

NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY

Minutes of the meeting of the New Jersey Transportation Trust Fund Authority (“Authority” or “NJTTFA”) held via GoToMeeting from the Office of the Commissioner in the Main Office Building of the New Jersey Department of Transportation (“NJDOT”), 1035 Parkway Avenue, Trenton, New Jersey on August 18, 2022, at 11:00 AM (ET).

The following Authority members were present:

- Joseph Bertoni, NJTTFA Chairperson / NJDOT Deputy Commissioner
(Delegate for Diane Gutierrez-Scaccetti, NJDOT Commissioner)
- David Moore, NJTTFA Treasurer / Acting Director, Office of Public Finance, NJ Department of the Treasury (Delegate for the Honorable Elizabeth Maher Muoio, New Jersey State Treasurer)
- Khalid Anjum, NJTTFA Public Member
- Robert Briant, Jr., NJTTFA Public Member
- Jack Kocsis, NJTTFA Public Member
- Gregory Lalevee, NJTTFA Public Member

Constituting a quorum of the Members of the Authority.

There were also present:

- Lewis Daidone, NJTTFA Executive Director / Assistant Commissioner, Finance and Administration, NJDOT
- Samuel Braun, NJTTFA Comptroller, NJDOT
- Naileen Rodriguez, NJTTFA Secretary, NJDOT
- Kimberly Minter, NJTTFA Assistant Secretary, NJDOT
- Anthony Longo, NJTTFA Assistant Treasurer, NJ Department of the Treasury

- Susan Wilkerson, Deputy Attorney General, NJ Attorney General's Office
- Dorian Smith, NJ Governor's Authorities Unit
- Parth Oza, Acting Assistant Commissioner, Capital Program Management, NJDOT
- Mohab Hussein, Project Engineer, Bureau of Structural Design & Geotechnical Engineering, NJDOT
- Laine Rankin, Director, Division of Local Aid & Economic Development, NJDOT
- Andrew Tunnard, Assistant Commissioner, Transportation Operations Systems & Support, NJDOT
- Chuck Maciejunes, Director, Division of Budget, NJDOT

Chairperson Joseph Bertoni presided at the meeting and Kimberly Minter, NJTTFA Assistant Secretary, kept the minutes.

Chairperson Joseph Bertoni convened the meeting at 11:05 AM. He introduced himself and made the following statement:

"I wish to announce that adequate notice of today's meeting of the New Jersey Transportation Trust Fund Authority has been provided in accordance with the Open Public Meetings Act. Notice was filed with the Secretary of State. This notice was e-mailed and mailed to five newspapers of general distribution (The Trentonian, Trenton Times, Courier Post, Star Ledger, and the Atlantic City Press); posted on the Authority's website and posted in the main entrance of the New Jersey Department of Transportation's Headquarters in Ewing, New Jersey."

Assistant Secretary Kimberly Minter called the roll. The following Board members acknowledged their presence: Khalid Anjum, Joseph Bertoni, Robert Briant, Jr., Jack Kocsis,

Gregory Lalevee and David Moore. Assistant Secretary Kimberly Minter confirmed that a quorum was present.

Chairperson Joseph Bertoni stated that this was a virtual meeting and reminded Board members to identify themselves before making or seconding a motion.

Chairperson Joseph Bertoni then opened the floor for public comment and requested that members of the public identify themselves before expressing their comments or questions. There were no public comments.

Chairperson Joseph Bertoni called the first order of business by requesting a motion to adopt the resolution approving the minutes of actions taken at the April 21, 2022, board meeting of the New Jersey Transportation Trust Fund Authority. Jack Kocsis moved to approve the following resolution:

WHEREAS, Article II, Section 2 of the By-laws of the New Jersey Transportation Trust Fund Authority (the "Authority") provides that the minutes of actions taken at the meetings of the Authority be approved by the Authority.

NOW, THEREFORE, BE IT RESOLVED, that the minutes taken at the meeting of April 21, 2022, of the New Jersey Transportation Trust Fund Authority are hereby approved.

The motion was seconded by Khalid Anjum and carried by unanimous vote.

Chairperson Joseph Bertoni moved on to the next order of business: the election of officers for the Authority for Fiscal Year 2023.

Chairperson Joseph Bertoni nominated Gregory Lalevee for the position of Vice Chairperson. There were no other nominations. Jack Kocsis moved to elect Gregory Lalevee to serve as Vice Chairperson of the Authority for Fiscal Year 2023. The motion was seconded by Khalid Anjum and adopted on a call of roll as follows:

AYE: 6
NAY: 0
ABSTAIN: 0

ABSENT: 1

Chairperson Joseph Bertoni nominated David Moore for the position of Treasurer. There were no other nominations. Gregory Lalevee moved to elect David Moore to serve as Treasurer of the Authority for Fiscal Year 2023. The motion was seconded by Jack Kocsis and adopted on a call of roll as follows:

AYE: 6
NAY: 0
ABSTAIN: 0
ABSENT: 1

Chairperson Joseph Bertoni nominated Naileen Rodriguez for the position of Secretary. There were no other nominations. Khalid Anjum moved to elect Naileen Rodriguez to serve as Secretary of the Authority for Fiscal Year 2023. The motion was seconded by Robert Briant, Jr. and adopted on a call of roll as follows:

AYE: 6
NAY: 0
ABSTAIN: 0
ABSENT: 1

For the next order of business, Chairperson Joseph Bertoni requested a motion to adopt the resolution appointing Kimberly Minter to the position of Assistant Secretary, Anthony Longo to the position of Assistant Treasurer, and Samuel Braun to the position of Comptroller. Gregory Lalevee moved to approve the following resolution:

WHEREAS, the New Jersey Transportation Trust Fund Authority (the "Authority") has been created and exists pursuant to the provisions of the New Jersey Transportation Trust Fund Authority Act, P.L. 1984, c. 73, N.J.S.A. 27:1B-1 et seq., as amended (the "Act"); and

WHEREAS, the Authority is authorized, pursuant to Article V of the Authority's By-Laws, to appoint an Assistant Secretary and an Assistant Treasurer; and

WHEREAS, the Authority is authorized, pursuant to Article IV of the Authority's By-Laws, to appoint a Comptroller; and

WHEREAS, it is in the best interest of the Authority to appoint persons to serve as Officers of the Authority in the positions of: Assistant Secretary, Assistant Treasurer, and Comptroller.

NOW, THEREFORE, BE IT RESOLVED, that the Authority appoints the following individuals to serve as Officers of the Authority for fiscal year 2023:

*Kimberly Minter as Assistant Secretary,
Anthony Longo as Assistant Treasurer, and
Samuel Braun as Comptroller.*

The motion was seconded by David Moore and adopted on a call or roll as follows:

AYE: 6
NAY: 0
ABSTAIN: 0
ABSENT: 1

For the next order of business, Chairperson Joseph Bertoni called upon Executive Director Lewis Daidone to discuss the resolution approving the post-issuance tax compliance procedures and Memorandum of Understanding between NJTTFA, NJDOT, and NJ Transit.

Mr. Daidone began by providing background on the post-issuance tax compliance requirements that pertain to the Authority's issuance of tax-exempt bonds and its use of bond proceeds. He explained how "private use" restrictions are applicable to the Authority, including the percentage limitations on the extent to which proceeds can benefit persons other than a state or local governmental unit. To assist in ongoing compliance, the Authority has developed post-issuance tax compliance procedures including a formal NJDOT policy and a Memorandum of Understanding with NJDOT and NJ Transit. The procedures include: the appointment of Tax Compliance Officers at each agency and the ongoing review of bond-financed properties. It also outlines the steps taken by each agency to track the allocation of proceeds to individual projects, identify bond-financed properties, and quantify private use and payments. Mr. Daidone ended the discussion by providing a summary of the resolution.

There being no questions, Chairperson Joseph Bertoni requested a motion to adopt the resolution approving the amended and restated post-issuance tax compliance procedures and MOU. Gregory Lalevee moved to approve the following resolution:

RESOLUTION APPROVING AMENDED AND RESTATED POST ISSUANCE TAX COMPLIANCE PROCEDURES AND A MEMORANDUM OF UNDERSTANDING BETWEEN THE NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY, NJ TRANSIT CORPORATION, AND THE NEW JERSEY DEPARTMENT OF TRANSPORTATION

WHEREAS, the New Jersey Transportation Trust Fund Authority (the "Authority") has been created and exists pursuant to the provisions of the New Jersey Transportation Trust Fund Authority Act, P.L. 1984, c. 73, N.J.S.A. 27:1B-1 et seq., as amended (the "Act"); and

WHEREAS, pursuant to the Act, the Authority periodically issues tax-exempt bonds and other obligations to finance state transportation projects; and

WHEREAS, the federal Internal Revenue Service ("IRS") has requirements concerning the use of tax-exempt obligations and as an issuer of tax-exempt obligations, the Authority is subject to these requirements, including the filing of an IRS form 8038-G that requires the Authority confirm that proper procedures are in place to monitor compliance before issuing new obligations; and

WHEREAS, on November 3, 2011, the Authority's Board adopted the Twenty-Sixth Supplemental System Bond Resolution which "delegated to the Authorized Authority Officials the power to develop, in consultation with Bond Counsel and the State Attorney General, post issuance compliance procedures as required by the Code and the regulations promulgated thereunder for the Twenty-Sixth Supplemental Bonds, all outstanding bonds previously issued by the Authority and all future bonds to be issued by the Authority;" and

WHEREAS, to ensure continued compliance with the IRS requirements, certain Authorized Authority Officials subsequently developed, in consultation with Bond Counsel and the State Attorney General's Office, amended and restated post issuance tax compliance procedures ("Amended and Restated PITC Procedures"), including two separate documents entitled the Post Issuance Compliance Guide: Use of Tax-Exempt Bond Financed Property and Proceeds which formally describes the procedures that are in place to monitor the use of tax-exempt financing for state transportation projects, and the Post Issuance Tax Compliance For Tax-Exempt and Tax-Advantaged Bonds – Implementation Guide which explains review procedures in greater detail; and

WHEREAS, to ensure that the Authority is following the advice of Bond Counsel, as presented in the Amended and Restated PITC Procedures attached hereto as Exhibit A, the Authority requires the assistance of the NJ Transit Corporation ("NJ Transit") and the New Jersey Department of Transportation ("NJDOT"); and

WHEREAS, both NJ Transit and NJDOT benefit from the Authority's issues of tax-exempt bonds and other obligations; and

WHEREAS, pursuant to N.J.S.A. 52:14-4, two or more departments are authorized to unite in cooperative work in lines germane to the duties of said departments through an intergovernmental agreement such as a memorandum of understanding; and

WHEREAS, the Authority wishes to enter into a memorandum of understanding with NJ Transit and NJDOT, attached hereto as Exhibit B (the "MOU"), in order to carry out the procedures necessary for compliance with IRS requirements related to tax-exempt bonds and other obligations; and

WHEREAS, it is in the best interest of the Authority to approve the Amended and Restated PITC Procedures and to enter into the MOU.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY AS FOLLOWS:

1. *The Members of the Authority hereby approve the Amended and Restated PITC Procedures attached hereto as Exhibit A.*

2. *The Executive Director, in consultation with nationally recognized Bond Counsel and the State Attorney General's Office, is hereby authorized and directed to adopt such further amendments to the Amended and Restated PITC Procedures as may be necessary or appropriate to enable the Authority to comply with the federal tax requirements applicable to the Authority's bonds and other obligations. The Executive Director shall provide the Board with written notice of any amendments adopted pursuant to this paragraph 2, which notice shall contain a brief description of the amendments and shall be accompanied by a copy of such amendments.*

3. *The Members of the Authority hereby approve the MOU attached hereto as Exhibit B, in substantially the form presented at this meeting and authorize the Executive Director to execute and deliver the MOU, with such changes, revisions and omissions as may be necessary or appropriate as determined by the Executive Director, in consultation with the Office of the Attorney General and Bond Counsel.*

4. *The Members of the Authority hereby approve the execution and delivery of any documents necessary to effectuate and implement the MOU and authorize the Executive Director to take any and all action necessary to effectuate and implement the MOU, including, but not limited to, execution and delivery of documents in connection therewith.*

The motion was seconded by Robert Briant, Jr. and adopted on a call of roll as follows:

AYE: 6
NAY: 0
ABSTAIN: 0
ABSENT: 1

For the next order of business, Chairperson Joseph Bertoni called upon Executive Director Lewis Daidone to provide a summary of NJDOT capital project funding for State Fiscal Year 2023.

Mr. Daidone first presented a recap of total capital construction and delivery expenditures through State Fiscal Year 2022, along with the number and value of construction contracts awarded. He then provided a breakdown of the Capital Program for State Fiscal Year 2023: \$2 billion of funding from the Transportation Trust Fund and \$2.6 billion of Federal funds which reflects an increase from prior years due to the additional Federal funding provided through the Infrastructure Investment and Jobs Act. He also noted that legislation was passed to increase the Authority's statutory spending limitation through State Fiscal Year 2024 by \$600 million in order to replenish the \$600 million that was added to the Capital Program in Fiscal Year 2021. In reviewing the breakdown of programmed projects by capital investment categories, Mr. Daidone highlighted that over half of the value falls under "Bridge Assets" and "Road Assets". He concluded his presentation by listing some additional sources of funding through state appropriations including \$130 million from the General Fund and \$230 million from the Debt Defeasance and Prevention Fund.

In response to a question from Robert Briant, Jr., Mr. Daidone noted that the Debt Defeasance and Prevention Fund will provide funds to continue to work on Lincoln Tunnel Access Program projects through October 2023, but this will not in any way mitigate or decrease the Port Authority's obligation to provide the funding that they have committed to for this Program.

