Appendix D:

Memorandum of Understanding (MOU) – Statewide Procedures for the TIP/STIP Revisions among DVRPC, NJTPA, SJTPO, NJ TRANSIT Corp., and NJDOT

And

The MOU for Funds Transfer
MEMORANDUM OF UNDERSTANDING

Statewide Procedures for TIP/STIP Revisions

Among the

Delaware Valley Regional Planning Commission,
North Jersey Transportation Planning Authority,
South Jersey Transportation Planning Organization,
New Jersey Transit Corporation,
and New Jersey Department of Transportation
PURPOSE

This Memorandum of Understanding (MOU) establishes a set of procedures to be used for processing and implementing revisions to the Regional Transportation Improvement Program (TIP) of each of the three Metropolitan Planning Organizations (MPOs), as well as the New Jersey Statewide Transportation Improvement Program (STIP). The three MPOs responsible for TIP revisions are the Delaware Valley Regional Planning Commission (DVRPC), the North Jersey Transportation Planning Authority (NJTPA), and the South Jersey Transportation Planning Organization (SJTPO). The two state agencies responsible for STIP revisions are the New Jersey Department of Transportation (NJDOT) and the New Jersey Transit Corporation (NJ TRANSIT).

This MOU represents the parties' entire understanding and agreement with respect to TIP/STIP revisions and supersedes all prior agreements between and among any of the parties with respect to such revisions.

DEFINITIONS

For the purposes of this MOU the following meanings will apply:

Advance Construction – A technique which allows a State to initiate a project using non-federal funds while preserving eligibility for future federal-aid funds. Eligibility means that the Federal Highway Administration (FHWA) has determined that the project technically qualifies for federal-aid; however, no present or future federal funds are committed to the project. After an Advance Construction project is authorized, the State may convert the project to regular federal-aid funding provided federal funds are made available for the project.

e-STIP¹ – A transaction tool to enhance the development and management of the TIP/STIP through Internet-based submission, processing and approval of amendments and modifications to the TIP/STIP. e-STIP reports financial information, tracks and archives amendment and modification actions and promotes interagency collaboration. It supports policy makers in making better informed decisions and promotes electronic Government services.

Fiscal Constraint – A demonstration of sufficient funds (federal, state, local or private) to implement proposed transportation system improvements, as well as to operate and maintain the entire system, through the comparison of revenues and costs.

Flexing Funds – The transfer of federal funds between the federal highway and transit programs (i.e., from Title 23 of the highway program to transit projects and from Title 49 of the transit program to highway projects) pursuant to the provisions of the Intermodal

¹ Note, for TIP/STIP actions that amend or modify "Unobligated Prior Year Balance", these TIP/STIP actions may advance provided that the affected parties are notified in writing until such time that e-STIP is capable of processing such actions in a manner acceptable to FTA Region 2.
Surface Transportation Efficiency Act of 1991 (ISTEA) and subsequent Transportation Equity Act for the 21st Century (TEA-21).

Interagency Consultation Group (ICG) – A group of stakeholders consisting of state and federal agency representatives empowered to guide the transportation conformity process, review and approve the conformity demonstration’s assumptions and methodology, and fulfill the federal requirement for interagency consultation. Included are members from the United States Department of Transportation—including both the FHWA and the Federal Transit Administration (FTA)—the United States Environmental Protection Agency (USEPA), the New Jersey Department of Environmental Protection, the NJDOT, NJ TRANSIT, and an MPO. This group works cooperatively to insure the MPO’s conformity demonstrations and processes are following federal guidance and meeting federal requirements.

Memorandum of Understanding (MOU) – An official agreement among the MPOs, the NJDOT, and NJ TRANSIT establishing the principles that will govern how revisions to the TIP/STIP are processed and implemented.

Metropolitan Planning Organization (MPO) – A federally mandated and federally funded transportation policy-making organization that is made up of representatives from local government and governmental transportation authorities. MPOs plan all federally funded transportation investments and serve as a forum for local officials, public transportation providers, and state agency representatives to cooperatively plan to meet a region’s current and future needs.

Program Line Item – A commitment of funds to an item identified in the TIP/STIP with a specific scope of work but not a precise geographic location, the effort of which will improve the transportation system.

Project – A commitment of funds to an item identified in the TIP/STIP with a specific scope of work at a precise geographic location, the effort of which will improve the transportation system.

Project Sponsor – The lead agency with primary responsibility for implementing a project, typically the NJDOT or NJ TRANSIT, but may also include an MPO, a county or city government, or an independent authority.

Regional Transportation Plan – A federally mandated long-range transportation plan prepared by an MPO for its region.

Statewide Transportation Improvement Program (STIP) – A staged, multi-year, statewide, intermodal program of transportation projects, consistent with the statewide transportation plan and planning processes as well as metropolitan plans, TIPs, and processes.
Sub-region – The jurisdictions that comprise an MPO.

Transportation Improvement Program (TIP) – A document prepared by an MPO that lists projects that are drawn from the Regional Transportation Plan and are to be funded with FHWA/FTA funds for a multi-year period, as well as all regionally significant projects regardless of funding source.

Unobligated Prior Year Balance – The portion of the funds authorized by a federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

AGREEMENT

In adopting a TIP, the parties to this MOU (DVRPC, NJTPA, SJTPO, the NJDOT, and NJ TRANSIT) agree to a shared set of capital investments that implement each of the MPO’s Regional Transportation Plans. After approval of the TIPs by the MPOs and the Governor of the State of New Jersey or the New Jersey Commissioner of Transportation, if so designated, each of the three TIPs for New Jersey is consolidated without revision into the New Jersey STIP, pursuant to 23 U.S.C. § 135 (Statewide Transportation Planning). The New Jersey STIP is submitted to the FHWA and the FTA for joint approval. The approved STIP serves as the reference document required under federal regulations (23 CFR § 450.216) for use by the FHWA and the FTA in approving the expenditure of federal funds for transportation projects in New Jersey.

The Federal Statewide and Metropolitan Planning regulations contained in 23 CFR Part 450 govern the development of individual MPO TIPs, the STIP, and the process for revisions of these documents. 23 CFR § 450.326 permits the use of expedited procedures to revise the TIP/STIP, as agreed to by the cooperating parties consistent with federal regulations for TIP/STIP development and approval. This MOU shall in its entirety constitute such agreement.

The parties agree to demonstrate Fiscal Constraint for all amendments and modifications to a TIP/STIP pursuant to 23 CFR Part 450 and 49 CFR Part 613 and to identify all projects involved in such revisions on a Fiscal Constraint chart to be developed by each party. The parties agree to provide the information via e-STIP. These confines apply to statewide projects and Program Line Items as well as regional and local projects.
A. AMENDMENTS

The parties agree that a TIP/STIP amendment shall be required under the following circumstances. There are two classes of amendments:

1. Major Amendment

Any TIP/STIP action which affects air quality conformity and would require a new regional conformity determination is a Major Amendment. This type of amendment requires the approval of the FHWA and the FTA. The MPO, in consultation with the ICG as necessary, will determine if the change to or addition of a project would:

   a) Add a new project that is non-exempt from conformity analysis as per the Transportation Conformity Rule (40 CFR §§ 93.126 and 93.127) (unless it is deemed "Not Regionally Significant (NRS)" or can be subject to a project level analysis that would not change the conformity finding);

   b) Change the project scope so that it becomes non-exempt from conformity analysis as per the Transportation Conformity Rule (40 CFR §§ 93.126 and 93.127); or

   c) Change the project completion date such that it would change the conformity analysis year.

If the MPO determines that any of these conditions exists, then the change qualifies as a Major Amendment. If none of these conditions exists then the change qualifies as either a Minor Amendment or Modification.

2. Minor Amendment

Any TIP/STIP amendment which does not affect air quality conformity and does not require a new regional conformity determination may be a Minor Amendment or Modification. A Minor Amendment, like a Major Amendment, requires the approval of the FHWA and the FTA. The parties agree that, provided the TIP/STIP action is not a Major Amendment, it is a Minor Amendment under any of the following circumstances:

   a) When there is an addition of a new project or program into the TIP/STIP that uses federal funds or unobligated prior year balances;

   b) When there is a deletion of a project or program from the TIP/STIP that uses federal funds in its entirety from the TIP/STIP;

   c) When there is an addition of a development phase to a project that results in moving all major phases of work (e.g., Construction and Right-of-Way for the NJDOT) out of the TIP/STIP;
d) When there is a funding source change for a project in the TIP/STIP from the use of non-federal funds to the use of federal funds;

e) When there is a swap of FHWA or FTA funds in exchange for a commensurate amount of non-federal funding between the NJDOT and NJ TRANSIT; or

f) When any phase of work of a project has a cost increase of more than $15,000,000.

If none of these conditions exist, and the action does not affect conformity, then the change qualifies as a Modification and section B applies.

3. Procedures

Whenever any circumstance requiring a Major or Minor Amendment occurs, the Project Sponsor shall give the MPO (whose TIP the revision affects) sufficient notice (as defined by the MPO) to acquire the necessary technical and policy level approvals. The Project Sponsor shall provide documentation with a clear explanation justifying the amendment. The Project Sponsor shall also provide the necessary project data required for the TIP/STIP listing including the funding source(s), how Fiscal Constraint shall be maintained, and sufficient descriptive information for a conformity and/or congestion management process (CMP) determination, if required.

The MPO, in consultation with the ICG, shall determine if the proposed amendment requires a new TIP/State Implementation Plan (SIP) conformity determination. If the project is exempt under the USEPA Air Quality Conformity Rule (40 CFR Parts 51 and 93), no such determination by the MPO shall be required and this MOU’s procedures pertaining to Minor Amendments shall apply. If the project is not exempt, the MPO shall determine through consultation with the ICG whether a new TIP/SIP air quality conformity determination will be required and request that the ICG determine whether a project is NRS. The Project Sponsor shall provide information on the project design and scope to enable the MPO to code the travel networks for the regional emissions analysis. Upon receipt of the project design and scope information, the MPO shall conduct the regional emissions analysis.

For amendments requiring a new MPO conformity determination, the NJDOT shall forward the conformity determination for its projects to the FHWA and the FTA and apply for a joint conformity finding to be made by the FHWA and the FTA after consultation with the USEPA. Following FHWA/FTA approval, the NJDOT will notify the MPO of the approval. NJ TRANSIT shall follow the same procedures for its projects and programs.

Amendments to the TIP/STIP require public review according to their classification as Major or Minor. Major Amendments must have a 30-day public comment period as
delineated by the MPO. Minor Amendments must comply with the MPO public policy document but do not require a 30-day review period.

Following amendment approval by the MPO Board, the MPO shall forward to the NJDOT or NJ TRANSIT via e-STIP a completed package containing the following documents: (a) a document acknowledging Board approval, requesting approval from the FHWA or the FTA for the amendment and providing assurance of all necessary compliance (i.e., adherence to public participation, congestion management, conformity and Fiscal Constraint requirements); (b) the TIP Modification Request Form (which states the type of project change, the action taken and the reason for the action); and (c) the revised TIP/STIP page(s). Upon receipt of this approval package from the MPO the NJDOT shall submit the STIP amendment via e-STIP to the FHWA for review and approval. NJ TRANSIT shall submit the STIP amendment via e-STIP to the FTA for review and approval.

B. MODIFICATIONS

The parties agree that all changes to the TIP/STIP that are not amendments as described above shall be considered modifications (of which there are three classes as defined below).

1. Modifications Not Requiring Further MPO Action Beyond This MOU (Informational Modifications)

The parties agree that changes to the TIP/STIP under the following circumstances do not require further MPO action and are referred to as Informational Modifications:

a) When the cost of a Concept Development or Preliminary Engineering phase of work of a project increases by an amount less than or equal to $500,000.

b) When the cost of a Final Design, Right-of-Way, or Utility phase of work of a project increases by an amount less than or equal to $1,000,000.

c) When the cost of a Construction phase of work of a project increases by an amount less than or equal to $5,000,000.

d) When the cost of a Program Line Item increases by an amount less than or equal to $5,000,000.

e) When there is additional cost for incidental right-of-way. Incidental right-of-way is the purchase of real property or a property interest (e.g., an easement) for an amount less than or equal to $250,000 that shall not involve the taking of residential or business structure(s) or environmentally sensitive property. The parties agree that if a project is listed in an approved TIP/STIP for a Final Design or Construction phase of work and an incidental right-of-way need is discovered
during the Final Design phase, the right-of-way purchase may be authorized and funded as part of the Final Design or Construction phase of work of the project without modifying the TIP/STIP.

f) When either the NJDOT or NJ TRANSIT deems it appropriate to shift funding between interchangeable federal funding sources, to change the federal or state funding mix of a project and/or to introduce state funds to a project

g) When the NJDOT and NJ TRANSIT modify and use statewide Program Line Item funds throughout the State. Both agencies shall list these items, broken out by MPO, wherever appropriate. The amount of funds authorized within each program by the MPO(s) shall be included in a written notice submitted to the MPO(s) and in the updated e-STIP report available to the MPO(s).

h) When the Project Sponsor can apply federal Advance Construction procedures to a project in the TIP/STIP, provided the federal funding is shown for the project in the TIP/STIP.

i) When correcting technical information (including non-material changes to any text of the TIP/STIP, typographical errors, misspellings, and coding corrections).

