SUMMARY STATEMENT

ITEM NO.: DRPA-19-068  SUBJECT: Amendment to Lease Agreement between NJ Transit and DRPA for the Woodcrest Station Park and Ride Facility

COMMITTEE: Finance

COMMITTEE MEETING DATE: July 3, 2019

BOARD ACTION DATE: July 17, 2019

PROPOSAL: That the Board authorize staff to negotiate and execute a long-term Amendment to the NJ Transit Lease Agreement entered on January 28, 1980 for the Woodcrest Station Park and Ride. The Amendment is required in order to continue the utilization of the location and to permit the construction of the Solar Panels at Woodcrest Station.

PURPOSE: To continue the authorized occupancy of the DRPA/PATCO at the Woodcrest Station facility and to provide a contractual basis with the property owner for the construction of the Solar Panel system.

BACKGROUND: On January 28, 1980 a Lease Agreement between NJ Transit Corporation and the Delaware River Port Authority was entered for the purpose of installing and operating a park and ride facility at the Woodcrest Station for PATCO riders. Prior to the entry of this Lease, the Commuter Operating Agency (COA) the predecessor to NJ Transit on December 27, 1973 as supplemented on December 21, 1977 provided its share of funding to construct the Woodcrest Station building, platforms, fare collection facility, etc.

This Lease Agreement between NJ Transit and DRPA was assigned from the DRPA to PATCO on January 28, 1980 (see Exhibit A). The term of this Lease was twenty-three (23) years. It provides for 2618 commuter parking spots.

Inasmuch as the DRPA has entered into an Agreement with SunPower LLC for the construction of a Solar Panel facility at the Woodcrest Station, it has become necessary to seek approval from NJ Transit for this construction pursuant to paragraph 13 of the original Lease. Staff has been involved in communication with NJ Transit since June 29, 2018 in order to explore the parameters of an amendment extending this original Lease. At the current time staff seeks authorization to negotiate terms and requirements for the Lease extension to facilitate the construction of a Solar Panel facility and continuation of commuter parking.
| SUMMARY: | Amount: | TBD; based upon a percentage of PATCO net parking revenues at the Woodcrest Station after deductions for operation, maintenance and improvements of the Park and Ride facility |
| Source of Funds: | General Fund |
| Capital Project #: | N/A |
| Operating Budget: | TBD |
| Master Plan Status: | N/A |
| Other Fund Sources: | N/A |
| Duration of Contract: | Up to twenty (20) years |
| Other Parties Involved: | N/A |
| Estimated Number of Jobs Supported: | N/A |
RESOLUTION

RESOLVED: That the Board of Commissioners of the Delaware River Port Authority authorizes staff to enter into a long-term Lease Agreement with NJ Transit Corporation for the Woodcrest Station Park and Ride facility for the longest term available. This Agreement shall serve as an Amendment to the Lease Agreement entered January 28, 1980 and include the re-negotiation of payment terms for the use of the property similar to those in the original 1980 Lease Agreement; and be it further

RESOLVED: The Chairman, Vice Chairman and the Chief Executive Officer must approve and are hereby authorized to approve and execute all necessary agreements, contracts, or other documents on behalf of the DRPA. If such agreements, contracts, or other documents have been approved by the Chairman, Vice Chairman and Chief Executive Officer and if thereafter either the Chairman or Vice Chairman is absent or unavailable, the remaining Officer may execute the said document(s) on behalf of DRPA along with the Chief Executive Officer. If both the Chairman and Vice Chairman are absent or unavailable, and if it is necessary to execute the said document(s) while they are absent or unavailable, then the Chief Executive Officer shall execute such documents on behalf of DRPA.

SUMMARY: Amount: TBD; based upon a percentage of PATCO net parking revenues at the Woodcrest Station after deductions for operation, maintenance and improvements of the Park and Ride facility.

Source of Funds: General Revenue
Capital Project #: N/A
Operating Budget: TBD
Master Plan Status: N/A
Other Fund Sources: N/A
Duration of Contract: Up to twenty (20) years
Other Parties Involved: N/A
Estimated Number of Jobs Supported: N/A
LEASE AGREEMENT BETWEEN THE NEW JERSEY TRANSIT CORPORATION AND THE DELAWARE RIVER PORT AUTHORITY FOR THE WOODCREST STATION PARK AND RIDE FACILITY

THIS LEASE AGREEMENT, made this Twenty-Fourth day of January, One Thousand Nine Hundred Eighty, between the DELAWARE RIVER PORT AUTHORITY (Authority), a public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey, and the NEW JERSEY TRANSIT CORPORATION (NJ TRANSIT), successor in interest to the Commuter Operating Agency (COA), in accordance with P.L. 1979, c.150, witnesseth that:

WHEREAS, the State of New Jersey (State), acting by and through the COA, and the Authority entered into an agreement dated December 27, 1973 as supplemented by an agreement dated December 21, 1977, wherein the State agreed to provide its share of the local funding requirement for the Woodcrest Station building, platforms, appurtenances, fare collection equipment, ancillary parking lot and appurtenances, and circulation road network thereon (park and ride facility) and, in consideration thereof, title to these elements of the park and ride facility vested in the State; and

WHEREAS, the State, acting by and through the COA, acquired the additional right of way necessary for the said park and ride facility; and

WHEREAS, the State, acting by and through the COA, and the Authority, in the agreement dated December 27, 1973, agreed that in order to assure the continued operation and maintenance of the Lindenwold-Philadelphia Hi-Speed Line as an integrated system in the best interest of the public, NJ TRANSIT would lease to the Authority, for the sum of One

Exhibit A
Dollar ($1.00) per year, the park and ride facility for a term to expire January 31, 2003, under certain terms and conditions therein enumerated; and

WHEREAS, said construction of the park and ride facility will cause Essex Street to become the main ingress and egress for said facility; and

WHEREAS, the Authority, the State, and Cherry Hill Township have entered into a jurisdictional agreement dated April 27, 1979, for the jurisdiction of Essex Street; and

WHEREAS, in order to avoid future legal and maintenance problems in this area, it is necessary that the Authority and NJ TRANSIT apportion the jurisdiction and control and maintenance of the total facility;

NOW, THEREFORE, in consideration of the mutual covenants herein, the Authority and NJ TRANSIT agree as follows:

1. NJ TRANSIT hereby leases the park and ride facility (including those facilities on or partially on lands of the Authority) more particularly described in Exhibit "A," of which the boundaries representing the lease agreement have been set forth in bold dark line on a previously surveyed map of the area entitled "New Jersey Department of Transportation, Route 295, Section 11, Jurisdictional Limit Map," annexed hereto and made a part hereof, to the Authority for the consideration of One Dollar ($1.00) per year for a term to commence on the execution of this Agreement and to expire at midnight on January 31, 2003.

2. The Authority, as lessee of the property, shall assume all responsibilities and costs for the jurisdiction, control, maintenance, and operation of the park and ride facility, including but not limited to:

   a) the responsibility for all damage, loss, theft or destruction, partial or complete, of the park and ride facility. Any and all replacements, repairs or substitution of parts on the park and ride facility shall
be at the sole cost and expense of the Authority. In the event of any loss, theft or destruction of the park and ride facility or any part of it, it shall be repaired or replaced by another unit or facility of substantially the same value and specification. Title to replacement parts or units shall vest immediately in NJ TRANSIT, subject to the possessory rights of the Authority herein set forth;

b) the responsibility for lighting facilities including the obligation to pay for the electric current used to light the park and ride facility;

c) the responsibility to pay for all repairs and maintenance to the parking facilities, including but not limited to the paved portion, curb, stripes, lighting and light pole standards, coin receptacles and toll gate treadles, the necessary equipment, supplies and labor therefor;

d) the responsibility to pay for all operating and maintenance expenses of the park and ride facility, including but not limited to, the labor required for evacuation of parking meters and lot machines, banking and counting of the money, preparation of deposit slips and delivery to bank for deposit, police, snow removal, grass and shrubbery maintenance, trash removal, labor costs, general overhead and accounting expenses.

3. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by another party shall be in writing and shall be delivered by hand or by deposit in the registered mails of the United States, postage prepaid, in an envelope addressed as
follows:

If to NJ TRANSIT:

Executive Director
New Jersey Transit Corporation
1035 Parkway Avenue
Trenton, New Jersey 08625

If to the Authority:

Executive Director
Delaware River Port Authority
Benjamin Franklin Bridge Plaza
Camden, New Jersey 08101

4. The Authority shall indemnify, keep and save harmless the State of New Jersey, NJ TRANSIT, their agents, officials, employees and servants, and each and everyone of them, against all claims, actions, proceedings, made against the Authority or NJ TRANSIT or the State, their agents, officials, employees or servants on account of injuries, deaths, losses of any kind whatsoever, damages, suits, liabilities, judgments, costs and expenses which may in anywise accrue against the State, NJ TRANSIT, their agents, officials, employees or servants arising out of or on account of the use or operation of the premises and facilities under the lease by or through the Authority; and the Authority shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therewith or incurred in connection therewith, and, if any judgment shall be rendered against the State, NJ TRANSIT, their agents, officials, employees or servants, in any such action, the Authority shall, at its own expense, satisfy and discharge the same.

5. The Authority agrees that it will provide and put in place, at its cost, for the park and ride facility that is the subject of this
Agreement, the same excess liability insurance coverage that is provided for other stations and park and ride facilities of the Lindenwold Hi-Speed Line. Upon execution of this Agreement, NJ TRANSIT shall be notified as to the amount of the excess liability insurance coverage and also notified as to any changes in coverage.

6. The Authority shall insure that the terms and conditions of this Agreement shall be binding upon any successors or assigns to the Authority's powers, duties and functions.

7. The Authority shall not sublease, assign, nor in any other way encumber this Agreement without first obtaining NJ TRANSIT's prior written approval; provided, however, the Authority shall have the right to assign this lease to the Port Authority Transit Corporation (PATCO), its operating subsidiary corporation, and further provided that the Authority shall have the right to extend coverage to the station building and platform area of existing agreements for newsstand concessions, advertising, and coin changing machines, presently executed for the Lindenwold-Philadelphia Hi-Speed Line. It is expressly understood, however, that there will be no other income producing agreements covering the parking area other than parking fees.

8. NJ TRANSIT shall have the right to inspect the park and ride facility without prior notice to the Authority; provided, however, unless prior arrangements are made with the Office of PATCO's General Manager for the inspection, the Authority and PATCO shall not be responsible for any injury or damages, or obligations under Paragraph 4 above, resulting from or growing out of the making of the inspection.
9. The Authority agrees to maintain the park and ride facility for members of the general public who are patrons of the Lindenwold-Philadelphia Hi-Speed Line. The Authority shall not restrict the park and ride facility to residents of any particular community. To the extent that parking fees are charged for the parking facility, such parking fees shall be consistent with fees charged for parking at other stations of the Lindenwold Line and shall be consistent with applicable federal regulations.

10. The Authority shall submit to NJ TRANSIT's Assistant Executive Director two copies of the annual report relating to its entire operations, together with a Statement of Revenue and Expenditures for the Woodcrest Station park and ride facility in a format as set forth in Exhibit "B", annexed hereto. It shall reflect on an equitable allocable basis all expenses, expenditures and charges incurred in common with the operation and maintenance of park and ride facilities operated by the Authority or its subsidiary, PATCO. The information as submitted in Exhibit "B" shall be certified by the Treasurer and Comptroller of PATCO as accurately presenting the results of operations for the calendar year and as being in accordance with generally accepted accounting principles.

11. In the event that the total revenue from parking fees of the park and ride facility exceeds the total operating and maintenance expenses of the park and ride facility for any year as evidenced by the Statement of Revenue and Expenditures (Exhibit "B"), the Authority shall use the monies which exceed such expenses to reduce the parking fees for the following year in accordance with applicable Federal Highway Administration (FHWA) Guidelines.

12. The Authority shall maintain those parking spaces designated
for the handicapped which are presently in place at the park and ride facility, and shall provide additional spaces as reasonably may be required in the future.

13. No substantial alteration, modification, change, or new construction shall be made to, or placed on, the leased park and ride facility by the Authority, or its assignee, unless and until written approval by NJ TRANSIT is first obtained.

14. It is expressly understood and agreed that no default whatsoever or breach of covenant hereunder shall be deemed to have occurred on the part of the Authority, or its assignee, until ninety (90) days after written notice of such default or breach shall have been given to the Authority, and the Authority within such time shall have failed to remedy such default or breach, and unless within that time the Authority shall have commenced action to remedy such default or breach and shall have continued to prosecute the same diligently to completion; but at the expiration of such ninety (90) day period and following a determination that the Authority has not undertaken in good faith to cure the default or breach, NJ TRANSIT shall have the right to take any action to enforce its rights hereunder, including the right to terminate this lease and to reenter the demised premises, or to enforce full performance by the Authority of its obligations hereunder.

15. This Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of New Jersey.

16. NJ TRANSIT reserves the right to issue permits for air or subsurface utility installation, subject to the approval of the Authority.

17. This Agreement may be modified only by written agreement of the parties.

18. This Agreement embodies the entire understanding between the
If any provision herein is invalid, it shall be considered deleted and shall not invalidate the remaining provisions.

19. The parties to this Agreement do hereby agree that the non-discrimination provisions of the Urban Mass Transportation Grant Contract, Part II, Section 109, annexed hereto as Exhibit "C," and the rules and regulations promulgated pursuant thereunto, are hereby made part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers in multiple original counterparts on the day and year first above written.

ATTESTED:               DELAWARE RIVER PORT AUTHORITY

                        By: ___________________________  

                        Executive Director

ATTESTED:               NEW JERSEY TRANSIT CORPORATION

                        By: ___________________________  

                        Executive Director

The aforementioned Agreement has been reviewed and approved as to form.

JOHN J. DEGNAN  
Attorney General of New Jersey

By: ___________________________  
Deputy Attorney General
ASSIGNMENT

For value received, the Delaware River Port Authority (hereinafter DRPA) hereby assigns, transfers and sets over to Port Authority Transit Corporation (hereinafter PATCO) all of its rights, title, interest and obligations in, under and to that certain indenture of lease bearing date the 24th day of January, 1980, between New Jersey Transit Corporation (N. J. Transit) and the Delaware River Port Authority (DRPA) whereby the said N. J. Transit leased to the DRPA for a term commencing on January 24, 1980 and to expire at midnight on January 31, 2003, the park and ride facility (including those facilities on or partially on lands of the DRPA), all as more particularly described therein; to have and to hold the same unto the said PATCO for the residue of the aforesaid term; and PATCO hereby assumes and agrees to perform all of the terms, conditions and obligations of the DRPA as set forth therein.

PATCO shall defend and save harmless the DRPA, its officers and employees, from all suits, claims, liabilities, judgments, or damages suffered or claimed against DRPA connected with or arising out of the lease assigned hereunder, or operation of the property covered thereby.

IN WITNESS WHEREOF the said parties have set their hands and seals hereto this 27th day of January, 1980.

Attest: 

DELaware river Port authority

By: ________________________________

PORT AUTHORITY TRANSIT CORPORATION

By: ________________________________
TO: R. B. Johnston, PATCO

FROM: John E. Yeomans

DATE: January 28, 1980

SUBJECT: Lease Agreement NJ Transit/DRPA (Woodcrest Station Parking Lot) and Assignment DRPA/PATCO

Attached hereto find fully executed copy of Lease Agreement between NJ Transit & DRPA for the Woodcrest Station Parking Lot, and a fully executed copy of the Assignment from DRPA to PATCO.

cc: E. P. Scullin (w/att.)
    J. R. Woodruff (w/att.)