



MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President/Chief Operating Officer

SUBJECT: NJEDA/Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects) 2018 Series A

DATE: June 12, 2018

SUMMARY OF PROPOSED FINANCING

The EDA is currently being asked to (i) make findings and determinations relative to the provision of financial assistance through the issuance of one or more series of Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects) 2018 Series A (the “2018 Bonds”) to assist the New Jersey Transit Corporation (“NJ Transit”) in undertaking the Portal North Bridge Replacement Project, which consists of the replacement of the Portal Bridge, an existing two-track railroad swing type drawbridge that spans the Hackensack River in New Jersey, with a new two-track fixed structure (the “Project”), and to (ii) approve the execution and delivery of a Funding Agreement, pledging to the EDA certain appropriations by the New Jersey State Legislature to the New Jersey Transportation Trust Fund Authority in amounts sufficient to enable NJ Transit to make rent payments to the EDA under a Portal Bridge Sublease, which appropriations will secure the 2018 Bonds.

BACKGROUND

NJ Transit operates New Jersey’s main public transportation service consisting of public bus and commuter rail services. Its mission is to provide safe, reliable, convenient and cost-effective transit service with a skilled team of employees, dedicated to NJ Transit’s customers’ needs and is committed to excellence. One of NJ Transit’s many capital projects includes the Portal North Bridge Replacement Project. Built in 1910, the existing Portal Bridge is a two track, railroad swing-type drawbridge which crosses the Hackensack River in New Jersey as part of the Pennsylvania Railroad’s extension from New Jersey to Manhattan. This bridge is vital element of the Northeast Corridor (“NEC”), both in terms of ridership and service frequency. The Project will replace the existing century-old Portal Bridge with a new two-track fixed structure. The new bridge structure will be approximately 2.33 miles long and will have a clearance that accommodates current and forecasted maritime traffic, thereby eliminating the need for movable span that interrupts rail operation and results in delays. The new bridge design will improve reliability, allowing NJ Transit to operate longer and higher capacity trains and at an increased speed.

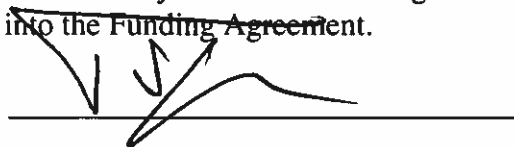
APPROVAL REQUEST

The EDA is being requested to approve a preliminary resolution relative to (i) findings and determinations with respect to the provision of financial assistance through the issuance of the 2018 Bonds by the EDA to NJ Transit to enable NJ Transit to finance the Project, and (ii) approval of the execution and delivery of a Funding Agreement establishing the security for payment of the 2018 Bonds. The EDA would issue the 2018 Bonds in one or more series, in the aggregate principal amount not to exceed \$600,000,000. NJ Transit and the EDA would enter into a Lease Agreement and a Sublease Agreement pursuant to which NJ Transit will make rent payments to the EDA in amounts sufficient to enable the EDA to pay debt service on the 2018 Bonds. Under the Funding Agreement, NJ Transit pledges to the EDA appropriations made by the New Jersey Legislature to Transportation Trust Fund Authority to pay the rent obligation under the Sublease. The EDA would assign such right to the appropriations and to the rent to the 2018 Bond trustee. Issuance of the 2018 Bonds is subject to all customary and legally required documents and approvals.

The preliminary approval of the issuance of the 2018 Bonds by the Board on June 12, 2018 is required to assist NJ Transit in obtaining Core Capacity Grant funding through the Federal Transit Administration (“FTA”) Capital Investment Funding (“CIG”) grant program for the financing of approximately \$844 million of the approximately \$1.7 billion costs of the Project. The other sources of funding for the Project, in addition to the proceeds of the 2018 Bonds and the CIG grant funds include a contribution from Amtrak for FRA grant proceeds, other Amtrak contributions, CMAQ funding and local NJ Transit match for CMAQ funds.