There being no further business or discussion, Chairperson Joseph Bertoni asked for a motion to adjourn the meeting. Khalid Anjum moved that the August 18, 2022, meeting of the

Authority be adjourned. The motion was seconded by Robert Briant, Jr. and carried by unanimous vote.

The August 18, 2022, meeting of the New Jersey Transportation Trust Fund Authority ended at approximately 11:24 AM.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Kimberly Minter". The signature is written in a cursive, flowing style.

Kimberly Minter
NJTTFa Assistant Secretary

Exhibit A

TRANSPORTATION TRUST FUND AUTHORITY
POST ISSUANCE COMPLIANCE GUIDE
USE OF TAX-EXEMPT BOND FINANCED PROPERTY AND PROCEEDS

February 14, 2012
Revised August 13, 2019

PURPOSE

The Transportation Trust Fund Authority (the “Authority”) periodically issues its tax-exempt bonds (the “Tax-Exempt Bonds”), and has issued direct pay Build America Bonds (the “BABs”, and collectively with the Tax-Exempt Bonds, the “Obligations”), to finance the construction, renovation, and/or acquisition of various public facilities and improvements and related equipment. Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”) contains limitations on the extent to which proceeds of the Obligations can benefit persons other than a state or local governmental unit. In addition, Section 148 of the Code imposes limitations on the investment of proceeds of the Obligations and required rebate of excess earnings to the federal government. The procedures set forth herein are intended to preserve the tax-exempt status of the Authority’s outstanding Tax-Exempt Bonds and the continued eligibility of the Authority’s BABs for subsidy payments by establishing procedures for: (1) identifying uses that may constitute private use; (2) managing and tracking changes in use, (3) accomplishing remedial action when necessary; and (4) assuring compliance with the arbitrage requirements of the Code.

RESPONSIBILITY

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of its outstanding Obligations (the “Tax Requirements”), the Authority has by Resolution dated November 3, 2011 appointed the Comptroller of the Authority to act as the Tax Compliance Officer who will have the primary responsibility to monitor the Authority’s compliance with the Tax Requirements for the Authority’s Obligations. The Tax Requirements include both limitations on the private use of bond-financed facilities and arbitrage limitations on the investment of the proceeds of the Obligations under the Internal Revenue Code of 1986, as amended (the “Code”). The general responsibilities of the Tax Compliance Officer with respect to tax compliance shall include, but not be limited to, communicating monitoring procedures (as outlined herein) to personnel of New Jersey Transit Corporation (“NJT”) and New Jersey Department of Transportation (“DOT”) responsible for tax compliance, confirming consistent application of these procedures, monitoring the completeness of documentation required by these procedures, and requesting that the Attorney General’s Office engage outside bond counsel (“Bond Counsel”) as necessary. The procedures that will be undertaken are set forth below. The Authority will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements.

PRIVATE ACTIVITY LIMITATIONS

Bond-Financed Property

The first step in undertaking a review of private activity limitations is to identify property that was financed by the Obligations. In many cases a particular property or project may have been partially financed with multiple issues of Obligations and a change in the use of that property or project could affect all of those issues. The Tax Compliance Officer will identify all outstanding issues of Obligations of the Authority by reference to the listing of Obligations in the most recent audited financial statement of the Authority for the fiscal year and any interim unaudited financial statements of the Authority. The Tax Compliance Officer will oversee the establishment and maintenance of books and records reflecting the actual expenditure of proceeds of Obligations during the expenditure period (the “Bond-Financed Property”) for Fiscal Year 2019 and future fiscal years and will coordinate with the responsible persons at DOT and NJT as described below under “DOT and NJT Procedures.”

Private Activity Review

Federal tax law limits the permitted amount of private business use of bond-financed facilities by reference to a percentage of the total amount of proceeds. In the case of private uses that are related to the governmental use of the facility, the limit is 10% of proceeds. In the case of private use that is unrelated to the governmental use or related but disproportionate to the private use, the limit is 5% of proceeds. Federal tax law also limits the amount of private loans to the lesser of 5% of proceeds or \$5,000,000. Reference should be made to the Private Activity Restrictions on Private Business Use and accompanying attachments, attached as Tab I, for further guidance on the Private Activity Limitations of Section 141 of the Code (the “Private Activity Limitations”). A form of Private Business Use Questionnaire that can be utilized to conduct private activity review is attached as Tab II.

Private activity review must be undertaken for both BABs and Tax-Exempt Bonds. In order to demonstrate compliance with the Private Activity Limitations, the Tax Compliance Officer will oversee the procedures described below under “DOT and NJT Procedures.” These procedures are designed to assist the Tax Compliance Officer in identifying the potential occurrence of any of the events set forth below (a “Tax Event”) with respect to any Bond-Financed Property:

Change of ownership of the financed property -- the ownership of any portion of the Bond-Financed Property is transferred to anyone other than a State or local governmental unit, prior to the earlier of the end of the expected economic life of the property, or the latest maturity date of any bond of the issue financing (or refinancing) the property.

Private business use of the Bond-Financed Property -- any portion of the Bond-Financed Property will be used by anyone other than a State or local governmental unit or members of the general public who are not using the property in the conduct of a

trade or business. Examples of uses that can give rise to private business use include use by a person as an owner, lessee, purchaser of the output of facilities under a “take” or “take or pay” contract, purchaser or licensee of research, a manager or independent contractor under certain management or professional service contracts or any other arrangement that conveys special legal entitlements (e.g., arrangement that conveys priority rights to the use or capacity of the financed property) for beneficial use of the property financed with proceeds of tax-exempt debt or special economic benefit.

Leases of the Bond Financed Property -- any portion of the Bond-Financed Property is to be leased, or otherwise subject to an agreement which gives possession of any portion of the Bond-Financed Property to anyone other than a State or local governmental unit.

Management agreement or service agreement -- any portion of the Bond-Financed Property is to be used under a management contract or professional service contract (e.g., medical group), other than a contract for services that are solely incidental to the primary function of Bond-Financed Property, such as janitorial services or office equipment repair.

Sale of Output from Bond-Financed Facility – any output of the Bond-Financed Facility is to be sold under a long-term contract to any person other than a state or local governmental unit.

Naming rights agreements for the Bond-Financed Property -- any portion of the Bond-Financed Property will become subject to a naming rights or sponsorship agreement, other than a “brass plaque” dedication.

Research using the Bond-Financed Property -- any portion of the Bond-Financed Property will be used for the conduct of research under the sponsorship, or for the benefit of, any organization other than a State or local governmental unit.

Private Loan of Bond Proceeds -- any portion of the proceeds of the Obligations (including any investment earnings thereon) is to be loaned by the Authority to any person other than a State or local governmental unit.

On or prior to the occurrence of any Tax Event, the Tax Compliance Officer will request that the Attorney General’s Office obtain the advice of Bond Counsel to ascertain what effect, if any, a contemplated Tax Event may have on the tax-exempt status of interest on the Tax-Exempt Bonds or the eligibility of the BABs for the receipt of subsidy payments. In certain circumstances it may be necessary for the Authority to take a remedial action under Treasury Regulation Section 1.141-12 to preserve the tax-exempt status of interest on the Tax-Exempt Bonds or the eligibility of the BABs for the receipt of subsidy payments. See Tab III regarding available remedial actions. Timely identification of a Tax Event is necessary to take a remedial action. In certain cases, remedial action may not be available, and the Authority may need to consider a voluntary closing agreement with the IRS.

DOT and NJT Procedures

Responsible Persons

NJT and DOT will each designate a person within the respective agency to be responsible for monitoring tax compliance within that agency. As of the date of this policy, such persons are the Deputy Chief Financial Officer and Controller within NJT (the “NJT Compliance Officer”) and the Assistant Commissioner of Finance and Administration within DOT (the “DOT Compliance Officer”). The Tax Compliance Officer will review the list of Tax Events with the NJT Compliance Officer and the DOT Compliance Officer, who in turn will review it with heads of departments responsible for projects (the “Department Designees”).

Allocation of Expenditures.

Prior to submission of the Annual Capital Program to the Legislature for inclusion in the annual Appropriations Act, the Tax Compliance Officer will coordinate a review for potential private use issues of all projects that are to be included in the Annual Capital Program for such fiscal year. The Tax Compliance Officer will work through the DOT and NJT Tax Compliance Officers to disseminate and discuss the list of potential private uses with the persons within DOT and NJT responsible for overseeing the expected actual use of the Bond-Financed Property.

In each fiscal year the Legislature is expected to appropriate revenue to the Authority, out of which it must first reserve funds for the payment of its debt service and the debt service of NJT’s obligations. The remaining revenue is referred to as the “Pay-As-You-Go Funds” and is available for transportation capital program payments. Transportation capital program costs that are funded in part with Pay-As-You-Go Funds and in part with proceeds of a specific bond issue as part of an overall plan of financing are treated as eligible mixed-use projects under Treasury Regulation Section 1.141-6(b). The plan of financing is defined by reference to the timing of the expenditure of the qualified equity relative to the timing of expenditures to be bond-financed. It includes as qualified equity funds spent no earlier than the earliest date expenditures would be eligible for reimbursement were they to be reimbursed with proceeds (generally the date 60 days before a declaration of intent to reimburse) and no later than the beginning of the measurement period, generally the project placed in service date.

Special rules relating to the allocation of private use apply to eligible mixed-use projects. Applying these rules here, private business use will first be allocated to Pay-As-You-Go Funds up to the percentage such Funds represent of the overall plan of financing, with governmental use allocated to the tax-exempt bond proceeds. Only if the percentage of private business use exceeds such percentage of Pay-As-You-Go Funds will private use be allocated to tax-exempt bond proceeds. The Tax Compliance Officer may flag any projects or programs identified as having significant potential private use for potential funding with Pay-As-You-Go Funds. Examples of projects with significant potential private use may include train stations with commercial operations, and parking facilities that will be part of a privatization initiative. All proceeds of Obligations and Pay-As-You-Go Funds will be treated as allocated to the capital costs of projects paid during the period of funding the plan of financing. The “period of funding” associated with a particular series of Obligations will begin with the first payments from the State’s General Fund which are to be reimbursed with proceeds of a particular series of Obligations, and ends with the final expenditure of the proceeds of that series of Obligations. The Tax Compliance Officer will oversee the development and maintenance of records that show for each fiscal year the project expenditures that were made, and the amount of proceeds of

specific issues of Obligations and of Pay-As-You-Go Funds that were available for allocation to such expenditures.

Federal moneys that are received and not otherwise restricted to a specific project or program cost may also be treated as qualified equity if available for expenditure as part of the same plan of finance as the proceeds of bonds and Pay-As-You-Go Funds.

The federal tax law requires the specific allocation of proceeds of bonds to expenditures no later than 18 months after the later of the payment of the expenditure or the date the property is placed in service.

All private business uses of property financed by a series of Obligations are aggregated to determine if the relevant limitations have been exceeded. Private business use of property is measured on an average basis over a measurement period that runs from the later of the issue date of the Obligations or the date property is placed in service, through the earlier of the last date of the expected economic life of the property or the maturity date of the Obligations or refunding bonds. The average percentage of private business use is the average of the percentages of private business during one-year periods within the measurement period. The percentage of private business use for any one-year period is the average private business use for that year, determined by comparing the amount of private business use during that year to the total amount of private business use and governmental use, taking into account any allocations of private business use to qualified equity.

The Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel as to questions relating to the measurement of private use, safe harbors for management contracts and service contracts with private entities and the appropriate course of action to take for any particular Tax Event.

Ongoing Contract Review

In addition to the on-going review, at the time of the review of the Annual Capital Program, the Tax Compliance Officer will coordinate a review to identify any changes in use of Bond-Financed Property financed with prior Obligations that might result in private use, including any privatization initiatives. Each February, the DOT and NJT Tax Compliance Officers will submit to the Tax Compliance Officer a letter regarding private use as described in the Memorandum of Understanding Post Issuance Tax Compliance Procedures among the Authority, DOT and NJT (the "MOU") and in DOT Policy/Procedure 811 (the "DOT Policy").

The Tax Compliance Officer will oversee the establishment of a procedure for the review on an on-going basis of all existing and prospective contracts between DOT or NJT and a non-governmental person, including the federal government or a non-profit organization, that involve use at, management of, provision of services with respect to, or sale of any transportation facility. Excluded from this review of contracts will be construction contracts, engineering or similar contracts, and purchase contracts. The review of contracts will identify the type of use by the contracting party, the term of the contract and the compensation arrangement.

For all contracts, and based upon information provided by the respective compliance officers at DOT and NJT, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel, on whether the contract meets, or will meet, the requirements for a safe harbor management contract under Rev. Proc. 97-13, Rev. Proc. 2017-13, or another exception to private use or can be revised to meet a safe harbor or exception. For those contracts that cannot meet a safe harbor or exception from private use, including all leases and sale contracts, the Tax Compliance Officer will identify the affected property and the source of funding for such property. The Tax Compliance Officer will maintain a schedule of private use identifying the issue of Obligations affected, the percentage of the property that is privately used, generally determined on a square footage basis, and the amount of the issue that is treated as privately used. If the aggregate amount of private use for a particular issue reaches an amount equal to 5% of the proceeds of the issue of Obligations in question, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel as to any further steps to be taken, including remedial action.

Recordkeeping

The Internal Revenue Service has advised issuers of tax-exempt obligations that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the Internal Revenue Service in the event of any future audit of the Obligations. All files must be maintained for the life of the Obligations plus three years. See IRS FAQs on Record Retention, attached as Tab IV. Set forth below are recordkeeping obligations necessary to demonstrate compliance with the private activity limitations:

1. Information and records regarding any use of proceeds of Obligations to make or finance a loan to any person other than a state or local governmental unit;
2. Records reflecting actual expenditures of the proceeds of Obligations;
3. Memoranda furnished to the Authority pursuant to the MOU and the DOT Policy;
4. Information and records regarding the continued use and ownership of the Bond-Financed Property;
5. Any use arrangements affecting the Bond-Financed Property, which result in private business use of any portion of the Bond-Financed Property; and
6. Copies of any leases, management contracts, service contracts or other written arrangements with persons other than a state or local governmental unit relating to Bond-Financed Property.
7. Records reflecting the amount of Pay-As-You-Go Funds and Federal Funds and any special allocation of such Funds.

ARBITRAGE COMPLIANCE

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of tax-exempt obligations at an unrestricted yield and the rebate of excess investment earnings to the federal government, as more fully described in the Tax Certificates for each of the Obligations, maintained with the record of proceedings for the Obligations, and the Arbitrage Letter of Instructions, attached at Tab V.

Arbitrage Review

For each issue of Obligations, the Tax Compliance Officer will maintain the records and documents described below under “Recordkeeping.” For each issue of Obligations, the Tax Compliance Officer will establish a timeline for review of arbitrage-related issues as more fully described below.

Temporary Period

For each issue of Obligations, the Tax Compliance Officer will note the date of expiration of the three-year temporary period for unrestricted investment of the proceeds of the respective issue of Obligations. The three-year temporary period runs from the date of issue of the original new money issue and is unaffected by refunding issues. Note, however, that the issuance of advance refunding bonds will terminate the three-year temporary period of any issue that is advance refunded. For all Obligations which have unexpended proceeds held beyond the temporary period, the Tax Compliance Officer must assure that the proceeds are yield restricted. The relevant yield will be the yield on the original issue of Obligations as shown on the Form 8038-G for such issue until those obligations are paid with the proceeds of another issue of Obligations (a “Refunding Issue”), at which time the relevant yield will be the yield on the Refunding Issue. Yield restriction will be accomplished through either an actual investment below the relevant yield or the making of yield reduction payments, as described in Section 3(b) of the Arbitrage Letter of Instructions found in Tab V. The Tax Compliance Officer will work with its auditor or arbitrage consultant to make timely yield reduction payments.

Rebate

For each issue of Obligations, the Tax Compliance Officer will note whether a rebate exception is available for the issue. The rebate exceptions include the bona fide debt service fund exception and the spending exceptions described in section 4(a)(ii) of the Arbitrage Letter of Instructions found in Tab V. If the Obligation is expected to meet one of the three spending exceptions to rebate, the six-month exception, the 18-month exception or the 2-year construction exception, the Tax Compliance Officer will establish a timeline of six month intervals following the date of issue of the Obligations and will note whether the spending requirements related to that exception are met at the end of each period.

If no rebate exception is expected to apply or if a spending requirement is not met, the Tax Compliance Officer will establish a timeline for rebate analysis for such issue of Obligations. For issues of Obligations with a maturity of five years or more, the timeline will provide for a rebate analysis to be conducted every five years and when the Obligations are discharged, as more fully described in Section 4 of the Arbitrage Letter of Instructions. For short-term issues with a maturity of less than five years, the timeline will provide for a rebate analysis to be undertaken at the time of the retirement of the short-term issue, unless it is expected that a spending exception will be met. The Tax Compliance Officer will consult with its auditor or arbitrage consultant and make timely filing of any rebate amount with the Internal Revenue Service, as more fully described in Section 4 of the Arbitrage Letter of Instructions.

Arbitrage Consultant

Unless all outstanding Obligations have met a rebate exception, the Tax Compliance Officer on behalf of and as directed by the Authority will maintain a contract with a third-party arbitrage consultant for the purpose of providing arbitrage consulting services, including but not limited to:

1. Annual analysis of all Obligations.
2. Arbitrage rebate calculations.
3. Yield restriction calculations.
4. Technical support on an ad-hoc basis.

The arbitrage consultant will provide on an annual basis, an analysis of all Obligations for potential liability, rebate, yield restriction or other arbitrage related issues. The Tax Compliance Officer will review the arbitrage analysis and coordinate with the arbitrage consultant to prepare the necessary filings and payments. The Tax Compliance Officer will file with the Internal Revenue Service the appropriate Internal Revenue Service arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due for any issue of Obligations.

Recordkeeping

In order to satisfy the arbitrage recordkeeping requirements, for each issue of Obligations, the Tax Compliance Officer shall create and maintain, or cause to be created and maintained, records of:

1. Purchases or sales of investments made with bond proceeds (including amounts treated as “gross proceeds” as a result of being part of a sinking fund or pledge fund, other than amounts that meet the exception for bona fide debt service funds) and receipts of earnings on those investments;
2. The final allocation of the proceeds of the Obligations to expenditures, together with purchase contracts, construction contracts, invoices, and cancelled checks;

3. Information and records showing that investments made with unspent proceeds of the Obligations after the expiration of the applicable temporary period were not invested in higher-yielding investments;
4. Information, if applicable, that will be sufficient to demonstrate to the Internal Revenue Service upon an audit of the Obligations that the Authority has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to the Bonds;
5. Information and calculations, when applicable, that will be sufficient to demonstrate to the Internal Revenue Service, upon an audit of the Obligations, for which an exception to the arbitrage rebate requirement was not applicable, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of the Obligations was calculated and timely paid with Form 8038-T being timely filed with the Internal Revenue Service;
6. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for Obligations, were not invested in higher-yielding investments; and
7. The Tax Certificate delivered by the Authority as part of the record of proceedings for the Obligations.

BUILD AMERICA BOND LIMITATIONS

Expenditure of Proceeds Review

For BABs to be treated as qualified for the direct pay credit, 100% of Available Project Proceeds must be spent on capital expenditures, as opposed to operating expenses. “Available Project Proceeds” are defined as proceeds from the sale of the BABs, net of issuance expenses not in excess of two percent of the sale proceeds, plus proceeds from the investment of such sale proceeds.

The Tax Compliance Officer will establish and maintain books and records with respect to the BABs issues that reflect the actual expenditure of the proceeds of the BABs. The expenditure of BABs’ proceeds is limited to capital expenditures and costs of issuance, the latter of which cannot exceed two percent of the sale proceeds of the BABs issue. At completion of the expenditure of an issue of BABs, the Tax Compliance Officer will determine the total amount of Available Project Proceeds, taking into account the actual earnings from the investment of the proceeds of the BABs and the total expenditures and must be able to demonstrate that 100% of Available Project Proceeds were spent on capital expenditures.

Filing for Credits

The Authority is entitled to receive an interest subsidy payment paid as a direct pay credit under Section 6431 of the Code from the IRS with respect to each interest payment on its BABs in the amount of 35% of the interest paid. In order to receive such credits on a timely basis, the

Authority must file Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, no later than 45 days before each interest payment date, but no earlier than 90 days before such interest payment date for fixed rate bonds. The applicable IRS Form 8038-CP and its accompanying instructions should be obtained from the Internal Revenue Service web site, www.irs.gov. In connection with each filing, the Authority will be recertifying that the BABs continue to comply with all ongoing tax requirements to be Qualified Build America Bonds and the Tax Compliance Officer should review the applicable tax certifications delivered as part of the record of proceedings for such BABs to confirm that the Authority is in compliance with such requirements, including the capital expenditure requirement, cost of issuance limitation, private use limitations and arbitrage restrictions described above. If questions arise as to such compliance, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel on such compliance issues. The direct pay credits are treated as overpayments of tax, and accordingly are subject to offset against certain amounts that may be owed by the Authority to the federal government or its agencies.

Attachments

- Tab I Private Activity Restrictions on Private Business Use
- Tab II Private Business Use Questionnaire
- Tab III Remedial Actions
- Tab IV IRS FAQs on Record Retention
- Tab V Arbitrage Letter of Instructions

POST ISSUANCE TAX COMPLIANCE FOR TAX-EXEMPT AND TAX-ADVANTAGED BONDS – IMPLEMENTATION GUIDE

Background

Properties of DOT or NJT that have been financed with the proceeds of New Jersey Transportation Trust Fund Authority Obligations or tax-advantaged (credit) bonds (TTFA Obligations) are subject to limitations on various types of agreements or other arrangements that can be entered into with non-governmental persons, including the federal government (the “Private Use Restrictions”). These restrictions are Summarized in Tab I Appendix to the TTFA’s Post Issuance Compliance Guide, entitled Private Activity Restrictions on Private Business Use -- Governmental Bonds <http://njdotintranet.njdot.lan/forms/tax.shtm> These restrictions do not impose a prohibition on arrangements with private use; rather they impose percentage limitations on a bond issue basis.

DOT Procedures

Policy/Procedure 811 establishes compliance procedures with respect to the use of proceeds of tax-exempt debt. These procedures establish and help to preserve the tax-exempt status of the TTFA Obligations and the continued eligibility for subsidy payments, where applicable, by: 1) identifying the uses, actions or other arrangements with respect to tax-exempt bond financed construction, renovation, and/or acquisition of various public facilities and improvements and related equipment; 2) managing and tracking changes in use; 3) and, implementing remedial action when necessary.

Responsible Parties

The New Jersey Transportation Trust Fund Authority’s Tax Compliance Officer (TCO) (Currently the Comptroller) and the DOT’s Transportation’s Tax Compliance Officer (Currently the CFO) oversee the process for monitoring potential private use issues for existing and new projects at the DOT.

The DOT’s Deputy Commissioner, the Assistant Commissioner for Capital Program Management, the Assistant Commissioner for Planning, Multimodal and Grant Administration and the Assistant Commissioner for Transportation Operations Systems and Support are also responsible for ensuring compliance with Policy/Procedure 811.

Project Review - Newly Authorized

Form AD-12 is the initiating document used by DOT Project Managers (PMs) to secure formal approval for agreements, contracts, and other commitments. When generating an AD-12 for a new project, PMs should run through a transaction checklist designed to identify if the project requires further review and evaluation for private use. Initial review should be by a person most familiar with the project in order to determine if any of the following apply:

- A. Sales of Property
 - a. Change of ownership
 - b. Change in Private Business Use
- B. Leases of Property

- C. Management or Service Agreements
- D. Research Agreements
- E. Sales of Output Agreements
- F. Naming Rights Agreements
- G. Joint Ventures/Partnerships
- H. Miscellaneous Agreements

Form AD-12 and RE-27 have been modified to include a line to indicate that a tax compliance review was performed in accordance with Policy/Procedure 811. A dropdown menu next to that line will indicate that the result of that review was: No private use was identified; Private use was identified and the appropriate documentation has been attached to the AD-12 or RE-27; or, N/A – Action/Item is a Federal project or Non-TTFA related. If private use was identified, the appropriate transaction checklist(s) <http://njdotintranet.njdot.lan/forms/tax.shtm> should be completed by PMs and copies should be sent to the PMs' manager and Assistant Commissioner and the CFO. The original should be attached to the AD-12.

Project Review - Existing Projects

Throughout the fiscal year, PMs will be required to monitor ongoing projects to identify any potential changes in use that may benefit a private person. In addition, PMs initiating forms AD-12 and/or RE-27 concerning Right of Way purchase of real estate or land swaps, must determine if the activity/transaction associated with each document constitutes private use and verify that the proceeds be reinvested in a TTFA related project. Private use findings should be reported to the PM's manager, Assistant Commissioner and the CFO in writing and include the following information of:

- The affected property;
- The time period for its construction; and,
- The planned source of funding, specifically federal, TTF, or cost sharing agreements.

In addition, if the following is determined to have occurred/or entered into as a result of an on-going project review:

- A. Sales of Property
 - a. Change of ownership
 - b. Change in Private Business Use
- B. Leases of Property
- C. Management or Service Agreements
- D. Research Agreements
- E. Sales of Output Agreements
- F. Naming Rights Agreements
- G. Joint Ventures/Partnerships
- H. Miscellaneous Agreements

The corresponding transaction checklist <http://njdotintranet.njdot.lan/forms/tax.shtm> should be completed and reported to the PM's manager, Assistant Commissioner and the CFO. In many

cases the checklists provide questions relating to safe harbors or exceptions to Private Use restrictions and require that the particular agreement be sent to someone familiar with the financing used to obtain the property and the respective dates associated with the private use. The checklists are designed to be completed in the first instance by a person familiar with the project to which the transaction relates. The checklists also contemplate a second review by a person who can identify which bond issue financed the project (typically the TCO).

Contract Review - Existing Projects

In addition to the on-going review of existing projects, the CFO will coordinate a review with the TCO to identify any changes in use of Bond-Financed Property financed with prior Obligations that might result in private use, including any privatization initiatives that include:

- Private benefit related to public facility improvement using state funds.
- Private benefit related to private or public facility improvement using state funds, including TTF funding provided for airport, rail, and maritime facilities.
- Private use of NJDOT property, facilities and equipment.
- Private lease agreements of NJDOT facilities, naming agreements.

Excluded from this review of contracts will be construction contracts, engineering or similar contracts, and purchase contracts. The review of contracts will identify the type of use by the contracting party, the term of the contract and the compensation arrangement.

Project Review - Existing Project Annual Review

A formal compliance review will take place annually in February of each year prior to the submission of the annual capital program to the New Jersey Legislature for inclusion in the annual Appropriations Act.

The review process will include an assessment by each Assistant Commissioner (or designee) of new and/or previously authorized projects that potentially contain an element of private use or have potentially experienced a change in use. Assistant Commissioners should review programs and projects for private uses including, but not limited to:

Capital Program Management - Purchase of real estate and/or lease agreements that have the potential for private use. Private benefit related to public facilities that have been improved using state funds.

Planning Multimodal and Grant Administration - Private benefit related to private or public facilities that have been improved using state funds. These would include, but not be limited to, TTF funding provided for airport, rail, and maritime facilities.

Transportation Operations Systems and Support - Private use of NJDOT property, facilities and equipment. Private lease agreements of NJDOT facilities, naming agreements.

As part of the review of existing projects process a review should be performed to identify of the following apply to the project being submitted to inclusion in the current year's Capital Program:

- A. Sales of Property
 - a. Change of ownership
 - b. Change in Private Business Use
- B. Leases of Property
- C. Management or Service Agreements
- D. Research Agreements
- E. Sales of Output Agreements
- F. Naming Rights Agreements
- G. Joint Ventures/Partnerships
- H. Miscellaneous Agreements

The checklists are designed to be completed in the first instance by a person familiar with the project to which the transaction relates. The checklists also contemplate a second review by a person who can identify which bond issue financed the project. In many cases the checklists provide questions that relate to safe harbors or exceptions to Private Use Restrictions and provide that the particular agreement be sent for review by someone familiar with these issues.

Each February, the PMs are required to certify <http://njdotintranet.njdot.lan/forms/tax.shtm> in writing to the CFO that, based on their knowledge and belief, no private use issues exist with respect to their projects; or if they do, provide the information as required as noted above. Based on those certifications, the CFO will submit a letter to the TCO regarding private use as described in the Memorandum of Understanding Post Issuance Tax Compliance Procedures among the Authority, DOT and NJT and in DOT Policy/Procedure 811.

Exhibit B

MEMORANDUM OF UNDERSTANDING

Post-Issuance Tax Compliance Procedures

Between:

**New Jersey Transportation Trust Fund Authority
New Jersey Department of Transportation
New Jersey Transit Corporation**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), is made the _____ day of _____ two thousand twenty two, between the NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY (the “Authority”), a body corporate and politic, created by the New Jersey Transportation Trust Fund Authority Act of 1984, as amended and supplemented; the NEW JERSEY DEPARTMENT OF TRANSPORTATION, (“NJDOT”); and the NEW JERSEY TRANSIT CORPORATION (“NJ TRANSIT”), a body corporate and politic, in but not of the NJDOT, but independent of any supervision or control by NJDOT or by any body or officer thereof, created by the New Jersey Public Transportation Act of 1979. The Authority, the NJDOT, and NJ TRANSIT shall hereinafter be collectively referred to as the “Parties.”

WHEREAS, the federal Internal Revenue Service (“IRS”) has requirements concerning the use of tax-exempt obligations, including §148 of the Internal Revenue Code of 1986, as amended and supplemented (the “IRC”), which limits the investment of proceeds of tax-exempt obligations and requires the rebate of excess investment earnings to the federal government, and IRC §141 regarding the extent to which proceeds of tax-exempt obligations may benefit persons other than a state or local government unit; and

WHEREAS, the Authority periodically issues tax-exempt bonds and other obligations to finance state transportation projects and thus is subject to these requirements, including the filing of an IRS form 8038-G that requires the Authority confirm that proper procedures are in place to monitor compliance before issuing new obligations; and

WHEREAS, to ensure compliance with the IRS requirements, the Authority has prepared two separate documents, entitled the *Post Issuance Compliance Guide: Use of Tax-Exempt Bond Financed Property and Proceeds* (“PIC Guide”) which formally describes the procedures that are in place to monitor the use of tax-exempt financing for state transportation projects, and the *Post Issuance Tax Compliance For Tax-Exempt and Tax-Advantaged Bonds – Implementation Guide* (“Implementation Guide”) which explains review procedures in greater detail; and

WHEREAS, tax compliance officers are identified as: (i) the Authority’s Comptroller for the Authority; (ii) the NJDOT Chief Financial Officer and/or Assistant Commissioner of Finance and Administration for the NJDOT; and (iii) the NJ TRANSIT Controller for NJ TRANSIT (“Tax Compliance Officers”); and

WHEREAS, the goal of this MOU is to formally identify the reporting relationships between the three Tax Compliance Officers, who collectively will administer the procedures described in the PIC Guide to monitor compliance, in order to preserve the tax-exempt status of the Authority’s outstanding and future issuances of tax-exempt obligations; and

WHEREAS, the Parties previously executed, in September 2012, a Memorandum of Understanding relating to Post-Issuance Tax Compliance (“2012 MOU”); and

WHEREAS, by entering into this MOU, the Parties now intend to supersede the 2012 MOU.

NOW, THEREFORE, the AUTHORITY, the NJDOT, and NJ TRANSIT agree as follows:

Review of Capital Projects and Contracts for Tax Compliance

1. General

The Tax Compliance Officers of the NJDOT and NJ TRANSIT will review, or cause to be reviewed, any capital projects of the NJDOT and NJ TRANSIT funded wholly or in part by federal or Transportation Trust Funds (“Capital Projects”) to assess whether there are any issues of private use; any findings of possible private use shall be promptly reported to the Authority’s Tax Compliance Officer.

The Tax Compliance Officers have read and understand the PIC Guide and the Implementation Guide.

2. Annual Project Review and Report to the Authority’s Tax Compliance Officer

A formal compliance review will take place in February of each year prior to the submission of the annual capital program to the New Jersey State Legislature for inclusion in the annual Appropriations Act. The Tax Compliance Officers will oversee the process that reviews each proposed Capital Project and program for the upcoming fiscal year to assess whether any private use exists and, if so, identify: (i) the affected property, (ii) the time period for its construction, and (iii) the planned source of funding, specifically: federal, Transportation Trust Fund, or cost sharing agreement funds.

Additionally, the tax Compliance Officers will also oversee the process to determine if a change in use occurred in existing projects and, if so, identify: (i) the affected property, (ii) the source of funding, and (iii) the associated circumstances, for example: the successful privatization of all road maintenance on certain segments of highway through a “fence-to-fence” type of contract.

The annual review process will include an assessment by each NJDOT Assistant Commissioner as well as the NJ TRANSIT Capital Programs Unit of proposed and/or existing Capital Projects that potentially contain an element of private use or have potentially experienced a change in use, respectively. The review of projects for private use includes, but is not limited to:

Capital Program Management - Purchase of real estate and/or lease agreements that have the potential for private use; and private benefit related to public facilities that have been improved using state funds.

Planning Multimodal and Grant Administration - Private benefit related to private or public facilities that have been improved using state funds, including but not limited to Transportation Trust Fund funding for airport, rail, and maritime facilities.

Transportation Operations Systems and Support - Private use of NJDOT property, facilities and equipment; private lease agreements of NJDOT facilities; and naming agreements.

Ferry Capital Improvement Program - Private benefit related to capital acquisitions and infrastructure improvements for ferry operators that have been funded using Transportation Trust Fund funds.

Private Carrier Capital Improvement Program - Private use of NJ TRANSIT property and equipment through lease agreements to eligible private bus carriers

Immediately upon completion of the annual review, the NJDOT Tax Compliance Officer and the NJ TRANSIT Tax Compliance Officer shall each summarize their findings in a letter to the Authority’s Tax Compliance Officer.

3. Ongoing Monitoring

Throughout the fiscal year, project managers of NJDOT and NJ TRANSIT will monitor existing projects to identify any potential changes in use that may benefit a private party. NJDOT project managers initiating AD-12 forms or the RE-27 form (concerning Right of Way issues) must determine if the activity/transaction associated with each document constitutes private use. Similarly, NJ TRANSIT’s Capital Programs Unit will work with NJ TRANSIT’s project managers to review individual projects, including relevant administrative and funding details to determine if the activity/transaction associated with each document constitutes private use. Additionally, any

proposed land swaps shall be examined to verify that the proceeds will be reinvested in a project related to the Authority.

If any possible private use is identified, the project manager will promptly notify their manager, Assistant Commissioner, and the entity's Tax Compliance Officer. The entity's Tax Compliance Officer shall notify the Authority's Tax Compliance Officer in writing of the possible private use issue and include: (i) the affected property, (ii) the time period for its construction, and (iii) the planned source of funding, specifically: federal, Transportation Trust Fund, or cost sharing agreement funds.

The Tax Compliance Officer will oversee the review on an on-going basis of all existing and prospective contracts between NJDOT or NJ TRANSIT and a nongovernmental person, including the federal government or a non-profit organization, that involve use at, management of, provision of services with respect to, or sale of any transportation facility. Excluded from this review of contracts will be construction contracts, engineering or similar contracts, and purchase contracts. The review of contracts will identify: (i) the type of use by the contracting party, (ii) the term of the contract, and (iii) the compensation arrangement.

Authority's Responsibility to Consult Attorney General's Office and Bond Counsel

4. Retention of Bond Counsel

If, after subsequent analysis, the Authority's Tax Compliance Officer agrees that a project may involve private use, the Authority will request that the Attorney General retain bond counsel ("Bond Counsel") and the pertinent information will be forwarded to Bond Counsel for consideration. The Parties understand that Bond Counsel will determine whether a particular situation presently meets, or will meet, the requirements for a safe harbor management contract under Rev. Proc. 97-13, Rev. Proc. 2017-13, or other exception to the private use restriction or, alternatively, can be revised to meet a safe harbor provision.

For all contracts between NJDOT or NJ TRANSIT and a nongovernmental person, including the federal government or a non-profit organization, and based upon information provided by the respective Tax Compliance Officers at NJDOT and NJ TRANSIT, the Authority's Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel, on whether the contract meets, or will meet, the requirements for a safe harbor management contract under Rev. Proc. 97-13, Rev. Proc. 2017-13, or another exception to private use or can be revised to meet a safe harbor or exception.

5. Advice of Bond Counsel

The Authority's Tax Compliance Officer will maintain a schedule that identifies: (i) the bond issue or issues affected, (ii) the percentage of property that is privately used, and (iii) the amount of the bond issue treated as privately used. If the aggregate amount of private use for a particular issuance of tax-exempt obligations equals or exceeds 5% of the proceeds of that issuance, Bond Counsel will advise the Authority as to the next steps, including any remedial action required.

General Provisions

6. **Captions** The captions appearing in this MOU are inserted and included solely for convenience and shall not be considered or given effect in construing this MOU, or its provisions, in connections with the duties, obligations, or liabilities of the Parties or in ascertaining intent, if a question of intent arises.

7. **Cooperation** The Parties shall cooperate in a timely manner with each other to facilitate the purpose and intent of this MOU.

8. **Amendments** Each party shall confer with the other parties on all changes in the plans described above, and changes to these processes shall only be effective upon a written change to this MOU signed by each of the Parties.

9. **No Third Party Beneficiaries** This MOU does not create in any individual or entity the status of third-party beneficiary, and this MOU shall not be construed to create such status. The

rights, duties, and obligations contained in this MOU shall operate only between the Parties and shall inure solely to the benefit of the Parties. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU.

10. Non-assignability No Party shall assign or transfer its rights or obligations hereunder without written modification to this MOU, executed by all Parties.

11. No personal liability No official, employee, agent, consultant, contractor, or subcontractor of any Party shall be personally liable to another Party and/or their employees, agents, contractors, or subcontractors under any term or provision of this MOU or because of its execution or attempted execution or because of any breach or attempted or alleged breach of this MOU.

12. Dispute Resolution If any dispute or difference shall arise between the Authority, NJDOT, and NJ TRANSIT with respect to the terms of this MOU, the Parties shall formally meet or confer in an effort to resolve the situation.

13. Authority By execution of this MOU, the Parties represent that they are duly authorized and empowered to enter into this MOU and to perform all duties and responsibilities established in this MOU.

14. Counterparts This MOU may be executed as duplicate original counterparts, with one (1) original counterpart being retained by each Party, and all such counterparts shall together constitute but one and the same instrument.

15. Use of Electronic Signatures By submitting this MOU with electronic signatures, the Parties acknowledge that they will accept and submit electronic signatures in connection with the submission of this MOU and any amendment hereto. The Parties acknowledge the right to opt-out of this provision permitting the use of electronic signatures and can request hard copies of the applicable documents to sign and review upon thirty (30) days written notice to the other Parties. The Parties agree that all Parties reserve the right to refuse to conduct other transactions by means of electronic signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Authority has caused this instrument to be signed by its Executive Director and attested by the Authority's Secretary, NJDOT has caused this instrument to be signed by its Commissioner of Transportation (or a designee of the Commissioner) and attested by the NJDOT Secretary, and NJ TRANSIT has caused this instrument to be signed by its President and CEO (or a designee of the President and CEO) and attested by the NJ Transit Acting Board Secretary.

ATTEST/WITNESS/AFFIX SEAL:

NJ TRANSPORTATION
TRUST FUND AUTHORITY

Naileen Rodriguez
Secretary
NJ Transportation Trust Fund Authority

By: _____
Lewis Daidone
Executive Director

Date

ATTEST/WITNESS/AFFIX SEAL:

NJ DEPARTMENT OF TRANSPORTATION

Anika James
Secretary
NJ Department of Transportation

By: _____
Lewis Daidone
Asst. Commissioner, Finance & Administration

Date

ATTEST/WITNESS/AFFIX SEAL:

NJ TRANSIT CORPORATION

Meghan Umukoro
Acting Board Secretary
NJ TRANSIT CORPORATION

By: _____
William Viqueira
Senior VP, Chief Financial Officer & Treasurer

Date

Reviewed and Approved as to Form Only:

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____
Susan J. Wilkerson
Deputy Attorney General