2. Modifications That May Be Approved by Administrative Action (Administrative Modifications)

The parties agree that, under the following circumstances, changes to the TIP/STIP may be handled by the Executive Director of the MPO as Administrative Modifications. In each case, the Executive Director of the MPO upon consultation with the affected sub-regions may approve the action administratively.

a) When the cost of a Concept Development or Preliminary Engineering phase of work of a project increases by an amount more than $500,000 but less than or equal to $1,000,000.

b) When the cost of a Final Design, Right-of-Way, or Utility phase of work of a project increases by an amount more than $1,000,000 but less than or equal to $4,000,000.

c) When the cost of a Construction phase of work of a project increases by an amount more than $5,000,000 but less than or equal to $7,500,000.

d) When the cost of a Program Line Item increases by an amount more than $5,000,000 but less than or equal to $10,000,000.

e) When a phase of work of a project is moved among the constrained years of the TIP/STIP.
f) When a major phase of work is added to or deleted from the current year of the TIP/STIP and the overall project schedule is not adversely affected (i.e., the Construction phase of work of a project is not delayed).

g) When the Project Sponsor chooses to apply federal Advance Construction procedures to a project listed in the current year of the TIP/STIP for which federal funding has not been provided in any future year.

h) When changing a federally funded, NRS project to non-federal funding.

i) When the project experiences an excessive bid overrun subject to a 30-day acceptance by the NJDOT. An excessive bid overrun occurs when the following conditions are met:
   1) When the scope of the project has not expanded from that anticipated in the TIP/STIP;
   2) When the final estimated cost in the Plans, Specification and Estimate (PS&E) package agrees with the TIP/STIP programmed amount or is within the threshold permitted for a Construction phase of work by administrative action, as per section B.2.(c); and
   3) When the NJDOT has received written concurrence from the FHWA that the bid would otherwise be acceptable.

j) When federal unobligated prior year balances are added to a federally-funded project or program.

k) When other modifications, not defined in this sub-section, are identified as an administrative action.

l) When the Executive Director of the MPO determines that administrative action is appropriate.

3. Modifications Requiring Committee Action (Committee Modifications)

The parties agree that the following circumstances require action by the MPO at the Committee level. Additionally the Executive Director of the MPO can determine at any time that Board action is necessary.

a) When the cost of a Concept Development or Preliminary Engineering phase of work of a project increases by more than $1,000,000.

b) When the cost of a Final Design, Right-of-Way, or Utility phase of work of a project increases by more than $4,000,000.

c) When the cost of a Construction phase of work of a project increases by more than $7,500,000 but not more than $15,000,000.
d) When the cost of a Program Line Item increases by more than $10,000,000.

e) When breaking out a new Project from the MPO’s Local CMAQ Initiatives Line Item. The act of flexing those CMAQ funds to FTA for breakout Projects from the Local CMAQ Initiatives Line Item and listing them in the transit program does not require processing of an additional Project action.

f) When the Executive Director of the MPO determines that Committee action is appropriate.

4. Procedures

TIP/STIP modifications shall be processed via e-STIP with a completed package containing the following documents: (a) a document acknowledging Board approval, requesting approval from the FHWA or the FTA for the amendment and providing assurance of all necessary compliance (i.e., adherence to public participation, congestion management, conformity and Fiscal Constraint requirements); (b) the TIP Modification Request Form (which states the type of project change, the action taken and the reason for the action); and (c) the revised TIP/STIP page(s). Upon receipt of this approval package from the MPO the NJDOT shall submit the STIP amendment via e-STIP to the FHWA for concurrence. NJ TRANSIT shall submit the STIP amendment via e-STIP to the FTA for concurrence.

C. FISCAL CONSTRAINT BANK

The federal statewide and metropolitan planning rules (23 CFR Part 450 and 49 CFR Part 613) stipulate that each year of the TIP/STIP must be fiscally constrained to available resources. The parties agree to manage the demonstration of Fiscal Constraint for amendments and modifications through the establishment of a “Fiscal Constraint Bank” for each MPO and NJ TRANSIT, plus four Fiscal Constraint Banks for NJDOT (one for statewide projects and programs and one for each of the three MPO regions). Fiscal Constraint for amendments and modifications may be demonstrated by using available balances in a Fiscal Constraint Bank.

1. Addition of Funds

Funds may be added to a Fiscal Constraint Bank for a given year through any of the following means:

a) De-obligation of funds from projects that were authorized under prior TIP/STIPs.

b) Excess funds available from low bids or awards on current projects.

c) Deletions of projects from the current four-year TIP/STIP.
d) Modification to the current constrained TIP/STIP which results in a net decrease to the cost of project(s) in a given year.

e) Modification to the current constrained TIP/STIP which moves a phase of work of a project from that year to another year in the constrained TIP/STIP or to a year beyond the current constrained TIP/STIP period.

f) Additional appropriations.

In addition, federal obligation authority may be transferred from one Fiscal Constraint Bank to another Fiscal Constraint Bank at the transferring party's discretion and only when such obligation authority is available and necessary for the receiving party's projects.

2. Procedures

The NJDOT shall provide to the MPOs, via e-STIP and other formats as needed to provide sufficient information for MPO purposes, reports listing programmed projects by fund source and MPO region that have not been obligated during the current federal fiscal year. MPO action (as per section A., B.2., or B.3.) may be required for such projects for which it is determined funds will not be obligated in the current federal fiscal year. The unobligated funds may be used for subsequent amendments or modifications to address Fiscal Constraint within the MPO.

The parties agree that in accounting for Fiscal Constraint when making TIP/STIP amendments (as per section A.) or modifications (as per section B.2. or B.3.), the net result for the first fiscal year must be that the Fiscal Constraint Bank has a zero or positive balance and that the net result for the constrained TIP/STIP period must also be a zero or positive balance. This will allow for temporary imbalances in the second, third, and fourth years, but will still maintain the overall Fiscal Constraint of the TIP/STIP.

If there are no outstanding balances in the Fiscal Constraint Bank, the parties shall demonstrate Fiscal Constraint for each amendment and modification. Fiscal Constraint by year shall be demonstrated by the parties through such other amendments and/or modifications as may be necessary.

The parties agree that the NJDOT shall apply these same procedures to the statewide program Fiscal Constraint Bank. NJ TRANSIT shall apply similar procedures to its Fiscal Constraint Bank.
D. PUBLIC PARTICIPATION

The MPO shall follow its adopted public participation procedures for amendments, modifications and conformity determinations to provide the appropriate level of public involvement prior to the MPO Committee or Board taking action. The parties agree that the MPO public participation procedures shall also serve as the public participation procedures for the STIP. The NJDOT shall provide access to public participation by linking to the MPO’s website sites via e-STIP. The MPO shall state in notices to the public that comments received on the proposed action to the TIP are comments on the same action to the STIP.

E. PROJECT REPORTING

The NJDOT and NJ TRANSIT agree to provide information on the TIP/STIP and project status to the MPOs. The NJDOT maintains a Project Reporting System (PRS). Project-specific information from the PRS including schedule dates, authorization dates, project costs, and pertinent issues are available to the MPOs on-line. It will be the NJDOT’s responsibility to keep the information in the PRS current. It will be the responsibility of the MPOs to reformat the data into reports they deem usable.

The NJDOT Division of Capital Program Management will be the clearinghouse for additional information related to MPO project inquiries. The NJDOT shall respond to all MPO inquiries within seven (7) business days. The NJDOT Office of Community Relations will be the clearinghouse for project inquiries from local elected officials.

NJ TRANSIT is required to submit Progress Reports to the FTA on a quarterly basis. These reports will continue to be shared with the MPOs in a database format. NJ TRANSIT shall respond to all MPO inquiries within seven (7) business days.

The MPOs may request meetings for projects with critical issues at any time. Invited attendees may include local elected officials and staff, MPO staff, NJDOT and/or NJ TRANSIT project management staff, capital programming staff, and NJDOT and/or NJ TRANSIT liaison staff. The purpose of the meetings on key projects is to enhance the information flow on important projects to the community and shall supplement information provided to the MPO in the reporting requirements enumerated above.

The NJDOT and NJ TRANSIT will each produce an Annual Listing of Obligated Projects report within sixty (60) days after the close of the federal fiscal year. The report will contain all federally funded projects that were obligated during the previous federal fiscal year. The NJDOT and NJ TRANSIT reports shall be available in e-STIP. A similar listing for state funded programs and projects will be provided under separate cover.
F. DISPUTE RESOLUTION

Any party with a dispute under this MOU shall promptly notify the involved party or parties in writing. Those parties shall then submit to non-binding informal dispute resolution and meet within fifteen (15) days. The disputing parties shall endeavor in good faith to resolve their differences within thirty (30) days after meeting, or may mutually agree to extend the time for resolution.
We, the undersigned, agree to use the above procedures to amend and modify the Metropolitan Planning Organizations’ Transportation Improvement Programs (TIPs) and the New Jersey Statewide Transportation Improvement Program (STIP).

Barry Seymour, Executive Director
Delaware Valley Regional Planning Commission

Honorable Matthew Holt, Chairman
North Jersey Transportation Planning Authority

Honorable Frank Sutton, Chairman
South Jersey Transportation Planning Organization

James Weinstein, Executive Director
New Jersey Transit Corporation

Honorable James S. Simpson, Commissioner
New Jersey Department of Transportation

Memorandum of Understanding – State of New Jersey and the MPOs

Appendix D

WHEREAS, the North Jersey Transportation Planning Authority, Inc. (NJTPA) has been designated by the Governor of New Jersey as the Metropolitan Planning Organization (MPO) for the northern New Jersey region; and

WHEREAS, the NJTPA is the MPO responsible for updating the Transportation Improvement Program (TIP) for the northern part of New Jersey as required by 23 CFR 450 and CFR 613 B; and

WHEREAS, the NJTPA, on September 10, 2013 approved the Memorandum of Understanding (MOU) for the exchange of program funds among the NJTPA, the Delaware Valley Regional Planning Commission (DVRPC), and the South Jersey Transportation Planning Organization (SJTP), hereinafter referred to as “the MPOs,” the New Jersey Department of Transportation (NJDOT), and NJ TRANSIT, which was signed on January 7, 2014; and

WHEREAS, the NJTPA, on July 13, 2015 approved the second amendment to the MOU; and

WHEREAS, the NJTPA, on January 9, 2017 approved the third amendment to the MOU; and

WHEREAS, the MPOs, NJDOT and NJ TRANSIT, hereinafter referred to as “the PARTIES,” agree that the MOU reflects a single, unified document that will serve the interests and requirements of all the PARTIES; and

WHEREAS, by federal and state law, NJ TRANSIT, 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 (TCP) and the Statewide Transportation Improvement Program (STIP); and

WHEREAS, the annual TCP is a list of all highway, bridge, transit and related projects funded with federal, state and certain other funds; and

WHEREAS, the FY 2018 TCP was developed by NJDOT and NJ TRANSIT and is the foundation for the NJTPA’s federally required TIP; and

WHEREAS, NJTPA Central Staff and the subregions have reviewed the TCP; and
WHEREAS, NJDOT, NJ TRANSIT, and the MPOs are permitted to make certain funding adjustments within the budget for the State’s TCP and within the STIP, subject to state and federal laws and regulations; and

WHEREAS, the Federal Highway Administration (FHWA) permits NJDOT to initiate transfers of FHWA apportionments to the Federal Transit Administration (FTA) for certain purposes and FTA permits NJ TRANSIT to initiate transfers of FTA apportionments to FHWA for certain purposes; and

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

WHEREAS, the MOU provides for the PARTIES to enter into amendments to the MOU to set forth for each of the subsequent fiscal years for federal and state Fiscal Years (FY) 2014 through 2018 (the “Five-Year Period”), the specific exchange of program funds, subject to federal and state appropriation, for the fourth amendment year of the Five-Year Period which is federal and state FY 2018; and

WHEREAS, in accordance with the MOU, in Federal Fiscal Year (FFY) 2018, NJDOT will direct the transfer of $85.0 million of FHWA Surface Transportation Program (STP) funds from FHWA to FTA to be allocated by NJ TRANSIT for the program items, Preventive Maintenance - Rail and Preventive Maintenance – Bus; and

WHEREAS, in accordance with the MOU, NJDOT will allocate $85.0 million in New Jersey State Transportation Trust Fund (TTF) funds in the FY 2018 TCP and in the 2018 program year of the FY 2018-2027 STIP for allocation by the MPOs to local projects that would be eligible for STP funds under current federal transportation law; and

WHEREAS, in accordance with the MOU, NJDOT will allocate the $85.0 million in FY 2018 TTF funds as follows: $70.0 million to NJTPA, $15.0 million to DVRPC; and

WHEREAS, in accordance with the terms of the MOU, NJDOT, NJ TRANSIT, 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 allocation each respective FFY and subject to the annual appropriation of TTF funds for MPO use; and

WHEREAS, no action authorized by the NJTPA shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Board of Trustees has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.
NOW, THEREFORE, BE IT RESOLVED that the North Jersey Transportation Planning Authority hereby approves the fourth amendment to the Memorandum of Understanding for the Exchange of Program Funds for FFY 2014 – 2018.

BE IT FURTHER RESOLVED that the North Jersey Transportation Planning Authority hereby endorses the FY 2018 Transportation Capital Program.

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the New Jersey Department of Transportation and NJ TRANSIT for submission to the Federal Highway Administration and Federal Transit Administration.

Certification

I hereby certify that the above is a true copy of a resolution adopted by the North Jersey Transportation Planning Authority at its scheduled meeting held on September 18, 2017.

Mary K. Murphy
Executive Director, NJTPA
Summary of Action Item

Approval of the FY 2018 Amendment to the Memorandum of Understanding for the Exchange of Program Funds for Federal Fiscal Years 2014-2018 and Endorsement of the FY 2018 Transportation Capital Program

**Action Item:** Approval of the Fourth Amendment to the Memorandum of Understanding for the Exchange of Program Funds for Federal Fiscal Year (FFY) 2014 – 2018 and the endorsement of the FY 2018 Transportation Capital Program (TCP).

**Background:**

**FY 2018 Exchange of Funds**
The New Jersey Department of Transportation, NJ TRANSIT and New Jersey’s three Metropolitan Planning Organizations (MPOs) agreed to exchange program funds beginning in FFY 2014, as documented in the Exchange of Program Funds Memorandum of Understanding (MOU) approved by the NJTPA Board of Trustees.

The MOU covers a five-year period (FFY 2014 -2018) in amounts commensurate with the annual federal apportionments made available to each MPO in each respective FFY, subject to the annual appropriation of State Transportation Trust Fund (TTF) funds and their designation for MPO use. For each FFY, each MPO Board must approve the exchange of federal and state funds in order to revise the Transportation Improvement Program (TIP) and the State Transportation Improvement Program as necessary, through an amendment to the MOU.

In FFY 2018, $85 million in federal Surface Transportation Program (STP) funds sub-allocated to the NJTPA and the Delaware Valley Regional Planning Commission (DVRPC) for local projects will be exchanged for $85 million in TTF funds designated for NJ TRANSIT. The NJTPA will exchange $70 million, while DVRPC will exchange $15 million. The NJTPA and DVRPC will allocate the TTF funds for local projects on the federal-aid system, and NJ TRANSIT will allocate the STP funds for Rail and Bus Preventative Maintenance programs.

This Exchange of Funds is reflected in the FY 2018 element of the FY 2018 Transportation Capital Program.

**FY 2018 Transportation Capital Program**
The TCP is the list of all road, bridge, transit and related projects in New Jersey funded with federal, state and certain other funds and is the foundation for the NJTPA’s federally required TIP. In the NJTPA region, the TCP includes nearly $2.3 billion in transportation investments. On June 28, 2017, the NJTPA distributed an analysis of the draft TCP to each subregion for review and comment.

**Justification for Action:**
The fourth amendment to the MOU permits the proposed FY 2018 funding exchange of federal STP funds to NJ TRANSIT for use in its capital program, providing greater flexibility in the use of transportation funds. It also will provide TTF funds to the MPOs for local projects on the federal aid system.
The FY 2018 TCP contains a balanced set of investments for the region, given available resources. By endorsing the FY 2018 TCP, the NJTPA will be apprising FHWA and FTA that it is in concurrence with NJDOT and NJ TRANSIT’s proposed programs.

**Staff Recommendation:** Central Staff recommends approval of this action.

THIS FOURTH AMENDMENT TO MEMORANDUM OF UNDERSTANDING (this "FOURTH Amendment- 2018"), dated as of ______, 2017, is entered into by and among the parties listed as signatories hereto ("NJT, NJDOT and the MPOs", or the "Parties").