RECOMMENDATION

The Project is a critical improvement to the comprehensive rail improvement program along the NEC. The Project meets all criteria for Core Capacity eligibility; ridership on the NEC commuter rail corridor is currently at capacity and the Project is a substantial, corridor-based investment within the existing NEC that will increase capacity by over 10%. The new high-level fixed span bridge provides the reliability necessary for NJ Transit to add capacity. Additionally, its functionality adheres to U.S. Coast Guard requirements to eliminate interference with marine traffic. Based on the aforementioned, Staff recommends approval of the Preliminary Resolution making the requisite finding and determinations and approving entering into the Funding Agreement.

A handwritten signature in black ink, consisting of a stylized 'V' shape followed by a series of loops and a horizontal line, positioned above a solid horizontal line.

Prepared by: Teresa Wells

2018 SERIES A FUNDING AGREEMENT

This **2018 SERIES A FUNDING AGREEMENT**, dated as of _____, 2018 (this "Funding Agreement"), made by NEW JERSEY TRANSIT CORPORATION (the "Corporation"), a body corporate and politic constituting an instrumentality of the State of New Jersey (the "State"), created and existing under and by virtue of the New Jersey Public Transportation Act of 1979, L. 1979, c. 150, as heretofore or hereafter from time to time amended and supplemented (the "Transportation Law"), with the approval of the COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF TRANSPORTATION (the "Commissioner"), to and in favor of the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority"), a public body corporate and politic organized and existing under the New Jersey Economic Development Authority Act, L. 1974, c. 80, as heretofore or hereafter from time to time amended and supplemented (the "Act"), with reference to the following background:

BACKGROUND

WHEREAS, the Corporation is authorized and directed by the Transportation Law to provide efficient, coordinated, safe and responsive public transportation for the residents of the State; and

WHEREAS, the Authority is a public body corporate and politic and an instrumentality of the State exercising public and essential governmental functions, organized, subsisting under and having the powers conferred by the Act, including, *inter alia*, the power to render assistance to governmental bodies through, among other means, the issuance of its obligations and the entering into of contracts, including leases, for the acquisition, construction and improvement of transportation facilities; and

WHEREAS, the Corporation proposes to undertake the Portal North Bridge Replacement Project, which consists of the replacement of the Portal Bridge, an existing two-track railroad swing type drawbridge that spans the Hackensack River in New Jersey, with a new two-track fixed structure that will be approximately 2.33 miles and will have a clearance that accommodates current and forecasted maritime traffic, which will eliminate the need for a moveable span that interrupts rail operations and results in delays due to mechanical failures and which when built, will allow for a 10% increase in peak hour passenger capacity (the "Portal Bridge Project"); and

WHEREAS, the Corporation and the Authority have agreed that the financing of the costs of the Portal Bridge Project, including capitalized interest and transaction costs (collectively, the "Costs"), shall be obtained through the creation of lease-sublease arrangements between the Corporation and the Authority, and the sale of the Authority's Transportation Project Sublease Revenue Bonds (New Jersey Transit Corporation Projects) 2018 Series A (the "2018 Series A Bonds"). A portion of the debt service on the 2018 Series A Bonds shall be paid by the Authority from the 2018 Series A Rent Payment Obligations payable (as hereinafter defined) by the Corporation to the Authority pursuant to the 2018 Series A Sublease (as hereinafter defined) from appropriations by the New Jersey Legislature for the Portal Bridge Project in each Fiscal Year of the State (a "Fiscal Year") in an amount up to, but not exceeding, the amount necessary to pay the

Corporation's 2018 Series A Rent Payment Obligations for such Fiscal Year ("2018 Series A State Appropriations"), if, as and when such amounts become available; and

WHEREAS, pursuant to the New Jersey Transportation Trust Fund Authority Act of 1984, L. 1984, c. 73, as heretofore or hereafter from time to time amended and supplemented (the "NJTTFA Act"), and, in particular, Section 13 of the NJTTFA Act, N.J.S.A. 27:1B-21.6, the Commissioner or the Board of Directors of the Corporation (the "Board") with the approval of the Commissioner is authorized to enter into agreements for the advancement of a transportation project to be funded by future Fiscal Year appropriations to the New Jersey Transportation Trust Fund Authority, pursuant to which the Commissioner or the Board may pledge funds anticipated to be appropriated to those transportation projects in those agreements; provided, however, that payment of moneys pledged is subject to the availability of funds in the Fiscal Year in which the funds are to be appropriated. The New Jersey Legislature has no legal obligation to make any such appropriations. Any project which is the subject of an agreement authorized by Section 13 of the NJTTFA Act shall appear in the annual report of proposed projects prepared by the New Jersey Department of Transportation pursuant to Section 22 of the NJTTFA Act for each Fiscal Year in which the agreement is in effect, and the report shall indicate the amount to be appropriated, if any, to the project in the upcoming Fiscal Year; and

WHEREAS, the Corporation is, pursuant to a Portal Bridge Lease dated as of the date of issuance of the 2018 Series A Bonds, leasing the Portal Bridge Project to the Authority (the "2018 Series A Lease"); and

WHEREAS, pursuant to a Portal Bridge Sublease dated as of the date of issuance of the 2018 Series A Bonds (the "2018 Series A Sublease"; capitalized terms used but not defined in this Funding Agreement shall have the meanings given to them in the 2018 Series A Sublease or the Resolution (as hereinafter defined)), the Authority is in turn contemporaneously reletting and subleasing the Portal Bridge Project back to the Corporation, to be designed, acquired, constructed, equipped and operated by the Corporation. Pursuant to the 2018 Series A Sublease, the Corporation shall pay periodic installments of Rent (the "2018 Series A Payment Obligations") from 2018 Series A State Appropriations; and

WHEREAS, the Corporation, with the approval of the Commissioner, is entering into this Funding Agreement in favor of the Authority pursuant to which, inter alia, the Corporation is pledging the 2018 Series A State Appropriations to the Authority to secure the payment of the Corporation's 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease; and

WHEREAS, the Authority will issue the 2018 Series A Bonds pursuant to a Transportation Project Sublease Revenue Bond Resolution (New Jersey Transit Corporation Projects), adopted on December 13, 2016, as amended by the First Supplemental Transportation Project Sublease Revenue Bond Resolution (New Jersey Transit Corporation Projects), and a Series Certificate of the Authority dated as of the date of sale of the 2018 Series A Bonds (collectively, the "Resolution"), in an aggregate principal amount which, together with other funds of the Corporation which are or are to become available for such purposes, will be sufficient to pay, among other things, the costs of the Portal Bridge Project, and all other Costs; and

WHEREAS, in conjunction with, and as security for, the issuance of the 2018 Series A Bonds pursuant to the Resolution, the Authority will assign all of its right to receive the 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease and the pledge of the 2018 Series A State Appropriations under this Funding Agreement to the Trustee pursuant to the Resolution; and

WHEREAS, U.S. Bank National Association, as trustee under the Resolution (the "Trustee"), shall, pursuant to the Resolution, pay the debt service on the 2018 Series A Bonds solely from the Pledged Property assigned to it under the Resolution; and

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, the Corporation hereby agrees as follows:

1. Pledge of 2018 Series A State Appropriations. In order to secure the payment when due of the Corporation's 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease, the Corporation hereby pledges to the Authority any and all 2018 Series A State Appropriations, if, when and as received, together with any and all investment income thereon; *provided, however*, that payment of amounts pledged under this Funding Agreement is subject to the availability of funds in the Fiscal Year in which such amounts are to be appropriated. The pledge and security interest granted hereby shall remain in full force and effect until the Corporation's 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease have been paid in full.

2. Limitation of Liability.

(a) Notwithstanding anything in this Funding Agreement to the contrary, the cost and expense of the performance by the Corporation of its obligations under this Funding Agreement and the incurrence of any liabilities of the Corporation under this Funding Agreement, shall be limited solely to the 2018 Series A State Appropriations, which are hereby irrevocably pledged to the Authority as security for the payment of all of the Corporation's 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease. The obligation to make payments of Rent required to be paid under this Funding Agreement and the 2018 Series A Sublease is not and shall not be a liability or charge upon the credit of the Corporation. Furthermore, no debt or liability of the Corporation shall be deemed or construed to create or constitute a debt, liability, loan of credit or pledge of credit of the Authority or the State. Accordingly, the cost and expense of the performance by the Corporation of its obligations under this Funding Agreement and the incurrence of any liabilities of the Corporation under this Funding Agreement in any Fiscal Year shall be subject to and dependent upon appropriations being made from time to time by the New Jersey Legislature for the Portal Bridge Project in such Fiscal Year in an amount up to, but not exceeding, the amount necessary to pay the Corporation's 2018 Series A Rent Payment Obligations for such Fiscal Year.

(b) A failure by the Corporation to pay when due any 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease or any amount payable under this Funding Agreement by reason of the occurrence of an Event of Non-Appropriation (as such term is defined in the 2018 Series A Sublease) shall not constitute a Default under the 2018 Series A Sublease or a default under this Funding Agreement or an event of default under the Resolution. All liabilities or potential liabilities of the Corporation hereunder are further subject to the

provisions of N.J.S.A. 59:1-1 et seq. and of N.J.S.A. 59:13-1 et seq. The provisions of this Section 2(b) shall be applicable to all liabilities of the Corporation wherever set forth in this Funding Agreement, whether or not specific reference is made to this Section 2(b).

(c) Nothing herein contained shall require or be construed to constitute a legal requirement (contractual or otherwise) that the Corporation must request additional funds from the New Jersey Legislature or any other funding source if for any reason monies legally available to the Corporation from 2018 Series A State Appropriations in any Fiscal Year are not sufficient to meet the Corporation's 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease or this Funding Agreement (but nothing herein contained shall preclude the Corporation from making any such request, if it shall elect to do so).

3. Representations, Warranties and Covenants of the Corporation. The Corporation hereby represents, warrants and covenants that:

(a) The Corporation has all requisite power and authority to execute and deliver this Funding Agreement and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Funding Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the Board and no other proceedings on the part of the Corporation are necessary or required under the Transportation Law or the NJTTF Act. This Funding Agreement constitutes the legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms.

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity or before or by any court, public board or body, pending, or to the knowledge of the Corporation, threatened, wherein an unfavorable decision, ruling or finding would (i) materially adversely affect the transactions contemplated by this Funding Agreement, the 2018 Series A Lease or the 2018 Series A Sublease; or (ii) adversely affect the validity or enforceability of this Funding Agreement, the 2018 Series A Lease or the 2018 Series A Sublease. All authorizations, consents and approvals of governmental bodies or agencies presently required in connection with the execution, delivery and performance by the Corporation of this Funding Agreement have been obtained and are in full force and effect.

(d) Neither the execution and delivery of this Funding Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the terms and conditions contained herein is prevented, limited by, conflicts with or results in a breach of, the terms, conditions or provisions of the Transportation Law or any regulation issued thereunder, any agreement or instrument to which the Corporation is a party or by which the Corporation is bound, or constitutes a default under any of the foregoing.

(e) As set forth in Section 13 of the NJTTF Act, the Corporation has the right, power and authority to pledge the 2018 Series A State Appropriations as provided in this Funding Agreement, has not created, assumed, incurred or suffered to be created, assumed or incurred, or to exist, and will not for so long as the 2018 Series A Sublease remains in effect,

create, assume, incur, or suffer to be created, assumed or incurred or to exist any lien, pledge, charge or encumbrance of any kind or nature on the 2018 Series A State Appropriations.

4. Benefit of Funding Agreement; Successors and Assigns. This Funding Agreement is entered into by the Corporation for the benefit of the Authority and the Trustee on behalf of the Holders from time to time of the 2018 Series A Bonds and any Additional Bonds, including Refunding Bonds, hereafter issued in connection with the Portal Bridge Project and Outstanding under the Resolution. This Funding Agreement shall be binding upon the Corporation and its successors and assigns.

5. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when hand delivered with receipt acknowledged, sent by telecopy, telegraph, telex, facsimile transmission or any other similar means of electronic communication, mailed by first class mail, registered or certified, return receipt requested, or sent by recognized overnight carrier, postage prepaid and with acknowledgment of delivery, to the parties at the addresses or numbers set forth below or as to each party at such other or additional address or numbers as shall be designated by such party in a written notice to the other party hereto. Copies of all notices shall also be sent to the Commissioner and the Trustee:

If to the Commissioner: Commissioner of Transportation
New Jersey Department of Transportation
Finance and Administration Building
1035 Parkway Avenue
P.O. Box 600
Trenton, New Jersey 08625

If to the Corporation: New Jersey Transit Corporation
New Jersey Transit Headquarters
One Penn Plaza East
Newark, New Jersey 07105-2246
Attention: Executive Director

If to the Authority: New Jersey Economic Development Authority
36 West State Street
P.O. Box 990
Trenton, New Jersey 08625
Attention: Chief Executive Officer

If to the Trustee: U.S. Bank National Association
21 South Street, 3rd Floor
Morristown, New Jersey 07960
Attention: Paul D. O'Brien, Vice President

6. Amendments. This Funding Agreement may be amended upon the written consent of the Commissioner, the Corporation and the Authority, subject to and in accordance with the provisions of Section 1005 of the Resolution.

7. Severability. Any provision of this Funding Agreement which is prohibited, unenforceable or unauthorized in any jurisdiction or as to any circumstance shall, as to such jurisdiction or circumstance, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction or as to any other circumstance.

8. Governing Law; Submission to Jurisdiction.

(a) This Funding Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

(b) With respect to any suit, action or proceedings relating to this Funding Agreement, each of the Authority and the Commissioner irrevocably submits, to the fullest extent permitted by law, to the exclusive jurisdiction of the State courts of the State of New Jersey located in the County of Mercer.

9. Headings. Section headings in this Funding Agreement are for convenience of reference only and shall not constitute a part of this Funding Agreement for any other purpose.

10. Counterparts. This Funding Agreement may be executed in any number of counterparts, all of which counterparts, taken together, shall constitute but one and the same Funding Agreement.

11. Term of Agreement. This Funding Agreement and the obligations of the Corporation and the Commissioner hereunder shall terminate when all of the Corporation's 2018 Series A Rent Payment Obligations under the 2018 Series A Sublease have been paid in full.

12. Pledge and Assignment. The Corporation acknowledges that all of the Authority's right, title and interest in, to and under this Funding Agreement has been pledged and assigned to the Trustee pursuant to the Resolution.

IN WITNESS WHEREOF, the Corporation, the Commissioner and the Authority have caused this 2018 Series A Funding Agreement to be duly executed and delivered, approved or consented to, as applicable, by their duly authorized officers, as of the date first above written.

NEW JERSEY TRANSIT CORPORATION

By: _____

Pursuant to N.J.S.A. 27:1B-21.6, I hereby approve this 2018 Series A Funding Agreement by the New Jersey Transit Corporation and further agree to comply with all applicable legal requirements in the implementation hereof.

**COMMISSIONER, NEW JERSEY
DEPARTMENT OF TRANSPORTATION**

By: _____

Date of Approval:

This 2018 Series A Funding Agreement from New Jersey Transit Corporation to and in favor of the New Jersey Economic Development Authority is hereby consented to and approved.

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____

Date of Consent and Approval: