

**MEMORANDUM OF UNDERSTANDING
BETWEEN NJ TRANSIT CORPORATION AND
THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

This Memorandum of Understanding (“MOU”) is made on the 28 day of April 2021 between New Jersey Transit Corporation, an instrumentality of the State of New Jersey, having offices at One Penn Plaza East, Newark, New Jersey 07105 (“NJ TRANSIT”) and the New Jersey Board of Public Utilities, having offices at 44 South Clinton Avenue, Trenton, New Jersey 08625-0350 (“BPU”) (singularly, “Party,” collectively, “Parties”).

WHEREAS, NJ TRANSIT is an instrumentality of the State of New Jersey, authorized to operate passenger service in New Jersey and between points in New Jersey and points in other states, pursuant to the New Jersey Public Transportation Act of 1979, as amended; and

WHEREAS, the BPU is an independent political subdivision of the State of New Jersey charged with general supervision of and jurisdiction over New Jersey public utilities including the functions, powers and duties assigned to it pursuant to N.J.S.A. 48:2-1 et seq. and 52:18A-2.1 and is allocated in, but not part of, the Department of Treasury pursuant to Reorganization Plan No. 001-1994; and

WHEREAS, NJ TRANSIT is the nation's third largest provider of bus, rail and light rail transit, and, as New Jersey's statewide public transit corporation, operates 201 bus routes; and

WHEREAS, on May 23, 2018, Governor Phil Murphy signed Executive Order 28, which required BPU to convene the Energy Master Plan Committee for the purpose of completing and delivering a new Energy Master Plan for the State of New Jersey (“EMP”) and

WHEREAS, on January 27, 2020, Governor Murphy introduced the EMP, which includes certain key strategies to reach the Administration's goal of 50% clean energy by 2030 and 100% clean energy by 2050, including the reduction of energy consumption and emissions from the transportation sector, such as encouraging the adoption of electrical vehicles; and

WHEREAS, Battery Electric Buses (“BEBs”) will enable NJ TRANSIT to increase service in densely populated areas without adversely impacting air quality and advance New Jersey's goal to reduce carbon emissions from the transportation sector; and

WHEREAS, in compliance with the Executive Order and the Key Strategies of the EMP, and in furtherance of NJ TRANSIT's commitment to implement cleaner air initiatives statewide, NJ TRANSIT plans to acquire up to eight (8) 40-foot (40') or longer BEBs to expand service along bus route No. 25, which operates from its Hilton Garage in Maplewood, New Jersey ("Hilton Garage") through Maplewood, Irvington, and Newark, and returning through said municipalities and cities to the Hilton Garage; and

WHEREAS, acquisition of BEBs will require garage infrastructure upgrades to NJ TRANSIT's Hilton Garage including, but not limited to, civil, electrical, and other work necessary to support the Project, as defined below; and

WHEREAS, NJ TRANSIT plans to undergo the Bus Garage Modernization Program, the goal of which includes the complete renovation and transformation of NJ TRANSIT's Hilton Garage for deployment of BEBs ("Project"); and

WHEREAS, in March 2020, NJ TRANSIT applied to the U.S. Department of Transportation's Federal Transit Administration ("FTA") for a grant in the amount of seven million and seventy-four thousand, three hundred and ten dollars (\$7,074,310) through its Low-No Emission Grant Program ("Low-No Program"), which funds the deployment of transit buses and infrastructure for the purchase or lease of zero-emission and low-emission transit buses and supporting facilities; and

WHEREAS, in its application to the FTA, NJ TRANSIT stated that it would make a local financial commitment of three million, thirty-one thousand, eight hundred and forty-seven dollars (\$3,031,847); and

WHEREAS, the BPU supported and endorsed NJ TRANSIT'S application to the FTA for the Low-No Program and memorialized its commitment to provide NJ TRANSIT with up to ten million dollars (\$10,000,000) for the Hilton Garage infrastructure upgrades by letter dated March 17, 2020 from Joseph L. Fiordaliso, President of the BPU, to Kevin S. Corbett, President and CEO of NJ TRANSIT (a copy of which is annexed hereto as Exhibit A); and

WHEREAS, in June 2020, the FTA awarded NJ TRANSIT a grant of seven million, seventy-four thousand, three hundred and ten dollars (\$7,074,310) under its Low-No Program.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Agreement.

A. Responsibilities of BPU

1. BPU expressly agrees and acknowledges that it will commit to NJ TRANSIT up to ten million dollars (\$10,000,000) ("Allocations") as approved in the December 2019 Clean Energy program True Up Budget State Facilities Initiative appropriation for infrastructure investment to aid in the preparation of the Hilton Garage for the Project. BPU will retain control of the money and pay invoices as provided by NJ TRANSIT up to the Allocations related to the Project. BPU expressly agrees and acknowledges that the Allocations are held in trust by BPU as dedicated funds and shall remain exclusively committed to the funding of the Project for which funding has been set aside until either: (a) the Allocations are entirely exhausted by the Project; or (b) the Project is closed out (whether through completion or by termination short of completion) and all monetary obligations of the State of New Jersey incurred for the Project are paid and/or discharged in full. No portion of the Allocation shall be repurposed or diverted to pay any financial obligation of the State of New Jersey other than the design or construction of the Project approved by BPU for funding under the State Facilities Initiative.
2. BPU may increase its financial commitment to NJ TRANSIT for this Project subsequent to action brought before BPU's Board of Directors. Such an increase in BPU's commitment shall be memorialized in a writing as an Amendment to this MOU and executed by the Parties.
3. In the event that the Project is not completed, or does not use all of the funds provided by BPU, the remaining money will revert back to the Clean Energy fund within BPU.
4. BPU will support the design and construction of the Project by, inter alia, assisting NJ TRANSIT's designer with facilitating data needed for the design, and/or coordinating with NJ TRANSIT's contractor(s) during construction.

