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SSA 12/27/2022

TINICUM ISLAND ROAD SETTLEMENT AGREEMENT

This **TINICUM ISLAND ROAD SETTLEMENT AGREEMENT** (the "**Agreement**") is made as of the 28th day of December, 2022 and effective as of December 28 2022 (the "**Effective Date**") by and between the Township of Tinicum, Delaware County, PA (the "**Township**"), and The City of Philadelphia, Philadelphia County, PA (the "**City**"). The Township and the City are individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

WHEREAS, the City owns and operates the Philadelphia International Airport ("**Airport**"), which is located in Philadelphia County and Tinicum Township, Delaware County; and **WHEREAS**, as part of the Airport, the City owns certain parcels of real estate in Tinicum Township, Delaware County, Pennsylvania on both sides of the current location of a segments of a certain Township roadway commonly known as Tinicum Island Road ("**Existing TI Road**"), which is situated on approximately 9.25 acres of land; and

WHEREAS, the City condemned approximately 136 acres of property located in the Township across and northwest of the Existing TI Road ("**West Cargo Development Tract**"). The City plans to develop the West Cargo Development Tract in the future as an Airport cargo facility; and

WHEREAS, the integration of the West Cargo Development Tract into the Airport property, and its' future development is referred to as the "**West Cargo Development Project**". As part of and to facilitate the West Cargo Development Project, the City desires to relocate a portion of the Existing TI Road northwest of the West Cargo Development Tract. The portion of the Existing TI Road to be relocated is generally depicted on the plan attached hereto at Exhibit A; and

WHEREAS, the relocation of the Existing TI Road and the integration of the West Cargo Development Tract into the Airport is an integral first step in the West Cargo Development Project; and it is critical to the success of the West Cargo Development Project that the City acquire and relocate the Existing TI Road without delay; and

WHEREAS, the City has submitted development plans to the Township (the "100% Design Plans") proposing the details of a relocated TI Road ("**Relocated TI Road**"), which will encompass approximately 5.4 acres of land on the West Cargo Development Tract. A plan depicting the general location of the Relocated TI Road is attached hereto at Exhibit B; and

WHEREAS, in connection with the Relocated TI Road, the Parties agree that certain associated improvements will be required to be made ("**Associated Improvements**"). Such Associated Improvements shall include an elevated berm ("**Berm**") together with a sound wall ("**Sound Wall**") no less than 6 feet in height, a walking trail ("**Walking Trail**"), stormwater retention and management basins and facilities ("**Stormwater Basins**"), wetland areas ("**Wetlands**") and various other improvements ("**Related Improvements**"). These Associated

Improvements are also depicted on the 100% Design Plans last dated February 9, 2022, including any subsequent modifications and changes agreed to by the Parties by Index, which is attached hereto as Exhibit "C" and incorporated herein by reference; and

WHEREAS, the Township currently operates, maintains and repairs the Existing TI Road; and

WHEREAS, the Parties hold various ownership and related rights in the Existing TI Road, including fee interests in the land underlying the Existing TI Road, fee interests in the road surface and supporting materials and structures, as well as interests resulting from various easements; and

WHEREAS, the Parties dispute and cannot agree on their respective ownership and other interests and related rights in the Existing TI Road. The City believes that the Township only owns the entire fee interest in two segments of the Existing TI Road totaling approximately 1.4 acres and other easement interests. The Township disagrees and asserts it holds a fee interest in the entire 9.25 acres of the Existing TI Road; and

WHEREAS, the Township has threatened to initiate litigation to compel the City to pay fair market value for the entire 9.25 acres of the Existing TI Road so that it can be vacated, and the Township has threatened litigation in this regard; and

WHEREAS, the Parties have undertaken extensive title and internal record research and have failed to resolve the disputed ownership rights; and

WHEREAS, the City submitted a Land Development Application to the Township on April 14, 2022, requesting land development approval and a limited waiver (Limited Waiver Application) of certain of the mandatory provisions applicable to land development submissions relating to the construction of the Relocated TI Road on the West Cargo Development Tract (the "Project"); and

WHEREAS, on May 26, 2022, the City also submitted a Subdivision Application to the Township requesting subdivision approval for the Project, which Subdivision Application is presently pending before the Township Board of Commissioners; and

WHEREAS, the City also submitted a zoning application to the Township on August 15, 2022, requesting variance relief from §395-55 and §395-50(B) of the Tinicum Township Zoning Ordinance necessary for the relocation of the Existing TI Road and the creation of a walking trail (Zoning Relief); on September 15, 2022 the Township Zoning Hearing Board held a hearing on the City's application; and on October 20, 2022, the Township Zoning Hearing Board entered a decision granting the City's requested Zoning Relief; and

WHEREAS, on July 18, 2022 the Township adopted Tinicum Township Resolution 2022-009 (the "**Resolution**") approving the Limited Waiver Application subject to certain terms and conditions (Resolution attached hereto as Exhibit D) authorizes the City to proceed with certain grading, stormwater management and surcharging activities related to the Project prior to receiving full Land Development approval; and

WHEREAS, the Resolution requires, and the City agrees, that the remaining Land Development approvals and the Subdivision approvals are to be completed no later than February 15, 2023; and

WHEREAS, the Parties, after negotiations, and in order to allow construction of the Relocated TI Road to proceed, have agreed to amicably resolve their dispute over the ownership of the Existing TI Road in order to avoid the expense, delay, and uncertainty of litigation; and

WHEREAS, by this Agreement, the Parties desire to memorialize the terms and conditions upon which the Parties agree to amicably resolve this dispute, as well as to facilitate the construction of the Relocated TI Road, Walking Trail, and the abandonment and vacation of the Existing TI Road, so as to allow the West Cargo Development Project to be developed in a timely manner.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and agreements herein contained, and intending to be legally bound, the Township and the City agree to certain terms and conditions, as follows:

INCORPORATION OF RECITALS

1. The foregoing Recitals are hereby incorporated into and made a part of this Agreement.

TINICUM ISLAND ROAD RELOCATION

2. The Township and the City agree that the Plans (hereinafter defined) have been submitted to and reviewed with comments and recommendations by the Township engineers and such Plans have been submitted to the Tinicum Township Board of Commissioners for approval. In order to assure completion of the Relocated TI Road in a timely manner essential to the development of the West Cargo Development Project, construction of the Limited Waiver Activities for the Relocated TI Road commenced in the third quarter of 2022. In that regard, the parties acknowledge that the City has placed the construction of the Relocated TI Road out for bid and have received bids and awarded the contract to C Abbonizio Contractors Inc. The "**Plans**" shall mean those certain plans captioned as Tinicum Island Road Construction Plans, 100% Design, Sheets 1 through 293 (The Index of which is attached hereto at Exhibit C), last dated February 9, 2022 and prepared by Johnson, Mirmiran, & Thompson, Inc., and including any subsequent changes agreed to by the Parties. The Plans are fully incorporated herein and made a part hereof by reference or amendment.

3. The City shall be solely responsible, at its cost, for the following in accordance with applicable present and future laws, ordinances, rules, regulations, orders and requirements of all Federal (including Federal Aviation Administration ("FAA") grant assurances and Transportation Security Administration ("TSA") requirements), Commonwealth of Pennsylvania, and local governments (including Philadelphia and Delaware Counties, as well as the Township), courts, departments, councils, commissions, boards or agencies ("Applicable Laws").

- a. obtaining all permits and approvals from the Township including, but not limited to grading and drainage permit, stormwater management permit, floodplain development permit and construction permits required for the construction and installation of Relocated TI Road and Walking Trail;
 - b. constructing the Relocated TI Road, the Berm and Sound Wall, the Stormwater Basins, the Wetlands, and agreed upon Related Improvements in accordance with the approved "Plans" and the Township engineering surveillance and inspections;
 - c. constructing the 10ft wide Walking Trail within a 15ft wide parcel providing for written joint access agreements or easement agreements as provided in Paragraph 20.d. hereinafter, which shall include, but not be limited to, access to the City's electrical duct bank and required conduit and wiring for the Township's future lighting of the Walking Trail (future lighting to be at the Township's cost) on the West side of the Relocated TI Road in accordance with the approved plans and the Township's engineering surveillance and inspections;
 - d. maintaining, repairing and repaving of the Relocated TI Road; and maintaining and as necessary repairing the Berm and Sound Wall, the Stormwater Basins, and the Wetlands;
 - e. demolishing and removing road debris from the Existing TI Road, no sooner than when the Relocated TI Road has been approved and opened for public vehicular traffic in accordance with Applicable Laws; provided, however, in no event shall any action be taken to demolish and remove the Existing TI Road until the Existing TI Road is vacated. The City must obtain applicable permits and approvals, including but not limited to demolition and grading permits which shall occur after the vacation of Existing TI Road by the Township. The Township shall reasonably cooperate in granting the applicable permits and approvals, subject to compliance by the Applicant, all in accordance with Applicable Laws.
 - f. All Township applications and permit fees required for zoning, subdivision, land development, grading, stormwater, and construction in connection with the installation of the Relocated TI Road, the demolition of the Existing TI Road and the construction of the Walking Trail. Applicable application fees will be submitted with each separate application, and permit fees will be paid prior to the issuance of any permits. In addition, at the time of approval of each requested permit, the City, its designee or its contractor, shall deposit with the Township a Cash Escrow equivalent to 3.5% of the total construction costs for each such permit issued for the Relocated TI Road and demolition of the Existing TI Road: Except for the amount of the escrow, this escrow, including any reduction and/or its termination, will be subject to the provisions of Section 10509 of the Pennsylvania Municipalities Planning Code and to the applicable sections of the Township's development ordinances.
- (1) All reasonable professional legal, engineering, inspection and surveillance fees incurred by the Township in the ordinary course in connection with the

construction of the Relocated TI Road and demolition of the Existing TI Road; provided, however, in no event shall the City be responsible for any legal fees incurred by the Township in connection with this Agreement; and

- (2) The Township shall waive any professional, engineering inspection or surveillance fees in connection with the construction of the Walking Trail, only.

4. The Township shall be responsible, at its cost, for the following respecting the Relocated TI Road and Walking Trail in accordance with Applicable Laws:

- a. installation of the Walking Trail lighting, as well as benches, landscaping, signage, and accessory structures desired by the Township; and
- b. maintaining and repairing the Walking Trail; and
- c. vacating the Existing TI Road after the Relocated TI Road is completed and approved for public vehicular traffic; provided, however, the Township shall commence actions required for vacation of the Existing TI Road no later than sixty (60) days after the Relocated TI Road is complete and open to public vehicular traffic.

5. Upon completion and opening of the Relocated TI Road for public vehicular traffic:

- a. the City shall retain ownership of the fee interests to the land and surface improvements of the Relocated TI Road; and
- b. The Township shall transfer to the City, in fee simple, any and all right, title and interest, if any, held by the Township free and clear of any known liens, judgments or other encumbrances of record, to that portion of the Existing TI Road determined to be held in fee simple interest by the Township and insurable as such by a licensed Pennsylvania Title Company. Any interest not determined to be held in fee simple by the Township shall be transferred by Quit-Claim Deed or such other document as may be mutually agreed to by the parties hereto; and
- c. The Township shall not intentionally erect, or permit the erection or growth of any building, structure, tree or other object that would cause an obstruction or hazard to air navigation as defined in 14 C.F.R. Part 77, as may be amended, or allow the use of the Walking Trail in a manner that would intentionally create a hazardous wildlife attractant, create electrical interference with radio communication to and from aircraft, cause glare that would impair pilot visibility, generate smoke that would impair visibility in the vicinity of the Airport. In the event there is some obstruction or hazard as stated herein, the Township and the City agree to reasonably cooperate in the removal or eliminating the obstruction or stopping the activity. The Township will not be responsible for the relocation of any hazardous wildlife attractant not erected or created by the Township which results from the natural habitat or migration of wildlife arising from the presence of the adjacent

John Heinz Federal Wildlife Preserve; and

- d. The City will transfer to the Township all of its fee simple interest in the Walking Trail subject to a negotiated avigation easement as provided in paragraph 19.e. hereinafter, and which transfer document is in an instrument insurable by a licensed Pennsylvania Title Company, free and clear of any other liens, judgments or other encumbrances of record.
6. After all required federal, state and local approvals are received, and prior to the opening of the new Tinicum Island Road, the City and the Township shall contemporaneously exchange the following documents:
 - a. License Agreement providing the Township and the public-at-large with rights of free access for public vehicular traffic to, over, and across the Relocated TI Road in a manner reasonably equivalent to the Township's and public's rights in the Existing TI Road. The License Agreement will also include provisions: (i) preventing limitations, obstructions or restrictions on the Township's and public's rights of access and use of the public roadway in any manner; (ii) prohibiting the establishment of any lien or encumbrance on or affecting the Relocated TI Road, in ways which impact, obstruct or restrict the use of the roadway for the Township and/or public purposes; (iii) establishing right-of-way lines for the Relocated Tinicum Island Road, which are a minimum width of eighty-four (84') feet, and which right-of-way lines will be subject to and the basis for applying any relevant setback, lot width, road access, or similar provisions of the Township's Zoning Code; (iv) except for as provided herein by paragraph 36 restricting the assigning, subleasing or transferring of responsibilities or duties of or by the City to any third party entity without the prior written approval of the Township; and (v) which transfers and assigns responsibility for unrestricted police, fire, traffic and enforcement policies and procedures for the Relocated TI Road to the Township;
 - b. Fee Simple and/or Quit-Claim Deeds or other instruments from the Township to the City, as applicable, conveying all right, title, or interest the Township holds in the Existing TI Road in accordance with paragraph 5.b. above; and
 - c. Deed(s) and instruments, as applicable, from the City to the Township in accordance with Paragraphs 5.d, and 20. herein.
7. The City has filed or agrees to file the following applications related to the Relocated TI Road Plans:
 - a. Land Development/Construction Application for Plans.
 - (1) The City has submitted a land development application seeking limited approval for the development and construction of the Relocated TI Road (including the Berm and Sound Wall, Walking Trail, Stormwater Basins, Wetlands, and Related Improvements). Such application also requested a limited waiver of land development, which limited waiver was granted as

set forth herein and in the Resolution attached hereto at Exhibit D, for the City to begin grading and surcharging for the Relocated TI Road. Approval to begin construction of the balance of the Relocated TI Road shall be granted upon review and final approval of the land development application and other related permitting as set forth in the Resolution, and in accordance with the Applicable Laws.

- (2) As required in the Resolution, and herein, the City agrees to execute or cause its designee to execute, as applicable, the below documents:
 - a) Developer and Security Agreement(s) guaranteeing the construction, completion and costs of the 100% Design Plans subject to the recommendations, comments and conditions provided by the Township Engineer pursuant to Applicable Laws. The foregoing Agreement(s) shall be consistent and compliant with the applicable provisions of the Pennsylvania Municipalities Planning Code, Act of 1968, P.L.805, as enacted and amended.
 - b) Provide financial security to the Township for the Relocated TI Road construction. This security shall be in the form of a contractor's performance and/or completion bond or similar instrument ("Bond") in an amount as determined by the City and the Township engineering professionals, which Bond shall be provided by the City's contractor as part of its construction contract. The Bond shall name both the Township and the City as additional insureds to the extent of the full cost of construction and installation of the Relocated TI Road and Walking Trail and associated improvements.
- (3) The City shall, upon application and after approval of permits, at the time of filing its initial application in connection with the development and construction of the Relocated TI Road, including the Berm and Sound Wall, Walking Trail, stormwater basins and other related improvements, deposit with the Township, or shall cause its designee or contractor to deposit with the Township, a Cash Escrow in an amount of no less than 3.5% of the construction costs to compensate the Township for legal, engineering, construction inspection and surveillance services (subject to Paragraph 3.f.(1)).
- (4) The Township shall process the foregoing land development application and all other applications referenced in subparagraphs b. and c. below, in the ordinary course, and in accordance with Applicable Laws upon receipt by the Township.
- (5) Upon final Township approval of the Land Development Application or any waivers granted with respect thereto, the City or its designee will submit grading, construction, paving and any other necessary construction related

applications, together with applicable fees and costs in accordance with Applicable Laws.

b. Subdivision Application. The City has also submitted a subdivision application to the Township requesting subdivision approval creating the following parcels as depicted on the accompanying subdivision plans: 1) a parcel encompassing the Relocated TI Road, including the Berm and Sound Wall, the Stormwater Basins and any Related Improvements; 2) a parcel encompassing the Walking Trail; 3) a parcel encompassing the forested wetlands; and 4) a parcel or parcels encompassing the portion of the West Cargo Development Site proposed for future cargo development facilities. The Township agrees to process this application in the ordinary course upon filing, independent of its processing of the other referenced applications.

c. Zoning Application. Because certain of the Parcels created pursuant to the Subdivision Application are deemed to be non-compliant with Township zoning requirements, the City submitted a zoning application to the Township Zoning Board requesting the necessary Zoning Relief. On October 20, 2022, the Township Zoning Board entered a decision granting the City's requested Zoning Relief; and

d. The Parties agree that other than the grading and related permits necessary for the grading, stormwater and surcharging activities approved by the **Resolution**, no other construction related permits will be issued by the Township until final land development, subdivision and zoning approvals are granted, separate additional Developers, Security and Stormwater Agreements are executed, if required, and all fees and costs thereof are paid in accordance with Applicable Laws. Financial security arrangements and agreements for the grading, stormwater and surcharging activities approved by the **Resolution** has been provided as required for the Limited Waiver Activities as well as for the remaining balance of the Relocated TI Road construction project phase..

8. The Township and the City agree that each shall take all necessary municipal actions to effectuate this Agreement, including, without limitation, all actions required by Tinicum Township ordinances and City of Philadelphia ordinances.

9. The City agrees that it shall not levy any toll fees or charges or establish any procedure or take any action inconsistent with the Licensing Agreement for public use of the Relocated TI Road or in any way impede or impact the Relocated TI Road without the prior agreement of the Township.

RELOCATED TI ROAD PAYMENTS TO THE TOWNSHIP

10. Fixed Payment: Contemporaneous with the Township's finally and irrevocably vacating the Existing TI Road, transferring to the City title or any interest it holds to the Existing TI Road, and formally opening the Relocated TI Road, the City will pay to the Township the sum of Four Million, Four Hundred Fourteen, Four Hundred Ten Dollars (\$4,414,410) in exchange for all the Township's right, title and interest in the Existing TI Road.

11. Conditional Tinicum Only Agreement Payment Phase-In: The City and the Township entered into the Tinicum Only Settlement Agreement dated as of April 22, 2015

(**"Tinicum Only Agreement"**). Pursuant to Paragraph 2 of the Tinicum Only Agreement, the City is obligated to make certain payments to the Township. Should the payments to the Township pursuant to Paragraph 2 of the Tinicum Only Agreement be modified because of the early termination of the Capacity Enhancement Project as provided in Paragraph 3 of the Tinicum Only Agreement, the City shall make the following payments to the Township from the Aviation Fund in addition to the Fixed Payments described above:

- a. In the first year following such early termination, the City shall pay the Township \$0.
 - b. In the second year following such early termination, the City shall pay the Township \$200,000.
 - c. In the third year following such early termination, the City shall pay the Township \$300,000.
 - d. In the fourth year following such early termination, the City shall pay the Township \$400,000.
 - e. In the fifth year following such early termination, the City shall pay the Township \$700,000.
 - f. In the sixth year following such early termination, the City shall pay the Township \$900,000.
 - g. In the seventh and following years after such early termination, the City shall pay the Township \$1,000,000 annually through 2035 and no payments pursuant to this Paragraph thereafter.
 - h. Nothing stated or provided in this Agreement shall modify, amend or waive the other terms or obligations of the Parties as set forth in the Tinicum Only Agreement.
12. The foregoing payments are subject to Applicable Laws relating to taxes, liens or judgments that may be owed to the City by the Township.

MUTUAL RELEASE AND SETTLEMENT OF LITIGATION

13. In consideration of the foregoing, the Township does hereby remise, release and forever discharge the City and its successors, assigns, agents, employees, departments, and officials, from any and all actions, causes of action, lawsuits, demands, debts, obligations, and claims at law, in equity, in restitution or otherwise, under any theory, related to the ownership of the Existing TJ Road, known or unknown by either Party, as of the Effective Date.
14. In consideration of the foregoing, the City does hereby remise, release and forever discharge the Township and its successors, assigns, agents, employees, and officials, from any and all actions, causes of action, lawsuits, demands, debts, obligations, and claims at law, in equity, in restitution or otherwise, under any theory of liability or

ownership, related to the ownership of the Existing TI Road and the Relocated TI Road, known or unknown by either Party, as of the Effective Date.

15. Each Party acknowledges and agrees that this Agreement constitutes a compromise settlement of disputed claims. Neither the fact of, nor any provision contained in, this Agreement, nor any action taken pursuant to its terms will constitute, or be construed as, or be asserted to be, an admission of any wrongdoing, fault or liability of any kind on the part of any Party. In any action or proceeding in which this Agreement is admitted into evidence or otherwise considered, this Agreement will not constitute, be construed as, or be asserted to be, an admission of any wrong doing, fault or liability of any kind on the part of any Party or a waiver of any claims or defenses the Party may have or assert. Nothing herein shall waive or amend any defense or immunity which the Township of Tinicum, or their respective Commissioners, officers, agents or employees may have or assert under the Pennsylvania Political Subdivision Torts Claims Act, 42 Pa.C.S.A. §8541 et seq., as amended.

RELOCATED TINICUM ISLAND ROAD MAINTENANCE AGREEMENT

16. Prior to completion or opening of the Relocated TI Road, the Parties agree to enter into a Maintenance Agreement for the Relocated TI Road, which shall provide, among other things, the following:
 - a. The City shall be solely responsible for maintaining and repairing the Relocated TI Road from Hog Island Road to Scott Way and the Associated Improvements (from Hog Island Road to Scott Way), but not the Walking Trail. The City's responsibility includes, but may not be limited to, road safety checks, trash removal, paving, repaving, patching and pothole repair, grass cutting and tree removal, line painting, snow removal and plowing, street light maintenance, fencing, drainage and storm water runoff, traffic signals and signage, and required fire hydrant availability and maintenance, all pursuant to PennDOT Maintenance Manual Standards.
 - b. The City shall retain the Township to maintain the Relocated TI Road as soon as the Relocated TI Road is open. The City agrees to pay for each maintenance item, provided that those charges are consistent with agreed upon budgeted charges. The Parties agree that they will develop an annual budget/charges that may increase depending on market conditions from time to time. When acquiring goods or products (e.g., road salt or replacement lights) the Township shall charge the City the exact cost to the Township of such goods or products together with a fifteen percent (15%) administrative expense. The Township shall charge the City for its labor and personnel costs at the exact rate that the Township pays its employees together with an additional administrative cost of ten percent (10%). The City understands that the Township's cost of personnel may vary and increase in accordance with the Township's Personnel Policy and Labor Agreements. The Township shall invoice the City no less than monthly and shall enumerate all such expenses and charges and provide backup documentation upon request. The term of the Maintenance Agreement shall be one (1) year and shall include three (3) one-year options to renew.

WEST CARGO DEVELOPMENT PROJECT

17. The Township acknowledges that the City will defer the filing of future subdivision, land development and zoning applications and accompanying plans for the subdivided parcel encompassing the West Cargo Development site proposed for future cargo facilities. The Township will retain all of its rights and responsibilities related to the approval of the City's future subdivision, land development and zoning applications and accompanying plans, pursuant to any and all Applicable Laws relating to subdivision, land development, financial security, noise abatement, stormwater management, zoning and permitting.

NOISE STUDIES

18. The Parties agree that the City has or will conduct the below road traffic noise studies, and the conclusions of the noise studies are to be summarized and recommendations listed:

Tinicum Island Road Relocation Traffic Noise

- a. The City has supplemented Appendix J "Philadelphia International Airport, Environmental Assessment Noise Technical Report" prepared by HMMH of Bedford, Massachusetts dated March 2021 to separate the existing traffic noise for Tinicum Island Road from the other Airport related noises and forecast the effect of the traffic related noise due to the relocation of Tinicum Island Road on the residential area of the Township including current background airport related noise and determine the extent of measures required to mitigate the effects of such noise to the standards of the Pennsylvania Department of Transportation as to the Relocated TI Road traffic activities, and the standards of the Federal Aviation Administration as to air traffic activities.
- b. The Parties have conducted and reviewed the following noise traffic Studies:
 - i. IIMMH Technical memo dated 3-18-22
 - ii. THC review letter to HMMH Technical memo dated 7-14-22
 - iii. HMMH Technical memo dated 9-15-22
 - iv. HMMH Technical memo dated 10-21-22 (executive summary)
 - v. Acceptance of conclusion email from McCombie Engineers dated November 9, 2022.
- c. The City will provide a noise monitor installed to determine the actual noise levels at the time of completion and opening of the Relocated TI Road to confirm the findings of the prior performed Noise Studies. Due to proximity, this noise monitor may replace the noise monitor currently in existence at the Airport de-icing pad. Any comparison of actual readings will be reviewed by the respective Noise Consultants to ensure that the information is compatible and the process for comparison is appropriate.

- d. The City agrees to design, install and maintain the required permanent measures to mitigate the effects of the noise caused by the relocation of Tinicum Island Road in accordance with the above stated Studies prior to the opening of the Relocated TI Road to the public. The permanent mitigation measures will include the Berm, in conjunction with other measures including the construction of the Sound Wall as agreed are necessary based on the Parties' respective Studies and consultants as indicated in Paragraph 19b herein. The mitigation measures will be designed to address the noise generated by all projected vehicular roadway traffic, including truck traffic generated by the Relocated TI Road.

West Cargo Development Traffic Noise

- e. The City agrees to complete a new Table Top Noise Study using the data from the previous supplemented report, projecting increases in traffic from current and proposed projects in Tinicum Township to forecast the effect of the traffic related vehicle traffic noise due to the relocation of Tinicum Island Road on the residential area of the Township. In order to complete the Table Top Noise Study, the City must receive the traffic forecast from Ivy Development. The new Table Top Study shall include current airport related noise before development of the West Cargo Expansion and determine the extent of measures required to mitigate the effects of such noise to the standards of the Pennsylvania Department of Transportation as to the Relocated TI Road traffic activities, and the standards of the Federal Aviation Administration as to air traffic activities.
- f. The City or its developer agrees to design, construct and maintain temporary sound mitigation measures during all phases of construction of the West Cargo Development to mitigate the effects of construction noise, unless the existing measures (Berm and Sound Wall) are sufficient, subject to Township approval. The temporary mitigation measures, if any, shall remain until replaced with permanent mitigation measures to be determined during the City's Land Development approval process.
- g. The City agrees to submit new Table Top Sound Study(ies) during each phase of the Land Development approval process for the West Cargo Development Expansion for the Township's review and approval. The new Table Top Sound Study(ies) shall forecast the impact of the noise due to the proposed West Cargo Expansion including the presence of aircraft, freight processing equipment, freight transportation and related developments on the adjoining residential area of the Township. The City, in accordance with the results of the Sound Study(ies), shall take measures required to mitigate the effects of such noise to within the standards of the Pennsylvania Department of Transportation as to the Relocated TI Road traffic activities, and the standards of the Federal Aviation Administration as to air traffic activities. All required permanent sound mitigation measures shall be in place prior to the issuance of occupancy permits by the Township.

ADDITIONAL DOCUMENTS AND AGREEMENTS

19. Pursuant to, and in furtherance of, this Agreement, the Parties will negotiate in good faith and prepare, execute and record (as appropriate) prior to the opening of the Relocated TI Road, the following documents related only to the relocation of TI Road, in accordance with the terms and conditions hereof:

- a. Purchase, Exchange and Sale Agreement;
- b. Relocated TI Road License Agreement;
- c. Relocated TI Road Maintenance Agreement;
- d. Joint Access Agreements or Easement Agreements, as may be required;
- e. Avigation Easement for the Walking Trail;
- f. Development and Financial Security agreements as provided in Paragraph 7.a.(2) and 7.d.,
- g. Stormwater Operations and Maintenance Agreement as required;
- h. Deeds or other documents of transfer so as to reflect the provisions of Paragraphs 5.b. and 5.d. and 6.b. and 6.c. above;
- i. Documentation evidencing the vacation of the Existing TI Road from the applicable governmental authority;
- j. Any other agreement or document determined by the Parties to be necessary to effectuate the terms of this Agreement, or required for closing on the Walking Trail or Relocated TI Road parcels

PERMIT FEES FOR WEST CARGO DEVELOPMENT PROJECT

20. In connection with permits required to be issued by the Township necessary to develop and construct the future West Cargo Development Project, the Township shall charge to the City or its designee and the City or its designee will pay the Township's standard permit fees at published Township rates associated with applicable applications and permits. Because the Township is unsure what administrative costs it will incur in connection with processing the permit applications, and/or conducting inspections and/or reviews of the West Cargo Development Project construction, the Township will maintain separate ledgers to track all expenses and costs incurred and will adjust the permit fees to reflect actual costs incurred in processing the permit applications as provided below. At mutually agreeable times, specified below, the Township will make the ledgers available to the City, its designees or its agents for inspection and review.

21. The first review of the West Cargo Development Project permit fees will occur one year after the City or its designee pays the first permit fees for the West Cargo Development Project and, thereafter, prior to any subsequent land use filing requiring additional permit fees, but in no case, more frequently than annually, by the City in connection with a new phase of construction pursuant to the West Cargo Development Project. If after such inspection and review, the Township's reasonable and appropriate costs to process the permit and conduct inspections and reviews are less than the fees collected after the completion of construction pursuant to each permit issued, the Township will apply the excess permit fees to fund specific projects benefiting the Township and the Airport. The Parties agree that any or all of the following projects are appropriate to consider as benefiting the Township and the Airport, with the highest priority for such application of excess fees given to a. and b. below, unless such projects in a and b are required as

stormwater mitigation for the West Cargo Development plans:

- a. Conduct a study regarding improvement of storm water management and flood mitigation for Long Hook Creek;
- b. Long Hook Creek Reconnection Under RR Bridge;
- c. Bridge over Long Hook Creek to access Airport property;
- d. Any upgrades required for the Relocated TI Road due to additional development in the Township;
- e. Hog Island Road/Relocated TI Road and 2nd Street/4th Avenue intersection Modifications for the inclusion of traffic from the Tinicum Industrial Park Redevelopment;
- f. Bridge/Access Road TRP to the Relocated TI Road Drainage Improvements within Western Airfield (piping and basin improvements);
- g. Replacement of CMP Drainage Pipes South of the Relocated TI Road ;
- h. I-95 Access Improvements ;
- i. Improvements to the remaining Existing TI Road/Scott Way ;
- j. Improvements to Existing Hog Island Road (widening, Turn Lane, Reconstruction for increased Cargo Traffic) ; and
- k. Regional H&H/Flood analysis – Climate Resiliency Study .

TORT CLAIMS ACT

22. Nothing herein shall waive or amend any defense or immunity which the City or Township, its officers, agents, or employees may have under the Pennsylvania Political Subdivisions Tort Claims Act, 42 Pa. C.S.A Section 8451 et seq. as may hereinafter be amended from time to time.

SEVERABILITY/FAA REQUIREMENTS

23. The City's performance under this Agreement is subordinate to the City's obligations under federal law, including without limitation obligations under federal aviation or airport grants, conditions on the use of Passenger Facility Charges, and/or conditions on the use of airport revenue. In the event the U.S. Department of Transportation, the Transportation Security Administration, the Federal Aviation Administration ("FAA"), or a court of competent jurisdiction determines that the City's ability to perform any obligation under this Agreement would violate any such law or obligation, the City shall be immediately excused from performing such obligation

and shall in good faith negotiate a lawful resolution to the mutual satisfaction of the Parties hereto. All other terms and obligations under this Agreement shall remain in full force and effect.

24. In accordance with applicable FAA regulations, all records concerning the Airport are subject to inspection by any duly authorized agent of the United States Secretary of Transportation upon reasonable request. The Township agrees to make available such records related to the subject matter of this Agreement as are required by the FAA. Additionally, the City and any of its duly authorized representatives will have access to any books, documents, papers, and electronic records of the Township which are directly or indirectly related to the maintenance of the Relocated TI Road, for the purpose of audit or examination, or making excerpts or transcriptions.

NOTICE

25. All notices, requests and other communications under this Agreement shall be effectively given only if in writing and sent by United States registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized and receipted overnight courier service (such as Federal Express) guaranteeing next business day delivery, addressed as follows:

If intended to the City:

Chief Executive Officer
Philadelphia International Airport
Executive Offices, 3rd Fl. Terminal D-E
Philadelphia, PA 19153
Email: Atif.Saeed@phl.org
or his successor email

With a copy to:

City of Philadelphia Law Department
Chief Deputy City Solicitor,
Philadelphia International Airport
Executive Officers, 3rd Fl. Terminal D-E
Philadelphia, PA 19153
Email: Scott.Schwarz@phila.gov
or his successor email

and

City of Philadelphia Law Department
Chief Deputy City Solicitor, Regulatory Law
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
Email: Scott.Schwarz@phila.gov
or his successor email

If intended for the Township:

President, Board of Commissioners
Historic Lazaretto Building
97 Wanamaker Avenue
Essington, Pa. 19029
Email: patcarpetguy@aol.com

With a copy to:

David D. Schreiber, Township Manager
Township of Tinicum
97 Wanamaker Avenue

(Lazaretto Building)
Essington, PA 19029
Email: dschreiber@tinicumtownshipdelco.com

and

Sam S. Auslander, Esquire, Solicitor
Eckell, Sparks, Levy, Auerbach, Monte,
Sloane, Matthews & Auslander, P.C.
300 W. State Street, Suite 300
Media, PA 19063
E-mail: sauslander@eckellsparks.com

or to such other addresses of which a Party shall have given notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof on the third (3rd) business day after proper mailing thereof (in the case of United States registered or certified mail) or on the date of the delivery thereof to a courier service as aforesaid and may be given on behalf of either Party by its counsel. Without limiting the matter by which notice otherwise may be given, electronic communication ("Electronic Notice") shall be deemed written notice for purposes of this Paragraph if sent to the electronic mail address specified above or to such other electronic mail address of which a Party shall have given notice as herein provided. Electronic Notice shall be deemed received at the time the Party sending the Electronic Notice receives verification of the receipt by the receiving Party. Any Party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in non-electronic form, which shall be sent in accordance with the provisions of this Paragraph within five (5) business days of receipt of the written request for such non-electronic notice.

TINICUM TOWNSHIP EARNED INCOME TAX

26. The Parties agree that all contractors, subcontractors and/or vendors who engage in the demolition, construction, and other work that occurs in the Township related to the Existing TI Road and the Relocated TI Road and future construction of the West Cargo Development pursuant to this Agreement, shall be subject to the Township's Earned Income Tax. The City shall take reasonable measures to assure that all such contractors, subcontractors and/or vendors involved in these activities are aware of these Township requirements, and upon request, shall provide the Township with any documentation in its possession with respect to the foregoing. The City acknowledges that its contractors, subcontractors and vendors working within the Township must comply with all of the local ordinances including payment of the Township's Earned Income Tax which the Township intends to enforce in accordance with its applicable ordinance. In support thereof, the City will advise its contractors of this requirement related to their subcontractors and vendors, and will provide the Township with the names of all contractors to allow the Township to require compliance with the Township's requirements.

GENERAL PROVISIONS

27. Binding Effect. This Agreement shall be binding upon and shall inure only to the benefit of the Parties hereto and their respective successors and assigns to the extent permitted by law.

28. Costs and Expenses. Each Party hereto shall bear its own attorneys' fees and costs incurred in connection with this Agreement, litigation and all documents prepared and executed in connection herewith.

29. Authority. Each of the Parties and their representatives negotiating and executing this Settlement Agreement represents and warrants that it has the power and authority to bind the Party for whom they are signing this Agreement.

30. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person, firm, corporation, or legal entity, other than the Parties, any rights, remedies, or other benefits under or by reason of this Agreement.

31. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

32. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A facsimile or scanned electronic image of an original signature of a Party shall be sufficient to bind a Party to this Agreement.

33. Headings. The headings in this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the construction, interpretation or meaning of the provisions of this Agreement.

34. Enforcement. The Parties agree to defend, as appropriate, any challenge by a third-party, including, without limitation, a challenge by or before the U.S. Department of Transportation, the Transportation Security Administration, or the FAA to the enforceability of this Agreement or any obligation under this Agreement or any part thereto. Whichever Party's compliance with this Agreement is challenged will have the obligation to take whatever legal action is necessary to defend the enforceability of this Agreement or any obligation thereunder. If nonetheless this Agreement or any obligation under this Agreement or any part thereto is found to be unenforceable, the parties shall in good faith negotiate a lawful alternative means of performance to the mutual satisfaction of the Parties hereto.

35. Assignment. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TOWNSHIP OF TINICUM, DELAWARE COUNTY

By: DocuSigned by:
Patrick K. McCarthy
~~Name:~~ Patrick K. McCarthy
Title: President, Tinicum Township Commissioners

Date: December 28, 2022, 2022

Attested to:

DocuSigned by:
David D. Schreiber, Township Manager/Secretary
~~Name:~~ David D. Schreiber, Township Manager/Secretary

THE CITY OF PHILADELPHIA:

By: DocuSigned by:
Diana P. Cortes
~~Name:~~ Diana P. Cortes
Title: City Solicitor

Date: December 28, 2022, 2022