

## **SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION**

**RESOLUTION 1309-41: Adopting the Memorandum of Understanding Among the New Jersey Transit Corporation, the New Jersey Department of Transportation, the North Jersey Transportation Planning Authority, the Delaware Valley Regional Planning Commission and the South Jersey Transportation Planning Organization for Exchange of Program Funds for Federal Fiscal Years 2014 Through 2018**

**WHEREAS, the South Jersey Transportation Planning Organization (SJTPO) is the Metropolitan Planning Organization (MPO) designated under federal law for the southern region of New Jersey including Atlantic, Cape May, Cumberland, and Salem Counties; and**

**WHEREAS, NJDOT receives federal funding through the Federal Highway Administration (FHWA) and NJT receives federal funding through the Federal Transit Administration (FTA); and**

**WHEREAS, FHWA apportions federal funding for various programs and uses, including the Surface Transportation Program (the “FHWA Surface Transportation Program”); and**

**WHEREAS, a portion of FHWA Surface Transportation Program funds are sub-allocated by NJDOT to SJTPO to be programmed for regional projects on the federal-aid system, which funds are designated as STP-SJ funding; and**

**WHEREAS, NJT and NJDOT program State Transportation Trust Fund (TTF) funds for capital projects; and**

**WHEREAS, by federal and State law, NJT, NJDOT, and SJTPO, biennially, establish the federal and State revenue levels that each organization will program for projects and programs in the State’s Transportation Capital Program and the Statewide Transportation Improvement Program (“STIP”), and the SJTPO Transportation Improvement Program; and**

**WHEREAS, from time to time, NJT, NJDOT, and SJTPO may face circumstances that require changes in the mix of federal and State funding that each organization allocates; and**

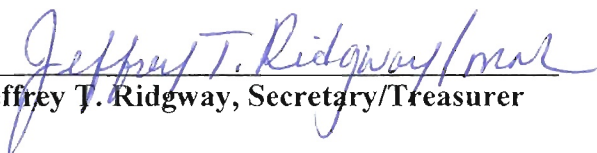
**WHEREAS, it is advantageous to SJTPO to program a mixture of State funds and federal STP-SJ funds as circumstances change; and**

**WHEREAS, SJTPO desires to enter into an agreement among NJDOT, NJ Transit, the DVRPC, and the NJTPA to establish a programming exchange protocol for Fiscal Years 2014 through 2018 as outlined in the attached Memorandum of Understanding.**

**NOW, THEREFORE, BE IT RESOLVED, that the Policy Board of the South Jersey Transportation Planning Organization hereby authorizes the Executive Director to execute the Program Funds Exchange MOU, as may be slightly amended with the concurrence of all parties, with subsequent notice to the Policy Board.**

Certification

I hereby certify that the foregoing is a correct and true copy of a resolution adopted by the Policy Board of the South Jersey Transportation Planning Organization at its meeting of September 23, 2013.

  
Jeffrey T. Ridgway, Secretary/Treasurer

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### **PROPOSAL**

At its September 9, 2013 meeting, the Technical Advisory Committee recommended adoption of the attached Memorandum of Understanding for the Exchange of Program Funds from FY 2014 through FY 2018.

### **BACKGROUND**

NJDOT and New Jersey Transit are direct recipients of annual appropriations from the Federal Highway Administration and Federal Transit Administration, respectively, to be used to fund projects and programs on the locally – owned facilities on the federal – aid system. In light of the requirements that must be met for a local agency to use federal funds, NJDOT, NJTransit, and New Jersey’s three MPO’s are proposing to swap federal funds for an equivalent amount of New Jersey Transportation Trust Funds, which are used routinely by local agencies.

For SJTPO in FY 2014, this would mean that \$7.5 million of the \$10.1 million “Local Lead” program would be state TTF – funded, with the remainder programmed as FHWA Surface Transportation Program (STP-SJ) funds. SJTPO’s local project sponsors have expressed support for the proposal, and will revisit the concept each capital programming cycle.

**MEMORANDUM OF UNDERSTANDING**  
**AMONG**  
**NEW JERSEY TRANSIT CORPORATION, THE NEW JERSEY**  
**DEPARTMENT OF TRANSPORTATION, THE NORTH JERSEY**  
**TRANSPORTATION PLANNING AUTHORITY, THE DELAWARE**  
**VALLEY REGIONAL PLANNING COMMISSION AND THE SOUTH**  
**JERSEY TRANSPORTATION PLANNING ORGANIZATION FOR**  
**EXCHANGE OF PROGRAM FUNDS**  
**FEDERAL FISCAL YEAR 2014 THROUGH 2018**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made the day of January <sup>fourteen, 2014</sup> ~~thirteen~~, among NEW JERSEY TRANSIT CORPORATION, acting through its Executive Director, hereinafter referred to as "NJT", the NEW JERSEY DEPARTMENT OF TRANSPORTATION, acting through its Commissioner of Transportation, hereinafter referred to as "NJDOT," the NORTH JERSEY TRANSPORTATION PLANNING AUTHORITY, hereinafter referred to as "NJTPA," the DELAWARE VALLEY REGIONAL PLANNING COMMISSION, hereinafter referred to as "DVRPC," and the SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION, hereinafter referred to as "SJTPO," witnesses that: O M U

WHEREAS, NJT programs federal and State of New Jersey ("State") funding for use in carrying out its projects and programs; and

WHEREAS, NJDOT programs federal and State funding for use in carrying out its projects and programs; and

WHEREAS, under 23 USC Section 134, NJTPA, DVRPC and SJTPO are metropolitan planning organizations, hereinafter collectively referred to as the "MPOs," established by agreement between the Governor of the State and units of general purpose local government to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process, including the development of a metropolitan transportation plan and a transportation improvement program (TIP), for designated urbanized areas with populations greater than 50,000; and

WHEREAS, NJDOT receives federal funding through the Federal Highway Administration (FHWA) and NJT receives federal funding through the Federal Transit Administration (FTA); and

WHEREAS, FHWA apportions federal funding for various programs and uses; and

WHEREAS, one of the programs by which FHWA apportions federal funding is the Surface Transportation Program (the "FHWA Surface Transportation Program"); and

WHEREAS, a portion of FHWA Surface Transportation Program funds are sub-allocated by NJDOT to each MPO (which is responsible for a particular urbanized area)

to be programmed for regional projects on the federal-aid system; and

WHEREAS, NJT and NJDOT program State Transportation Trust Fund (TTF) funds for capital projects; and

WHEREAS, by federal and State law, NJT, NJDOT, and the MPOs, biennially, establish the federal and State revenue levels that each organization will program for projects and programs in the State's Transportation Capital Program and the Statewide Transportation Improvement Program ("STIP"); and

WHEREAS, from time to time, NJT, NJDOT, and the MPOs may face circumstances that require changes in the mix of federal and State funding that each organization allocates; and

WHEREAS, FHWA permits NJDOT to initiate transfers of FHWA apportionments to FTA for certain purposes; and

WHEREAS, FTA permits NJT to initiate transfers of FTA apportionments to FHWA for certain purposes; and

WHEREAS, NJDOT, NJT, and the MPOs are permitted to make certain funding adjustments within the budget for the State's Transportation Capital Program and within the STIP subject to State and federal laws and regulations; and

WHEREAS, this MOU provides for the general parameters of the exchange of program funds for federal and State fiscal years 2014 through 2018 (the "Five-Year Period") and for the specific exchange of program funds for the first year of the Five-Year Period which is federal and State fiscal year 2014; and

WHEREAS, this MOU may be amended to provide for the specific exchange of program funds for federal and State fiscal years 2015 through 2018 subject to federal and State appropriation; and

WHEREAS, for federal and State Fiscal Year 2014, a total amount of \$94 million of FHWA Surface Transportation Program Funds is scheduled to be sub-allocated to the MPOs;

NOW, THEREFORE, NJT, NJDOT, and the MPOs agree as follows:

A. Preambles

The WHEREAS clauses above are incorporated into this paragraph as though set forth in verbatim.

## B. Programming Exchange in General

1. NJDOT, NJT, and the MPOs agree to exchange program funds, for each of the federal and State fiscal years within the Five-Year Period, in amounts commensurate with the annual federal apportionments made available to each MPO for this program for allocation for each respective federal fiscal year, subject to the conditions set forth in Paragraph B.4 below. .
2. NJDOT, NJT and the MPOs agree to enter into amendments to this MOU to set forth for each of the subsequent fiscal years within the Five-Year Period, the specific exchange of program funds, subject to federal and State appropriation;
3. NJDOT, NJT, and the MPOs agree that in order for the exchange of program funds to take place for each federal fiscal year within the Five-Year Period, each MPO, to the extent applicable, annually shall obtain its Board's approval for each federal fiscal year to revise the TIP and STIP for such annual funding amounts as determined and agreed to by all parties participating, from time to time, in the process set forth in this MOU.
4. In order to exchange program funds for any fiscal year within the Five-Year Period, the State's Transportation Capital Program must appropriate the TTF funds for use by the MPOs and the STIP shall also reflect the appropriation. There will be no program exchange for any fiscal year within the Five-Year Period if the TTF funds have not been so appropriated by the State Legislature, and enacted into law, or if such appropriation and enactment shall contain any limitations or restrictions regarding the use of such funds that are inconsistent with the intended use of the funds as set forth in this MOU.
5. An action taken by any individual MPO Board, or failure to take action by any individual MPO Board, shall not affect the funding exchange program contemplated by this MOU for other MPO parties who have complied with the provisions of this MOU.
6. Notwithstanding anything contained in this MOU to the contrary, no MPO shall be required to participate in the funds exchange program in any fiscal year unless and until the MPO Board has approved participation by such MPO in the program for such fiscal year.

### C. Programming Exchange for Fiscal Year 2014

1. In Federal Fiscal Year 2014, NJDOT agrees to direct the transfer of \$94 million of FHWA Surface Transportation Program funds from FHWA to FTA to be allocated by NJT for the program items, Preventive Maintenance - Rail and Preventive Maintenance - Bus.
2. The \$94 million comprises \$70.5 million that would have been allocated by NJTPA, typically identified as STP-NJ funds; \$16 million that would have been allocated by DVRPC, typically identified as STP-STU funds; and \$7.5 million that would have been allocated by SJTPO, typically identified as STP-SJ funds.
3. As a result of NJDOT's directive to transfer funds as stated in paragraph C.1 above, NJT's 2014 FTA funds will reflect an increase of \$94 million;
4. As a result of such transfer, NJT's TTF appropriations are reduced by \$94 million and NJDOT's TTF appropriations are increased by \$94 million.
5. NJDOT will allocate the \$94 million in TTF funds in the Fiscal Year 2014 Transportation Capital Program and in the 2014 program year of the Federal Fiscal Year 2014-2023 STIP for allocation by the MPOs to projects that would be Progress in the 21st Century Act (MAP-21) Sect. 1108 under 23 U.S.C. 133.
6. NJDOT will allocate the \$94 million in TTF funds to each MPO as follows: \$70.5 million to NJTPA, \$16 million to DVRPC and \$7.5 million to SJTPO.
7. The State Fiscal Year 2014 Transportation Capital Program provides a TTF funded line item for each MPO showing where these funds will be allocated.
8. The Federal Fiscal Year 2014-2023 STIP and MPO TIPs identifies the individual projects and funds allocated to each MPO for each year.

### D. Administration of TTF Funds Allocated to the MPOs

1. Each MPO will select projects for the use of these funds, with the understanding that this funding is provided in lieu of the FHWA funds, which were intended for use on the federal-aid system.
2. Each MPO will be responsible for managing programming changes related to additions and deletions of projects, and increases and decreases in costs for these allocated TTF funds.
3. TTF funds allocated to a respective MPO and not obligated in a fiscal year will carry over for use in future years by the same MPO.
4. Each MPO will determine the process and methodology for programming within its respective organization regarding any allocated TTF funds not specifically identified in the State Transportation Capital Program and STIP.



5. By March 1 of each year, each MPO will provide NJDOT with a list of projects it intends to program for obligation in the upcoming State Fiscal Year.
6. Projects carried out under this program will be administered in accordance with the document entitled, “Guidance for Locally Administered Projects Funded through the NJDOT/MPO Program Funds Exchange,” which was prepared in consultation with the MPOs and NJDOT. It is understood that the “Guidance for Locally Administered Projects Funded through the NJDOT/MPO Program Funds Exchange” may be revised from time to time. Such revisions will be made in consultation with NJDOT and the MPOs (NJTPA, DVRPC and SJTPO) prior to adoption.
7. NJDOT agrees to prepare monthly financial reports and provide the MPOs with access to such reports for the MPOs to track expenditures and obligations for each TTF funded project selected by each MPO.
8. NJDOT will execute a project-specific agreement with each sub-recipient (county or municipality) for each project selected by each MPO.
9. Each sub-recipient shall be required to follow the process established by NJDOT and the MPOs for authorization to advertise and award the project as well as for administration, oversight and closure.
10. NJDOT will provide payment for each project on a reimbursement basis in accordance with procedures established by NJDOT’s Division of Local Aid.
11. NJDOT will coordinate with the MPOs to report on account balances and additional obligation needs as a result of project cost increases or decreases.
12. Project cost changes will be reviewed and approved by NJDOT in accordance with the terms outlined in the Memorandum of Understanding titled “Statewide Procedures for TIP/STIP Revisions Among the Delaware Valley Planning Commission, North Jersey Transportation Planning Authority, South Jersey Transportation Planning Organization, New Jersey Transit Corporation and New Jersey Department of Transportation,” dated October 24, 2012.

#### E. General Provisions

1. This MOU represents the parties’ entire understanding and agreement with respect to the programming exchange which is the subject of this MOU, and supersedes all prior agreements between and among any of the parties with respect to this exchange.
2. All obligations of the parties pursuant to this MOU are subject to appropriations and the availability of funds. A failure by any party to observe and perform any



condition on its part to be performed under this MOU as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach or default by that party and that party shall not be held liable in any manner whatsoever because of the absence of available funding.

3. The parties' commissioners, officers, agents, or employees shall not be held personally liable under any provision of this MOU or because of its execution, breach, or alleged breach hereof.
4. In the event a dispute or difference arises between the parties regarding the terms of this MOU, the parties shall meet in a good-faith effort to resolve the dispute. Should any party determine that it does not desire to participate in the exchange of funds in accordance with this MOU, such party shall use its best efforts to provide reasonable notice to the other parties of its intent to withdraw as a party to this MOU for the yearly funding cycle for which the notice is provided.
5. This MOU shall bind and inure to the benefit of the parties and their respective successors and assignees. No third-party beneficiary rights are created by this MOU.
6. This MOU shall be construed under and shall be governed in accordance with the Constitution and the laws of the State of New Jersey.

IN WITNESS WHEREOF, NJT has caused this instrument to be signed and attested by its duly authorized representative, NJDOT has caused this instrument to be signed by its Commissioner of Transportation, or a designee of the Commissioner, and attested by the Secretary of NJDOT, the MPOs have caused this instrument to be signed and attested by their duly authorized representatives, and the Seals of NJT and NJDOT to be hereunto affixed the day, month and year first written above.

ATTEST/WITNESS/AFFIX SEAL:

John J. Zumb  
Secretary  
Adm. Board Secretary  
NJ TRANSIT  
(SEAL)

NEW JERSEY TRANSIT CORPORATION  
By: James Weinstein  
James Weinstein  
Executive Director

ATTEST/WITNESS/AFFIX SEAL:

Jacqueline Frause  
Secretary  
JACQUELINE FRAUSE  
January 07, 2014

NEW JERSEY DEPARTMENT OF TRANSPORTATION  
By: James S. Simpson  
James S. Simpson  
Commissioner

ATTEST/WITNESS/AFFIX SEAL:

Deborah A. Barrett  
Secretary  
3/5/2014

NORTH JERSEY TRANSPORTATION PLANNING AUTHORITY  
By: Mary K. Murphy  
Mary K. Murphy  
Executive Director

ATTEST/WITNESS/AFFIX SEAL:

Tammy Dimeo  
COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
TAMMY DIMEO  
Notary Public  
PHILADELPHIA CITY, PHILADELPHIA CNTY  
My Commission Expires Jan 8, 2017

DELAWARE VALLEY REGIONAL PLANNING COMMISSION  
By: Barry Seymour  
Barry Seymour  
Executive Director

ATTEST/WITNESS/AFFIX SEAL:

Monica A. LoGuidice  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 2/22/2017

SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION  
By: Timothy Chelius  
Timothy Chelius  
Executive Director

This Agreement has been reviewed and approved as to form.

Attorney General of New Jersey

By: Sneha Raj  
Deputy Attorney General

Date: 10/7/13