B. Responsibilities of NJ TRANSIT:

1. NJ TRANSIT agrees to utilize BPU's commitment to the Project hereinabove described and provide Project updates and invoices to BPU.
2. In the event that NJ TRANSIT does not acquire up to eight (8) 40-foot or longer (40') BEBs to be garaged at its Hilton Garage, it shall notify BPU

within thirty (30) days from the date that NJ TRANSIT determines that the BEBs will not be acquired.

3. NJ TRANSIT expressly agrees and acknowledges that the Allocations are held in trust by BPU and shall remain exclusively committed to the funding of the Project for which funding has been set aside until either: (a) the Allocations are entirely exhausted; or (b) the Project is closed out (whether through completion or by termination short of completion) and all monetary obligations of the State of New Jersey incurred on the Project are paid and/or discharged in full. No portion of the Allocations shall be repurposed or diverted to pay any financial obligation of the State of New Jersey other than the design or construction of projects approved by BPU for funding under this State Facilities Initiative. NJ TRANSIT shall provide BPU with a written Progress Report, including the current and expected progress of the Project, potential causes for concern, progress by key performance indicators, current quality overview, and a categorized listing of all costs and expenses for reimbursement on a minimum quarterly basis.

2. **Successors and Assigns.**

The covenants, agreements, terms, provisions, conditions, rights, and obligations of this MOU shall be binding upon and inure to the benefit of the Parties and upon their successors and assigns.

3. **Severability.**

If any provision of this MOU is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this MOU shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any Party hereunder.

4. **Governing Law.**

This MOU shall be governed by and construed in accordance with the laws of the State of New Jersey.

5. **Third Party Beneficiaries.**

The provisions of this MOU are and will be for the benefit of NJ TRANSIT and BPU and their respective successors and assigns only, and not for the benefit of any third party, and accordingly, no third party other than the Parties' successors and assigns shall have any rights arising out of this MOU.

6. **Notices.**

Any and all notices and other communications with respect to this MOU must be addressed to the Parties at the addresses set forth below, or at such other addresses as either Party may designate in writing to the other. Any and all such notices will be in writing and will be sent by certified or regular mail, return receipt requested.

NJ TRANSIT's authorized representative for this MOU, to whom all correspondence and notices should be addressed, is:

Eric Daleo
Senior Vice President,
Capital Programs
NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105

BPU's authorized representative for this MOU, to whom all correspondence and notices should be addressed, is:

Sara Gibson
Director, State Energy Services, Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, NJ 08625

7. **Modifications, Waivers, Consents.**

This MOU may not be modified, amended, or discharged except by an instrument in writing by both Parties. No waiver or consent may be enforced unless such waiver or consent shall be in writing and signed by the Party against whom enforcement thereof is sought.

8. **Financial Obligations.**

This MOU is a declaration of intent between the Parties but it does not commit any Party to take any actions; the actions of each Party are independent of, and not obligated by, the actions of the other Party. This MOU does not itself authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates the Parties to expend appropriations, enter into any contract, or implement this agreement, or undertake other obligations under this MOU. The execution of this MOU does not constitute a financial obligation on the Parties. Each Party is to use and manage its own funds in carrying out the purpose of this MOU, which shall not

be used to obligate any Party to commit funds or serve as the basis for the transfer of funds. Funding of this MOU is subject to appropriations.

9. **Reservation of Rights.**

Nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting a Party's regular operations or its decisions in carrying out its statutory or regulatory duties. This MOU does not limit or restrict the Parties from participating in similar activities or arrangement with other entities.

10. **Legal Effect.**

This MOU shall not be construed to provide a private right or cause of action for or by any person or entity.

11. **Term.**

This MOU shall take effect upon the signature of all the Parties and shall remain in full force and effect for a period of ten (10) years from the date of the MOU. This MOU may be amended, terminated, or extended by written agreement of the Parties. Any Party may withdraw from this MOU in its sole discretion upon thirty (30) days written notice to the other Parties. A final accounting of costs and expenses between the Parties shall occur within ninety (90) days of Project close-out.

12. **Personal Liability.**

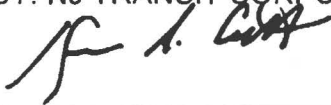
No commissioner, director, officer, agent or employee of NJ TRANSIT or BPU shall be held personally liable under any provision of this MOU or because of its execution or because of any breach or alleged breach of this MOU.

13. **Entire MOU.**

This MOU constitutes the entire understanding between the Parties hereto and supersedes all prior understandings and undertakings relating to the subject matter hereof.

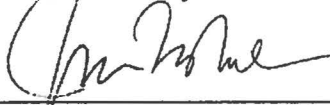
IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the day and year above written.

BY: NJ TRANSIT CORPORATION



Name: Kevin S. Corbett
Title: President & CEO
Dated: 8/12/2021

BY: New Jersey Board of Public Utilities

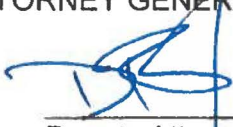


Name: Joseph L. Fiordaliso
Title: President
Dated: April 28, 2021

Approved as to form only:

Gurbir S. Grewal
ATTORNEY GENERAL OF NEW JERSEY

By:




DAREN R. ERCEY 4/29/21
Deputy Attorney General (New Jersey Board of Public Utilities)
State of New Jersey

Approved as to form only:

Gurbir S. Grewal
ATTORNEY GENERAL OF NEW JERSEY

By:



Stacy Ann Dary
Deputy Attorney General (NJ TRANSIT)
State of New Jersey