WHEREAS, on January 7, 2014, NJT, NJDOT and the MPOs entered into a certain Memorandum of Understanding (the "MOU") which 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 was federal and State fiscal year 2014; and

WHEREAS, Paragraph B.2 of the MOU provides that the Parties (NJDOT, NJT and the MPOs) agree to enter into amendments to the MOU to set forth for each of the fiscal years within the Five-Year Period, the specific exchange of program funds, subject to federal and State appropriation; and

WHEREAS, on August 4, 2014, NJT, NJDOT and the MPOs entered into an amendment to the MOU to set forth the specific exchange of program funds for the second year of the Five-Year Period which was federal and State fiscal year 2015; and
WHEREAS, on January 20, 2016 NJT, NJDOT and the MPOs entered into an amendment to the MOU to set forth the specific exchange of program funds for the third year of the Five-Year Period which was federal and State fiscal year 2016; and

WHEREAS, on January 9, 2017 NJT, NJDOT and the MPOs entered into an amendment to the MOU to set forth the specific exchange of program funds for the fourth year of the Five-Year Period which was federal and State fiscal year 2017; and

WHEREAS, the Parties wish to amend the MOU to set forth for Fiscal Year 2018 the FHWA Surface Transportation Program Funds in the amount of $85.0 million to be sub-allocated to the MPOs;

NOW, THEREFORE, the Parties agree as follows:

1). The Recitals above are incorporated into this FOURTH Amendment-2018 as though set forth verbatim herein.

2) Paragraph C. Programming Exchange for Fiscal Year 2017 (Paragraphs C.1 through C.8, inclusive) of the MOU is deleted in its entirety and replaced with the following:

C. Programming Exchange for Fiscal Year 2018

1. In Federal Fiscal Year 2018, NJDOT agrees to direct the transfer of $85.0 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 $85.0 million comprises $70.0 million that would have been allocated by NJTPA, typically identified as STP-NJ funds and $15.0 million that would have been allocated by DVRPC, typically identified as STP-STU funds.
3. As a result of NJDOT’s directive to transfer funds as stated in paragraph C.1 above, NJT’s FY 2018 FTA funds will reflect an increase of $85.0 million.

4. As a result of such transfer, NJT’s TTF appropriations are reduced by $85.0 million and NJDOT’s TTF appropriations are increased by $85.0 million.

5. NJDOT will allocate the $85.0 million in TTF funds in the Fiscal Year 2018 Transportation Capital Program and in the 2018 program year of the Federal Fiscal Year 2018-2027 STIP for allocation by the MPOs to projects that would be eligible under Fixing America’s Surface Transportation (FAST) Act Sect. 1108 under 23 U.S.C.133.

6. NJDOT will allocate the $85.0 million in TTF funds to each MPO as follows: $70.0 million to NJTPA and $15.0 million to DVRPC.

7. The State Fiscal Year 2018 Transportation Capital Program provides a TTF funded line item for each MPO showing where these funds will be allocated.

8. The Federal Fiscal Year 2018-2027 STIP and MPO TIPs will identify the individual projects and funds allocated to each MPO for each year.

3) Except for the amendment to Paragraph C of the MOU as set forth above, all other provisions of the MOU shall remain unchanged and shall remain in full force and effect.
IN WITNESS WHEREOF, NJT, NJDOT and the MPOs have caused this instrument to be signed and attested by their duly authorized representatives.

ATTEST/WITNESS: NEW JERSEY DEPARTMENT OF TRANSPORTATION

______________________________
Secretary

By: ___________________________
Richard Hammer
Commissioner

ATTEST/WITNESS: NEW JERSEY TRANSIT CORPORATION

______________________________
Secretary

(SEAL)

By: ___________________________
Steven H. Santoro
Executive Director

ATTEST/WITNESS: NORTH JERSEY TRANSPORTATION PLANNING AUTHORITY

______________________________
Secretary

By: ___________________________
Mary K. Murphy
Executive Director

ATTEST/WITNESS: DELAWARE VALLEY REGIONAL PLANNING COMMISSION

______________________________

By: ___________________________
Barry Seymour
Executive Director

This Agreement has been reviewed and approved as to form.

Christopher S. Porrino
Attorney General of New Jersey

By: ___________________________
Deputy Attorney General
Date: