

2009 Memorandum of Agreement Concerning Tweed-New Haven Airport

By: George Miles, Associate Attorney
September 17, 2020 | 2020-R-0238

Issue

This report summarizes and presents (1) the 2009 memorandum of agreement between the City of New Haven, Town of East Haven, and the Tweed–New Haven Airport Authority concerning the Tweed–New Haven Regional Airport and (2) New Haven’s 2019 termination of that agreement.

Agreement Summary

Under the agreement (see Attachment 1), New Haven, East Haven, and the Airport Authority generally agreed to:

1. limit the airport’s Runway 2-20 to its existing paved length of 5,600 feet;
2. dismiss two lawsuits related to the construction of runway safety areas at the airport;
3. remove obstructions affecting the airport that are situated on public property;
4. coordinate on the Airport Authority’s construction of certain runway safety areas;
5. establish a community advisory board and good neighbor program;
6. expand the airport’s commercial service, subject to specific limits and conditions; and
7. add and distribute new passenger fees.

The group also agreed to pursue a series of state legislative initiatives during the 2009 session. Specifically, to:

1. limit Runway 2-20 to 5,600 feet,
2. make specific modifications to the composition of the Airport Authority's board,
3. increase the state grants in lieu of taxes for the airport that are provided to New Haven and East Haven,
4. appropriate \$2 million in each of the next two fiscal years towards the Airport Authority's operating costs, and
5. preserve \$5 million in bond appropriations for airport improvements.

The agreement took effect on March 16, 2009, subject to certain termination clauses. It was signed by New Haven Mayor John DeStefano, Jr.; East Haven Mayor April Almon; and Airport Authority Chair Mark Volchek.

Five state legislators (Senator Martin Looney, Senator Leonard Fasano, Representative Michael Lawlor, Representative Robert Megna, and Representative Vincent Candelora) expressed support for the agreement's efforts in a signed statement that accompanied the agreement.

Termination Summary

In a letter dated January 2, 2019 (see Attachment 2), New Haven Mayor Toni Harp terminated the agreement based on one of its termination clauses, specifically the failure of the state legislature to accomplish all of the above legislative initiatives during the 2009 session. She specifically cited failing to increase the state grants in lieu of taxes and appropriate the funds for the Airport Authority's operating costs.

Related Legislation

In 2009, the state legislature passed [PA 09-7, September Special Session](#). This act amended [CGS § 15-120j](#), modifying the Airport Authority board's composition, and added [CGS § 15-120j\(c\)](#), limiting Runway 2-20 to 5,600 feet. However, in 2019, the U.S. Second Circuit Court of Appeals invalidated the runway statute in [Tweed-New Haven Airport Auth. v. Tong](#), 930 F.3d 65 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 2508, (2020). For more information on the invalidation of [CGS § 15-120j\(c\)](#), see OLR Report [2020-R-0199](#).

Attachment 1

2009 Memorandum of Agreement Concerning Tweed-New Haven Airport

(Taken from Mayor John DeStefano Jr. Papers [Binder March 2009](#) pages 328 to 332.)

MEMORANDUM OF AGREEMENT CONCERNING TWEED NEW HAVEN REGIONAL AIRPORT BETWEEN THE CITY OF NEW HAVEN, THE TOWN OF EAST HAVEN AND THE TWEED NEW HAVEN AIRPORT AUTHORITY

March 16, 2009 [9]

I. STATEMENT OF PURPOSE AND UNDERSTANDING.

The City of New Haven ("City"), the Town of East Haven ("Town") and the Tweed New Haven Airport Authority ("Authority") are all committed to improving the economic health, environmental condition and overall quality of life of southern Connecticut. Tweed New Haven Regional Airport ("Airport") plays a vital role supporting the region's economic health.

The City and the Town support the Tweed New Haven Airport Authority in its effort to provide high quality commercial and non-commercial air services at the Airport in a safe, responsible and environmentally sensitive manner. The City and the Town likewise believe that the Airport must be a good neighbor and make substantial efforts to improve the quality of life for the residents in the immediate vicinity of the Airport.

This Memorandum of Agreement (the "Agreement") establishes a way forward for the Airport, which allows for a modest level of commercial activity at the Airport and mandates responsible actions to lessen the impact of Airport activity in the surrounding neighborhoods.

II. POINTS OF AGREEMENT.

The Town, the City and the Authority agree upon the following matters.

1. Runway 2-20. The Town and the City agree Runway 2-20 shall be limited to the existing paved runway length of 5,600 linear feet.
2. Litigation. Within ten (10) days of the date of this Agreement, and in particular in reliance on the anticipated legislative fulfillment of the limitation of Runway 2-20, the Town will end current litigation related to construction of the Airport Runway Safety Areas, specifically Tweed New Haven Airport Authority v. Town of East Haven et al, United States District Court of Appeals for the Second Circuit, Docket No. 09-0465-CV, by, jointly with the Authority, executing and filing a "Stipulation of Dismissal Without Prejudice," including the routine specification that "each party will bear its own attorney fees and costs". The Town will have the ability to reopen the dismissal only if (a) the Agreement is terminated for any reason and in any manner as provided for in Section IV ("Terms of Agreement") or (b) there occurs any of the three failures set forth in Section IV ("Terms of Agreement") which permit either the City or the Town to unilaterally terminate the Agreement, whether or not the City or the Town invokes any of those failures to in fact unilaterally terminate the Agreement.

The Town and the Authority will also, by stipulation, dismiss without prejudice Tweed New Haven Airport Authority v Town of East Haven et al., Docket No. CV-08-5022815-S, which seeks damages in connection with the dispute concerning the construction of the Runway Safety Areas, including the routine specification that "each party will bear its own attorney fees and costs". The Authority will have the ability to reopen the dismissal only if the Town reopens the aforementioned federal case.

Attachment 1 (continued)

The Authority and the City further agree that they shall not otherwise seek any damages from the Town or its officials or entities in connection with the aforesaid litigation or the subject matter of such litigation.

3. Obstructions. The Town and the City agree that obstructions contained in the Federal Aviation Administration ("FAA")-approved Aeronautical Study (dated November 1, 2007, and amended from time to time) are matters of public safety and shall be removed in a manner consistent with the Aeronautical Study, FAA and State regulations. With that in mind, the Town shall remove the obstructions situated on Town-owned property within 90 days of the date of this Agreement. The Authority will work directly with property owners and the Connecticut Department of Transportation to remove other obstructions. Neither the Town or the City shall intervene, interfere or otherwise affect the preservation and / or removal of obstructions on private property.
4. Dodge Avenue. The Authority shall construct the new Dodge Avenue in a responsible manner and meet weekly with the municipal engineers for East Haven and New Haven for the duration of the construction project, commonly referred to as Runway Safety Area North.
5. Taxiway B. In 2009, the Authority will initiate the Taxiway B, Safety Area Construction Project. The Town and the City support the project. The municipal engineers for East Haven and New Haven shall review the construction and staging plans and provide technical comments to the Authority within 10 days of this Agreement.
6. Good Neighbor Program. The Town and the City shall work with the Authority to establish the Good Neighbor program for each municipality, overseen by a Community Advisory Board. The Advisory Board shall be comprised of the 13 Special Directors of the Tweed New Haven Airport Authority (see Section II.7), or their designees. The Community Advisory Board and Good Neighbor program shall be established within 30 days of passage of the Legislative Initiatives (see Section III).

The Good Neighbor program shall be funded by each municipality in an amount equal to the net new PILOT revenue as described in Section III.1(c), or other revenues as may be available. The Authority shall assist both the Town and the City as necessary to make investments in environmental protection, sound attenuation, traffic calming, and other measures as needed to improve the compatibility of uses and the quality of life for residents of East Haven and New Haven in the immediate vicinity of the Airport.

7. Composition of the Authority's Board of Directors. In its current composition, the Town is under-represented on the Authority's Board of Directors. The Town and the City agree to initiate State Legislation to change the composition of the Tweed Board of Directors as follows:

Appointing Agency	Current	Proposed
City of New Haven	9	8*
Town of East Haven	2	5*
SCRCOG	3	2
Total	14	15

* Note: In the proposed Board makeup, the City (8) and Town (5) members shall be known as 13 "Special Directors" for the purposes noted in Section II.6.

Attachment 1 (continued)

8. Four-Point Service Ceiling. The Town and the City agree that the Airport will establish additional scheduled commercial air service within the following service ceilings:
 - (1) 30 commercial departures per day.
 - (2) 180,000 commercial enplanements per year.
 - (3) 700 parking spaces (ie. no expansion to the existing paved parking areas).
 - (4) 6 commercial service counters.
9. Process to Increase any of the Service Ceilings. In the event the Authority seeks to increase any of the four service ceilings, the increase must first be approved by a three quarters vote of all Directors. The Authority shall amend its bylaws to reflect this Agreement.
10. Increase in Passenger Charges. The City, the Town and the Airport Authority shall pursue an imposition of additional passenger fees to be distributed equally to the City and to the Town in a manner consistent with federal law and regulations concerning such charges.

III. LEGISLATIVE INITIATIVES.

Within 10 days of the date of this Agreement, the Town and the City shall initiate discussions with the undersigned State Legislative Partners and the Tweed Airport Authority to accomplish the following in the 2009 Legislative session.

1. SB 745 - An Act Concerning Tweed New Haven Airport Authority
 - a. Amend Connecticut General Statutes Section 15-120j to establish that Runway 2-20 shall be limited to the existing paved runway length of 5,600 linear feet.
 - b. Amend Connecticut General Statutes Section 15-120i(b) to amend the composition of the Tweed New Haven Airport Authority to read as follows:

“(b) The authority shall be governed by a board of directors consisting of fifteen members, each member serving not more than two consecutive four-year terms. The initial terms of the members shall be staggered so that not more than four members’ terms shall expire at the same time. Eight members shall be appointed by the mayor of New Haven and five members shall be appointed by the mayor of East Haven. Not less than six members of the authority shall be residents of New Haven and East Haven. Two members of the authority shall be appointed by the South Central Regional Council of Governments...The members appointed by the mayor of New Haven and the Mayor of East Haven shall be considered Special Directors with additional powers vested in the bylaws of the Tweed New Haven Airport Authority...”
 - c. Amend Connecticut General Statutes Section 12-19a(a) to modify the state grant in lieu of taxes payable to the Town of East Haven and the City of New Haven from the current percentage of State payment from 45% to 100% for the Tweed-New Haven Airport.

Attachment 1 (continued)

2. Appropriation of Funds for Tweed New Haven Airport Authority, FY 2009-11

- a. Appropriate \$2.0 million in FY 2009-10 and \$2.0 million in FY 2010-11 for operating costs of the Authority.

3. Capital Bond Supporting Renovations & Improvements to Tweed New Haven Airport

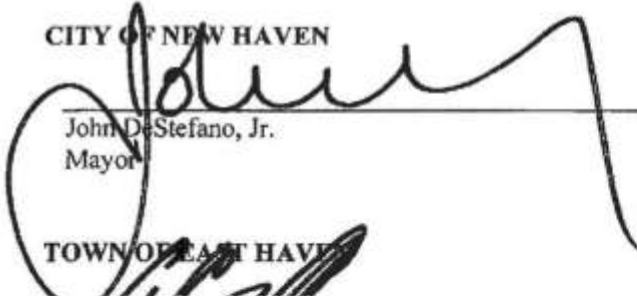
- a. Vote against Section 58 of SB 833, in order to preserve the previously appropriated \$5.0 million capital bond to be used for on- and off-Airport improvements.

Note: Proposed SB 833 reads, "Section 58. Subdivision (7) of subsection (d) of section 9 of special act 01-2 of the June special session is repealed."

IV. TERM OF AGREEMENT.

This Agreement shall become effective immediately upon execution by the City and the Town. Notwithstanding the foregoing, this Agreement may be terminated by mutual written agreement of the City and the Town or this Agreement may be terminated by written notice by either the City or the Town in the event (a) the Tweed New Haven Airport Authority fails to endorse this Agreement within 30 days of execution; (b) the State of Connecticut Department of Transportation fails to furnish a determination authorizing removal of obstructions identified in the Aeronautical Study within 60 days of execution; or (c) the State of Connecticut fails to enact the Legislative Initiatives contained in Section III of this Agreement in the 2009 Legislative Session.

CITY OF NEW HAVEN


John DeStefano, Jr.
Mayor

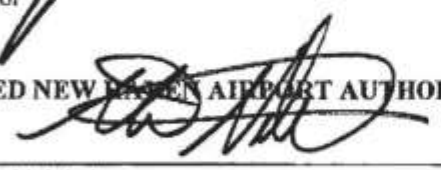
3/16/09
Date

TOWN OF EAST HAVEN


April Capone Almon
Mayor

3/16/09
Date

TWEED NEW HAVEN AIRPORT AUTHORITY


Mark Volchek
Chair


3/16/09
Date


Attachment 1 (continued)

STATEMENT OF STATE LEGISLATIVE PARTNERS

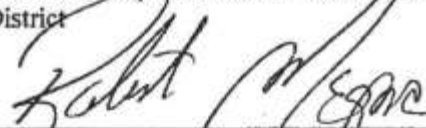
The undersigned members of the State Legislature likewise are committed to improving the economic health, environmental condition and overall quality of life of southern Connecticut and Tweed New Haven Regional Airport plays a vital role supporting the region's economic health. We are supportive of the efforts contained in this memorandum of agreement.

STATE LEGISLATIVE PARTNERS


The Honorable Senator Martin M. Looney
11th District
3/16/09
Date


The Honorable Senator Leonard A. Fasano
34th District
3/16/09
Date


The Honorable Representative Michael P. Lawlor
99th District
3/16/09
Date


The Honorable Representative Robert W. Megna
97th District
3/16/09
Date


The Honorable Representative Vincent J. Candelora
86th District
3-16-09
Date

Attachment 2

2019 Termination of the Memorandum of Agreement

(Taken from the Tweed-New Haven Airport [website](#).)



CITY OF NEW HAVEN

TONI N. HARP, MAYOR

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January 2, 2019

Mayor Joseph Maturo, Esq.
Town of East Haven
250 Main Street
East Haven, CT 06512

John Picard, Chairman
Tweed New Haven Airport
155 Burr Street
New Haven, CT 06512

Re: Terminating the March 16, 2009 Memorandum of Agreement

Gentlemen:

On March 16, 2009, the City of New Haven, John DeStefano, its then Mayor, the Town of East Haven, by its then Mayor and the Airport Authority signed onto a "Memorandum of Agreement Concerning Tweed New Haven Regional Airport..." (MOA), to which reference may be had. By the terms of that MOA, the City, the Town and the Authority agreed, inter alia, that the main runway at the Airport "...shall be limited to the existing paved runway length of 5,600 linear feet."

The MOA was also endorsed by a "Statement of State Legislative Partners," signed by two (2) State Senators and three (3) members of the House of Representatives.

"(c) By its terms, the MOA reserved to the City of New Haven the right to terminate it if the State of Connecticut fails to enact the Legislative Initiatives contained in Section III of this Agreement in the 2009 Legislative Session."

The State failed to enact all of the Legislative Initiatives set forth in the MOA. See subsections 1.c and 2.a of the Legislative Initiatives.

Further, the provisions of the MOA concerning 30 commercial departures per day and 180,000 commercial enplanements per year for Tweed have never materialized at the Airport. In fact, commercial departures per day has never topped five (5) and annual enplanements has never topped 36,010, since 2009. The economic health of the Airport has deteriorated, and the Airport has failed to play the vital role in the region envisioned by the MOA. As of 2018, the City annually contributes \$350,000 and the State some \$1,500,000 annually to subsidize the Airport operations.

Attachment 2 (continued)

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On November 24, 2015, the Authority commenced a lawsuit in the United States District Court seeking to have the State Legislation enacted in 2009, limiting the existing paved runway to 5600 linear feet, declared null and void, in light of federal preemption and the claim of the Federal Aviation Administration that it alone has jurisdiction over navigable air space – defined as the airspace needed to insure safety in the take-off and landing of aircraft. On April 18, 2016 the Court granted the City's Motion to Intervene in that litigation which remains pending on appeal to the United States Court of Appeals for the Second Circuit.

For the City of New Haven, I have determined that the MOA of some nine-plus years ago does not serve the best interests of the City and, in fact, hinders economic growth in the City and the region. I hereby terminate the Memorandum of Agreement dated March 16, 2009.


Toni N. Harp, Mayor

CC: Senator Martin M. Looney
Senator Leonard A. Fasano

GM:kc