

10720. RESOLUTION 13-38 APROVING OF A MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF CAPE MAY, THE DELAWARE RIVER AND BAY AUTHORITY, AND THE TOWNSHIP OF LOWER REGARDING REAL ESTATE TAXES WITHIN THE CAPE MAY COUNTY AIRPORT

WHEREAS, the Cape May County Airport (hereinafter "Airport"), located in the Township of Lower (hereinafter "Township"), County of Cape May, and State of New Jersey, is owned by the County of Cape May (hereinafter "County"); and

WHEREAS, pursuant to a certain Acquisition Agreement, dated as of December 15, 1998, by and between The Delaware River and Bay Authority (hereinafter "Authority") and the County, the Authority agreed to assume operation and control of certain parcels of land and improvements at the Airport and further agreed to operate and manage the Airport and related facilities and to administer various leases relating to tenants at the Airport; and

WHEREAS, the County and Authority entered into that certain Ground Lease dated as of June 8, 1999, a memorandum of which was recorded on June 9, 1999 in the Office of the Clerk of Cape May County in Book 2809, Page 0584, pursuant to which the County leased to the Authority and the Authority leased from the County certain parcels of land and improvements legally described therein as the "Demised Premises" which are located at the Airport; and

WHEREAS, Cape May County, Lower Township, and the Authority have held different opinions on the handling of real estate taxes due at the Demised Premises; and

WHEREAS, since at least 2006, all parties have attempted to amicably resolve the dispute relating to unpaid real estate taxes; and

WHEREAS, the County, Lower Township, and the Authority wish to advance all the purposes outlined in the Memorandum of Agreement ("MOA") attached hereto as Exhibit "A" cooperatively and in harmony with each other party thereto recognizing the objectives of the other and wish to avoid the time, expense, uncertainty and aggravation of continuing to dispute this issue; and

WHEREAS, the parties to the MOA have reviewed it and provided comments to same.

NOW, THEREFORE, BE IT RESOLVED, that the form and provisions of the MOA are hereby approved and that the Chairperson, Vice Chairperson and Executive Director are hereby authorized to execute and deliver the MOA in substantially the form attached hereto as Exhibit "A" with such changes therein as Counsel may advise and they may approve, such approval to be conclusively evidenced by the execution and delivery of the MOA.

A motion to approve Resolution 13-38 was made by Commissioner Wilson, seconded by Commissioner Dorn, and approved by a roll call vote of 9-0.

Resolution 13-38

EXHIBIT A

MEMORANDUM OF AGREEMENT REGARDING REAL ESTATE TAXES

This Memorandum of Agreement (hereinafter "MOA") is entered into as of the date this MOA is fully executed, by and between the County of Cape May; The Delaware River and Bay Authority; and the Township of Lower.

- A. The Cape May County Airport and Industrial Park (hereinafter "Leasehold Property"), located in the Township of Lower (hereinafter "Township"), County of Cape May (hereinafter "County"), and State of New Jersey, is owned by the County.
- B. The Delaware River and Bay Authority (hereinafter "Authority") was duly created pursuant to the Delaware-New Jersey Compact, 17 Del. C. § 1701 and 1\1, J. S .A. 32:11E-1, et. seq. (the "Compact"). Among the purposes of the Authority is the undertaking of projects which advance the economic growth and development within the counties of Delaware and New Jersey which border the Delaware River and Bay by providing for, planning and engaging in projects which will enhance the future economic growth and development of those areas.
- C. Pursuant to an Acquisition Agreement dated December 15, 1998 (the "Acquisition Agreement"), executed by and between the Authority and the County, the Authority agreed to assume operation and control of certain parcels of land and improvements at the Leasehold Property and further agreed to operate and manage the Leasehold Property and related facilities and to administer various leases relating to tenants at the Leasehold Property.
- D. The County and Authority entered into a Ground Lease dated June 8, 1999 (the "Ground Lease"), a memorandum of which was recorded on June 9, 1999 in the Office of the Clerk of Cape May County in Book 2809, Page 0584, pursuant to which the County leased to the Authority certain parcels of land and improvements located at the Leasehold Property described therein as the "Demised Premises." The Ground Lease is for a thirty (30) year term with two automatic thirty (30) year renewals subject to certain rights to elect non-renewal as set forth therein.
- E. From time to time since at least 2006, the Township sought to collect, from the County and/or Authority, unpaid real estate taxes due from delinquent tenants at the Leasehold Property.
- F. The Township claims that the County and/or the Authority are obligated to pay all delinquent taxes if a tenant defaults in payment of same.
- G. The County claims that if any real estate taxes are due, the Authority is liable to pay same.

- H. The County further claims that the Authority must reimburse it for real estate taxes it pays to the Township pursuant to the County's interpretation of the Acquisition Agreement.
- I. The County claims that, since at least 2009, it paid the Township in excess of \$49,000.00 for real estate taxes on behalf of delinquent tenants at the Leasehold Property.
- J. The Authority claims that pursuant to law and/or the Compact, there is no basis to impose real estate taxes on tenants at the Leasehold Property under these circumstances and, in any event, the Authority is not liable for real estate taxes.
- K. The Authority further claims that it is not liable for any real estate taxes pursuant to the Acquisition Agreement.
- L. The parties' respective positions regarding these real estate taxes issues have been memorialized in various extensive correspondence since at least as early as 2006, all of which is incorporated by reference herein as if fully set forth at length.
- M. Since at least 2006, the parties have attempted to amicably resolve this dispute.
- N. The parties share a common goal to promote economic development and growth in the County and the Township.
- O. The parties recognize that to achieve this goal it is critical to maintain tenants at the Leasehold Property and attract tenants to the Leasehold Property.
- P. The businesses operated by tenants lead to employment, traffic and commerce to stimulate economic development and growth.
- Q. According to the Authority, the existing tenants at the Leasehold Property employ approximately thirty (30) people on both a full-time and part-time basis.
- R. Many of the businesses operated by the existing tenants at the Leasehold Property provide services essential to aircraft operators and passengers, visitors and neighbors such as food and car rental.
- S. In order to avoid the time, expense, and uncertainty of continuing to dispute the real estate tax issues and to focus their respective resources on promoting economic development and growth, the parties engaged in extensive cooperative communications in an attempt to resolve this dispute.
- T. The parties have agreed to resolve this dispute using a notice and collection procedure to be implemented in accordance with the terms of this MOA.
- U. The parties wish to advance all the purposes in this MOA cooperatively and in harmony with each party recognizing the objectives of the other and wish to avoid the time, expense, and uncertainty of continuing to dispute this issue.
- V. Pursuant to the "Uniform Shared Services and Consolidation Act", N.J.S.A. 40A:65-1 et. seq., local government units, including Townships and Counties, are authorized

to jointly to enter into agreements pursuant to the provisions of that statute.

- W. In order to allow for the objectives of the parties to advance, the parties agree to the terms of this MOA and recognize that these provisions are binding on all parties and their successors, heirs and assigns.

NOW, THEREFORE, in consideration of the following promises and covenants and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. The Recitals set forth above are incorporated in the body of this MOA as if fully set forth at length.
2. The parties agree to cooperatively address the interest of their entities and constituents as outlined in this MOA and agree that there are no outstanding real estate taxes due and owing at the time of the execution of this MOA.
3. The initial term of this MOA is for four (4) years with successive renewals of three (3) years as set forth in Section 4. This initial four (4) year term of this MOA commences upon the latest date of the passage of the appropriate approvals/resolutions/ordinances by the parties hereto,
4. This MOA will automatically renew for additional three (3) year terms unless one or more of the parties provide written notice as required herein within sixty (60) days of the beginning of the last full year of each term to all other parties.
5. Within thirty (30) days after this MOA is fully executed, the Authority will issue a one-time notice to all tenants reminding them to timely pay real estate taxes imposed by the Township.
6. The Authority agrees to quarterly provide, in written form, to both the County and the Township contacts noted below, an updated list of current tenants and the duration of each tenant's leasehold. The Authority will provide an updated list to the County and Township of a tenant vacating the property within thirty (30) days of the knowledge thereof.
7. Unless the tenant is evicted or vacates in breach of the lease, the Township, upon receipt of the aforesaid notification, will remove the property from the Township's tax rolls effective as of the 1st day of the next calendar month following said vacation. The parties agree that no taxes for the intervening period (consisting of the date the tenant vacates the property to the first day of the next calendar month) will be due and owing to or from any party or tenant. If the tenant is evicted or vacates in breach of the lease, the property will remain on the tax rolls until said lease would have expired; provided, however, that the Township may only seek payment of any real estate taxes for the term of the lease solely from the tenant and not the County and/or Authority and the Township will not assert any liens related thereto.
8. If the opportunity to amend any existing tenant leases presents itself and subject to the tenant's consent thereto, the Authority agrees to attempt to modify the language in such leases to include an acknowledgement by the tenant that the Township reserves any right to

pursue legal action against the tenant for any real estate taxes due and owing to the Township. For any new leases (excluding renewals) the Authority enters into after the date this MOA is fully executed, the Authority agrees to include language in such leases whereby the tenant acknowledges that the Township reserves any right to pursue legal action against the tenant for any real estate taxes due and owing to the Township. Notwithstanding any right the Township has to pursue legal action against any tenant for delinquent real estate taxes, the Township shall not at any time seek any payment of any real estate taxes from the County or Authority which allegedly accrued or were imposed during the time that the MOA is/was in effect or assert any liens based on such accrued or imposed real estate taxes. The Township acknowledges that its sole means of recourse to collect real estate taxes that allegedly accrued or were imposed during the time that this MOA is/was in effect, is against the tenants and not the County or Authority. The determination as to whether to pursue legal action will lie solely with the Township. The Township will provide the County and Authority contacts notice of any legal action it pursues against any tenant.

9. The Township will, upon notification from the Authority, make an added assessment for any property that is not on the assessment list as of January 1 of any year of this MOA but becomes occupied at any point during the tax year on a pro-rata basis.
10. The Township will send to the County and Authority contacts copies of any delinquent notices sent to any tenants which notices are typically sent quarterly and once at the end of the year.
11. This MOA may be executed in any number of original or telecopied counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall constitute one and the same instrument.
12. The contact person for the Authority will be the Property Manager or designee.
 - a. Property Manager: Michelle Griscom
 - i. Phone Number: (302) 571-6482
 - ii. Fax Number: (302) 571-6479
 - iii. [Email: michelle.griscom@drba.net](mailto:michelle.griscom@drba.net)
 - b. Secondary Contact: Michelle Hammel, Esquire
 - i. Phone Number: (302) 571-6002
 - ii. Fax Number: (302) 571-6305
 - iii. [Email: michelle.hammel@drba.net](mailto:michelle.hammel@drba.net)

The contact person for the County will be the County Clerk or designee.

- c. Clerk: Elizabeth Bozzelli
 - i. Phone Number: (609) 465-1065
 - ii. Fax Number: (609) 465-6189
 - iii. [Email: ebozzelli@co.cape-may.nj.us](mailto:ebozzelli@co.cape-may.nj.us)
- d. Secondary Contact: County Counsel, Barbara Bakley-Marino
 - i. Phone Number: (609) 465-6885
 - ii. Fax Number: (609) 463-0705

- iii. [Email: countycounsel@co.cape-may.nj.us](mailto:countycounsel@co.cape-may.nj.us)

The contact person for the Township will be the Township Clerk or designee.

- e. Township Clerk: Julia Picard
 - i. Phone Number: (609) 886-2005 ext. 113
 - ii. Fax Number: (609) 886-9488
 - iii. [Email: clerk@townshipoflower.org](mailto:clerk@townshipoflower.org)

- f. Secondary Contact Name: Township Manager, Michael J. Voll
 - i. Phone Number: (609) 886-2005 ext. 132
 - ii. Fax Number: (609) 886-1232
 - iii. [Email: manager@townshipoflower.org](mailto:manager@townshipoflower.org)

The parties shall immediately notify each other in the event of any change in their respective designated contact person.

- 13. No party to this Agreement waives any immunity to which it may be entitled pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq. or any other law.

- 14. The Township, for itself and all persons and entities claiming by, through or under it, releases, acquits and forever discharges the County and Authority and all related entities and their agents, trustees, officers, commissioners, freeholders, directors, members, employees, servants, shareholders, partners, members, representatives, attorneys, subsidiaries, predecessors, successors, heirs and assigns (the "County/Authority Releasees") from all liens, obligations, claims, debts, demands, covenants, contracts, promises, agreements, liabilities, costs, attorney's fees, expenses, interest, penalties, fines, actions, and causes of action, whatsoever, at law or in equity, whether known or unknown, from the beginning of the World to the present date, which the Township and all persons or entities claiming by, through or under it, had, has or claims to have against the County/Authority Releasees (individually, jointly or severally) which are connected with, related to, and/or arising from, real estate taxes which allegedly accrued or were imposed during the time that this MOA is/was in effect. The Township, for itself and all persons and entities claiming by, through or under it, also agrees not to pursue at any time any legal action to collect any real estate taxes against the County/Authority Releasees (individually, jointly or severally) or otherwise seek to collect at any time any real estate taxes from the County/Authority Releasees (individually, jointly or severally) which allegedly accrued or were imposed during the time that this MOA is/was in effect and forever waives any and all rights to do so.

- 15. This MOA reflects a compromise reached between the parties and nothing in this MOA shall constitute an admission by any party to this MOA. Nothing in this MOA shall affect the parties' rights, positions, claims or defenses with respect to any real estate taxes that allegedly accrue and/or are imposed after the expiration of this MOA.

- 16. Due to the unique nature of this MOA, the parties will be irreparably harmed in the event this MOA is not specifically enforced and all parties waive any claim or defense that an adequate remedy at law exists. In the event any party breaches this MOA, an injunction may be issued and any and all rights or obligations shall be enforceable in a court of equity by a decree of

specific performance. This remedy is cumulative and not exclusive, and shall not preclude the pursuit of any other remedies at law or in equity including, but not limited to, the right to maintain an action for any monetary damages caused by any breach.

17. Unless otherwise stated in this MOA, all notices required by this MOA shall be hand-delivered or mailed to the following addresses:

For the Authority:

Michelle Hammel, Esquire
The Delaware River and Bay Authority
1-295 and Route 9
Delaware Memorial Bridge Plaza
New Castle, DE 19720

For the County:

County of Cape May
Elizabeth Bozzelli, Clerk
4 Moore Road, DN-104
Cape May Court House, NJ 08210

For the Township: Township of Lower Julie Picard, Clerk 2600 Bayshore Road Villas, NJ 08251

18. Each party represents and warrants to the other that all governmental, municipal or county action necessary to enter into and perform all obligations required by this MOA has been, or will have been, validly taken and that the undersigned are authorized to execute this MOA. This MOA shall become effective as of the date when both of the following are completed:
 - a. The Authority's consent to the terms and conditions of this MOA as approved by the Authority's commissioners in accordance with Article VI of the Compact; and
 - b. Failure of the Governors of Delaware and New Jersey to cancel the MOA within ten (10) days (Saturdays, Sundays and public holidays in each state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which the Authority's commissioners' vote for approval of the MOA was taken pursuant to Article VI of the Compact.
19. This MOA shall be governed by and construed in accordance with the laws of the State of New Jersey.
20. This MOA sets forth the entire understanding of the parties hereto with respect to the transactions contemplated herein. No change or modification of this MOA shall be valid unless the same shall be in writing and signed by all the parties hereto.
21. If any clause, sentence, paragraph, section, or part of this MOA shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or

invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.

IN WITNESS WHEREOF, the parties affix their signatures to this MOA, intending to be legally bound. If a party is a corporation, this MOA is signed by its proper corporate officers and its corporate seal is affixed.

COUNTY OF CAPE MAY

Date

By: _____
Gerald M. Thornton
Director, Board of Chosen Freeholders

ATTEST: _____
Elizabeth Bozzelli
Clerk

Barbara Bakley-Marino, Esquire
Cape May County Counsel

ATTEST: _____

THE DELAWARE RIVER AND BAY
AUTHORITY

Print Name: _____
Title: _____
Date: _____

By: _____
James N. Hogan
Chairperson
Date: _____

Print Name: _____
Title: _____
Date: _____

By: _____
William E. Lowe, III
Vice Chairperson
Date: _____

Print Name: _____
Title: _____
Date: _____

By: _____
Scott A. Green
Executive Director
Date: _____

Approved as to Form:

Philip A. Norcross, Esquire

Date

ATTEST: _____

Clerk

Approved as to Form and Legality:

City Solicitor

TOWNSHIP

By: _____

Mayor

Resolution 13-38 Executive Summary

Resolution: Memorandum of Agreement between the County of Cape May, the Delaware River and Bay Authority, and the Township of Lower regarding real estate taxes at the Cape May Airport.

Committee: Economic Development

Board Date: September 17, 2013

Purpose and Background for Resolution:

The Cape May Airport is operated by the Authority on land owned by the County on Lower Township, New Jersey. There are a number of tenants who operate commercial businesses at the Airport pursuant to Lease Agreements with the Authority. On occasion, Lower Township has recorded unpaid taxes on their tax rolls. Lower Township has sought payment for these delinquent accounts from both the County and the Authority. Both the County and the Authority assert that they are not liable for the taxes owed by the tenants. After lengthy negotiations, the parties have reached this agreement that resolves the issue both as it relates to past taxes and how delinquent tenants will be handled in the future.