DECLARATION OF BRIGID HYNES-CHERIN
Federal Transit Administration Regional Administrator for Region 2

1. My name is Brigid Hynes-Cherin. I am the Regional Administrator for Region 2 of the Federal Transit Administration ("FTA"), an operating administration of the United States Department of Transportation, with offices at One Bowling Green, Suite 429, New York, New York 10004-1415. I have served in this position since January 2007. Previously, from August 2005 to January 2007, I served as FTA's Associate Administrator for Planning and Environment at the agency's headquarters in Washington, DC. I submit this Declaration in connection with FTA's demand for repayment of $271,101,291 from the New Jersey Transit Corporation ("NJT") due to NJT's termination of the Access to the Region's Core Project (hereinafter "ARC Project" or "Project"). I have personal knowledge of the facts set forth herein, and they are true and correct.

2. In my previous capacity as the FTA Associate Administrator for Planning and Environment, I was responsible for nationwide management of FTA's Major Capital Investment ("New Starts") program. During my tenure as the Associate Administrator for Planning and Environment, FTA approved the ARC Project for entry into the Preliminary Engineering phase of project development. I am very familiar with the Federal requirements of the New Starts process and NJT's development of the ARC Project.

3. In my current capacity as the Regional Administrator for FTA Region 2, I am responsible for administering the Federal financial assistance provided to State and local public transportation agencies in the States of New York and New Jersey under the statutes codified at Chapter 53 of Title 49 of the United States Code and various provisions of Title 23 of the United

States Code, including the Federal financial assistance for New Starts projects in the States of New York and New Jersey.

4. As the Regional Administrator for FTA Region 2, I am familiar with and directed the Regional Office's award and management of grants to assist the planning, engineering, design, and construction of all aspects of the ARC Project, including, specifically, the environmental impact statements, risk assessments, the Early System Work Agreement ("ESWA"), the ESWA amendment, grant approvals, quarterly progress reviews, and NJT drawdowns of Federal funds. I personally participated in many of the discussions and negotiations associated with these aspects of the Project. In these capacities above, I am competent to testify in this matter.

5. In this Declaration, I refer to various documents. I attach these documents as "Exhibits," all of which are in the possession of New Jersey Transit. I hereby certify that the Exhibits are true and correct copies of the documents to which I refer.

The FTA "New Starts" Process

6. Under FTA's New Starts program authorized by 49 U.S.C. § 5309, FTA provides Federal funding to State and local governmental authorities—project sponsors—to assist them in financing the planning, engineering, design, and construction of new fixed guideway capital projects.

7. The New Starts program has stringent requirements that a project must meet to move through each of the following successive phases of project development: Alternatives Analysis, Preliminary Engineering, Final Design, and construction under a Full Funding Grant Agreement ("FFGA").

8. As a project advances through the New Starts process, FTA and the project sponsor jointly and collaboratively assess the risks of a project through "risk assessments," and negotiate a baseline cost estimate and revenue operations date to be used at that particular phase of project development. The baseline cost estimate and revenue operations date are the cost and schedule that FTA and the project sponsor use in applying the New Starts criteria for project justification and local financial commitment to the project, as required by 49 U.S.C. § 5309(d). If a project does not meet the stringent New Starts criteria, then it could not advance to the next phase of project development, and thus, it would not be eligible for additional New Starts funds. FTA and the project sponsor also use the baseline cost estimate and revenue operations date as reference points for future decisions regarding the Federal and local financial commitments to the project. As a project moves through the different phases of the New Starts process, FTA and the project sponsor jointly and collaboratively update the risk assessments and engage in resultant negotiations of the baseline cost estimate and revenue operations date.

9. The Federal New Starts funding commitment for a project is generally established at the time a project enters into Final Design, and any costs exceeding the Federal commitment become the responsibility of the project sponsor. *See* Exhibit 1, FTA's Guidance on New Starts Policies and Procedures (May 16, 2006).

10. During the Final Design phase of a New Starts project, as a project moves toward execution of an FFGA, FTA and the project sponsor jointly and collaboratively update the risk assessment. If necessary, FTA and the project sponsor may agree to revise the project's scope, the baseline cost estimate, or the revenue operations date prior to executing an FFGA.

11. At all times, prior to the execution of an FFGA, any estimated ranges of project cost based on a risk assessment are solely estimates, which are the basis for collaborative

negotiations between FTA and the project sponsor as they seek to agree on the cost and schedule that will be used during each phase of project development. Some of the factors that are used in finalizing the cost and schedule include: the particular types of risks in the project, the project sponsor's ability to mitigate risks, the project sponsor's overall financial capacity, and the project sponsor's level of experience in construction of transit infrastructure.

12. Throughout the development of a New Starts project, FTA's role is to ensure that the project and the project sponsor are meeting applicable Federal requirements. FTA exercises oversight to determine whether the project sponsor is delivering the project on time and within budget, and whether the project sponsor is taking appropriate action to address any issues that may affect cost and schedule.

13. Throughout the development of a New Starts project, the project sponsor remains solely responsible for the management of the project, including the design of the project, the award of contracts related to the project, the management of contractor performance, and the collaboration with other stakeholders to ensure that any required actions occur in a timely manner. At all times, the project sponsor, not FTA, is responsible for controlling the actual costs incurred on a New Starts project. *See* Exhibit 1, FTA's Guidance on New Starts Policies and Procedures (May 16, 2006).

14. At any given time, numerous grantees are seeking FTA's commitment of its discretionary New Starts funds for projects in their local areas. Consequently, FTA's New Starts program is oversubscribed. FTA's commitment of New Starts funds from an oversubscribed program has the effect of denying the use of those funds for other eligible New Starts projects throughout the United States.

The 2008 Risk Assessment for the ARC Project

15. From May 2008 through August 2008, in collaboration with and based on input from NJT, FTA conducted a risk assessment of the ARC Project as part of the process for approving the Project for entry into Final Design. Throughout this process, NJT and FTA engaged in numerous discussions regarding the scope of the Project, as well as its risks and costs.

16. FTA and NJT used the risk assessment to: (1) establish a baseline cost estimate and revenue operations date for purposes of applying the New Starts criteria for project justification and local financial commitment under 49 U.S.C. § 5309, and (2) set the maximum Federal New Starts funding that would be committed to the ARC Project if NJT were to receive an FFGA for the Project.

17. On August 7, 2008, FTA prepared a preliminary cost estimate for the ARC Project with a projected range of $9.5 billion to $12.4 billion, based in part on information provided by NJT. *See* Exhibit 2, FTA's Draft 2008 Risk Assessment at 6 (Aug. 7, 2008).

18. After FTA staff shared this draft preliminary estimate with NJT staff, NJT provided FTA with two sets of comments and additional input in an attempt to demonstrate that NJT could deliver the Project within an estimated cost range of $7.495 to $7.520 billion. *See* Exhibit 3, Grantee Response to FTA Letter (Aug. 11, 2008); Exhibit 4, Grantee Response to FTA Letter at 9 (Aug. 14, 2008).

19. Having considered NJT's comments and input, FTA staff produced a revised preliminary cost estimate for the ARC Project with a projected range of $8.4 billion to $12 billion. *See* Exhibit 5, FTA's 2008 Risk Assessment at 7 (Aug. 26, 2008).

20. In late August 2008, I met with senior NJT officials to discuss the cost estimate. We agreed to a marginally higher escalation rate, and we agreed to include a higher contingency

in the budget. Based on my discussions with NJT at that meeting and these changes in assumptions, FTA subsequently developed a cost estimate range of $9.1 billion to $12.2 billion.

21. On September 12, 2008, I attended a meeting with the FTA Administrator, the NJT General Manager, and the Chairman of NJT's Board wherein FTA shared its revised cost estimate range with NJT. *See* Exhibit 6, ARC Cost Risk Summary (September 3, 2008) (hereinafter "2008 Risk Assessment").

22. The purpose of the September 12, 2008 meeting was for NJT and FTA to reach agreement on the baseline cost estimate that NJT and FTA would use if FTA approved the ARC Project into Final Design. To reach a baseline cost estimate, NJT and FTA had to resolve several issues.

23. First, NJT and FTA had to negotiate the point within the cost estimate range that NJT and FTA would use for purposes of applying the New Starts evaluation criteria as required under 49 U.S.C. § 5309. FTA and NJT agreed to a baseline cost estimate of $9.1 billion, the figure at the low end of the range.

24. FTA agreed to a $9.1 billion baseline cost estimate only after NJT assured FTA that NJT would mitigate the significant risks that FTA identified in its previous risk assessments.

25. NJT and FTA further agreed that, as a condition of using a baseline cost estimate at the low end of the range, NJT and FTA would work collaboratively to draft a "Project Execution Plan" prior to FTA's approval of the Project into Final Design. In the Project Execution Plan, NJT and FTA would specify the actions that NJT would take to mitigate potential cost increases and delays in NJT's schedule for the ARC Project.

26. Second, NJT proposed that, consistent with FTA policy on railcar acquisition, NJT and FTA would reduce the baseline cost estimate to reflect the value of the railcars on the

Project's opening day service. NJT proposed that it purchase only the 10 locomotives and 100 bi-level railcars necessary for the opening day service on the ARC Project. Consistent with NJT's 20 year financial plan, NJT would purchase an additional 12 locomotives and 74 bi-level railcars needed for the 2030 forecast year in later years.

27. NJT planned to use local funds to purchase the 10 locomotives and 100 bi-level railcars before they were needed for the Project, and use those vehicles in its existing service.

28. NJT proposed that it would then "sell" the 10 locomotives and 100 bi-level railcars to the ARC Project at their depreciated value when NJT needed them for the ARC Project's opening day service. This action ultimately would reduce the cost of the vehicles to the Project.

29. NJT indicated that the combined reduction in the scope and cost of the vehicles would bring the total cost of the ARC Project down to $8.7 billion.

30. Finally, NJT had to identify how it would finance its share of the $8.7 billion estimated cost of the ARC Project. NJT reported that the New Jersey Turnpike Authority had just recently agreed to increase tolls and provide $1.25 billion of the new toll revenues for the ARC Project beginning in 2012.

31. At the conclusion of the September 12, 2008 meeting, NJT and FTA agreed to use $9.1 billion as a baseline cost estimate for purposes of calculating the project justification and local financial commitment ratings for the ARC Project as required under 49 U.S.C. § 5309(d).

32. At that same time, NJT and FTA further agreed that the baseline cost estimate for purposes of an FFGA would be $8.7 billion, calculated by reducing the number and depreciated value of the vehicles needed for the ARC Project's opening day service.

33. At that same time, FTA capped its New Starts funding commitment for the ARC Project at $3 billion, and NJT agreed to negotiate a Project Execution Plan with FTA that would identify the extra measures that it would take to vigorously mitigate and control the risks that could lead to cost increases.

34. Based on the understandings reached during the September 12, 2008 meeting, NJT and FTA moved to complete the environmental review process for the Project.

35. NJT subsequently submitted a request to FTA to enter the Project into Final Design.

36. By letter dated December 19, 2008, the Acting FTA Administrator reminded NJT of its commitment to take extra measures to ensure the Project's costs would remain at the $9.1 billion estimate, and that FTA could not approve the ARC Project for entry into Final Design until FTA and NJT agreed on a final Project Execution Plan. *See* Exhibit 7, FTA Letter to NJT Regarding the ARC Project Execution Plan (Dec. 19, 2008).

37. By letter dated January 27, 2009, over my signature, FTA approved the ARC Project for entry into Final Design. In the letter, FTA indicated that the estimated cost of the Project was $9.2 billion. This $9.2 billion figure was slightly higher than the $9.1 billion figure that NJT and FTA agreed to in September 2008 because NJT would have to undertake a new procurement process at a slightly higher cost to purchase bi-level railcars. Nevertheless, in the letter, FTA continued to use $8.7 billion as a baseline cost estimate, allowing for the depreciated value of the railcars. Additionally, FTA and NJT agreed that the baseline cost estimate would be funded with a ratio of one-third Federal funds and two-thirds local funds. Finally, to account for risks identified in the previous 2008 risk assessments that NJT might realize as the Project moved forward, NJT and FTA agreed to a $1.8 billion contingency as part of the $8.7 billion

budget. NJT could draw down funds against the $1.8 billion contingency if it realized risks and if it experienced cost overruns. The size of this contingency was unprecedented in the history of FTA's New Starts program. *See* Exhibit 8, FTA Letter to NJT Approving Entry into Final Design (Jan. 27, 2009).

38. In the letter dated January 27, 2009, FTA again reminded NJT that NJT needed to complete certain actions before FTA and NJT could negotiate an FFGA. Those actions included, among other things: (1) the need to firm up the local financial commitments to the Project, especially in light of the potential shortfall in the State of New Jersey's Transportation Trust Fund revenues; (2) confirmation of the availability of port and toll revenues for the Project; and (3) identification of funding for the Portal Bridge, a separate project to complement the ARC Project by addressing a bottleneck at the Hackensack River. *See* Exhibit 8, FTA Letter to NJT Approving Entry into Final Design (Jan. 27, 2009).

39. Additionally, upon NJT's request—and as is FTA's practice on New Starts projects—FTA and NJT agreed upon a "Roadmap" of actions needed before an FFGA for the ARC Project could be executed. The Roadmap: (1) incorporated many of the concerns that FTA identified in its January 27, 2009 Final Design approval letter, (2) identified the basic requirements that FTA follows in awarding an FFGA, (3) identified the party that had the lead for each item, and (4) tracked the current status of each item. *See* Exhibit 9, ARC FFGA Roadmap (Nov. 6, 2009).

40. Pursuant to the Roadmap, NJT was required to update the cost and schedule for the Project at least ninety days before submitting to FTA an application for an FFGA. This ninety-day lead time would ensure that FTA had sufficient opportunity to conduct an updated risk assessment before NJT submitted a corresponding grant application, which would have to be

based on a current baseline cost estimate and revenue operations date. *See* Exhibit 9, ARC FFGA Roadmap (Nov. 6, 2009).

41. As mentioned above, and in accordance with longstanding FTA policy for the New Starts program, NJT was responsible for any costs in excess of the baseline cost estimate for the Project agreed upon at the time that the Project entered Final Design. Thus, FTA alerted NJT in the January 27, 2009 Final Design approval letter and in the Roadmap that NJT might need to establish a Capital Reserve Account to finance any cost overruns on the Project. FTA also emphasized the need for NJT to update its financial plan to demonstrate how the State Transportation Trust Fund ("TTF") revenues would be made available for the Project, how any shortages in the TTF would affect the State's priorities, and how NJT would keep the Project on schedule if there were any delays in congressional appropriations of Federal New Starts funds. *See* Exhibit 8, FTA Letter to NJT Approving Entry into Final Design (Jan. 27, 2009); Exhibit 9, ARC FFGA Roadmap (Nov. 6, 2009).

42. Pursuant to the Roadmap, NJT was required to reach agreement with the Port Authority of New York and New Jersey ("Port Authority") on which entity would be responsible for any cost overruns on the Project. *See* Exhibit 9, ARC FFGA Roadmap (Nov. 6, 2009).

The Early System Work Agreement

43. Pursuant to 49 U.S.C. § 5309, an Early System Work Agreement ("ESWA") is an agreement between FTA and a project sponsor which allows the project sponsor to obtain a commitment of a significant amount of Federal funds for a New Starts project in advance of the execution of an FFGA. FTA may execute an ESWA if FTA finds that an FFGA will be executed for a project and that the terms of the ESWA will promote ultimate completion of the project more rapidly and at less cost. An ESWA allows a project sponsor to incur costs for a New Starts

project against an authorized commitment of Federal funds well in advance of receiving an FFGA. It is unusual for FTA to execute an ESWA. Moreover, the ARC Project was only the fifth project to enter into an ESWA since the enactment of the ESWA statute in 1991.

44. Between January 2009 and June 2009, NJT inquired about the possibility of FTA executing an ESWA for the purpose of keeping the ARC Project on schedule and within budget.

45. Also, NJT emphasized its desire to obtain the maximum amount of Federal funds possible for the Project in advance of an FFGA.

46. In our discussions with NJT, I noted that an ESWA is a means whereby FTA can commit both New Starts funds and other types of Federal funds to a New Starts project.

47. During these discussions, NJT proposed to use approximately $1 billion in Congestion Mitigation and Air Quality ("CMAQ") funds for the ARC Project, and NJT was particularly concerned about having access to these funds.

48. Also, following the enactment of the American Recovery and Reinvestment Act ("ARRA") in February, 2009, NJT proposed that $130 million of ARRA funds be allocated to the ARC Project to backfill some of the State of New Jersey's TTF funds for the Project.

49. Ultimately, these discussions resulted in an agreement between FTA and NJT to include not only New Starts funds, but also CMAQ and ARRA funds in an ESWA.

50. By letter dated June 24, 2009, NJT requested FTA to enter into an ESWA with NJT. *See* Exhibit 10, NJT Letter to FTA Requesting an ESWA (June 24, 2009).

51. NJT recognized that, should an FFGA be executed for the ARC Project, it would not be executed until late 2010. Consequently, NJT requested the ESWA because it intended to award several large contracts for real estate, construction, and professional services between the summer of 2009 and early 2010 and it needed Federal funds to support those contracts prior to

the potential execution of an FFGA. *See* Exhibit 10, NJT Letter to FTA Requesting an ESWA (June 24, 2009).

52. In June 2009, in connection with the ESWA under negotiation, NJT submitted draft grant applications to FTA requesting that FTA obligate $14.7 million in New Starts funds (Grant NJ-03-0169-00), $50 million in CMAQ funds (Grant NJ-90-X008-00), and $130 million in ARRA funds (Grant NJ-96-X002-01) to pay for costs incurred on the ARC Project, pursuant to an ESWA.

53. Consistent with FTA practice, any Federal funds available for a New Starts project that are committed under an ESWA can be obligated through grants executed prior to, simultaneous to, or after the execution of the ESWA. The Federal funds from various funding sources to be obligated under an ESWA cannot be joined in a single grant due to the inability of FTA's financial management systems to accommodate the commingling of different program funds within a single grant application.

54. As is common practice in FTA Region 2, FTA and NJT held informal discussions before and after NJT submitted its request for an ESWA and its draft grant application. I was personally involved in many of these discussions.

55. During these discussions, I informed NJT that, in its draft grant request, NJT erroneously included $6,069,932 in Preliminary Engineering funds from previously approved New Starts Grant NJ-03-0138-02; $766,000 from previously approved CMAQ Grant NJ-90-X086-00; $34,756,000 from previously approved CMAQ Grant NJ-95-X002-00; and $39,478,000 from previously approved CMAQ Grant NJ-95-X003-00.

56. I advised NJT to remove the Federal funds awarded under these previous grants, since an ESWA typically includes only new commitments of Federal funding, and the funds under these previous grants had been committed, obligated, and expended.

57. I explained to NJT that an ESWA is a precursor to an FFGA, but it serves a different purpose than an FFGA; that an ESWA does not reflect the total cost of a New Starts project cost; and that an ESWA should reflect only the portion of a project that a project sponsor is ready to advance, and therefore, the matching Federal and local ratio of project costs could be different in an ESWA from what might eventually be established in an FFGA.

58. Contrary to FTA's advice, NJT insisted that the previously committed and obligated New Starts and CMAQ funds be included in its request for an ESWA for purposes of maintaining the anticipated one third Federal share and two thirds local share of total project costs which NJT and FTA established when the ARC Project entered Final Design.

59. NJT explicitly rejected a written FTA comment on NJT's electronic application that these previous New Starts and CMAQ grant funds should be removed from the application. *See* Exhibit 11, NJT E-mail to FTA Regarding ESWA (June 5, 2009).

60. Given NJT's insistence that the ESWA include the largest possible amount of Federal funding, FTA acquiesced to NJT's request to incorporate the previous New Starts and CMAQ funds into the ESWA.

61. By letter dated August 14, 2009, FTA informed NJT that FTA had approved the ESWA for the ARC project, and that the dollar amount of the ESWA included funding expended under the previously awarded CMAQ grants, as NJT had requested. *See* Exhibit 12, FTA Letter to NJT Approving the ESWA (Aug. 14, 2009). At NJT's request, the previously expended New Starts funds were included in the ESWA amendment.

62. In the August 14, 2009 letter, FTA reiterated that the baseline cost estimate for the Project was $8.7 billion—the same figure that NJT and FTA agreed upon at the time that the Project entered Final Design in January 2009. FTA also reiterated all of the conditions set forth in the Final Design approval letter dated January 27, 2009. *See* Exhibit 12, FTA Letter to NJT Approving the ESWA (Aug. 14, 2009).

63. On August 20, 2009, FTA executed Grant NJ-03-0169-00 and obligated $14.7 million in New Starts funds for the ARC Project. *See* Exhibit 13, Grant NJ-03-0169-00 (Aug. 20, 2009).

64. Grant NJ-03-0169-00 was the first grant that allowed NJT to draw down New Starts funds to reimburse costs incurred for Final Design and construction of the Project.

65. On August 18, 2009, and September 4, 2009, FTA executed ARRA Grant NJ-96-X002-00 and CMAQ Grant NJ-95-X008-00, respectively. On March 4, 2010, FTA and NJT subsequently amended Grant NJ-96-X002-00 with Grant NJ-96-X002-01.

66. ARRA Grant NJ-96-X002-01 and CMAQ Grant NJ-95-X008-00 allowed NJT to use $130 million in ARRA funds and $50 million in CMAQ funds for costs related to the Final Design and construction of the ARC Project under the ESWA.

67. Consistent with FTA accounting procedures, ARRA Grant NJ-96-X002-01 and CMAQ Grant NJ-95-X008-00 included projects other than the ARC Project within the scopes and budgets of those grants, but specifically allocated a portion of each grant for the ARC Project.

68. By letter dated January 8, 2010, NJT requested that FTA amend the ESWA to provide funding for upcoming contracts that were expected to be ready for award by September 30, 2010. NJT simultaneously submitted to FTA a grant application for $47,520,000 in

additional New Starts funds that had been appropriated for the Project. *See* Exhibit 14, NJT Letter to FTA Requesting an ESWA Amendment (Jan. 8, 2010).

69. Before acting on NJT's request to amend the ESWA, FTA wanted written assurances that newly-elected New Jersey Governor Chris Christie would continue to support the proposed multi-billion dollar investment of New Jersey funds for the ARC Project.

70. By letter dated March 26, 2010, Secretary of Transportation Ray LaHood formally requested Governor Christie to confirm the State's commitment to the ARC Project. *See* FTA Exhibit 15, Secretary Ray LaHood Letter to Governor Chris Christie (Mar. 26, 2010).

71. By letter dated April 6, 2010, Governor Christie reaffirmed the State of New Jersey's commitment to the ARC Project, and stated he looked forward to "an expeditious award of the second Early Systems Work Agreement." Additionally, Governor Christie reaffirmed the Port Authority's $3 billion commitment to the Project. *See* FTA Exhibit 16, Governor Chris Christie Letter to Secretary Ray LaHood (Apr. 6, 2010).

72. By letter dated April 14, 2010, based on Governor Christie's reaffirmation of the State's commitment to the Project, FTA informed NJT that it agreed to amend the ESWA to increase the Federal commitment of funds for the ARC Project under the ESWA to $1,035,139,932. FTA reiterated all of the conditions that would have to be met before an FFGA could be executed, as stated in the January 27, 2009 letter whereby FTA approved the Project into Final Design. Additionally, FTA expressed numerous concerns with NJT's willingness to mitigate major risks associated with the Project, and FTA warned NJT that "[t]he scheduled completion date for the project is extremely optimistic and has the potential to slip, with possible delays ranging from 9 to 22 months." *See* Exhibit 17, FTA Letter to NJT Approving an Amendment to the ESWA at 3 (Apr. 14, 2010).

73. On April 14, 2010, FTA and NJT executed Grant NJ-03-0169-01, and FTA obligated an additional $47,520,000 in New Starts funds for the ARC project.

The Updated 2010 Risk Assessment

74. Following the execution of the ESWA amendment, FTA and NJT jointly and collaboratively worked towards entering into the next phase of the ARC Project—the execution of an FFGA that would commit a total of $3 billion in Federal New Starts funds for the Project.

75. In his letter dated April 6, 2010, Governor Christie requested that FTA and NJT finalize an FFGA "as soon as possible." *See* FTA Exhibit 16, Governor Chris Christie Letter to Secretary Ray LaHood (Apr. 6, 2010).

76. To this end, NJT transmitted to FTA an updated cost and schedule estimate and FTA began to develop an updated risk assessment—consistent with FTA policy—which NJT and FTA would use as the basis for further negotiations to develop the risk range for the Project and identify a baseline cost estimate and revenue service date to be used in an FFGA, taking into consideration NJT's efforts to mitigate and control the Project's risks, costs, and schedule.

77. The baseline cost estimate for the ARC Project was always a work in progress, subject to continued negotiations between FTA and NJT throughout the development of the Project. This is always the case with any project in FTA's New Starts program, prior to the execution of an FFGA.

78. On May 3, 2010, FTA and NJT met to discuss the details of NJT's proposed budget and schedule. FTA and NJT continued to meet during a series of "Risk Workshops" held on June 11, June 19, June 21, July 22, and July 26, 2010, to discuss different aspects of the cost estimate that FTA subsequently used to prepare an initial draft estimated risk range for presentation to NJT.

79. On August 16, 2010, representatives from FTA and NJT gathered for a meeting to discuss the initial draft results of FTA's updated risk assessment with the understanding that this was only an initial assessment, that FTA needed to review its assumptions with NJT in detail, and that there would be further discussion before a final risk range was reached and a final baseline cost estimate and revenue service date was established for FFGA negotiations.

80. During this meeting, after I presented a summary of FTA's draft risk range results, but before any discussion of those results, NJT representatives asked for and took a five minute recess.

81. When the NJT representatives returned to the meeting, the NJT Executive Director informed me and the other FTA representatives that NJT would not review in detail the draft results of FTA's updated risk assessment because NJT believed that FTA did not consider any of NJT's input over the last several months.

82. The NJT representatives subsequently walked out of the room after indicating that they would provide their own risk range to FTA in a few days.

83. Notwithstanding NJT's abrupt departure from the August 16, 2010 meeting, FTA provided NJT with a copy of its draft 2010 Risk Assessment and my talking points from the meeting. *See* Exhibit 18, Brigid Hynes-Cherin Notes for Meeting with ARC on Risk Assessment (Aug. 16, 2010); Exhibit 19, Draft Risk Assessment (Aug. 16, 2010).

84. Based on the draft 2010 Risk Assessment, FTA preliminarily estimated the cost of the ARC Project to be within the range of $10.9 billion to $13.7 billion. *See* Exhibit 19, Draft 2010 Risk Assessment (Aug. 16, 2010).

85. The $10.9 billion to $13.7 billion risk range represented an increase from FTA's 2008 Risk Assessment which included a risk range of $9.1 billion to $12.2 billion; such an

increase is not unusual for a New Starts project. Despite the fact that NJT committed to mitigating risks when it negotiated with FTA using the $9.1 billion baseline cost estimate when the Project entered Final Design, FTA's revised risk range was due, in part, to NJT's demonstrated failure to mitigate and control project costs.

86. By May 2010, NJT had expended $775 million of the Project's $1.8 billion contingency—nearly half of it—before it even began major construction on the ARC Project. Because NJT was burning through its contingency so rapidly, FTA was concerned that the potential cost overruns on the Project could have well exceeded the $1.8 billion contingency.

87. Following the August 16, 2010 meeting, NJT provided FTA with its own projected cost range of $8.7 billion to $10 billion for the Project. *See* Exhibit 20, NJT Access to the Region's Core—Project Cost Ranges (Aug. 17, 2010); Exhibit 21, NJT Access to the Region's Core—Project Cost Ranges (Aug. 23, 2010).

88. Based on NJT's submittal, FTA revised its projected cost estimate downward to range from $10.61 billion to $13.373 billion. *See* Exhibit 22, Revised ARC Risk Assessment (Aug. 24, 2010).

89. On September 10, 2010, Governor Christie announced a thirty day hold on the execution of any new contracts and the incurrence of any new expenditure on the Project so NJT could reassess the financing for the Project and the costs of completing the Project. *See* Exhibit 23, NJT ARC Executive Steering Committee Memorandum to Governor Christie (Oct. 7, 2010).

90. For two weeks after Governor Christie initiated the thirty day hold on the ARC Project, there were no formal communications between NJT and FTA.

91. On September 24, 2010, representatives of NJT, the New Jersey Department of Transportation, the Port Authority, the New Jersey Turnpike Authority, and the Governor's staff

met with the FTA Administrator and FTA staff at FTA's headquarters to discuss FTA's and NJT's respective cost estimate ranges for the ARC Project. I participated in that meeting. Afterward, NJT and FTA agreed to engage in further discussions regarding the assumptions used in FTA's August 16, 2010 Risk Assessment.

92. On September 28 and 29, 2010, my staff again met with NJT to review, in detail, various risk assumptions regarding the ARC Project.

93. On October 4, 2010, I met with NJT's leadership to review the risk assumptions.

94. Based on NJT's input regarding its willingness, going forward, to mitigate and control risks and costs with third-party transactions and acquisition of real estate for the Project, FTA further reduced its estimated risk range to $9.775 billion to $12.432 billion. *See* Exhibit 24, FTA ARC Risk Assessment (Oct. 4, 2010).

95. Based on this $9.775 billion to $12.432 billion risk range, FTA offered to use $9.775 billion as the baseline cost estimate for purposes of negotiating an FFGA. In the meantime, FTA continued to evaluate the Project's progress and risks in an effort to further reduce the estimated cost range based on NJT's continuing input.

96. On October 27, 2010, Governor Christie, citing the recommendation of the ARC Executive Steering Committee, terminated the ARC Project. *See* Exhibit 25, Transcript of Governor Christie's Public Comments Terminating the ARC Project (Oct. 27, 2010).

97. By letter dated November 8, 2010, I notified NJT's Executive Director that given the termination of the ARC Project, FTA would de-obligate and recover all Federal funding expended on the Project under the ESWA, as amended. At that time, more than $350 million in Federal funds had been obligated for the Project under the ESWA, as amended, and at least

$78,909,000 of that amount had not yet been expended. *See* Exhibit 26, FTA Letter to NJT Regarding Repayment of Federal Funding (Nov. 8, 2010).

98. By letter dated November 24, 2010, FTA's Chief Financial Officer demanded that NJT repay $271,101,291—the sum total of Federal funds expended under the ARC Project's ESWA, as amended. *See* Exhibit 27, FTA Demand Letter (Nov. 24, 2010).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on March 11, 2011.

Brigid Hynes-Cherin
Regional Administrator for Region 2
Federal Transit Administration

EXHIBIT 1

Guidance on New Starts Policies and Procedures

May 16, 2006

Prepared by:
Federal Transit Administration
Office of Planning and Environment
US Department of Transportation

http://www.fta.dot.gov

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Purpose

Section 3011 (d)(6) of the new transportation statute, the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU), requires that the Federal Transit Administration (FTA) publish, for comment and response, "Policy Guidance" regarding the new fixed guideway capital project review and evaluation process and criteria at the following times: (1) 180 days after the enactment of SAFETEA-LU, (2) each time significant changes are made to the process and criteria, and (3) at least every two years. This document is FTA's response to requirement (1) above and represents our initial publication of the New Starts Policy Guidance.

This guidance was initially issued for comment on January 19, 2006. The guidance explained proposed changes to the New Starts program which were proposed to become effective April 30, 2006, as well as longer-term changes to the New Starts program that FTA plans to be the subject of rulemaking in the future. Rather than April 30, 2006, these changes are effective immediately upon publication in the Federal Register of the Notice of Availability of the Policy Guidance. FTA requested – and received - comments on both aspects of the guidance in the January notice. Based on these comments, the guidance was revised to respond to industry concerns. A summary of comments received, as well as FTA's response to those comments, is included in the Federal Register Notice of Availability, published May 16, 2006. The immediate changes discussed in detail below apply to all New Starts submittals received after the date of this guidance and will be effective until future policy guidance or a new rule is released.

FTA will also publish a new Rule for Major Capital Investment Projects (New Starts) in response to changes specified in SAFETEA-LU to the methods, criteria and procedures used to evaluate and rate projects proposed for funding under FTA's New Starts program. These provisions of SAFETEA-LU may lead to some changes in the way that FTA determines eligibility for funding, the framework for evaluating and rating projects, and the procedures used to plan and develop new transit capital projects that seek New Starts funds.

Improvements to Project Development and Program Management of New Starts Projects,

The current framework and methodology for evaluating and rating New Starts projects, and the decision rules that support it, remain unchanged. All of the measures and their weights for developing New Starts ratings and recommendations remain consistent with the process spelled out in the Major Capital Investment Projects Final Rule issued in December 2000. The May 2006 Reporting Instructions for the Section 5309 New Starts Criteria, and the FY 2008 Evaluation and Rating Process issued along with this Policy Guidance, are the same as the FY2007 Reporting Instructions and Evaluation and Rating Process, except where noted in the Notice of Availability. Furthermore, it should be noted that the FY 2008 FTA New Starts Evaluation and Rating Process continues to reflect two changes established in SAFETEA-LU, which were previously implemented through the FY2007 Evaluation and Rating Process. Specifically, SAFETEA-LU replaces a three-point rating scale with a five-point scale, with the overall project rating designations of "Highly Recommended," "Recommended," and "Not Recommended" replaced with "low," "medium-low," "medium," "medium-high," and "high." In addition, SAFETEA-LU, while continuing to require that a project's overmatch be evaluated, adds a clause that nothing in the Act shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

While the evaluation and rating framework will not change prior to the publication in the Federal Register of a final rulemaking, FTA is implementing various procedural changes meant to improve the management of the New Starts process and to ensure the accuracy and consistency of the information submitted to FTA as part of the New Starts evaluation and rating process. These improvements are presented in the following sections.

The amendments made by SAFETEA-LU to section 5309(d) continue to require FTA to determine that projects proposed for New Starts funds meet a variety of criteria, including that they are the result of an alternatives analysis, are included in an approved transportation plan, that the applicant has the legal, financial and technical capability to carry out the project, that the project is justified based on a review of the criteria specified in the law, and that the project is likely to continue to meet these requirements in the future, before projects are allowed to begin preliminary engineering as well as final design. Guidance on *Advancing Major Transit Investments through Planning and Project Development* is found at http://www.fta.dot.gov/16231_ENG_HTML.htm.

Pursuant to these requirements and prior to submitting a request to enter into preliminary engineering, candidate New Starts project sponsors must complete a planning alternatives analysis, which evaluates a range of transportation alternatives developed to meet locally-identified transportation problems in a given corridor. The objective of the planning alternatives analysis is the development of reliable estimates of the costs, impacts, and benefits of these alternatives sufficient to make an informed decision on the mode and general alignment of the preferred alternative. The planning alternatives analysis should further result in the development of measures of the proposed New Starts project's justification and financial commitment, which will support the subsequent request to enter into preliminary engineering.

It is FTA's desire to work closely with New Starts project sponsors during the planning alternatives analysis to ensure that it results in the development of reliable information to support both the local decision on selection of a preferred alternative *and* FTA's decision to admit the preferred alternative into preliminary engineering. FTA therefore strongly encourages that the project sponsor submit the following study products as they are developed during the alternatives analysis study to facilitate FTA review of a subsequent request to enter into preliminary engineering:

- Scope of Work
- Problem Statement, Goals, and Objectives
- Definition of Alternatives
- Documentation of Study Assumptions and Methodologies
- Documentation of Study Results, particularly in terms of the estimated costs and benefits of the preferred alternative

Before FTA can consider a preliminary engineering request, the project sponsor must:

- Obtain FTA's agreement on the alternative to use as the baseline for analysis
- Demonstrate that the preferred alternative has been adopted into the fiscally constrained Long Range Plan
- Demonstrate the technical capability of the project sponsor to advance into preliminary engineering based on an adequate Project Management Plan (PMP)
- Certify to the assumptions and technical methods used to produce the information submitted
- Submit the required templates and other information supporting the New Starts evaluation measures for project justification and local financial commitment

FTA will conduct a review of the products of the planning alternatives analysis, including the estimates of project costs and benefits of the preferred alternative and the baseline alternative used to calculate the New Starts project justification criteria, to ensure that the information is reliable and is sufficient to support a decision to enter into preliminary engineering . FTA may utilize its oversight resources to facilitate such reviews. Project sponsors should coordinate closely with FTA and its consultants in these reviews to ensure the timely advancement of candidate New Starts projects into preliminary engineering.

Before approving entry into final design, FTA requires that the project design and cost estimates be solidified as described in Section 4, that all National Environmental Policy Act (NEPA) requirements be completed, that the majority of proposed non-New Starts funds be committed, and that the project maintain satisfactory ratings against the New Starts evaluation criteria. FTA and its oversight resources will review the products of preliminary engineering to minimize and manage risk in the project's estimate of costs and benefits, and in the sponsor's capability to finalize the design and construction of the project. As described in Section 4, FTA's expectations for products of New Starts preliminary engineering may differ from preliminary engineering as that term is used for other FTA programs.

Recently, a number of projects have either failed to advance through project development or have changed a great deal in cost and scope from the projects that were initially chosen as the locally preferred alternative that was approved to enter into New Starts preliminary engineering. This has led FTA to consider a variety of ways to ensure that the project is: 1) actually ready to advance into project development, and 2) likely to succeed during project development, prior to approval of entry into preliminary engineering and final design. The following sections describe procedural changes that FTA will apply to projects seeking to enter into New Starts preliminary engineering or final design after the date of this guidance and includes a discussion of the basis for these changes.

1 NEPA Interfaces

FTA has a strong interest in improving the linkage between the New Starts and NEPA project development processes and requirements. Specifically, FTA seeks to mitigate conflicts between NEPA and New Starts; to improve the consistency and reliability of the information developed for both NEPA and New Starts purposes; and to ensure the use and disclosure of such information for local and Federal decision-making. To achieve these goals, FTA is implementing the following procedural changes related to the NEPA interface with the New Starts project development process.

Require a project to have progressed beyond the NEPA scoping phase before entering into New Starts preliminary engineering.

While FTA does not now mandate that project sponsors combine the planning alternatives analysis process with the NEPA process, the failure to perform some tasks related to the NEPA process has the potential to disrupt project development. Scoping is a requirement of the NEPA process focused on determining the range of alternatives to be addressed in NEPA documents and for identifying significant issues related to a proposed federal action.

A Council on Environmental Quality (CEQ) memo dated April 30, 1981 regarding scoping guidance outlined the following scoping objectives:

- To identify the affected public and agency concerns;
- To facilitate an efficient Environmental Impact Statement (EIS) preparation process, through assembling the cooperating agencies, assigning EIS writing tasks, ascertaining all the related permits and reviews that must be scheduled concurrently, and setting time or page limits;
- To define the issues and alternatives that will be examined in detail in the EIS while simultaneously devoting less attention and time to less important issues; and
- To save time in the overall process by helping to ensure that draft statements adequately address relevant issues, reducing the possibilities that new comments will cause a statement to be rewritten or supplemented.

In addition, SAFETEA-LU Section 6002 requires that, as early as practicable during the NEPA review, the project sponsor provide an opportunity for involvement by the public and other interested agencies in determining the range of alternatives to be considered.

FTA has found that when proposed New Starts projects enter into New Starts preliminary engineering before NEPA scoping has been completed, other reasonable alternatives have occasionally been introduced during New Starts preliminary engineering. This introduction of major new alternatives occurred because many of the NEPA scoping participants had not previously been involved in developing the alternatives that were evaluated in the alternatives analysis. FTA recognizes that CEQ regulations require consideration of "reasonable alternatives" introduced at any point in the NEPA process. However, by requiring that NEPA scoping, including the related requirements of SAFETEA-LU Section 6002, be completed prior to FTA approval to initiate New Starts preliminary engineering, FTA hopes to foster earlier interaction and, ideally, general consensus among the scoping participants about the alternatives to be considered during NEPA review. Through this requirement, FTA expects to produce more efficient and mutually-supporting NEPA and New Starts reviews, which share a similar objective – informed decision-making.

Therefore, FTA requires projects to have progressed beyond the NEPA scoping phase before it will approve entry into New Starts preliminary engineering. This requirement could be satisfied in a number of ways: (1) A Draft EIS can be completed as part of the planning alternatives analysis process. (2) In the case where the Draft EIS is being prepared during the New Starts PE, after any NEPA scoping meetings and other NEPA scoping activities, project sponsors can submit, for FTA review, a scoping report that identifies the range of alternatives and major issues that are proposed to be addressed in the EIS. The scoping report would also include a discussion of the alternatives that have been proposed and the reasons for retaining or eliminating each of those alternatives. (3) In the case of an environmental assessment, after early coordination with interested parties, the project sponsor would submit, for FTA review, a report or technical memorandum which identifies the alternatives to be the subject of the NEPA review. (4) In the rare instance when a proposed New Starts project is categorically excluded from NEPA review, project sponsors would submit appropriate documentation to support that class-of-action determination.

Accordingly, FTA will require that project sponsors submit the results of the NEPA Scoping process, as discussed above, as part of the information submitted to FTA for requests to enter into News Starts PE. FTA recognizes that when the Draft EIS is being prepared as part of the New Starts PE process, the scoping process can take 3 to 4 months to complete. Project sponsors should build this step into the schedule, recognizing that scoping can occur while FTA is reviewing the ridership, cost, and financial information that support the request to enter into New Starts PE. Sponsors who are contemplating a request to enter into New Starts PE in the next few months should contact FTA immediately about beginning the scoping process.

Require the Final EIS to present the New Starts evaluation of the preferred alternative as part of the NEPA evaluation of the alternatives.

According to CEQ's NEPA regulations (40 CFR 1502.14), an EIS should present the merits and environmental impacts of the alternatives in comparative form, "thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." In the transportation context, the NEPA evaluation typically measures the merits of an alternative by the extent to which the project's purpose and need and other established objectives are met.

These merits are arrayed against the adverse impacts and other costs of each alternative to facilitate decision-making among the available alternatives.

The CEQ regulations (40 CFR 1502.23) further require that "an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." For a New Starts project, the New Starts rating information qualifies as "relevant and important to a decision." Therefore FTA requires that, as part of the NEPA evaluation of the alternatives, a NEPA document include information relating to the New Starts evaluation. FTA recognizes that, for a draft EIS or EA, the New Starts evaluation information may not be available when the draft NEPA document is published, but if it is available, it must be included. For a Final EIS, the New Starts evaluation information must be included in the document.

This policy will ensure that, through the NEPA document, the affected public and interested agencies are fully informed about the proposed New Starts project, including the factors that, under Federal transit law, FTA must consider in evaluating those projects.

For NEPA documents prepared during alternatives analysis and before a project has been approved for entry into New Starts PE, FTA will require that information relating to the New Starts criteria be presented along with a brief description of how the information is used for FTA's ratings. For projects that have received an FTA rating, the actual rating would also be presented. This policy applies specifically to the locally preferred alternative (i.e. the proposed New Starts project); however, in cases where the DEIS constitutes the alternatives analysis phase of project development, FTA strongly encourages (but will not require) that information in support of the criteria be developed for all studied alternatives, as a means of enhancing local stakeholders' understanding of the potential competitiveness of the alternatives for New Starts funding. In addition, FTA clarifies that the requirement to include information on FTA's rating process and to include the latest available New Starts rating applies to all NEPA documents, which could include environmental assessments (EAs) in addition to environmental impact statements (EISs). FTA has prepared standard language that would accompany the New Starts rating to provide context for the New Starts rating and process. An example of standard language is available from the Office of Planning and Environment.

<u>For projects with a New Starts rating of less than "medium," require the environmental decision document to include a statement as to how the New Starts process may affect the ability of the project to advance to implementation.</u>

Over the past several years, a number of projects that were rated lower than "medium" against the New Starts criteria experienced scope changes after the publication of a Final EIS and environmental Record of Decision (ROD). The scope changes were necessary to reduce the project cost and achieve an acceptable New Starts rating. The scope changes also necessitated supplemental NEPA documents and re-evaluations. In some cases, the project that was presented to the public in detail in the Final EIS was subsequently altered substantially in order to improve the cost-effectiveness rating.

Therefore, in cases where FTA has determined that a supplemental NEPA document will be required in order to advance the project into final design, FTA will not issue a FONSI, FEIS or ROD until the supplemental document is completed. This policy will help ensure that the environmental documents present the affected public with an accurate description of a project that is acceptable for FTA New Starts funding.

When FTA has determined that a supplemental environmental document will not be required and a proposed project has received a New Starts rating of less than "medium," FTA will issue the FEIS or ROD, but include a statement in the document as to how the New Starts process may affect the ability of the project to receive New Starts funds. This approach allows the environmental process to be completed and allows the project sponsor to begin land acquisition with its own funds. At the same time it puts the public as well as local decision-makers on notice of the possibility that the project may not ultimately receive New Starts funding. An example of standard language for this statement is available from the FTA Office of Planning and Environment.

2 Preservation of Information for Before and After Study

In the December, 2000 Final Rule on Major Capital Investment Projects, FTA required that project sponsors seeking full funding grant agreements (FFGA) submit to FTA, before approval to enter into an FFGA, a complete plan for the collection and analysis of information to identify the impacts of their projects and the accuracy of the forecasts prepared during project planning and development. SAFETEA-LU amended section 5309(g)(2)(c) to codify this regulatory requirement and now requires that project sponsors, as a condition of receiving a FFGA, assemble information on five key project characteristics generated during project planning and development: (1) project scope; (2) transit service levels; (3) capital costs; (4) operating and maintenance costs; and (5) ridership patterns and revenues. SAFETEA-LU now requires FTA to use this information in preparing an annual report to Congress on the results of any before and after studies completed during that year.

FTA's regulation requires this information at the point of entry into New Starts preliminary engineering, entry into final design, before the award of an FFGA, and two years after opening to revenue service. To ensure that information that will be required to complete the before and after study is identified and preserved during project planning and development, FTA now requires project sponsors to provide initial documentation of the information produced during alternatives analysis when they apply to enter into New Starts preliminary engineering, and to provide updated information and an analysis of any changes from the previous phase of project development, when applying to enter into final design and before receiving an FFGA. The purpose of this requirement is to ensure that the information is preserved and will be available to be analyzed in the forthcoming before and after study. This documentation is similar to information already used to support a request to enter into New Starts preliminary engineering, and thus should not represent a significant burden on project sponsors.

The SAFETEA-LU amendment to section 5309(l)(2) now requires that FTA publish an annual report that analyzes the consistency and accuracy of cost and ridership forecasts prepared by

each contractor to New Starts project sponsors. To help FTA fulfill this new responsibility, we require, as part of the before and after submissions, that each New Starts project sponsor identify the contractor responsible for the capital and operating cost estimates and ridership forecasts and include a description of the contractor's role and responsibilities in developing these forecasts. Preliminary guidance on before and after studies and a model before and after study plan are currently available from the FTA Office of Planning and Environment. FTA is currently updating this guidance to reflect SAFETEA-LU requirements.

3 Certification of Technical Methods, Planning Assumptions, and Project Development Procedures

SAFETEA-LU emphasizes the need for reliable ridership forecasts and cost estimates in a number of ways. First, reliability of forecasting methods has been explicitly included as an evaluation criterion (section 3011 (d)(2)(B)). Second, FTA is now required to track contractor performance and annually report to Congress on the consistency and accuracy of the cost estimates and ridership forecasts produced by each contractor to public transit agencies developing New Starts projects (section 5309(l)(2) as amended).

The information submitted to FTA during the New Starts evaluation and rating process must use consistent and defensible measures, reliable data, and analytical assumptions consistent with best practices and FTA's requirements. Accordingly, as part of its existing New Starts evaluation procedures, FTA has asked project sponsors to include with their New Starts preliminary engineering or final design request, as well as the annual New Starts submissions, a statement certifying that the technical approaches and assumptions used in the analysis were in accordance with FTA guidance and best professional practices. FTA has required that the sponsoring agency's Chief Executive Officer (CEO) sign the certification statement included in the New Starts templates.

In order to ensure that all relevant assumptions, consistent with FTA guidance, are used in developing New Starts information, FTA has enhanced the CEO's certification to include all key assumptions that must be followed in developing the New Starts information. The revised certification can be found in the Reporting Instructions for FY 2008 New Starts submittals. This certification will continue to be signed only by the project sponsor's CEO.

4 New Starts Funding Level Set at Final Design Approval

Projects that enter into final design are those projects that FTA and the project sponsor agree are meritorious and will very likely be built. In order to support this determination and the decision to move forward with the proposed project, the products of New Starts preliminary engineering should include a final project scope, a highly accurate cost estimate, and a solid financial plan with a substantial portion of the proposed local funding committed. Furthermore, SAFETEA-LU contains several sections that indicate Congress's keen interest in minimizing cost increases between stages of project development. These sections include: 1) the amendment to section

5309(h)(3) which allows FTA to provide a higher New Starts share than requested for projects with costs and ridership forecasts that do not change much from alternatives analysis to just before completing a FFGA; 2) inclusion of the reliability of forecasting methods as an evaluation criteria in section 5309(d)(2)(B) as amended; and 3) a requirement that FTA report to Congress on the accuracy of ridership forecasts and costs for all New Start projects, both in before and after studies and in contractor performance reports as stated in section 5309(l) as amended.

If the information generated in New Starts preliminary engineering is to be reliable as the basis for decision-making for proposed New Starts projects, the final New Starts preliminary engineering cost estimate and financial plan should have very little likelihood of changing significantly in final design. Therefore, FTA will place a cap on the FFGA New Starts funding amount at the point of approval to enter into final design.

All refinements to project scope and alignment should be finalized and major project uncertainties assessed during the New Starts preliminary engineering phase of the New Starts process. This approach will, in many instances, require a different perspective on the work performed and eligible costs for federal reimbursement than has traditionally been associated with the term "preliminary engineering." For example, varying definitions of preliminary engineering, such as "the engineering necessary to complete NEPA," or "30% design" would be supplanted—for New Starts projects—by an expectation that the New Starts preliminary engineering phase will result in project scope and cost estimates and financial plans that have little, if any, need for change after approval of the project into final design. To clarify the distinct nature of the activities that must be completed prior to entry into final design, FTA will refer to this stage of project development as "New Starts Preliminary Engineering."

Once the project is approved into final design, any increase in project costs will be borne by the sponsoring agency and its non-section 5309 New Starts funding partners, except in limited circumstances addressed below. In any case, cost increases after entry into final design must not be so large as to jeopardize the project's cost-effectiveness. Under this approach, it will be in the project sponsors' best interest to estimate costs reliably and conservatively in New Starts preliminary engineering since any cost increase later in project development is the sole responsibility of the project sponsor. At the same time, FTA does not want to create a disincentive for project sponsors to apply value-engineering techniques or otherwise identify legitimate cost reductions during final design. As with increases in costs beyond the grantee's control, FTA would expect to share proportionally in the benefit of those cost reductions.

FTA will entertain requests for higher levels of New Starts funding when, during final design but prior to execution of the FFGA, FTA determines that the increase in costs is beyond the grantee's control. These cost increases are expected to be limited to unforeseen inflationary increases due to unusual occurrences (i.e. Hurricane Katrina, large commodity market fluctuations such as steel and concrete, etc.) FTA will decide on a case by case basis whether these circumstances apply to a given project and what dollar amount is attributable to these occurrences. FTA would participate in these cost increases proportionate to the previously agreed to percentage share between FTA and the project sponsor.

In addition, once the project has been approved for entry into final design, the project would not be subject to any changes in New Starts policy, guidance, and procedures. By adopting this policy, FTA is creating a process that provides more stability for grantees at this phase while allowing FTA to proceed with desired policy/guidance changes without having to account for any negative impact on existing projects that are far along in the development process. It should be noted that this policy would not exempt a project from new statutory or regulatory guidelines, as it is outside FTA's authority to do so.

Finally, FTA is developing "exit criteria" which will define in greater detail the conditions that must be met at the completion of New Starts preliminary engineering. FTA believes that the "exit criteria" will help in clarifying when a New Starts project is ready to move from one step to the next.

5 Cost Effectiveness Breakpoints

In response to concerns that the breakpoints used for cost effectiveness ratings were dated, FTA announced that it would annually make adjustments to the breakpoints in its Dear Colleague letter of April 29, 2005. That letter also stated that the breakpoints would be adjusted using the Gross Domestic Product (GDP) price deflator. The revised breakpoints are included in the updated Reporting Instructions for Section 5309 Criteria and listed below. In order to understand how the breakpoints are changed, it is important to know how the breakpoints are established, which is described below.

The breakpoints that FTA uses to assign cost-effectiveness ratings are based, fundamentally, on the value of the project's benefits (cost per hour of transportation system user benefits with an adjustment to account for congestion benefits and all other unquantifiable benefits). The value of time savings is both well developed and widely used in the economic analysis of transportation projects. This issue was addressed in standing US Department of Transportation (DOT) guidance (*Departmental Guidance for the Valuation of Travel time in Economic Analysis, April 9, 1997*). This guidance describes, in detail, the derivation of the standard values of time to be used by all USDOT Administrations in the economic evaluation of proposed projects. Consistent with this guidance, FTA values travel time-savings at 50 percent of Median Household Income published by the Census Bureau, divided by 2,000 hours.

When the breakpoints were initially established, the most recent data available was from the year 2000. At that time, the median household income of $42,148 was reported by the U.S. Census and using 2000 hours per year as specified in the departmental guidance, the value of time in year 2000 was calculated at $10.54 per hour. However, time savings for transit users alone does not capture the full range of benefits of major transit projects. Pending improved reliability of the estimates of highway congestion relief, FTA assumes that congestion relief adds about 20% to the travel time savings generated by the project. Hence, each hour of transit time savings would represent a total direct benefit of about $12.65 per hour in year 2000 dollars to all users of the transportation system. Further, indirect benefits (economic development, safety improvements, pollutant reductions, energy savings, etc.) increase that value. Assuming that indirect benefits are approximately equal to the direct transportation benefits, FTA increases the

value of each hour of transit travel time by a factor of two to about $25 in year 2000 dollars. FTA uses this value to establish the breakpoinit between "low" and "medium-low" for cost effectiveness.

In 2005 and now again in 2006, FTA has used the GDP deflator to adjust the breakpoints. The new breakpoints are:

High	$11.49 and under
Medium-High	$11.50- $14.99
Medium	$15.00-$22.99
Medium-low	$23.00-$28.99
Low	$29.00 and over

6 Contractor Performance Assessment Report

SAFETEA-LU requires the Secretary to submit to congressional committees a report analyzing the consistency and accuracy of costs and ridership estimates made by each contractor to public transportation agencies developing new fixed guideway projects. The report must compare the cost and ridership estimates made when projects are approved to enter into New Starts preliminary engineering with those made when the project is approved to enter into final design, and the cost and ridership at the commencement of revenue operations and when the project has been operating for two years. In making the comparisons, the Secretary shall consider those factors having an impact on costs and ridership outside the control of the contractor.

Similar to other provisions in SAFETEA-LU, the report is intended to encourage better forecasts of costs and ridership to inform decision-makers when a locally preferred alternative (LPA) is chosen. Having the most accurate information at that time reduces the likelihood that ridership and cost estimates will change significantly during project development, so that the locally preferred alternative's worthiness over other alternatives cannot be questioned.

FTA will begin tracking the performance of contractors for all projects that are approved for enter into New Start preliminary engineering after publication of this guidance. Information on the contractor's area of responsibility for the forecasts will be required along with explanations or analysis of uncertainties. As discussed in the federal register notice announcing this policy guidance, FTA does not require but strongly encourages descriptions of the uncertainties inherent in costs and ridership whenever they are reported to FTA or in any other document. The uncertainty analysis describes how costs and ridership could change given the reliability of methods in predicting the project's scope or travel markets effected, or should external events depart from what was assumed. If such an analysis is available, it will be taken into consideration by FTA in its assessment. For example, if an analysis described cost or ridership changes that could occur under different conditions than those assumed, and these changed conditions occur with an effect close to that predicted, FTA would give positive consideration to the contractor's performance. FTA plans to provide guidance in the future for reporting uncertainties in cost and ridership forecasts, but it is in the interest of contractors to perform their own analysis now when forecasts are produced.

While it is not the intent of this report to assess the performance of other entities (e.g metropolitan planning organizations, or transit agencies) responsible for forecasts, as part of the information collected on contractor responsibilities, FTA will require that the responsibilities of these other entities be identified in the same format as that for contractors in order to better assess the context of the contractor's involvement. The reporting format for this information can be obtained from FTA's Office of Planning and Environment.

FTA will use information from project sponsors and contractors, and FTA oversight contractors, to make the assessments for the report. FTA intends to assess the performance of contractors in relation to the specific project for which they have been contracted to support. FTA does not intend to produce an overall assessment of contractors for all the projects on which they have worked.

EXHIBIT 2

NJT ARC RM Talking Points for Entry into FD (PG46 Template)
Staff Discussion Document and Pre-Decisional Briefing

All Readers are hereby instructed of the following limitation on any use of this report:

Third Party Disclaimer

This deliverable and all subsidiary reports are prepared solely for the Federal Transit Administration (FTA). This risk-informed evaluation and assessment should not be relied upon by any party, except FTA or the project sponsor, in accordance with the purposes of the evaluation and assessment as described below.

For projects funded through FTA's Major Capital Investment (New Starts) program, FTA and its PMOCs use a risk-informed assessment process to review and validate a project sponsor's budget and schedule. This risk-informed evaluation and assessment process is a tool for analyzing project development and management. Moreover, this process is iterative in nature; any results of an FTA or PMOC risk-informed evaluation and assessment represent a "snapshot in time" for a particular project under the conditions known at that same point in time. The status of any evaluation or assessment may be altered at any time by new information, changes in circumstances, or further developments in the project, including any specific measures a sponsor may take to mitigate the risks to project costs, budget and schedule, or the strategy a sponsor may develop for project execution.

- D1 Milestone..
  - Outcomes
    - Stakeholder Issues.. Amtrak supplying Traction power (Cost risk of 2%) and shared facilities, NYC DEP and Water Tunnel 1, NYCMTA shared facilities…

      Base of $5.75bn, risk at 0-15%, NJT working on Amtrak agreement, moving NYPSE, etc.. [Base year 2007 $s] **$0-$850mm**
- D2 Milestone
  - NEPA scoping review
    - Malanka Landview
      - Cost Issues… Construction changes on off gas; post construction requirements to off site the flue gas… Environmental site assessments for NY… Wetlands mitigations issues…
        - Base of $5.75bn, risk at 2.5%... [Base year 2007 $s] **$0 - $150mm**
- D3 Milestone…
  - PDM Review
    - Market Risk: Unrealistic estimates of number of bids received; single bid premiums
      - Cost Issues: NJT estimated risk premium at $209mm; PMO (IEI) estimated $230mm. NJT stated that this is in the contingency.
      - FTA contingency target for Entry into FD is predicated upon mitigation of PDM risk. Unmitigated PDM risk is an adder to the target of 20% as discussed below. Therefore, NJT argument is not credible or supported.
        - $209mm is (3.5%) Base of $5.75bn (2007$s) say **$200mm**
        - Program Recommendation from geotechnical analysis below is $400mm for PDM/Market risk…combining PMO and Program

          [Base year 2007 $s] **$200mm to $400mm**

          Allocate $100mm each to SCC10 and SCC20
  - Construction Indirects…(Still to be resolved is labor incentives, labor availability contractor contingencies which would be "embedded" into the indirects) [See scope review below….]
  - Schedule Review …
    - TRB G-7 found that average NS project slips 20% of the schedule duration from entry into FD to ROD. ARC is 9 years or 108 months… say 110 months… 20% of that is 22 months.. again say 24 months… with a cost impact of 4-6% or $250mm to $350mm.
    - Program recommendation is that no more than a third (8 months) of that should be available for procurement schedule delay… or a third of that for geotechnical problems…
      - Procurement schedule activities on the critical path (CP), PMO noted that no addenda were planned..
        - Program recommendation is that another 12 months should be factored into the Project CP…. [4 months over the target]
      - PMO(Burns) found 18 months on CP for Manhattan tunnels..
        - Program recommendation is that this should be "factored" another 50% or 9 months… [say a push]…
      - On both a time and cost basis, the forecasts fit within the FTA contingency targets for Entry into FD..
    - Schedule issues… (See above and geotechnical discussion below)
      - Procurement schedules unrealistic …

Page Summary:[2007$s, no mitigation scenarios] **+$200mm to $1,400mm**

D4 Milestone…

- Scope Reviews (Geotechnical Scope findings…)
  - The Geotechnical base work is 11 contract packages inclusive of 3 shafts, NYSPE caverns, tunnels, etc. estimated by NJT in 2007 $s at $2.75bn (65% of all hard costs) out of a "hard cost" total of $4.3bn and $5.75bn total base year costs (all net of contingency, 2007 $s).
    - Program recommendation [See March 2008 Geotechnical Risk whitepaper] of 45% - 60% geotechnical risk premium. Based upon NJT RM work to date, recommend using lower bound of 45%. ($1.2375bn, say $1,250mm for total geotechnical risk premium)
    - This gives an estimated allocation, equally weighted at $400mm for Differing Site Conditions (DSC) reserves (No PMO or NJT estimates), $400mm for PDM/Market risk (PMO (IEI) estimated $230mm, NJT $209mm) and $450mm for geotechnical scope (PMO Burns estimated $250mm). ***DSC is treated as contingency below, PDM risk is included above and geotechnical scope is in this D4 estimate.***
  - Three geotechnical production functions; (1) TBM rates, (2) shaft excavation and (3) drill and blast for caverns.
    - (1) PMO found NJT TBM rates to be reasonable, but modified indirects;
    - (2) non-TBM cost estimates to be unrealistic in terms of standby time at 5% and increased to 25% for drill and blast (D&B); "hot rates" on the D&B productions;
    - (3) PMO questioned shaft labor estimates as to adequacy;
    - PMO questioned indirects, contractor contingency and profits and added contingency and their profit; worst case is Hudson tunnel (20% profit, 25% contingency, 25% indirects);
    - PMO (Burns) recommended an 18% increase ($250mm) on the base budget versus the program target of $450mm…

      [Base year 2007 $s] **+$250mm to $450mm**
      Allocate $125mm each to SCC10 and SCC20

- Systems and Vehicles: based upon PMO (IEI) analysis, currency escalation (Euros to $s) basis for adjustment… [Base year 2007 $s] **+$0mm to $ 40mm**
  Allocate $0mm to SCC70
- SCC70 Real Estate,[IEI recommendation] [Base year 2007 $s] **+$100mm to $150mm**
  Allocate $100mm to SCC60
- SCC 80/ force account costs…
  - Amtrak on NEC, etc. NYCMTA ESA budgeted their Amtrak force account work at 0.6% at FFGA and rebudgeted it to ~3% recently. ARC is currently budgeting force account at $200mm or 3.5%.
    No Recommendation to add.
  - Program recommendation is FTA historical experience (HRT study in 2004)[1] that FD cost is approximately 9.7% of associated hard costs… Hard costs of $4.3bn plus $250-400mm (2007$s), $4.55bn to $4.7bn…and using 9.7% gives $440mm to $455mm.
    - NJT has budgeted $137mm, variance of $303mm to $318mm.
    - No PMO recommendation, program experience only…

      [Base year 2007$s] **+$0 to $300mm**

Page Two Summary: [2007 $s, no mitigation scenarios] +$350mm to $ 900mm
Page One Summary: [2007 $s, no mitigation scenarios] +$200mm to $1,400mm

Grand Total of Base Adjustments: [2007 $s] +$550mm to $2,300mm

Grand total of Base Adjustments: [2007 $s] +550mm to $2,300mm

Using the NJT ARC SCC workbook and removing the $891mm in allocated base year contingency gives a base of $5.743bn (say $5.75bn) net of contingency (2007 Base year $s) prior to any adjustments. [Reference the NJT ARC SCC Inflation worksheet] This was used to produce the grantee's current YOE estimate of $7.646bn (YOE$s). The current NJT ARC SCC base year cost of $6.634bn (2007$s) includes an allocated contingency of $0.891bn for a base cost, net of contingency of $5.75bn as discussed above.

Based upon the above recommended adjustments, the existing base cost, net of contingency and finance costs of $5.75bn could increase anywhere from $0.55bn to $2.3bn, or increase to $6.3bn to $8.05bn in base year costs (2007 $s) net of contingency. Using the PMO recommendations as the for basis for adjustments to the lower ranges only, these adjustments were allocated to the following SCCs..

SCC10: +$100mm (PDM)	+$125mm (Geotechnical Scope)	Total Adjustment:	$225mm
SCC20: +$100mm (PDM)	+$125mm (Geotechnical Scope)	Total Adjustment:	$225mm
SCC30: [no adjustment]			
SCC40: [no adjustment]			
SCC50: [no adjustment]			
SCC60: +$100mm (Real Estate)		Total Adjustment:	$100mm
SCC70: [no adjustment]			
SCC80: [no adjustment]			
	Grand Total for Adjustments (Base Year 2007$s)		$550mm

Revised Base recommendation for NJT ARC, net of contingency, 2007$s $6,300mm vs. $5,750mm (grantee)

Risk Range for Base with recommendations, net of contingency, 2007s $6,300mm to $ 8,050mm

Add Contingency target at 20% of base ($1,260mm to $1,610mm) and DSC reserve of $400mm

$1,660mm to $ 2,010mm

Risk range with contingency, 2007$s $7,960mm to $10,060mm

D4 Milestone…
Cost Reviews (Continued)

- Escalation findings… PMO(IEI) recommended going from Grantee's current forecast of 3.16% to 4.25% on the project. Programmatic recommendation is to recognize escalation over the past year for construction which has been much higher. *(Program recommendation based upon cost reporting (2Q2008) in ENR is in the 10-15% range.)*
  - A difficulty in estimating this adjustment is that NJT has developed their SCC workbook budget on the basis on no SCC90 (Unallocated Contingency). All project contingency for the project is allocated among the SCC 10-80 budgets. SCC70 Vehicles has no contingency allocated or unallocated.
  - Grantee's current YOE adjustment factor using the SCC workbook [Rev 10], is 1.152566748
  - With the revised base as adjusted by the recommendations above to **$6,300mm**, the escalation adjustment is as follows…[each is base year marginal cost is in addition to the Grantee's existing $877mm YOE adjustment using the $5.75bn base.
    - Adjusting the $5.75bn base for $0.55bn adjustments **+$ 85mm**
    - Adjusting the $6,3bn base from 3.16% to 4.25% per PMO recommendation [changes YOE adjustment to 0.2627, an increase of $635mm less $85mm identified above] **+$550mm**

    Revised YOE$s adjustment elements of $85mm, $550mm and $877mm to a total of $1,512mm

  - Adjusting for the cost impact of a ROD of 2019 in lieu of the grantee's proposed one of 2017 was estimated to be in the range of $150-$200mm. This within the capacity of the contingency targets for schedule delay as discussed above and therefore not recommended as an adjustment.

  Revised, Total YOE adjustment of $1.512bn to the revised 2007$s base year cost of $6.3bn for a revised YOE estimate of $7.812bn net of contingency and finance.
  [YOE adjustment factor of 1.263 (average)]

Total Project Budget: [2007 Base Year $s w/adj]+ YOE adjustments from PMO …. $7.812bn

Contingency analysis…

- Program recommendation is based upon TCRP G-7 and PG-35 guidelines. PG-35 recommends that without any modification for risk mitigation or risk concentrations, the entry into FD target is 20% contingency calculated on the base cost (not base year $s) net of contingency and finance.
- Contingencies will be calculated in YOE$s only.
- The geotechnical risk premium of 45% discussed above covers cost growth from what is called the PS&E (Plans, specifications and estimate) point where the engineer delivers the estimate. This would normally be equal to the 100% Bid target point. The contingency target for this point is from 10% (PG-35) to 12% (TCRP). The lower PG-35 value is a product of formal risk management programs whereas the TCRP study group did not have such management measures. This 10% target is predicated upon being 100% mitigated with respect to market risk, i.e. fully bid. It has the capacity to "absorb" a forecasted 4% for scope changes and 6% for schedule delays.
    - The question is how much of an "overlap" is there between the geotechnical risk premium and the PG-35 contingency targets? There is some overlap between the two as the differing site conditions claims, almost invariably have a delay component to them. The overlap is not complete, but a 50% assumption seems reasonable. Therefore, the PG-35 target of 10% should be reduced 5% when the geotechnical risk premium is applied to the underlying SCC budget.
- The discussion above looked at the overlap between the PG-35 targets and the geotechnical risk premium beyond the 100% bid point. This project is currently seeking to go into FD. The target at this point is 20%. The difference between the 2 targets (20% versus 10%) is broken down into 2 components: 5% for design changes and 5% for market risk.
    - The question is how much of an overlap is there between the geotechnical risk premium and the PG-35 entry into FD target of 20%? Of the two components, the design change component would have a negligible overlap as it covers design issues on all aspects of the geotechnical scope. The market risk component does in fact overlap the risk premium. Therefore, the PG-35 target of 20% should be reduced 5% when the geotechnical risk premium is applied to the underlying SCC budget.
    - Based upon the two overlap analyses, the entry into FD target of 20% should be reduced 10%, or 10% when the geotechnical risk premium is applied.
- A part of the D4 milestone, it was determined that there was forecasted some $2.75bn (2007$s) in geotechnical scope for the project. Using the YOE adjustment factor developed above of 1.263 this becomes $3.47bn (say $3.5bn, YOE$s).
- Therefore, the total recommendation for BCE net of contingency at $7.812bn (YOE$s) breaks into two parts, one for the reduced PG-35 target of 10% and one for the application of 20%. The first is $3.5bn (Geotechnical scope) and $4.312bn for the rest.
    - The contingency is calculated as follows (1) $3.5bn(0.1) or $350mm and (2) $4.312bn(0.2) or $862mm (say $850mm) for a total of $1,200mm
- As noted above, the program recommendation for geotechnical risk forecasted $508mm YOE$s, say $500mm ($400mm in base year 2007$s) in differing site conditions. As noted above, this is an after bid contingency. The TCRP and PG-35 targets are not designed to accommodate this type of risk. Therefore, this amount of $500mm will be added to the $1,200mm developed above for a total contingency recommendation of $1,700mm (YOE$s).

Adding this contingency recommendation of $1.7bn (YOE$s) to the base of $7.812bn (YOE$s) results in a recommended BCE of $9.512bn say $9.5bn (YOE$s) with a contingency % of 22%.

Risk Range for Base with recommendations, net of contingency, 2007$s $6,300mm to $ 8,050mm
Add YOE$s adjustment at 1.263 $7,812mm to $10,167mm
Add Contingency target inclusive of DSC reserve at 22% of base .. 9,500mm (rounded) to $12,404mm

[1] Revised from previous version that used light rail study in 2003. Now using Heavy rail study which shows higher FD costs…

EXHIBIT 3

Grantee Response to FTA Letter Dated August 07, 2008

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
D1 Milestone	o Outcomes ▪ Stakeholder Issues.. Amtrak supplying Traction power (Cost risk of 2%) and shared facilities, NYC DEP and Water Tunnel 1, NYCMTA shared facilities... Base of $5.75bn, risk at 0-15%, NJT working on Amtrak agreement, moving NYPSE, etc.. [Base year 2007 $s] **$0-$850mm** calculated @ location	Grantee disagrees that these are risks to the project. **Amtrak power** Amtrak's refusal to allow NJ TRANSIT to obtain power from its 12-kV, 25-Hz system should not be considered a risk item because THEP has done sufficient engineering evaluation during PE and extended PE to determine that the alternative approach in extending the 25-kV, 60-Hz traction power system from NJ TRANSIT's Morris and Essex Lines is technically feasible, and can be constructed within the same budget allocated for the Amtrak system. **NYC DEP Water Tunnel No1 – No issue.** Potential impact to Water Tunnel No.1 is eliminated ❖ July 22nd, NJT met with NYCDEP and agreed to defer the construction not the tail tracks in this phase of the project. The tail tracks are NOT used to support the Operations Plan. ❖ Tail Tracks will NOT be precluded from future installation-as part of another project **MTA No7 Line subway – No issue.** No. 7 Line Subway is NOT an impact. Mitigation is included in the estimate because the design improvements associated with going under the subway facility are included in the profile design and take into consideration the following: ❖ Geotechnical staff obtained borings from MTA in and around the proposed crossing to use in a FLAC analysis. Additional borings were obtained to further confirm ground conditions. ❖ FLAC analysis determined that eleven feet separation between the two facilities (No.7 Line Subway and the upper Tunnel tubes) does NOT cause any settlement or impact to the No. 7 proposed infrastructure. ❖ Profile established to stay eleven feet below the No..7 Line Subway. ❖ Instrumentation will be established during construction to further monitor the No. 7 Line Subway infrastructure ❖ The Tunnel Underground Peer review panel reviewed the design improvements and analysis and agreed with measures implemented. ❖ MTA consultant is currently reviewing the design measures implemented and the FLAC analysis. **Grantee General Statement** Any applied contingency being considered is NOT to be applied to the total budget, but rather for the contract item of concern.	$0 - $850M	$0 $0 -$44M $0

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
D2 Milestone	○ NEPA scoping review ▪ Malanka Landview • Cost Issues... Construction changes on off gas; post construction requirements to off site the flue gas... Environmental site assessments for NY... Wetlands mitigations issues... Base of $5.75bn, risk at 2.5%... [Base year 2007 $s] **$0 - $150mm** * schedule delays * entire element with the entire project.	**Malanka** The costs for methane gas ventilation during construction have been included in the project environmental contingency (FTA SCC line item40.03). They are not delineated as a specific line item in the estimate. The infrastructure for methane gas ventilation post construction is shown in the Preliminary Engineering documents and the costs are included in the Preliminary Engineering estimate although not delineated as a specific line item in the estimate. The costs were only included for the portion of the landfill being disturbed. Subsequent to the Preliminary Engineering submittal, NJ Transit has preliminarily decided to acquire the entire landfill and prepare a closure plan. The costs for ventilating the methane gas on the entire landfill would be included in future operational costs and are not included in the project cost. **Wetlands** The wetland disturbance associated with the construction of the Loop Tracks is included in the project wetland impacts and is a part of the application to the US Army Corps. The wetland disturbance, if any, associated with the placement of excavation associated with the Loop Track construction on the remaining area of the landfill and closure of the remaining area of the landfill has not been determined and is not included in the project. If there would be a risk, it should ***not*** be applied to the entire project -- Contract C01 value is $259M Note -Grantee currently carries $38M for hazardous material & contaminated material. See Item No. 40.03 in the FTA SCC Project Estimate	$0- $150M	$0 No adjustment to the base number, $38M already included for this category.
D3 Milestone	○ PDM Review ▪ Market Risk: Unrealistic estimates of number of bids received; single bid premiums • Cost Issues: NJT estimated risk premium at $209mm; PMO (IEI) estimated $230mm. NJT stated that this is in the contingency. • FTA contingency target for Entry into FD is predicated upon mitigation of PDM risk. Unmitigated PDM risk is an adder to the target of 20% as discussed below. Therefore, NJT argument is not credible or supported. ○ $209mm is (3.5%) Base of $5.75bn (2007$s) say **$200mm** ○ Program Recommendation from geotechnical analysis below is $400mm for PDM/Market risk...combining PMO and	This is a subjective opinion with which we disagree. PDM risk is mitigated via the strategies outlined. We also take umbrage with the statement that NJ TRANSIT's position is "not credible" given the vast experience of the project team on major projects. Grantee also disagrees with the "combination of PMOC and Program Recommendation from geotechnical" of $400M. This is "layering" of a different category of risk form this Market Risk item. Single Bid Mitigation Strategies: ❖ Contract packages sized to maximize eligible contractors ❖ Contract packages consist of like work ❖ Continued contractor outreach ❖ Incorporation of contractor input in GPs ❖ D/B stipend ❖ Accelerated mobilization payments	njdot.gov doing business construction services	

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	Program [Base year 2007 $s] **$200mm to $400mm** Allocate $100mm each to SCC10 and SCC20	❖ Modified bonding requirements ❖ Reduced retainage ❖ Bi-monthly payments ❖ Dispute Resolution Board ❖ Performance incentives Where bid price submitted is determined to be unreasonable and bids are rejected; NJT is authorized under N.J.S.A. 52:34-9(e) to negotiate with bidder(s) so long as terms of contract are not modified and all responsible bidders are notified and provided opportunity to negotiate and negotiated price is lower than that of lowest responsible bidder. PDM The estimates are based on average of 3 bids. Market risk should be part of risk assessment process where the project contingency will be determined.	~~$230M~~	$209 M
D3 Milestone	o Construction Indirects...(Still to be resolved is labor incentives, labor availability contractor contingencies which would be "embedded" into the indirects) [See scope review below....] Freeze up from ESA, NOT. believe that they will receive.	Grantee disagrees. Labor for local (NY-NJ) construction market will likely be at a constant level, able to meet ARC needs as MTA ESA and No.7 Line tunnel projects will be winding down when ARC ramps up. National and local economic downturn in construction will also increase labor pool. Therefore contractors will not add contingencies above their normal 'indirects' for this item. Key Staff incentives are covered in the estimate detail in terms of staff relocations from out of state, travel expenses, living expenses and vehicles Labor availability is confirmed for ARC Project by the Local 147 Business Manager (copy of letter previously provided).		$0
D3 Milestone	o Schedule Review ... ▪ TRB G-7 found that average NS project slips 20% of the schedule duration from entry into FD to ROD. ARC is 9 years or 108 months... say 110 months... 20% of that is 22 months.. again say 24 months... with a cost impact of 4-6% or $250mm to $350mm. ▪ Program recommendation is that no more than a third (8 months) of that should be available for procurement schedule delay... or a third of that for geotechnical problems... • Procurement schedule activities on the critical path	PMOC and FTA methodology for assessment is flawed. Grantee disagrees that TRB G-7 is a valid study for this assessment. The 22 projects in the study go back more than 10 years in some cases and their parameters – maturity/knowledge of the agency and staff, type of project and contract terms, etc. – are not "equalized" to draw any true conclusions. Additionally, rounding up of assumed schedule delay by four months is arbitrary and inappropriate. Grantee also disagrees that cost impact (if any) should be applied as a percentage of the total project instead of on specific contracts which	~~$250M - $350M~~	Schedule float is adequate and included in the estimate $0

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	(CP), PMO noted that no addenda were planned.. o Program recommendation is that another 12 months should be factored into the Project CP.... [4 months over the target] • PMO(Burns) found 18 months on CP for Manhattan tunnels.. o Program recommendation is that this should be "factored" another 50% or 9 months... [say a push]... • On both a time and cost basis, the forecasts fit within the FTA contingency targets for Entry into FD.. ▪ Schedule issues... (See above and geotechnical discussion below) • Procurement schedules unrealistic ...	are on the critical path where delays are likely to occur. Non-issue because of the following reasons: ❖ Current Critical Path for the Tunnel Project contains 5 months of program float available prior to the planned Revenue Operations Date (ROD). ❖ Within the Project Schedule's critical path, there is an internal contingency float of 5 months in the station cavern excavation. ❖ Both the internal and program float was discussed with the FTA and PMOC during the recent work shops. ❖ Recent events have permitted NJ TRANSIT to eliminate the tail tracks, thereby obtaining another 2 months of float for the Manhattan TBM activity. ❖ The overall Project Schedule therefore has a total of 12 months of float (5 months program + 5 months internal + 2 months Tail Track). This is ***double*** the amount of float the FTA agreed to with MTA on the Second Avenue Subway. Early contract outreach efforts, and making geotechnical data plans available on line for bidders during the RFQ stage are strategies that will aid in maintaining the base schedule procurement duration. Grantee disagrees with the PMOC that additional float is needed for ROW Acquisition & Single Bid Scenario. Float is built into the schedule for critical contracts. The procurement duration for C12 – Manhattan Tunnels is NOT too short and reinforced by the actions / facts noted below: ❖ Geotechnical Data is already posted on the Grantee's web site which is experiencing a multitude of 'hits' indicating contractors and engineers are reviewing this posted information and data. ❖ Draft –near final – plans will be posted on the web site at the time of RSPQ solicitation ❖ The amount of contractor design for major elements of the tunnel package is limited to the procurement of the TBM, tunnel liner and cross passages in rock. Designs for shafts are being finalized by THE Tunnel Team. All alignment and profile geometry is fixed and finalized. The procurement duration for C-16 has already been mitigated by reducing the magnitude of this contract by splitting into two contracts, C-16a and C-16b. This logic was reviewed with the Underground Tunnel Peer Review experts and given very favorable acceptance. It was also reviewed with FTA / PMOC during the recent workshops and viewed as highly favorable. Note that it is intended as part of the plan to permit the bidders to either bid C-16a	- EIS duration - past plans * list of documents	

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
		and b, or C-16a or C-16b, maximizing the possibilities of tailoring this work to contractors' current work loads and increasing competition. Early contract outreach efforts, and making geotechnical data plans available on line for bidders during the RFQ stage are strategies that will aid in maintaining the base schedule procurement duration.		
Summary	**Page Summary:[2007$s, no mitigation scenarios] +$200mm to $1,400mm**		**$200M - $1.4B**	**$165M**
D4 Milestone	o Scope Reviews (Geotechnical Scope findings...) • The Geotechnical base work is 11 contract packages inclusive of 3 shafts, NYSPE caverns, tunnels, etc. estimated by NJT in 2007 $s at $2.75bn (65% of all hard costs) out of a "hard cost" total of $4.3bn and $5.75bn total base year costs (all net of contingency, 2007 $s). o Program recommendation [See March 2008 Geotechnical Risk whitepaper] of 45% - 60% geotechnical risk premium. Based upon NJT RM work to date, recommend using lower bound of 45%. ($1.2375bn, say $1,250mm for total geotechnical risk premium) o This gives an estimated allocation, equally weighted at $400mm for Differing Site Conditions (DSC) reserves (No PMO or NJT estimates), $400mm for PDM/Market risk (PMO (IEI) estimated $230mm, NJT $209mm) and $450mm for geotechnical scope (PMO Burns estimated $250mm). ***DSC is treated as contingency below, PDM risk is included above and geotechnical scope is in this D4 estimate.*** • Three geotechnical production functions; (1) TBM rates, (2) shaft excavation and (3) drill and blast for caverns. o (1) PMO found NJT TBM rates to be reasonable, but modified indirects; o (2) non-TBM cost estimates to be unrealistic in terms of standby time at 5% and increased to 25% for drill and blast (D&B); "hot rates" on the D&B productions; o (3) PMO questioned shaft labor estimates	Only 7 contract packages include underground excavation where there may be geotechnical risks. They are: C-8, C-9, C-10, C-12, C-13 & C-16A & 16B, totaling a base construction value of $1.985B, or $1.985B/$5.75B = 35% of all hard costs. The contract package relating to fan plants include costs of outfitting of the shafts whose excavation is already included in the respective TBM or cavern excavation contract package. Grantee strongly disagrees with the PMOC's review comment which amounts to added cost of $361mm mainly due to a different approach for direct cost markup to bid level Base Year Dollars. Also, Grantee does not understand the PMOC/FTA's change in approach for assessing 'indirects' ***after*** THE Project Team followed recommendations. Grantee's 'indirects' are based on current NY market norms. Refer to Review Form of Reports32C & 32E. Majority if not all of the $361M increase is due to adding contractor contingency and increasing the profit from 10% to either 15% or 20%. 1- Contractor contingency should be considered as risk for unforeseen conditions that the contractor is not sure whether it is going to occur or not. If it does not occur then it turns the risk or contingency money into profit for the contractor. In other words, the contingency money and profit should be considered the same as a margin of profit that a contractor anticipates to make on a project. Therefore, by combining the contingency and profit into one, it represents anticipated 20% to 40% profit margin depending on the contract. 2- Such margins are matter of opinion and depend on the market condition and the contractor's business strategy at the time of bid. 3- THEP's position is that the contractor contingency is built into the production rates where the direct costs were calculated as best as possibly can be quantified and assessed. 4- If additional contingency were to be added, it is THE Project's opinion that it should NOT be added to the entire contract amount, for example the exclusion of labor for fabricated materials, materials, etc. a. The purpose of FTA implied additional contingency is to cover the cost of slowing down of construction activities because of unforeseen conditions, or adjustment to estimator's production rates that he feels may have been overestimated. Therefore, the Grantee	$250M - $450M	$0 $0 Disagree with indirects proposed by PMOC/FTA.

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	as to adequacy; o PMO questioned indirects, contractor contingency and profits and added contingency and their profit; worst case is Hudson tunnel (20% profit, 25% contingency, 25% indirects); o PMO (Burns) recommended an 18% increase ($250mm) on the base budget versus the program target of $450mm... [Base year 2007 $s] **+$250mm to $450mm** Allocate $125mm each to SCC10 and SCC20	believes contingency should only be added to installation cost not the material. Material is shown on the drawings and is not expected to change. No growth in quantities expected. Example; so many CY of CIP concrete, so many SF of precast liner or waterproofing material and tons of reinforcement bars. They will not change regardless of productivities. 5- It is intended to include in the contract document supplemental items as separate bid items for 'areas of uncertainty' and to remove associated contingency from the bids. NJT is going to share the risk if not taking full responsibility for all the delays due to unforeseen condition so the contractors do not have to include the cost in their bids such as TBM stoppage, ground improvements and etc. These interventions have been estimated and included in the cost estimate. 6- During the first workshops, it was suggested that the every contract should be reexamined by its construction duration and determine the value for indirect costs (specifically indirect field cost) instead of applying the same flat percentage for all contracts. We acknowledged that request and developed variable indirect cost analysis and presented it to the PMOC. We are surprised that now the PMOC is recommending a flat 26% for indirect field cost for the contracts that they have reviewed. Departure from previous comment. SCC 10 series also includes at-grade, built up fill, aerial structure and trackwork in addition to tunnels. SCC Series 20 also includes station finishes, E/M in addition to the station cavern.		
	▪ Systems and Vehicles: based upon PMO (IEI) analysis, currency escalation (Euros to $s) basis for adjustment... [Base year 2007 $s] **+$0mm to $ 40mm** Allocate $0mm to SCC70	Grantee Concurs with FTA to NOT add Dollars. Grantee has in place a contract with options to purchase 100 coaches at a fixed unit price. Vehicles required beyond 2017 will NOT be included in the project cost	$0 - $40M	-$239M
	▪ SCC70 Real Estate,[IEI recommendation] [Base year 2007 $s] **+$100mm to $150mm** Allocate $100mm to SCC60	As the national credit crisis and economic recession continues, Manhattan real estate sales and construction activity are now beginning to decline. In the Second-quarter Manhattan market overview, there were 3,081 sales (second quarter of 2008), which was down 21.8 percent from sales seen in the prior-year quarter. Also, in a sign that Manhattan's office market is well past the peak of its rent cycle, average asking rents in the borough declined for the first time since 2005 in the second quarter. In addition, the fallout from the problems on Wall Street are just beginning to take their toll on real estate as more people lose their jobs as firms significantly cut back. The greatest fallout to hit the Manhattan real estate market will occur later this year and in 2009. With regard to individual properties, THE Project Team continues to make good progress with Con-Edison in reducing our required footprint on block 674, which will reduce the cost. However, the Grantee agrees to add $23M to its base number for Block 783 ($306M + $23M = $329M) At Block 783, the potential involvement of the Port Authority in the Moynihan project at the site, improves the likelihood that we will be able to acquire the property rights for entrances at little to no cost.	$100M - $150M	$72M

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	The current NJT ARC SCC base year cost of $6.634bn (2007$s) includes an allocated contingency of $0.891bn for a base cost, net of contingency of $5.75bn as discussed above.			
	Based upon the above recommended adjustments, the existing base cost, net of contingency and finance costs of $5.75bn could increase anywhere from $0.55bn to $2.3bn, or increase to $6.3bn to $8.05bn in base year costs (2007 $s) net of contingency. Using the PMO recommendations as the for basis for adjustments to the lower ranges only, these adjustments were allocated to the following SCCs... SCC10: +$100mm (PDM) +$125mm (Geotechnical Scope) Total Adjustment: $225mm SCC20: +$100mm (PDM) +$125mm (Geotechnical Scope) Total Adjustment: $225mm SCC30: [no adjustment] SCC40: [no adjustment] SCC50: [no adjustment] SCC60: +$100mm (Real Estate) Total Adjustment: $100mm SCC70: [no adjustment] SCC80: [no adjustment] Grand Total for Adjustments (Base Year 2007$s) $550mm	Grantee disagrees. The "adjustments" made by the PMOC/FTA to the base are excessive (even in the lower range) given the risk mitigations already included and extensive geotechnical analysis and construction analyses (TBM advance rates and utilization, Drill and Blast time studies, etc) completed by THE Project Team.	$550M	-$2M
	Revised Base recommendation for NJT ARC, net of contingency, 2007$s $6,300mm vs. $5,750mm (grantee) **Risk Range for Base with recommendations, net of contingency, 2007s $6,300mm to $ 8,050mm** **Add Contingency target at 20% of base ($1,260mm to $1,610mm) and DSC reserve of $400mm** **$1,660mm to $ 2,010mm** **Risk range with contingency, 2007$s $7,960mm to $10,060mm**	Here before adding 20% contingency, FTA recommends to add $550M to base estimate for PDM and geotechnical issues to bring the base estimate to $6,300M. Then adding 20% contingency on the adjusted base estimate and again in addition adding another $400M to the project cost for DSC. This would equal to $2,210M or 38% more to the Grantee's base estimate at the low end of the FTA recommended range and 75% at the high end. Note that it does not yet cover the adjustment to escalation.	**Revised Base** **$6.3B** **@20% = range $1.26B to $1.61B** **Total** **$7.96B to $10.06B**	**Revised Base** **$5.748B** **@16% = $891M** **Total** **$6.639B**
D4 Milestone	Cost Reviews (Continued) o Escalation findings... PMO(IEI) recommended going from Grantee's current forecast of 3.16% to 4.25% on the project. Programmatic recommendation is to recognize escalation over the past year for construction which has been much higher. *(Program recommendation based upon cost reporting (2Q2008)*	Grantee disagrees with the PMOC's assessment of the escalation factor. The approach used by THE Project Team established an escalation facto of 3.2% for 2005 dollars based on historical data over a 10-year period and performed a sensitivity check for a 20-year period. Grantee adjusted the 2005 dollars to 2007 dollars, taking into		

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	▪ Therefore, the total recommendation for BCE net of contingency at $7.812bn (YOE$s) breaks into two parts, one for the reduced PG-35 target of 10% and one for the application of 20%. The first is $3.5bn (Geotechnical scope) and $4.312bn for the rest. o The contingency is calculated as follows (1) $3.5bn(0.1) or $350mm and (2) $4.312bn(0.2) or $862mm (say $850mm) for a total of $1,200mm			
	▪ As noted above, the program recommendation for geotechnical risk forecasted $508mm YOE$s, say $500mm ($400mm in base year 2007$s) in differing site conditions. As noted above, this is an after bid contingency. The TCRP and PG-35 targets are not designed to accommodate this type of risk. Therefore, this amount of $500mm will be added to the $1,200mm developed above for a total contingency recommendation of $1,700mm (YOE$s).			
	Adding this contingency recommendation of $1.7bn (YOE$s) to the base of $7.812bn (YOE$s) results in a recommended BCE of $9.512bn say $9.5bn (YOE$s) with a contingency % of 22%. **Risk Range for Base with recommendations, net of contingency, 2007$s $6,300mm to $ 8,050mm** **Add YOE$s adjustment at 1.263** **$7,812mm to $10,167mm** **Add Contingency target inclusive of DSC reserve at 22% of base .. 9,500mm (rounded) to $12,404mm**		$9.5B - $12.4B	$7.701B ~~7.9B~~ 7.23B.

[i] Revised from previous version that used light rail study in 2003. Now using Heavy rail study which shows higher FD costs...

EXHIBIT 4

Grantee Response to FTA Letter Dated ~~August 07, 2008~~ 8/14/2008

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
D1 Milestone	o Outcomes ▪ Stakeholder Issues.. Amtrak supplying Traction power (Cost risk of 2%) and shared facilities, NYC DEP and Water Tunnel 1, NYCMTA shared facilities... Base of $5.75bn, risk at 0-15%, NJT working on Amtrak agreement, moving NYPSE, etc.. [Base year 2007 $s] **$0-$850mm**	Grantee disagrees that these are risks to the project. **Amtrak power ($19M)** Amtrak's refusal to allow NJ TRANSIT to obtain power from its 12-kV, 25-Hz system should not be considered a risk item because THEP has done sufficient engineering evaluation during PE and extended PE to determine that the alternative approach in extending the 25-kV, 60-Hz traction power system from NJ TRANSIT's Morris and Essex Lines is technically feasible, and can be constructed within the same budget allocated for the Amtrak system. **NYC DEP Water Tunnel No1 – No issue.** Potential impact to Water Tunnel No.1 is eliminated ❖ July 22nd, NJT met with NYCDEP and agreed to defer the construction of the tail tracks in this phase of the project. The tail tracks are NOT used to support the Operations Plan. ❖ Tail Tracks will NOT be precluded from future installation-as part of another project **MTA No7 Line subway – No issue.** No. 7 Line Subway is NOT an impact. Mitigation is included in the estimate because the design improvements associated with going under the subway facility are included in the profile design and take into consideration the following: ❖ Geotechnical staff obtained borings from MTA in and around the proposed crossing to use in a FLAC analysis. Additional borings were obtained to further confirm ground conditions. ❖ FLAC analysis determined that eleven feet separation between the two facilities (No.7 Line Subway and the upper Tunnel tubes) does NOT cause any settlement or impact to the No. 7 proposed infrastructure. ❖ Profile established to stay eleven feet below the No. 7 Line Subway. ❖ Instrumentation will be established during construction to further monitor the No. 7 Line Subway infrastructure ❖ The Tunnel Underground Peer review panel reviewed the design improvements and analysis and agreed with measures implemented. ❖ MTA consultant is currently reviewing the design measures implemented and the FLAC analysis. **MTA / NJT shared facilities ($175M)** ❖ Mezzanine connections		$0 to ($200K) ($44M) to ($48M) $0

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
		❖ Surface Connections ❖ Entrances ❖ Removal of existing subway sidewalk entrances (canopies) **Grantee General Statement** Any applied contingency being considered is NOT to be applied to the total budget, but rather for the contract item of concern.	$0 - $850M	$0 $0 to ($44M)
D2 Milestone	o NEPA scoping review ▪ Malanka (Landview, sic) Landfill • Cost Issues... Construction changes on off gas; post construction requirements to off site the flue gas... Environmental site assessments for NY... Wetlands mitigations issues... Base of $5.75bn, risk at 2.5%... [Base year 2007 $s] **$0 - $150mm**	**Malanka ($15M – Fill portion of the yard)** The costs for methane gas ventilation during construction have been included in the project environmental contingency (FTA SCC line item40.03). They are not delineated as a specific line item in the estimate. The infrastructure for methane gas ventilation post construction is shown in the Preliminary Engineering documents and the costs are included in the Preliminary Engineering estimate although not delineated as a specific line item in the estimate. The costs were only included for the portion of the landfill being disturbed. Subsequent to the Preliminary Engineering submittal, NJ Transit has preliminarily decided to acquire the entire landfill and prepare a closure plan. The costs for ventilating the methane gas on the entire landfill would be included in future operational costs and are not included in the project cost. **Wetlands** The wetland disturbance associated with the construction of the Loop Tracks is included in the project wetland impacts and is a part of the application to the US Army Corps. The wetland disturbance, if any, associated with the placement of excavation associated with the Loop Track construction on the remaining area of the landfill and closure of the remaining area of the landfill has not been determined and is not included in the project. If there would be a risk, it should ***not*** be applied to the entire project. Note -Grantee currently carries $38M for hazardous material & contaminated material. See Item No. 40.03 in the FTA SCC Project Estimate	$0- $150M	No adjustment to the base number, $38M already included for this category.

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
D3 Milestone	○ PDM Review ▪ Market Risk: Unrealistic estimates of number of bids received; single bid premiums • Cost Issues: NJT estimated risk premium at $209mm; PMO (IEI) estimated $230mm. NJT stated that this is in the contingency. • FTA contingency target for Entry into FD is predicated upon mitigation of PDM risk. Unmitigated PDM risk is an adder to the target of 20% as discussed below. Therefore, NJT argument is not credible or supported. ○ $209mm is (3.5%) Base of $5.75bn (2007$s) say **$200mm** ○ Program Recommendation from geotechnical analysis below is $400mm for PDM/Market risk...combining PMO and Program [Base year 2007 $s] **$200mm to $400mm** Allocate $100mm each to SCC10 and SCC20	This is a subjective opinion with which we disagree. Project Delivery Method (PDM) risk is mitigated via the strategies outlined. We also take umbrage with the statement that NJ TRANSIT's position is "not credible" given the vast experience of the project team on major projects. Grantee also disagrees with the "combination of PMOC and Program Recommendation from geotechnical" of $400M. This is "layering" of a different category of risk form this Market Risk item. Single Bid Mitigation Strategies: ❖ Contract packages sized to maximize eligible contractors ❖ Contract packages consist of like work ❖ Continued contractor outreach ❖ Incorporation of contractor input in GPs ❖ D/B stipend ❖ Accelerated mobilization payments ❖ Modified bonding requirements ❖ Reduced retainage ❖ Bi-monthly payments ❖ Dispute Resolution Board ❖ Performance incentives Where bid price submitted is determined to be unreasonable and bids are rejected; NJT is authorized under N.J.S.A. 52:34-9(e) to negotiate with bidder(s). PDM The estimates are based on average of 3 bids. Market risk should be part of risk assessment process where the project contingency will be determined.	$230M	$0 ($209M included in Project contingency)
D3 Milestone	○ Construction Indirects...(Still to be resolved is labor incentives, labor availability contractor contingencies which would be "embedded" into the indirects) [See scope review below....]	Grantee disagrees. Labor for local (NY-NJ) construction market will likely be at a constant level, able to meet ARC needs as MTA ESA and No.7 Line tunnel projects will be winding down when ARC ramps up. National and local economic downturn in construction will also increase labor pool. Therefore contractors will not add contingencies above their normal 'indirects' for this item. Key Staff incentives are covered in the estimate detail in terms of staff relocations from out of state, travel expenses, living expenses and vehicles Labor availability is confirmed for ARC Project by the Local 147 Business Manager (copy of letter previously provided).	Nothing cited	$0

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
D3 Milestone	○ Schedule Review ... ▪ TRB G-7 found that average NS project slips 20% of the schedule duration from entry into FD to ROD. ARC is 9 years or 108 months... say 110 months... 20% of that is 22 months.. again say 24 months... with a cost impact of 4-6% or $250mm to $350mm. ▪ Program recommendation is that no more than a third (8 months) of that should be available for procurement schedule delay... or a third of that for geotechnical problems... • Procurement schedule activities on the critical path (CP), PMO noted that no addenda were planned.. ○ Program recommendation is that another 12 months should be factored into the Project CP.... [4 months over the target] • PMO(Burns) found 18 months on CP for Manhattan tunnels.. ○ Program recommendation is that this should be "factored" another 50% or 9 months... [say a push]... • On both a time and cost basis, the forecasts fit within the FTA contingency targets for Entry into FD.. ▪ Schedule issues... (See above and geotechnical discussion below) • Procurement schedules unrealistic ...	PMOC and FTA methodology for assessment is flawed. Grantee disagrees that TRB G-7 is a valid study for this assessment. The 22 projects in the study go back more than 10 years in some cases and their parameters – maturity/knowledge of the agency and staff, type of project and contract terms, etc. – are not "equalized" to draw any true conclusions. Additionally, rounding up of assumed schedule delay by four months is arbitrary and inappropriate. Grantee also disagrees that cost impact (if any) should be applied as a percentage of the total project instead of on specific contracts which are on the critical path where delays are likely to occur. Non-issue because of the following reasons: ❖ Current Critical Path for the Tunnel Project contains 5 months of program float available prior to the planned Revenue Operations Date (ROD). ❖ Within the Project Schedule's critical path, there is an internal contingency float of 5 months in the station cavern excavation. ❖ Both the internal and program float was discussed with the FTA and PMOC during the recent work shops. ❖ Recent events have permitted NJ TRANSIT to eliminate the tail tracks, thereby obtaining another 2 months of float for the Manhattan TBM activity. ❖ The overall Project Schedule therefore has a total of 12 months of float (5 months program + 5 months internal + 2 months Tail Track). This is ***double*** the amount of float the FTA agreed to with MTA on the Second Avenue Subway. Early contract outreach efforts, and making geotechnical data plans available on line for bidders during the RFQ stage are strategies that will aid in maintaining the base schedule procurement duration. Grantee disagrees with the PMOC that additional float is needed for ROW Acquisition & Single Bid Scenario. Float is built into the schedule for critical contracts. The procurement duration for C12 – Manhattan Tunnels is NOT too short and reinforced by the actions / facts noted below: ❖ Geotechnical Data is already posted on the Grantee's web site which is experiencing a multitude of 'hits' indicating contractors and engineers are reviewing this posted information and data. ❖ Draft –near final – plans will be posted on the web site at the time of RSPQ solicitation ❖ The amount of contractor design for major elements of the tunnel		Schedule float is adequate and included in the estimate

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
		package is limited to the procurement of the TBM, tunnel liner and cross passages in rock. Designs for shafts are being finalized by THE Tunnel Team. All alignment and profile geometry is fixed and finalized. The procurement duration for C-16 has already been mitigated by reducing the magnitude of this contract by splitting into two contracts, C-16a and C-16b. This logic was reviewed with the Underground Tunnel Peer Review experts and given very favorable acceptance. It was also reviewed with FTA / PMOC during the recent workshops and viewed as highly favorable. Note that it is intended as part of the plan to permit the bidders to either bid C-16a and b, or C-16a or C-16b, maximizing the possibilities of tailoring this work to contractors' current work loads and increasing competition. Early contract outreach efforts, and making geotechnical data plans available on line for bidders during the RFQ stage are strategies that will aid in maintaining the base schedule procurement duration.	$250M - $350M	$0
D4 Milestone	o Scope Reviews (Geotechnical Scope findings...) • The Geotechnical base work is 11 contract packages inclusive of 3 shafts, NYSPE caverns, tunnels, etc. estimated by NJT in 2007 $s at $2.75bn (65% of all hard costs) out of a "hard cost" total of $4.3bn and $5.75bn total base year costs (all net of contingency, 2007 $s). o Program recommendation [See March 2008 Geotechnical Risk whitepaper] of 45% - 60% geotechnical risk premium. Based upon NJT RM work to date, recommend using lower bound of 45%. ($1.2375bn, say $1,250mm for total geotechnical risk premium) o This gives an estimated allocation, equally weighted at $400mm for Differing Site Conditions (DSC) reserves (No PMO or NJT estimates), $400mm for PDM/Market risk (PMO (IEI) estimated $230mm, NJT $209mm) and $450mm for geotechnical scope (PMO Burns estimated $250mm). ***DSC is treated as contingency below, PDM risk is included above and geotechnical scope is in this D4 estimate.*** • Three geotechnical production functions; (1) TBM rates, (2) shaft excavation and (3) drill and blast for caverns. o (1) PMO found NJT TBM rates to be reasonable, but modified indirects;	Only 7 contract packages include underground excavation where there may be geotechnical risks. They are: C-8, C-9, C-10, C-12, C-13 & C-16A & 16B, totaling a base construction value of $1.985B, or $1.985B/$5.75B = 35% of all hard costs. The contract package relating to fan plants include costs of outfitting of the shafts whose excavation is already included in the respective TBM or cavern excavation contract package. Grantee strongly disagrees with the PMOC's review comment which amounts to added cost of $361mm mainly due to a different approach for direct cost markup to bid level Base Year Dollars. Also, Grantee does not understand the PMOC/FTA's change in approach for assessing 'indirects' ***after*** THE Project Team followed recommendations. Grantee's 'indirects' are based on current NY market norms. Refer to Review Form of Reports32C & 32E. Majority if not all of the $361M increase is due to adding contractor contingency and increasing the profit from 10% to either 15% or 20%. 1- Contractor contingency should be considered as risk for unforeseen conditions that the contractor is not sure whether it is going to occur or not. If it does not occur then it turns the risk or contingency money into profit for the contractor. In other words, the contingency money and profit should be considered the same as a margin of profit that a contractor anticipates to make on a project. Therefore, by combining the contingency and profit into one, it represents anticipated 20% to 40% profit margin depending on the contract. 2- Such margins are matter of opinion and depend on the market condition and the contractor's business strategy at the time of bid. 3- THEP's position is that the contractor contingency is built into the production rates where the direct costs were calculated as best as possibly can be quantified and assessed. 4- If additional contingency were to be added, it is THE Project's opinion that it		$0 $0 Disagree with indirects proposed by PMOC/FTA.

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	o (2) non-TBM cost estimates to be unrealistic in terms of standby time at 5% and increased to 25% for drill and blast (D&B); "hot rates" on the D&B productions; o (3) PMO questioned shaft labor estimates as to adequacy; o PMO questioned indirects, contractor contingency and profits and added contingency and their profit; worst case is Hudson tunnel (20% profit, 25% contingency, 25% indirects); o PMO (Burns) recommended an 18% increase ($250mm) on the base budget versus the program target of $450mm... [Base year 2007 $s] **+$250mm to $450mm** Allocate $125mm each to SCC10 and SCC20	should NOT be added to the entire contract amount, for example the exclusion of labor for fabricated materials, materials, etc. a. The purpose of FTA implied additional contingency is to cover the cost of slowing down of construction activities because of unforeseen conditions, or adjustment to estimator's production rates that he feels may have been overestimated. Therefore, the Grantee believes contingency should only be added to installation cost not the material. Material is shown on the drawings and is not expected to change. No growth in quantities expected. Example; so many CY of CIP concrete, so many SF of precast liner or waterproofing material and tons of reinforcement bars. They will not change regardless of productivities. 5- It is intended to include in the contract document supplemental items as separate bid items for 'areas of uncertainty' and to remove associated contingency from the bids. NJT is going to share the risk if not taking full responsibility for all the delays due to unforeseen condition so the contractors do not have to include the cost in their bids such as TBM stoppage, ground improvements and etc. These interventions have been estimated and included in the cost estimate. 6- During the first workshops, it was suggested that the every contract should be reexamined by its construction duration and determine the value for indirect costs (specifically indirect field cost) instead of applying the same flat percentage for all contracts. We acknowledged that request and developed variable indirect cost analysis and presented it to the PMOC. We are surprised that now the PMOC is recommending a flat 26% for indirect field cost for the contracts that they have reviewed. Departure from previous comment. SCC 10 series also includes at-grade, built up fill, aerial structure and trackwork in addition to tunnels. SCC Series 20 also includes station finishes, E/M in addition to the station cavern. Grantee disagrees. The "adjustments" made by the PMOC/FTA to the base are excessive given the risk mitigations already included and extensive geotechnical analysis and construction analyses (TBM advance rates and utilization, Drill and Blast time studies, etc) completed by THE Project Team.	$250M - $450M	$0

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	▪ Systems and Vehicles: based upon PMO (IEI) analysis, currency escalation (Euros to $s) basis for adjustment... [Base year 2007 $s] **+$0mm to $ 40mm** Allocate $0mm to SCC70	Grantee Concurs with FTA to NOT add Dollars. Grantee has in place a contract with options to purchase 100 coaches at a fixed unit price. ❖ Prior Exchange rate = 1.43 yields vehicles @ $8.42M ❖ Current Exchange rate = 1.48 yields vehicles @ $8.71 ❖ **Delta = $292K X 12 vehicles = $3.5M**	$0 - $40M	$3.5M
	▪	Reduction of post 2017 vehicles ❖ 74 coaches ❖ 12 locomotives		($239M)
	▪ SCC70 Real Estate,[IEI recommendation] [Base year 2007 $s] **+$100mm to $150mm** Allocate $100mm to SCC60	As the national credit crisis and economic recession continues, Manhattan real estate sales and construction activity are now beginning to decline. In the Second-quarter Manhattan market overview, there were 3,081 sales (second quarter of 2008), which was down 21.8 percent from sales seen in the prior-year quarter. Also, in a sign that Manhattan's office market is well past the peak of its rent cycle, average asking rents in the borough declined for the first time since 2005 in the second quarter. In addition, the fallout from the problems on Wall Street are just beginning to take their toll on real estate as more people lose their jobs as firms significantly cut back. The greatest fallout to hit the Manhattan real estate market will occur later this year and in 2009. With regard to individual properties, THE Project Team continues to make good progress with Con-Edison in reducing our required footprint on block 674, which will reduce the cost. However, the Grantee agrees to add $23M to its base number for Block 783 ($306M + **$23M** = $329M) At Block 783, the potential involvement of the Port Authority in the Moynihan project at the site, improves the likelihood that we will be able to acquire the property rights for entrances at little to no cost. In summary, with the decline in the Manhattan real estate market that is taking place and predicted in the next 18 months, we feel an increase in the base cost of almost 30% is excessive. A more reasonable 15% increase would bring the base costs to $378 ($329M + **$49M**). Grantee also believes that the current and projected market conditions in Manhattan do not justify a 3% annual increase over the next 1.5 years. It appears property value may go down if not stay flat, and Grantee would recommend that no additional escalation be added beyond the $104M contingency to the base number of $378M, totaling to the proposed number of $482M. **Delta = ($23M + $49M) = $72M**	$100M - $150M	$72M

Milestone	FTA COMMENT	GRANTEE POSITION	FTA ADJUSTMENTS	GRANTEE ADJUSTMENTS
	▪ SCC 80/ force account costs... o Amtrak on NEC, etc. NYCMTA ESA budgeted their Amtrak force account work at 0.6% at FFGA and rebudgeted it to ~3% recently. ARC is currently budgeting force account at $200mm or 3.5%. No Recommendation to add. o Program recommendation is FTA historical experience (HRT study in 2004)[1] that FD cost is approximately 9.7% of associated hard costs... Hard costs of $4.3bn plus $250-400mm (2007$s), $4.55bn to $4.7bn...and using 9.7% gives $440mm to $455mm. o NJT has budgeted $137mm, variance of $303mm to $318mm. o No PMO recommendation, program experience only... [Base year 2007$s] **+$0 to $300mm**	Grantee Concurs with FTA to NOT add Dollars Using THE Project ***historical*** costs to date, the design consultant has expended less than 1.5% for the Preliminary Engineering Design. Final design is estimated at 4% of the construction cost. Rational: ❖ Projects of mega magnitude have cost repetitive design elements such as tunnel liners for TBM runs, unlike non-linear, site specific or rehabilitation projects that are labor intensive when compared to labor vs. dollars for construction.	$0 $0 - $300M	$0 Final Design cost is consistent with type of project $0
	Using the NJT ARC SCC workbook and removing the $891mm in allocated base year contingency gives a base of $5.743bn (say $5.75bn) net of contingency (2007 Base year $s) prior to any adjustments. [Reference the NJT ARC SCC Inflation worksheet] This was used to produce the grantee's current YOE estimate of $7.646bn (YOE$s). The current NJT ARC SCC base year cost of $6.634bn (2007$s) includes an allocated contingency of $0.891bn for a base cost, net of contingency of $5.75bn as discussed above.	This is Grantee's base cost - Non issue.		
	Based upon the above recommended adjustments, the existing base cost, net of contingency and finance costs of $5.75bn could increase anywhere from $0.55bn to $2.3bn, or increase to $6.3bn to $8.05bn in base year costs (2007 $s) net of contingency. Using the PMO recommendations as the for basis for adjustments to the lower ranges only, these adjustments were allocated to the following SCCs... SCC10: +$100mm (PDM),+$125mm (Geotechnical Scope), Total Adjustment: $225mm SCC20: +$100mm (PDM) +$125mm (Geotechnical Scope) Total Adjustment: $225mm SCC30: [no adjustment] SCC40: [no adjustment] SCC50: [no adjustment] SCC60: +$100mm (Real Estate) Total Adjustment: $100mm SCC70: [no adjustment] SCC80: [no adjustment] Grand Total for Adjustments (Base Year 2007$s) $550mm		Allocation of above values	Allocation of above values

Summary of FTA Recommendation M O'Connor's Letter Dated 8/7/08

FTA has broken down the adjustment to the Grantee project estimate into four categories:
1- Adjustment to Base Construction Estimate (BCE)
2- Project Contingencies
3- Differing Site Condition (DSC)
4- Escalation
FTA & Grantee recommendation are as follows:

		FTA		Grantee		Notes
		$M	$M	$M	$M	
Base Cost Estimate (BCE)		5,750	5,750	5,750	5,750	
		Low End	Hi End	Low End	Hi End	
1- Adjustment to BCE		550	2,300	(208)	(184)	
a-Amtrak Traction Power				(0)	(0.2)	
b-MTA Shared facilities				-	26	Based 0% to 15% of work that interfere with MTA facilities valued at $175M
c-Tail Tracks				(44)	(47)	Deferral of tail tracks
d- Malanka Land Fill						Separate contingency money budgeted for Hazmat in the amount of $38M
e-Project Delivery Method (PDM)						$209M risk money for single bidder possibility. It should be considered as part of the project contingency
f- Schedule Review						
g- Contractor Indirect cost Geotechnical Risk Premium						
h-Vehicles						
i- Euros to $ Exchange				3.5	3.5	
ii- Reduction in The Vehicles Required Beyond 2017				(239)	(239)	Includes cost of 74 coaches and 12 locomotives
i- Real Estate				72	72	
Adjusted BCE		6,300	8,050	5,542	5,566	
2- Project Contingencies	MO'C Recommends 20%	1,260	1,610	891	891	Grantee's Project Contingency @ 15.5%
FTA Guideline indicates 10% to 20%						
3- Differing Site Condition (DSC)		400	400	-	-	Grantee included in contingency
Adjusted BCE Incl. Contingency (2007$)		7,960	10,060	6,433	6,457	
Total Contingencies		2,210	4,310	891	891	For comparison to Grantee current contingency of $891M
Contingency Over BCE		38.43%	74.96%	15.50%	15.50%	For comparison to Grantee current project contingency of 15.5%
4- Escalation						
Escalation		1,512	2,117	1,012	1,012	FTA Escalation is for raw (w/o contingency factored in) comparison to Grantee's raw current escalation money of $877M
				50	51	Increase of Grantee escalation/year rate from 3% to 3.16%
Total Project Cost		9,472	12,177	7,495	7,520	
Rounded		9,500	12,404			
						Grantee's escalation factor is 1.1526 based on 3% per Year
						FTA recommended escalation factor is 1.263% based on 4.25% per Year
Correction to Escalation Factor Results in:		(295)	(377)			Note: Using 4.25% per year results in (4.25/3X1.1526=1.2162)- therefore the FTA escalation factor of 1.263 should be corrected to 1.2162
Corrected FTA Total Project w/o Rounding		9,177	11,800			

EXHIBIT 5

NJT ARC RM Talking Points for Entry into FD (PG46 Template)
Staff Discussion Document and Pre-Decisional Briefing

All Readers are hereby instructed of the following limitation on any use of this report:

Third Party Disclaimer

This deliverable and all subsidiary reports are prepared solely for the Federal Transit Administration (FTA). This risk-informed evaluation and assessment should not be relied upon by any party, except FTA or the project sponsor, in accordance with the purposes of the evaluation and assessment as described below.

For projects funded through FTA's Major Capital Investment (New Starts) program, FTA and its PMOCs use a risk-informed assessment process to review and validate a project sponsor's budget and schedule. This risk-informed evaluation and assessment process is a tool for analyzing project development and management. Moreover, this process is iterative in nature; any results of an FTA or PMOC risk-informed evaluation and assessment represent a "snapshot in time" for a particular project under the conditions known at that same point in time. The status of any evaluation or assessment may be altered at any time by new information, changes in circumstances, or further developments in the project, including any specific measures a sponsor may take to mitigate the risks to project costs, budget and schedule, or the strategy a sponsor may develop for project execution.

Determination of the Project Base Year Cost

Using the NJT ARC SCC workbook base year cost of $6.634bn (2007$s) and removing the $891mm in allocated base year contingency gives a base of $5.743bn (say $5.75bn) net of contingency (2007 Base year $s) prior to any adjustments. [Reference the NJT ARC SCC Inflation worksheet, dated January 17, 2008] This was used to produce the grantee's YOE estimate of $7.646bn (YOE$s).

This January 2008 SCC workbook had costs for 174 Coaches and 22 Locomotives, 196 vehicles in total that were budgeted at $471mm (2007$s). Following a series of meetings in the week of August 11, 2008 between FTA Region II and the grantee's project office, the grantee organization proposed for purposes of establishing a possible FFGA scope, reducing this vehicle compliment from 196 to 100 Coaches and 10 Locomotives, 110 vehicles in total that were now budgeted at $232mm (2007$s); a reduction of $239mm (2007$s).

[What proof of this offer do we have?.. has the grantee documented this anywhere?]
[This reduction represented the elimination of vehicles being purchased out in the 2017 and 2018 timeframe according to the grantee inflation data in its January 2008 workbook.]

This Vehicle change reduces the base year cost from $5.75bn to $5.50bn, before any adjustments as recommended below.

Recommended Adjustments to Base Year Cost and Risk Ranges

- D1 Milestone..
  - Outcomes
    - Stakeholder Issues.. Amtrak supplying Traction power (Cost risk of 2%) and shared facilities, NYC DEP and Water Tunnel 1, NYCMTA shared facilities…
      Base of $5.5bn, risk at 0-15%, NJT working on Amtrak agreement, moving NYPSE, etc.. [Base year 2007 $s] **$0 - $825mm**
- D2 Milestone
  - NEPA scoping review
    - Malanka Landview
      - Cost Issues… Construction changes on off gas; post construction requirements to off site the flue gas… Environmental site assessments for NY… Wetlands mitigations issues…
        - Base of $5.5bn, risk at 2.5%, $137.5mm, say $140...
          [Base year 2007 $s] **$0 - $140mm**
- D3 Milestone…
  - PDM Review
    - Market Risk: Unrealistic estimates of number of bids received; single bid premiums
      - Cost Issues: NJT estimated risk premium at $209mm; PMO (IEI) estimated $230mm. NJT stated that this was in the estimate as unidentified, or "latent" contingency. *PMO/Burns and Program evaluations did not support this.*
      - FTA contingency target for Entry into FD is predicated upon mitigation of PDM risk. Unmitigated PDM risk is an adder to the target of 20% as discussed below.
        - $209mm is (3.8%) Base of $5.5bn (2007$s) say **$200mm.**
        - Program Recommendation from geotechnical analysis below is $400mm for PDM/Market risk…combining PMO and Program recommendations.
        - *At the August 14, 2008 meeting, grantee representations were accepted.*
          [Base year 2007 $s] **$0 - $400mm**
  - Construction Indirects…(Still to be resolved is labor incentives, labor availability contractor contingencies which would be "embedded" into the indirects) [See scope review below….]

Page Summary:[2007$s, no mitigation scenarios] **+$0 to $1,365mm**

Schedule Review …

- TRB G-7 found that average NS project slips 20% of the schedule duration from entry into FD to ROD. ARC is 9 years or 108 months… say 110 months… 20% of that is 22 months.. again say 24 months… with a cost impact of 4-6% of the $5.5bn base, or $220mm to $330mm.
- Program recommendation is that no more than a third (8 months) of that should be available for procurement schedule delay… or a third of that for geotechnical problems…
  - Procurement schedule activities on the critical path (CP), PMO noted that no addenda were planned..
    - Program recommendation is that another 12 months should be factored into the Project CP…. [4 months over the target]
  - PMO(Burns) found 18 months on CP for Manhattan tunnels..
    - Program recommendation is that this should be "factored" another 50% or 9 months… [say a push]…
  - On both a time and cost basis, the forecasts fit within the FTA contingency targets for Entry into FD..
- Schedule issues… (See also above and geotechnical discussion below)
  - Procurement schedules unrealistic …

D4 Milestone…

- Scope Reviews (Geotechnical Scope findings…)
  - The Geotechnical base work is 11 contract packages inclusive of 3 shafts, NYSPE caverns, tunnels, etc. estimated by NJT in 2007 $s at $2.75bn (65% of all hard costs) out of a "hard cost" total of $4.3bn and $5.5bn total base year costs (all net of contingency, 2007 $s).
    - Program recommendation [See March 2008 Geotechnical Risk whitepaper] of 45% - 60% geotechnical risk premium. Based upon NJT RM work to date, recommend using lower bound of 45%. ($1.2375bn, say $1,250mm for total geotechnical risk premium)
    - This gives an estimated allocation, equally weighted at $400mm for Differing Site Conditions (DSC) reserves (No PMO or NJT estimates), $400mm for PDM/Market risk (PMO (IEI) estimated $230mm, NJT $209mm) and $450mm for geotechnical scope (PMO Burns estimated $250mm). ***DSC is treated as contingency below, PDM risk is included above and geotechnical scope is in this D4 estimate.***
  - Three geotechnical production functions; (1) TBM rates, (2) shaft excavation and (3) drill and blast for caverns.
    - (1) PMO/Burns found NJT TBM rates to be reasonable, but modified indirects;
    - (2) non-TBM cost estimates to be unrealistic in terms of standby time at 5% and increased to 25% for drill and blast (D&B); "hot rates" on the D&B productions;
    - (3) PMO questioned shaft labor estimates as to adequacy;
    - PMO questioned indirects, contractor contingency and profits and added contingency and their profit; worst case is Hudson tunnel (20% profit, 25% contingency, 25% indirects);
    - PMO (Burns) recommended an 18% increase ($250mm) on the base budget versus the program target of $450mm…
    - *Program recommendation is to not accept PMO schedule evaluation pending a more detailed analysis*

[Base year 2007 $s] **+$250mm - $450mm**
Allocate $125mm each to SCC10 and SCC20

Page Summary:[2007$s, no mitigation scenarios] **+$250mm - $450mm**

- Systems and Vehicles: based upon PMO (IEI) analysis, currency escalation (Euros to $s) basis for adjustment… [Base year 2007 $s] **+$0 - $ 40mm**

- SCC70 Real Estate,[IEI recommendation] [Base year 2007 $s] **+$70mm - $150mm**
  Allocate $70mm to SCC60

- SCC 80/ force account costs…
  - Amtrak on NEC, etc. NYCMTA ESA budgeted their Amtrak force account work at 0.6% at FFGA and rebudgeted it to ~3% recently. ARC is currently budgeting force account at $200mm or 3.5%.
    No Recommendation to add.
  - *Program recommendation is FTA historical experience (HRT study in 2004) that FD cost is approximately 9.7% of associated hard costs*... Hard costs of $4.3bn plus $250-400mm (2007$s), $4.55bn to $4.7bn…and using 9.7% gives $440mm to $455mm.
    - NJT has budgeted $137mm, variance of $303mm to $318mm.
    - No PMO recommendation, program experience only…
      [Base year 2007$s] **+$0 - $300mm**

Page Four Summary: [2007 $s, no mitigation scenarios]	**+$ 70mm - $ 490mm**
Page Three Summary: [2007 $s, no mitigation scenarios]	**+$250mm - $ 450mm**
Page Two Summary: [2007 $s, no mitigation scenarios]	**+$0 - $1,365mm**
Grand Total of Base Adjustments: [2007 $s]	**+$320mm - $2,305mm**

Grand total of Base Adjustments: [2007 $s] **+$320mm - $2,305mm**

Based upon the above recommended adjustments, the existing base cost, net of contingency and finance costs of $5.5bn could increase anywhere from $0.3bn to $2.3bn, or increase to $5.8bn to $7.8bn in base year costs (2007 $s) net of contingency. Using the PMO recommendations as the for basis for adjustments to the lower ranges only, these adjustments were allocated to the following SCCs..

SCC10: +$0mm (PDM)	+$125mm (Geotechnical Scope)	Total Adjustment:$125mm
SCC20: +$0mm (PDM)	+$125mm (Geotechnical Scope)	Total Adjustment:$125mm
SCC30: [no adjustment]		
SCC40: [no adjustment]		
SCC50: [no adjustment]		
SCC60: +$70mm (Real Estate)		Total Adjustment:$ 70mm
SCC70: [no adjustment]		
SCC80: [no adjustment]		
	Grand Total for Adjustments (Base Year 2007$s)	$320mm

Revised Base recommendation for NJT ARC, net of contingency, 2007$s **$5.8bn vs. $5.5bn (grantee)**

Risk Range for Base with recommendations, net of contingency, 2007s **$5.8bn to $7.8bn**

D4 Milestone…
Cost Reviews (Continued)

- Escalation findings… NJT used an escalation rate of 3% in their January 2008 SCC workbook. At the July 31, 2008 debriefing the grantee proposed raising this escalation rate to 3.14%
- PMO(IEI) recommended going from Grantee's current forecast of 3.14% to 4.25% on the project.
- Programmatic recommendation was to recognize escalation in 2008 and 2009 which has been higher.
  - Grantee's current YOE adjustment factor using 3.0% in the SCC workbook [January 2008], was 1.1441. With a base year cost of $5.5bn, this gave a YOE$s estimate of $6,295mm (again, net of all contingency). This gives a YOE$ adjustment of $793mm, **say $795mm** as the starting point for this analysis.

    [YOE$ Adjustment] +$795mm - $ 795mm
  - Using grantee's proposed 3.14% on the $5.5 gives a YOE adjustment factor of 1.1512. With a base year cost of $5.5bn, this gave a YOE$s estimate of $6,335mm (net of contingency), an increase of $40mm in the YOE$s.

    [YOE$ Adjustment] +$40mm - $ 40mm
  - With the adjustments (**$320mm**) to the base year cost as discussed above, using grantee's proposed 3.14% (YOE adjustment factor of 1.1512) increases the YOE$s adjustment by $48.5mm, say $50mm.

    [YOE$ Adjustment] +$50mm - $ 50mm
  - Adjusting the $5,820mm ($5.8bn) base year cost from the grantee's proposed escalation rate of 3.14% (YOE$ adjustment factor of 1.1512) to 3.8% with YOE$ adjustment factor of 1.1885 (delta of 0.0373) increases the YOE$s adjustment by $217mm, say $215mm.

    [YOE$ Adjustment] +$215mm - $ 215mm
  - The marginal cost for the risk (based upon the PMO recommendation to raise escalation rate from 3.8% to 4.25%) is a YOE$ adjustment factor of 1.222 (delta of 0.0335) and increases the YOE$s adjustment by $195mm on the risk range.

    [YOE$ Adjustment] +$0 - $ 195mm
  - The marginal cost for the risk that 2008/2009 will be a greater inflation rate (say 6%) than 4.25% without offsetting price deflation in the out years is a YOE$ adjustment factor of 1.2626 (delta of 0.0406) increases the YOE$s adjustment by $214mm, say $215mm on the risk range.

    [YOE$ Adjustment] +$0 - $ 215mm

Total YOE$ adjustment on $5,820mm (2007$s) $1,100mm - $1,510mm

Total Project Budget: [2007$s w/adjustments]+ YOE adjustment(s), net of contingency
$6,920mm - $7,330mm

Contingency analysis…

- Program recommendation is based upon TCRP G-7 and PG-35 guidelines. PG-35 recommends that without any modification for risk mitigation or risk concentrations, the entry into FD target is 20% contingency calculated on the base cost (not base year $s) net of contingency and finance.
- Contingencies will be calculated in YOE$s only.
- The geotechnical risk premium of 45% discussed above covers cost growth from what is called the PS&E (Plans, specifications and estimate) point where the engineer delivers the estimate. This would normally be equal to the 100% Bid target point. The contingency target for this point is from 10% (PG-35) to 12% (TCRP). The lower PG-35 value is a product of formal risk management programs whereas the TCRP study group did not have such management measures. This 10% target is predicated upon being 100% mitigated with respect to market risk, i.e. fully bid. It has the capacity to "absorb" a forecasted 4% for scope changes and 6% for schedule delays.
    - The question is how much of an "overlap" is there between the geotechnical risk premium and the PG-35 contingency targets? There is some overlap between the two as the differing site conditions claims, almost invariably have a delay component to them. The overlap is not complete, but a 50% assumption seems reasonable. Therefore, the PG-35 target of 10% should be reduced 5% when the geotechnical risk premium is applied to the underlying SCC budget.
- The discussion above looked at the overlap between the PG-35 targets and the geotechnical risk premium beyond the 100% bid point. This project is currently seeking to go into FD. The target at this point is 20%. The difference between the 2 targets (20% versus 10%) is broken down into 2 components: 5% for design changes and 5% for market risk.
    - The question is how much of an overlap is there between the geotechnical risk premium and the PG-35 entry into FD target of 20%? Of the two components, the design change component would have a negligible overlap as it covers design issues on all aspects of the geotechnical scope. The market risk component does in fact overlap the risk premium. Therefore, the PG-35 target of 20% should be reduced 5% when the geotechnical risk premium is applied to the underlying SCC budget.
    - Based upon the two overlap analyses, the entry into FD target of 20% should be reduced 10%, or 10% when the geotechnical risk premium is applied.
- A part of the D4 milestone, it was determined that there was forecasted some $2.75bn (2007$s) in geotechnical scope for the project. Using the YOE adjustment factor developed above of 1.263 this becomes $3.47bn (say $3.5bn, YOE$s).
- Therefore, the total recommendation for Project budget net of contingency at $6.92bn (YOE$s) breaks into two parts, one for the reduced PG-35 target of 10% and one for the application of 20%. The first is $3.5bn (Geotechnical scope) and $3.42bn for the rest.
    - The contingency is calculated as follows (1) $3.5bn(0.1) or $350mm and (2) $3.42bn(0.2) or $685mm for a total of $1,035mm
- As noted above, the program recommendation for geotechnical risk forecasted $508mm YOE$s, say $500mm ($400mm in base year 2007$s) in differing site conditions. As noted above, this is an after bid contingency. The TCRP and PG-35 targets are not designed to accommodate this type of risk. Therefore, this amount of $500mm will be added to the $1,035mm developed above for a total contingency recommendation of $1,535mm, say $1.5bn (YOE$s).

Adding this contingency recommendation of $1.5bn (YOE$s) to the base of $6.9bn (YOE$s) results in a recommended BCE of $8.4bn (YOE$s) with a contingency % of 22%.

Risk Range for Base with recommendations, net of contingency, 2007s	**$5.8bn to $7.8bn**
Adjusting top range with YOE adjustment and contingency (1.2626 x 1.22 x 7.8)	**$12bn**
Revised Risk range for project: YOE$s and inclusive of contingency	**$8.4bn to $12bn**

EXHIBIT 6

ARC Cost Risk Summary
Pre-decisional and Confidential document
FTA Internal Only

All $ are in millions	NJT Capital Cost Estimate January 2008	NJT Proposed Estimate August 2008	Optimistic Risk Cost Estimate	Mid-Range Risk based upon **high mitigation**	Mid-Range Risk based upon **low mitigation**	Pessimistic Risk Cost Estimate	Assumptions
Construction	4,297	4,297	4,550	5,000	5,300	5,650	
Geotechnical Scope	*0*	*0*	*150*	*250*	*350*	*450*	Production rates for tunnels and caverns, TBM downtime, contractor contingencies
Geotechnical Project Delivery	*0*	*0*	*100*	*200*	*300*	*400*	Single bidder premium, contractor margins/overheads, procurement schedule delays, impacts to other contractors
Stakeholder Risk (Amtrak)	*0*	*0*	*0*	*250*	*350*	*500*	Power distribution, Construction interfaces on the NEC and NYP
Professional Services	668	668	670	820	920	1,120	
Final Design	*0*	*0*	*0*	*150*	*200*	*300*	Historical experience on heavy rail, Seattle and Pittsburgh
Construction Management	*0*	*0*	*0*	*0*	*50*	*150*	Project is 12 month longer…
Real Estate	307	379	380	480	580	730	
Commercial Real Estate	*0*	*72*	*73*	*100*	*100*	*100*	Manhattan RE changes
Stakeholder Risk (Amtrak)	*0*	*0*	*0*	*0*	*100*	*250*	NEC Corridor ROW costs, NYPSE costs, W Manhattan yards…
Vehicles	471	471	470	570	720	850	
Procurement Risk (Coaches)	*0*	*0*	*0*	*100*	*200*	*280*	Reprocurement risk, currency risk,
Procurement Risk (Locomotives)	*0*	*0*	*0*	*0*	*50*	*100*	Currency risk, tax risk, performance risk
Subtotal: 2007$s	5,743	5,815	6,070	6,870	7,570	8,350	
Escalation	3% 2008 thru 2017	3.8% 2008 thru 2017	4.25% 2008 thru 2017	6% 2008/2009, 4.25% thru 2017	6% 2008/2009, 4.25% thru 2017	6% 2008/2009, 4.25% thru 2017	
Total: YOE$s	7,656	6,866	7,420	8,770	9,560	10,540	
Contingency	0	1,634	1,680 (22.6%)	1,760 (20%)	1,700 (18%)	1,700 (16%)	
Unallocated Contingency	*0*	*0*	*1,180*	*1,360*	*1,500*	*1,700*	
Differing Site Conditions Reserve	*0*	*0*	*500*	*400*	*200*	*0*	
Adjusted Total (YOE$s)	7,656	8,500	9,100	10,530	11,260	12,240	

ARC Cost Risk Summary
Pre-decisional and Confidential document
FTA Internal Only

Assumptions:

Differing Site Conditions reserve: Increasingly pessimistic scenario assumes that contractors front end load their pricing.

Notes:
Contingencies are based upon a split of 10% on the geotechnical and 20% on the rest....

For $7,420(YOE$s) ... $3,500 geotechnical base (plus ($250*1.2626)= $3,815 x .1 =$380; $3,670 other at 20%=$735, or $1,180 before DSC reserve of $500, or $1,680...[base numbers are within $5mm of YOEs]

For $8,770(YOE$s) ... $3,500 geotechnical base (plus $450= $3,950 x .1 =$395; $4,820 other at 20%=$965, or $1,360 before a DSC reserve of $400, or $1,860...

For $9,560(YOE$s) ... $3,500 geotechnical base (plus $650= $4,150 x .1 =$415; $5,410 other at 20%=$1,080, or $1,495, say $1,500 before a reduced DSC reserve of $200, or $1,700...

For $10,540(YOE$s) ... $3,500 geotechnical base (plus $850= $4,150 x .1 =$415; $6,390 other at 20%=$1,280, or $1,695, say $1,700 with no DSC reserve ($0), or $1,700...

EXHIBIT 7

U.S. Department
of Transportation
**Federal Transit
Administration**

Administrator

1200 New Jersey Avenue S.E.
Washington DC 20590

December 19, 2008

Mr. Richard Sarles
Executive Director
New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07501

Re: ARC Project Execution Plan

Dear Mr. ~~Sarles~~ Richard:

This letter summarizes our conversation reiterating the Federal Transit Administration's (FTA) concerns about the status of negotiations on the Project Execution Plan (PEP) for the Access to the Region's Core (ARC) project, our recent interactions with you and your staff on this issue, and the steps that must be taken before this project can be approved into Final Design under the New Starts process.

FTA's concerns about PEP progress were originally described in a November 10, 2008 letter to you from FTA Region II Administrator Brigid Hynes-Cherin, and discussed further at a meeting on November 20, 2008 between your staff and FTA Region II staff. At that meeting, during which we discussed the rationale and purpose of each of the clauses in the PEP, we stressed the urgency and importance of negotiating the terms of the PEP before FTA could approve the ARC project into Final Design. At subsequent meetings on December 9 and 11, 2008, some progress was achieved with respect to cost contingency milestones and hold points. However, we await the receipt of comparable information on the project schedule and a definitive response on FTA's proposed terms for technical capacity, project management requirements, and risk strategy terms.

With respect to the risk issue, in a September meeting with then-Administrator James Simpson, you agreed on a final total project cost of $9.1 billion. That agreement was based on the understanding that New Jersey Transit (NJT) would take aggressive actions to mitigate identified project risk. As you know, the PEP establishes the framework for those actions and the technical capacity is the mechanism for assuring that those actions can and are being met. As we indicated to your staff on December 9th and 11th, the main components of technical capacity that we need to address is the ability to integrate Technical Capacity and Capability/PEP requirements into the Project Management Plan, and "flow down" such requirements and scope in a traceable manner, into third-party contracts in the form of identifiable inputs and outputs (deliverables) that are fully integrated and coordinated between such third-party scopes--most notably, the design and construction management (CM) contracts. We discussed with you an example of how this could be accomplished within the Design Contractor's scope of services. Currently the CM and design contracts have sufficient duplication of services and products to raise the question whether NJT is complying with the Circular 4220.1F, Chapter 4, Section 1.b, requirement that NJT avoid the purchase of unnecessary or duplicative services.

At the same meeting, we also discussed the linkage between the entry into Final Design requirements and any future Early Systems Work Agreement (ESWA) or Letters of No Prejudice (LONP). It is important to note that because many of the mitigation activities must be reflected in the early construction contracts, FTA will not issue an LONP or negotiate a ESWA until we are satisfied that the process is being followed. More importantly, subsequent to contractor prequalification, NJT should not plan to advertise these procurements until after the LONP or ESWA is issued by FTA. FTA's approval of such LONPs or ESWA will be predicated upon successful implementation of PEP requirements in producing these contract packages. We expect NJT to be able to clearly demonstrate conformance with these requirements throughout the next few months so that we may quickly process any requested LONP. To that end, we have requested monthly briefings on this effort in order to expedite the LONP approval process.

We also anticipate the need to revisit the PEP terms and conditions within the next 12 to 15 months or prior to the recommendation for any Full Funding Grant Agreement, whichever comes earlier. This will enable FTA to monitor NJT's implementation of the project and further tailor the PEP terms and conditions and basis for technical capacity to the knowledge gained through Final Design and the early construction activities. The establishment of this process is what will allow NJT to anticipate and effectively manage the risks that FTA have found to be the traditional impediments to grantees' ability to deliver these major capital investments on time and on budget. It is only by anticipating the problems and having a clearly structured process for addressing them that the project can succeed. That is why we consider these clauses key to our finding that you have the technical capacity to carry out the project.

As I indicated during our conversation today, we will not be able to move forward with our approval of this project to enter into Final Design until we reach agreement on the PEP. I would also like to emphasize that FTA must be assured that your organization can implement the terms of the finalized PEP in a credible manner. This shall be demonstrated first by reflecting these requirements in the third-party contractor scopes, such as the Design and Construction Management contractors, and then in the early construction procurement documents.

Region II staff assures me that they will spend as much time as is necessary over the next week to ten days to work out the details of this agreement. We believe that a concentrated effort is needed if we are to meet our mutually established goal of moving the project promptly into Final Design after FTA reaches its final decision on the environmental review of the project.

Sincerely,

Sherry Little
Acting Administrator

EXHIBIT 8

U.S. Department
of Transportation
**Federal Transit
Administration**

REGION II
Connecticut (Rail),
New Jersey,
New York

One Bowling Green
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212-668-2170
212-668-2136 (fax)

January 27, 2009

Mr. Richard R. Sarles
Executive Director
New Jersey Transit
1 Penn Plaza East
Newark, NJ 07105

Re: Approval of Entry into Final Design for the Access to the Region's Core Project

Dear Mr. Sarles:

The Federal Transit Administration (FTA) is pleased to inform you that New Jersey Transit's (NJT) request to enter Final Design for the Access to the Region's Core (ARC) project is approved. This approval of the initiation of Final Design is a requirement of Federal transit laws governing the New Starts program (49 U.S.C. § 5309 (e)(6)).

The ARC project is a new 9.0-mile commuter rail line adjacent to the existing Northeast (Rail) Corridor (NEC) between Secaucus, New Jersey, and midtown Manhattan. The ARC project includes the purchase of 110 commuter rail vehicles, new rail tunnels under the Hudson River connecting to new tracks along the NEC right-of-way in New Jersey, a new passenger rail station in Manhattan under 34th Street, and a new rail yard in Kearny, New Jersey, for day storage and light maintenance of vehicles. The project is expected to result in more reliable service and/or a more direct route to midtown Manhattan for more than 250,000 weekday passengers in 2030.

FTA approved the ARC project into preliminary engineering (PE) in August 2006. A Draft Environmental Impact Statement (EIS) was published in February 2007. Because of changes to the project alignment made in response to the comments received on the Draft EIS and from the PE effort, a Supplemental Draft EIS was prepared and published in March 2008. The Final EIS was published in November 2008, with a Record of Decision issued on January 14, 2009.

FTA is required by law to evaluate a proposed project against a number of New Starts criteria. As a result of FTA's evaluation for Final Design approval, the project has received an overall rating of "Medium-High."

The current total capital cost estimate for the project is $9.2 billion in year of expenditure (YOE) dollars. The Baseline Cost Estimate (BCE), which is the amount for which NJT will be seeking a Full Funding Grant Agreement (FFGA), is $7.3 billion in 2008 base year dollars and $8.7 billion in YOE dollars. It differs from the total capital cost for two reasons:

- The BCE includes only the vehicles needed for the 2017 opening year service plan (100 multilevel coaches and 10 dual power locomotives) rather than the full number of vehicles

needed for the 2030 forecast year service plan (an additional 74 coaches and 12 dual power locomotives); and
- NJT is planning on purchasing the required rolling stock for the ARC project well before the 2017 opening year. Therefore, a straight line depreciation method is assumed to calculate the value of the vehicles for purposes of the FFGA, after accounting for the time they were used in non-ARC service. This amount will be verified once the vehicles are purchased and in operation.

The BCE of the ARC project is anticipated to be funded with:

- $3 billion (34.47 percent) of Federal New Starts funding;
- $3 billion (34.47 percent) of Port Authority of New York and New Jersey (PANYNJ) funds;
- $1.250 billion (14.36 percent) in New Jersey Turnpike Authority (NJTA) funds;
- $1.350 billion (15.54 percent) in Federal Highway Administration (FHWA) flexible funds (Congestion Mitigation and Air Quality Improvement Program/National Highway System); and
- $99.9 million (1.15 percent) in New Jersey Transportation Trust Fund (TTF) funds.

NJT and FTA have agreed on a New Starts contribution of $3 billion to the ARC project, which is a significantly higher total amount and will require significantly higher annual appropriations than have historically been given by Congress to any single project. Please be advised that, consistent with FTA's established policy, the level of New Starts funding is being set at the time of entry into Final Design and will be the maximum amount of New Starts funds provided by FTA for any FFGA for the ARC project. Moreover, please be aware that FTA does not have sufficient budget commitment authority for the proposed amount of New Starts funding for the ARC project. FTA cannot commit New Starts funds beyond the contingent commitment authority established in FTA's current authorizing legislation. Hence, an FFGA for the project will not be possible until additional budget commitment authority is given to FTA.

Although the financial plan submitted by NJT is sufficient for entry into Final Design, NJT will need to provide additional information before the ARC project can be considered for an FFGA in order to satisfy FTA's financial capacity requirements. NJT must update the financial plan prior to any application for an FFGA and/or as part of the next annual rating cycle to reflect any changes in funding assumptions that occur between now and then. In addition, the following financial issues will need to be satisfactorily addressed prior to FTA's consideration of the ARC project for an FFGA:

- FTA's Financial Management Oversight Contractor (FMOC) indicated a concern about the long term availability of funds from the TTF. Projections provided by the Transportation Trust Fund Authority indicate that all current-law revenues are fully programmed to cover current and authorized, but not-yet-issued, debt service through the horizon year of NJT's forecast (FY 2028). Because NJT's state of good repair program (as well as lesser capital projects) is dependent on future allocations from the TTF, before FTA will consider an FFGA for the ARC project, NJT will need to provide a more precise plan as to how these funds will be made available, as well as its priorities for modifying the capital program should a lesser amount of funds be made available.

- FTA will examine PANYNJ's ability to provide the $3 billion it has committed to the ARC project. In December 2007, PANYNJ included $3 billion for the ARC project in its ten-year capital plan (2007-2016). In March 2008, FTA performed a brief review of PANYNJ's financial capacity to provide the funding committed to the ARC project. However, since that time the credit market has changed significantly. Because of the rapidly changing credit market conditions, a detailed examination at this time would not prove useful. Rather, it will be examined prior to the consideration of the ARC project for an FFGA. We will also examine the impact of the credit market on the availability of New Jersey Turnpike Authority funds.

- The financial plan assumes a very minimal cost for the purchase of the Amtrak right-of-way. Since the terms and conditions with Amtrak simply identify a negotiated sale as the process for determining the cost of the ROW, but do not set a cost, the financial plan that supports the FFGA request must include a realistic estimate of the cost. As you know, this issue was raised as part of the risk assessment and, based on NJT's assurances, no increase was made to the real estate line item for Amtrak right-of-way.

- The financial plan assumes significantly higher annual appropriations of New Starts funding than have historically been given by Congress to any single project and includes assumptions on annual appropriations that exceed levels previously discussed with FTA. The amount of annual New Starts appropriations is specified in the FFGA, and must be agreed to by FTA and reflected in the financial plan that supports the FFGA application.

FTA is required by law to ensure that grantees demonstrate the technical, legal, and financial capability to implement the project. Several important activities have occurred which demonstrate these capabilities. First, FTA's Project Management Oversight Contractors (PMOC) reviewed project plans and conducted a risk assessment of the project scope, cost, and schedule to assess NJT's readiness to enter Final Design. The results of the PMOCs' reviews indicate that:

- NJT has adequately defined the scope of the ARC project, cost estimate, schedule, and potential risk areas to enter Final Design;
- The ARC project BCE of $8.7 billion in YOE dollars is sufficient to enter Final Design; and
- NJT has demonstrated technical capacity and capability to construct and implement the ARC project, and sufficient technical and management resources are available to enter Final Design.

As NJT completes Final Design for the project, it should take actions to address the major risk factors noted during the risk assessment concluded in January 2009. The following areas of uncertainty should be addressed during Final Design:

- As part of the risk management review process, FTA was not able to identify any meaningful capacity for NJT to effectuate secondary cost mitigation or scope deferrals, although NJT is committed to reviewing the possibility of implementing three cost saving items. This means that there is no effective cost risk mitigation buffer capability for the project. Therefore, as the project moves closer to an FFGA, FTA will evaluate whether a Capital Reserve Account (CAPRA) is needed to ensure set-aside funds are available for any overruns that may occur as the project moves through construction. The function of the

CAPRA is to preserve the existing contingency funds for requirements that the project will experience in mid to late construction. If FTA determines that an integrated CAPRA/cost contingency management plan is needed to assure that the project will be completed in an efficient and effective manner, funding arrangements for the CAPRA must be committed to the ARC project before execution of an FFGA.

- NJT has contracted with two consultant teams, THE Partnership (THEP) as its design consultant and THE Consortium (CMC) as its construction management consultant. The CMC was brought on board during PE and has been involved in the review of designs and the design consultant's cost estimates, development of project control procedures, risk management and outreach to potential bidders. In order to assure that each contractor has discrete, non-duplicative responsibilities, NJT must integrate the work scopes of the THEP and CMC and obtain FTA approval of the scopes within 60 days of entry into FD.

- The scheduled completion date for the project is extremely optimistic and has the potential to slip, with possible delays ranging from nine to 22 months. Several risk elements exist with activities that are included on the critical path. These risks must be addressed through NJT's schedule float and/or contingency planning as part of the FD effort. NJT must submit an updated schedule and schedule contingency plan 90 days prior to any application for an FFGA.

- The Project Management Plan (PMP) defines the project management structure, organization, reporting relationships and processes which will guide the ARC project development and implementation. NJT must revise the PMP within 60 days of FD approval to address FTA's specific comments on Revision 10 of the PMP and to incorporate the mitigation approaches included in the agreed to Project Execution Plan (PEP).

- Coordination with Amtrak is vital to the success of the ARC project. Prior to entry into FD, NJT and Amtrak reached agreement on the terms and conditions that will govern the purchase of Amtrak right-of-way by NJT, the process for Amtrak approval of design changes that affect the NEC, a commitment by Amtrak to provide force account resources during the project, and a preference that NJT expand its own traction power facilities rather than rely on Amtrak's, subject to a supplemental environmental review process. Prior to FTA's consideration of an FFGA for the ARC project, FTA will require that a formal Memorandum of Agreement (MOA) describing the details of these terms and conditions, be executed.

Several additional areas require action during Final Design:

- The 2030 forecast year operating plan developed for the ARC project (upon which the benefits of the project are calculated) is reliant upon the Portal Bridge over the Hackensack River being expanded from two tracks to four tracks, which is a separate project under the Federal Railroad Administration's (FRA) jurisdiction. The locally preferred alternative for the Portal Bridge includes a three-track fixed northern bridge and a two-track moveable southern bridge with a capital cost of $1.34 billion. The Record of Decision for the Portal Bridge project was issued by FRA in December 2008. Prior to execution of an FFGA for the ARC project, FTA will require identification of a complete and reasonable funding

plan for the Portal Bridge project. Currently, NJT's financial plan shows $750 million committed to the Portal Bridge project. The remaining funding sources have not yet been identified.

- NJT is considering a change in the traction power system from a 12kV, 25 Hz system, which is the current basis for Amtrak and the NEC and would utilize an Amtrak power supply, to a 25kV, 60 Hz traction power system built for the ARC project that would be independent of Amtrak. NJT has convened a technical working group to study the feasibility of this option. If a decision is made to pursue this traction power change, a supplemental environmental review process must be completed before FTA will consider an FFGA for the ARC project. In addition, prior to consideration of an FFGA for the ARC project, FTA will require that a final decision on traction power be made and that such power source supports the technology for the new dual power vehicles.

- Consistent with FTA's May 2006 *Guidance on New Starts Policies and Procedures*, NJT shall submit to FTA within 30 days of FD approval all information – including methodologies, assumptions, and results – if not previously submitted, pertaining to the development of project 1) scope; 2) transit service levels; 3) capital costs; 4) operating and maintenance costs; and 5) ridership patterns and revenues. This information will subsequently be used in a Before and After Study, as required by SAFETEA-LU for all executed FFGAs, should the ARC project result in a FFGA. FTA staff will work with NJT in further identification of the requisite documentation and other information for submission.

With this approval of entry into FD, NJT has pre-award authority to incur project costs for FD and utility relocation activities prior to grant approval and retain eligibility for future FTA grant assistance. As provided in the January 14, 2009, issuance of the Record of Decision for the ARC project, upon FTA's written approval of the Real Estate Acquisition Management Plan, NJT and PANYNJ will be authorized to acquire any real property identified in the Final EIS as needed for the ARC project, without prejudice to FTA's future financial assistance for the acquisition and for the relocation of persons and businesses thereon. To maintain the project's eligibility for FTA assistance, all real property acquisitions, and the relocation of persons and businesses thereon, must be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and its implementing regulation (49 CFR Part 24) and any other applicable Federal law or regulation. This pre-award authority does not constitute any FTA commitment that future federal funds will be approved for this project or any element of the project. As with all pre-award authority, all federal requirements must be met prior to incurring costs in order to retain eligibility for future FTA grant assistance. This approval is limited to Final Design, right-of-way and utility relocation activities and related costs. It does not constitute approval to start any physical construction activity, including but not limited to, site preparation and/or demolition, and procurement of long lead items. If needed to maintain schedule, project staff must identify which pre-construction activities need to be performed during the Final Design phase and obtain FTA approval of any necessary Letters of No Prejudice (LONP).

FTA's approval of any LONP or Early Systems Work Agreement (ESWA) will not occur until the contract for the specific activities for which the LONP or ESWA is requested is ready for an award and NJT has demonstrated continued conformance with the PEP with respect to that contract.

As an FTA grantee, NJT is required to provide continuous administrative and management direction of project operations authorized by this letter, including the timely resolution of the technical issues identified above. Failure to make substantial progress on the above items will delay advancement of the project.

FTA looks forward to working with you during the development of the ARC project. Please contact Ralph Branche at 212-668-2181 if you have any questions.

Sincerely,

Brigid Hynes-Cherin
Regional Administrator

EXHIBIT 9

Access to the Region's Core - FFGA Roadmap

Revised: November 6, 2009

Next action by	Requirement for FFGA (unless otherwise noted)	Date of Original Submittal	Review #1 Date Comments Received	Review #1 Date Resubmitted	Review #2 Date Comments Received	Review #2 Date Resubmitted	Review #3 Date Comments Received	Review #3 Date Resubmitted	Review #4 Date Comments Received	Review #4 Date Resubmitted	Date Approved	Status or comments
Financial												
FTA	1. Determine whether a Capital Reserve Account (CAPRA) is needed to ensure set-aside funds are available for any overruns that may occur as the project moves through construction.											A response to be provided once agreement has been reached on a target date for the FFGA
Garino	2. If determined to be necessary by FTA, the necessary funding arrangements for a Capital Reserve Account (CAPRA)											Pending item #1
Include in the application for an FFGA an updated financial plan that includes, at a minimum, the following:												
Smith	3. A revised project budget as agreed to by FTA. The budget should include an updated cost for the Amtrak ROW based on the status of negotiations											A response to be provided once agreement has been reached on a target date for the FFGA
Garino	4.Updated annual New Starts funding assumptions as agreed to by FTA											A response to be provided once agreement has been reached on a target date for the FFGA
Lihvarcik	5.An operating financial plan that reflects the current assumption for the opening date of the ARC Project											A response to be provided once agreement has been reached on a target date for the FFGA
Garino	6.A more precise plan as to how the TTF funds will be made available, as well as NJTC's priorities for modifying the capital program should a lesser amount of TTF funds be made available											A response to be provided once agreement has been reached on a target date for the FFGA
Garino	7.A complete and reasonable funding plan for the Portal Bridge project.											Pending agreement with Amtrak.
Garino	8.A copy of the funding proposal attached to the North Jersey Transportation Planning Authority resolution that commits to "flexing" $1 billion of National Highway System and/or Congestion Mitigation and CMAQ funds to the ARC Project.	10/20/2009										**Completed**
FTA	9. Examine PANYNJ's ability to provide the $3 billion it has committed to the ARC project as well as the availability of the New Jersey Turnpike Authority funds											A response to be provided once agreement has been reached on a target date for the FFGA
FTA	10. Perform a refresh of the financial capacity assessment looking at the reasonableness of the new financial plan											A response to be provided once agreement has been reached on a target date for the FFGA
Project Risk												
Wightman	11. 90 day prior to any application for an FFGA, submit an updated Cost & schedule and Cost & schedule contingency plans that addresses NJTC's schedule float and/or contingency planning and controls. *Requires an approved Cost and Schedule Management Plan prior to submittal.*	6/12/2009	7/30/2009	11/2/2009								Submitted to FTA. Meeting scheduled to demonstrate plans and seek comments.
Wightman	12. Letter detailing feasibility and closeout of secondary mitigations.											Secondary mitigations have been further elaborated in the updated Cost Management Plan. Request FTA if letter is still necessary.
Third Party Agreements												
Garino	13. Letter detailing the project financial plan to allocate the responsibility for cost overruns and/or any delays in the receipt of New Starts funds.											Pending
Rittenberry	14. Provide an executed agreement with NJTA, memorializing NJTA's financial commitment to the Project and addressing the respective roles and responsibilities of the agencies, including NJTA's participation, if any, in funding additional cost overruns and/or any delays in the receipt of New Starts funds.											Pending

Access to the Region's Core - FFGA Roadmap

Revised: November 6, 2009

Next action by	Requirement for FFGA (unless otherwise noted)	Date of Original Submittal	Review #1 Date Comments Received	Review #1 Date Resubmitted	Review #2 Date Comments Received	Review #2 Date Resubmitted	Review #3 Date Comments Received	Review #3 Date Resubmitted	Review #4 Date Comments Received	Review #4 Date Resubmitted	Date Approved	Status or comments
Rittenberry	15. Reach agreement with Amtrak on the terms and conditions that will: (a) govern the purchase of Amtrak right-of-way by NJTC and the process for Amtrak approval of design changes that affect the Northeast Corridor, (b) obtain a commitment by Amtrak to provide force account resources during the project, and (c) identify a preferred course of action on traction power facilities (rely on Amtrak or expand NJTC's traction power, subject to a supplemental environmental review process.	12/8/2009										Completed
Rittenberry	16. Execute a formal Memorandum of Agreement (MOA) describing the details of these terms and conditions.	2/27/2009										Completed

Access to the Region's Core - FFGA Roadmap

Revised: November 6, 2009

Next action by	Requirement for FFGA (unless otherwise noted)	Date of Original Submittal	Review #1		Review #2		Review #3		Review #4			Status or comments
			Date Comments Received	Date Resubmitted	Date Comments Received	Date Resubmitted	Date Comments Received	Date Resubmitted	Date Comments Received	Date Resubmitted	Date Approved	
FTA	17. Review Amtrak and NJTC compliance with the MOA as part of its consideration of the FFGA request.											Pending Submittal of FFGA Application

Access to the Region's Core - FFGA Roadmap

Revised: November 6, 2009

Next action by	Requirement for FFGA (unless otherwise noted)	Date of Original Submittal	Review #1 Date Comments Received	Review #1 Date Resubmitted	Review #2 Date Comments Received	Review #2 Date Resubmitted	Review #3 Date Comments Received	Review #3 Date Resubmitted	Review #4 Date Comments Received	Review #4 Date Resubmitted	Date Approved	Status or comments
Consultants Contracts												
Negotiate updated consultants' SOW that are consistent with the Project Execution Plan (PEP) for the design and construction management contractors including:												
Gaeta	18. Define scope, interface and schedule for closing out of open items from PE	3/27/2009	5/13/2009	11/5/2009								Sent email to FTA updating status of action items in Feb 25th SOW for THEP
Gaeta	19. Provide language from SOW demonstrating that THEP will meet the design schedule if changes occur.											Pending
Gaeta	20. Provide language from SOW demonstrating that THEP will design to budget if changes occur. And a letter describing day to day budget trending process during design development and Change Control Requests for contract repackaging with a focus on the 30% to 60% design phase.											Pending
Nayee	21. Letter explaining the process followed by the ARC Document Control Center to post deliverables submitted by THEP onto ECMS.											Pending
Gramlich	22. Letter explaining non-duplication between the SOW of THEP and CMC.											Pending
Ho/Carter	23. Complete the necessary supplemental environmental review process to support a change in traction power (60 Hz vs. 25 Hz) and proof of the technology for the new dual power locomotives											Pending
Demonstrate PEP Compliance												
Andreski	24. Submit evidence of a fully approved Project Management Plan (PMP) and provide evidence through internal audit that the ARC project team is operating in conformance with that PMP and other ARC sub-plans including:											Pending –need to address all comments provided with conditional approvals

Access to the Region's Core - FFGA Roadmap

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Programmatic Plans												
Nayee	25. Project Management Plan Procedures Plan	6/12/2009										Pending
FTA	26. Change Control Procedures (Configuration Control Plan)	6/12/2009										Pending FTA Comments
FTA	27. Integration & Interfaces Management Plan with certifications of closed out interface definitions.	6/12/2009										Rev 6 submitted. No outstanding comments
Wightman	28. Risk Management Plan	3/27/2009	5/22/2009	6/12/2009								Rev 3 submitted.
Smith	29. Cost Management Plan (including Secondary Cost Mitigation Capacity & Cost Contingency Management Plan)	6/12/2009										Meeting scheduled to demonstrate plans and seek comments.
Wightman	30. Schedule Management Plan (including Secondary Schedule Mitigation Capacity & Schedule Contingency Management Plan)	6/12/2009										Meeting scheduled to demonstrate plans and seek comments.
Wightman	31. Geotechnical Program Plan (GPP) (including Geotechnical Risk Mitigation Capacity)	6/12/2009	7/30/2009									C12 Geotech deficiencies were closed out in September meetings with FTA.
Nayee	32. Construction Contract Packaging Plan (CCPP)	6/12/2009										Completed
FTA	33. Project Quality Management Plan (PQMP)	3/27/2009	5/13/2009	10/28/2009								http://docs.masstransittunnel.com/livelink/llisapi.dll?func=ll&objId=584904&objAction=browse
Roberts	34. Real Fleet Management Plan (RFMP)	3/27/2009									5/13/2009	Completed. Update due 11/30/09
FTA	35. Real Estate Acquisition Management Plan (RAMP)	3/27/2009	5/13/2009									R.Andreski sent B.Hynes-Cherin a response via email highlighting the project's support of allocated funding for Amtrak real estate acquisition
Weinberg/Sica	36. Stakeholder/Third Party Coordination Plan											Pending
FTA	37. Fully Developed Project Construction Schedule	3/27/2009										No comments outstanding
Andreski	38. Document Control System											
FTA	39. Submit final dewatering and groundwater discharge plan with a letter explaining that focus upon surface work has been transferred from related white papers to the GDMs	10/30/2009	10/31/2009	11/6/2009								Final dewatering and groundwater discharge plan uploaded to ECMS and Mike O'Connor was notified on 10/30/09. questions answered on 11/06/09. http://docs.masstransittunnel.com/livelink/llisapi.dll?func=ll&objId=793492&objAction=browse
Wightman	40. Letter explaining combined quality and validation efforts											Pending
FTA	41. Project Management Plan Conformance											Pending Q4 submittal
Andreski	42. Staffing Plan and Project Organizations	9/18/2009										Staffing Plan is part of submitted PMP Chapter 2. Project org charts will be entered into December PMP revision
Levitt	43. Safety and Security Management Plan (SSMP)											Pending-DRAFT ready for review 11/06/09
Levitt	44. Safety and Security Certification Plan (SSCP)											Pending-DRAFT-Ready for review 11/06/09
Levitt	45. System Safety Program Plan (SSPP)											Pending-DRAFT-SSCRC comments due-11/09/09
Levitt	46. System Security Plan or Security or Emergency Preparedness Plan (SSEMPPP)											Pending-DRAFT-Ready for review 11/20/10
Levitt	47.Construction Health & Safety Plan											Pending-Constr-H&S Plan-Rev2, 06/18/09
Levitt	48.Construction Security Plan (SCP)											Constr. Sec'ty Plan-In Progress by CMC
Ho/Anderson	49. Startup and Testing Plan											Pending
FTA	50. Concept of Operations											Ralph Branche to verify acceptance of Operating Plan following successful perturbed simulation analysis'

Access to the Region's Core - FFGA Roadmap

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Contract Specific Plans, 8, 10 & others awarded or in procurement process)												
Mack	51. C08 Geotechnical Design Memoranda											Submit as available
Mack	52. C08 Geotechnical Construction Plans											
Mack	53. C08 Geotechnical Risk Allocation Plans											
Mack	54. C08 Validation Reports											
Mack	55. C08 Contract Specific Work Plans											
Mack	56. C08 Source Selection Plans											
Mack	57. C08 Work Breakdown Structure											
Mack	58. C08 Engineer's Estimate											
Mack	59. C08 Complete Contract Bid Package											
Mack	60. C08 Schedule and Estimating Assumptions Document											
Mack	61. C08 Geotechnical Baseline Report (GBR)											
Sheth	62. C10 Geotechnical Design Memoranda											
Sheth	63. C10 Geotechnical Construction Plans											
Sheth	64. C10 Geotechnical Risk Allocation Plans											
Sheth	65. C10 Validation Reports											
Sheth	66. C10 Contract Specific Work Plans											
Sheth	67. C10 Source Selection Plans											
Sheth	68. C10 Work Breakdown Structure											
Sheth	69. C10 Engineer's Estimate											
Sheth	70. C10 Complete Contract Bid Package											
Sheth	71. C10 Schedule and Estimating Assumptions Document											
Sheth	72. C10 Geotechnical Baseline Report (GBR)											
FFGA Application and Execution												
Andreski/Silber	73. Submit a complete FFGA application package including updated project budget, schedule, and payout schedule that address FTA's comments and guidance for FTA reviews for the Readiness to execute an ARC FFGA.											Cannot begin until FTA Administrator agrees to Process FFGA
Update templates:												
Smith	74. New Starts Criteria Templates and Certifications (If changed since FD)											Pending item #62
Smith	75. SCC Annualized Cost Worksheets (If changed since FD)											Pending item #62
Colangelo	76. Land Use Supporting Information (If changed since FD)											Pending item #62
Nayce	77. Submit the preservation of data required for the Before and After Study for both the preliminary engineering and final design approval points, including a memo describing what changed between the two data collection points for travel forecasts, service levels, scope, capital costs, and operating and maintenance costs	10/16/2009										Pending item #62
FTA	78. Review final budget and schedule for reasonableness based on current bids and final design changes											Pending item #62
Garino	79. Submit Grant Application (In TEAM)											Pending item #62
FTA	80. Process TEAM application including 5333(b) Department of Labor (DOL) Certification of the grant application											Pending item #62
Silber	81. Letter from Project Sponsor (NJTC) to Regional Administrator requesting an FFGA											Pending item #62
FTA	82. Administration review and approval of FFGA based on FTA readiness review requirements											Pending item #62
FTA	83. 60 day congressional review of the proposed FFGA											Pending item #62

EXHIBIT 10

Jon S. Corzine
Governor

Stephen Dilts
Board Chairman

Richard R. Sarles
Executive Director

NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246
973-491-7000

June 24, 2009

Ms. Brigid-Hynes-Cherin
Regional Administrator
Federal Transit Administration
One Bowling Green, Room 429
New York, NY 1004-1415

Dear Ms. Hynes-Cherin:

NJ TRANSIT is requesting an Early Systems Work Agreement (ESWA) for the Access to the Region's Core (ARC) project. NJ TRANSIT submitted a draft ESWA in TEAM the week of June 8, 2009 which reflects comments from your staff. While NJ TRANSIT expects the Federal Transit Administration (FTA) to ultimately recommend a Full Funding Grant Agreement (FFGA) for the project, NJ TRANSIT is requesting an ESWA to begin construction on critical path items in order to keep the project on schedule and within budget.

An Early Systems Work Agreement is critical not only to maintain schedule and budget, but also to demonstrate a federal funding commitment to the project in support of local funding commitments that are already in place. The ESWA will begin to unleash a portion of the $5.7 billion in local funding that has been allocated to the project, generating much-needed jobs consistent with President Obama's and Governor Corzine's focus on economic recovery and reinvestment. This ESWA will also allow NJ TRANSIT to take advantage of a favorable response from tunneling firms during the prequalification process recently completed.

Finally, service disruptions and crowding on trains confront existing commuters every day, a product of a system that is over capacity. Transit riders deserve the benefits of this project without delay. The construction documents are ready, the local funding is in place, stakeholders support the project – only the federal commitment of the ESWA federal funding is needed to put the project on a path to completion on schedule and within budget.

The attached critical path method (CPM) schedule provides five months of schedule contingency consistent with Project Execution Plan (PEP) and the need to maintain the 2017 project completion date. This project critical path is dependent on Federal funding commitments (such as this ESWA) in order to award critical path contracts. Failure to achieve critical path milestones will negatively impact either the completion date or the schedule contingency.

NJ TRANSIT proposes the following project elements be included in the ESWA:

- The Manhattan Tunnel Contract,
- The Tonnelle Avenue Underpass Contract,

- Early Property Acquisition,
- Professional Services for design, construction management and insurance, and
- Contingency.

Each of these is on the critical path as described below.

MANHATTAN TUNNELS: The critical path for the ARC begins with Manhattan Tunnels. The estimated $636 million contract ($511M Base, $9M Design, and $116 M Allocated Contingency) must be awarded by November 2009 in order to maintain the project schedule and project budget of $8.7 billion. Failure to award the Manhattan Tunnels contract by this date would jeopardize completion of the project in 2017 and would increase costs by approximately $1 million for each day of delay consistent with the FTA-recommended escalation rate of 4.25 percent annually.

TONNELLE AVENUE UNDERPASS: Construction of the Palisades Tunnel and other geographically adjacent contracts at the same time as the Tonnelle Avenue Underpass would cause serious negative impacts for the future tunnel contractor, regional traffic and the community. Substantially completing the Tonnelle Avenue Underpass before these other activities commence will improve traffic flow, haul routes for excavated materials, and contractor access associated with five future contracts. It is important to have the Tonnelle Avenue Underpass in place by the end of 2011 to facilitate site access for the adjacent project contracts.

Awarding this contract will take advantage of an exceptionally favorable bid climate, and advancing the Tonnelle Avenue contract now will also spur greater interest in the future ARC contracts that are advancing through procurement. If the project is delayed, employment opportunities will be postponed, favorable bids could expire, construction costs will escalate, and future contracts in the area will create more impacts to the roads, contractor schedule and neighborhood. FTA has issued an LONP for the Tonnelle Avenue project. An ESWA will allow federal reimbursement of the project cost.

PROPERTY ACQUISITION: Property acquisition is also on the critical path. Contractors on the various tunneling contracts cannot have access to the site until property acquisition is completed. Property acquisition is a critical early action item because routine negotiations and closings can take up to six months and condemnation actions can take even longer.

PROFESSIONAL SERVICES: The ESWA scope also includes professional services costs to support contract awards. Contracts cannot be advertised until design is sufficiently complete. Also, NJ TRANSIT's owner-controlled insurance program must be in place to provide contractor insurance prior to the award for the construction of the Manhattan tunnels.

With respect the requirements in your letter to Rich Sarles dated January 27, 2009, which approved entry of the project into final design and set conditions for a future FFGA, the following provides a status on each of those items, and when and how these items will be addressed prior to an award of an FFGA.

- NJ TRANSIT believes adequate funding is programmed for the project assuming a $3 billion Federal New Starts commitment.

Since the mid-1980s, the State of New Jersey's Transportation Trust Fund (TTF) often has been replenished in the year funding was set to be exhausted and usually in higher amounts. Between 1985 and 2008 the overall TTF total increased from $249 million to $1.6 billion annually or about 8.5 percent annually. The project financial plan assumes a conservative 3 percent annual growth rate in the TTF.

With respect to Federal funding, FTA has acknowledged that the project will receive a $3 billion New Starts commitment. Senators Lautenberg and Menendez will continue to work to extend and/or renew SAFETEA-LU to secure additional Contingent Commitment Authority and ensure availability of CMAQ funds for use for the project. Also, secondary cost mitigation strategies will be monitored and opportunities identified for scope reductions.

NJ TRANSIT will update the ARC financial plan to reflect changes in funding assumptions, if any, prior to an FFGA.

- NJ TRANSIT will continue to work with FTA's Financial Management Oversight Consultant to provide whatever material is necessary to examine the impact of recent credit market conditions with regard to the Port Authority of New York & New Jersey and New Jersey Turnpike funding commitments to the project. Addressing that concern more specifically, the Port Authority has had six bond issuances since the beginning of 2009, raising more than $1 billion.

- The project budget for Amtrak property was recently reviewed by project real estate staff and substantiated as adequate. Amtrak is presently reviewing parcel maps and property descriptions which detail the permanent property rights and interests to be acquired by NJ TRANSIT. Amtrak's comments on the parcel maps and property descriptions will be incorporated, and appraisals will be ordered by NJ TRANSIT with an anticipated completion by the first quarter 2010. The executed Memorandum of Agreement with Amtrak sets forth a mediation process if an agreement cannot be reached.

- The 2-year and full scope for THE Partnership and the 2-year and full scope for the CM Consortium were provided to FTA for review in March 2009. The scope for THEP agreement will include a budget for compliance with PEP requirements through final design. The scope for CM Consortium is being negotiated to increase the budget for PEP requirements through construction.

- The revised project baseline schedule with the PEP-required float and contingency was provided to FTA in May.

- Project schedule updates will be provided whenever there is a substantive change in the project, and the project schedule will be reissued or revised if needed following FTA's approval of the schedule management plan. The Project Management Plan (PMP), Revision 12 addresses recent FTA comments and was provided to FTA on Friday, June 12, 2009.

- NJ TRANSIT's Capital Program continues to provide $750 million for the Portal Bridge project. NJ TRANSIT is advancing discussions with Amtrak with respect to their contributions toward the project. NJ TRANSIT is pursuing other funding sources, primarily High-Speed Rail funds from the American Recovery & Reinvestment Act. Additionally, NJ TRANSIT is pursuing the development of a phased approach to construction of the Portal Bridge project that will provide connectivity to ARC and support the initial ARC service plan.

- A Memorandum of Agreement (MOA) for the ARC Project was executed between NJ TRANSIT and Amtrak in February 2009 that discussed traction power related concerns.

  In an effort to select the most advantageous traction power alternative for the ARC project (which also meets Amtrak's requirements contained in the MOA), NJ TRANSIT is furthering its investigation related to the optimum voltage/frequency to be utilized and phase gap locations. NJ TRANSIT has engaged a specialty engineering consultant with the requisite experience and knowledge in power phase gaps to analyze phase gap and rail rolling stock interfaces.

  Once that effort is completed along with recommendations to resolve concerns, NJ TRANSIT will make a selection of the ARC traction power system to be used. It is anticipated that this effort will take approximately six months. Also, all of our work will be coordinated to ensure compatibility with our existing electric locomotive fleet and the dual powered locomotives to be used after they are manufactured.

- A Before & After Study has been prepared and reviewed by FTA. The Study is being revised to include opening year ridership estimates and address FTA's comments.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven H. Santoro
Assistant Executive Director
Capital Planning and Programs

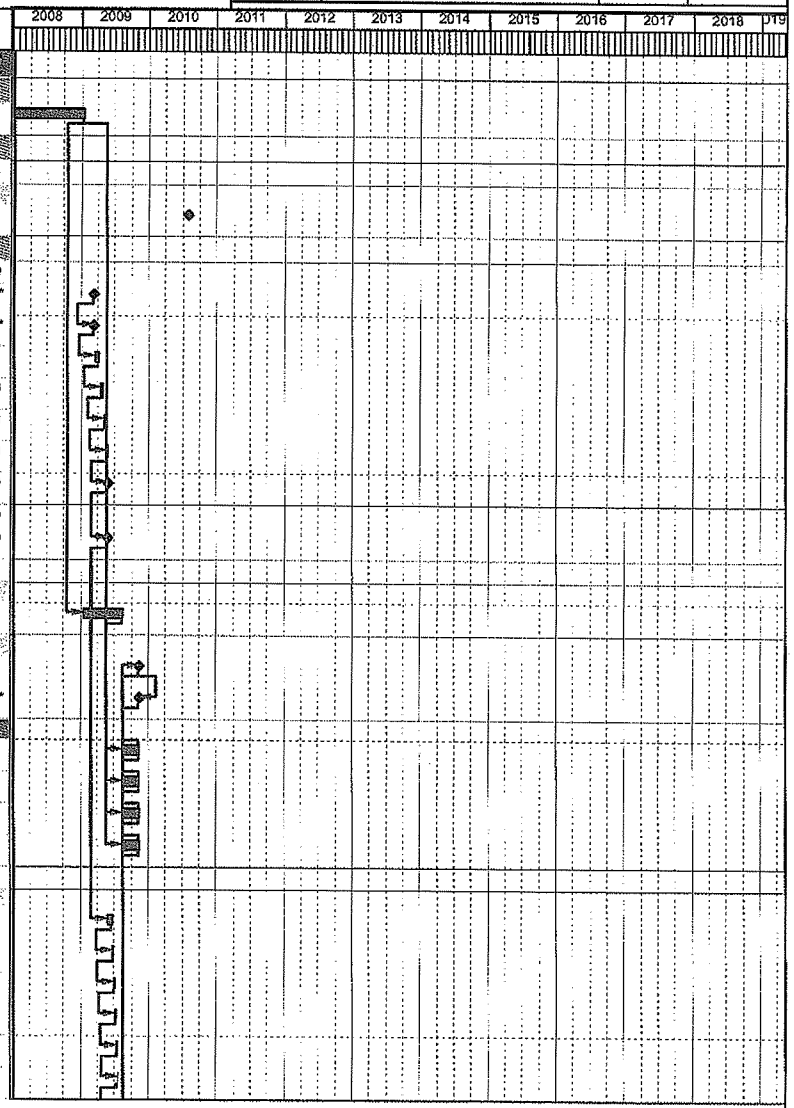
C: Ralph Branche, Jr. (FTA)
Anthony Carr (FTA)
Richard Sarles (NJ TRANSIT)
Pete Garino (NJ TRANSIT)
Karen Schrempp (NJ TRANSIT)
Art Silber (NJ TRANSIT)
Rich Andreski (NJ TRANSIT)

THE Tunnel

1 of 4

Date	Revision	Checked	Approved
May-09	Rev. 8b (Hoboken shaft in C...		

Activity ID	Activity Name	Curr. Dur.	Current Start	Current Finish
The Tunnel - Design & Construction Phase (June 09) - Rev.8b		2551	02-Jan-08	30-Dec-17
ROD		263	02-Jan-08	14-Jan-09
A1000	FTA Issues Rod	263	02-Jan-08*	14-Jan-09
Contract 08 - Palisades Tunnels		0	29-Jul-10	29-Jul-10
Construction		0	29-Jul-10	29-Jul-10
Key Milestones		0	29-Jul-10	29-Jul-10
A08_4120-1	Mc Donalds Property Available	0		29-Jul-10*
Contract 12 - Manhattan Tunnels		758	15-Jan-09	11-Jan-12
RSPQ Preparation		50	13-Mar-09	22-May-09
A12_0030	Advertisement For RSPQ	0		13-Mar-09*
A12_0040	Bidders Pick Up RSPQ	0		13-Mar-09*
A12_0060	Bidder's Prepare & Submit Qualifications Statement	20	16-Mar-09	10-Apr-09
A12_0070	Review Bidder's RSPQ - Initial	15	13-Apr-09	01-May-09
A12_0080	Bidder's RSPQ Cure Period	10	04-May-09	15-May-09
A12_0090	Final Review Of Bidder's RSPQ	5	18-May-09	22-May-09
A12_0100	Qualified Bidders List	0		22-May-09
Prepare & Issue IFB		0	22-May-09	22-May-09
A12_0160	Issue IFB / All Documents To Qualified Bidders	0		22-May-09
ROW		211	15-Jan-09	11-Nov-09
ROW Mapping		151	15-Jan-09	18-Aug-09
A12_2180	ULURP Process	151	15-Jan-09	18-Aug-09
ROW Acquisition - Partial / Full		60	19-Aug-09	11-Nov-09
A12_2010	Partial / Full Property Acquisition Complete	0		11-Nov-09
A12_2040	Partial / Full Property Needed	0		11-Nov-09*
Location - NY		60	19-Aug-09	11-Nov-09
A12_2020	003 - 674	60	19-Aug-09	11-Nov-09
A12_2038	002B - 675	60	19-Aug-09	11-Nov-09
A12_2044	004 - 675	60	19-Aug-09	11-Nov-09
A12_2046	005A - 675	60	19-Aug-09	11-Nov-09
Procurement		120	26-May-09	11-Nov-09
Bidders Submit Technical Proposals		64	26-May-09	24-Aug-09
A12_2510	Bidder's Prepare Interim Technical Proposals	20	26-May-09	22-Jun-09
A12_2520	Procurement Review Interim Technical Proposals	5	23-Jun-09	29-Jun-09
A12_2530	Technical Experts & TEC Review Interim Technical Proposals	5	30-Jun-09	07-Jul-09
A12_2540	Conduct Meetings With Bidders	2	08-Jul-09	09-Jul-09
A12_2550	Prepare / Incorporate Comments On Interim Technical Proposals	5	10-Jul-09	16-Jul-09
A12_2560	Issue Technical Proposals To Bidders	0	17-Jul-09	17-Jul-09



Start: 02-Jan-08 Finish: 30-Dec-17

Run Date: 19-Jun-09

Data Date: 02-Jan-08 EPC090610

Project MasterSchedule

Major Milestones On Critical Path

Project Internal Float - 6.5 months

Remaining Work

Critical Remaining Work

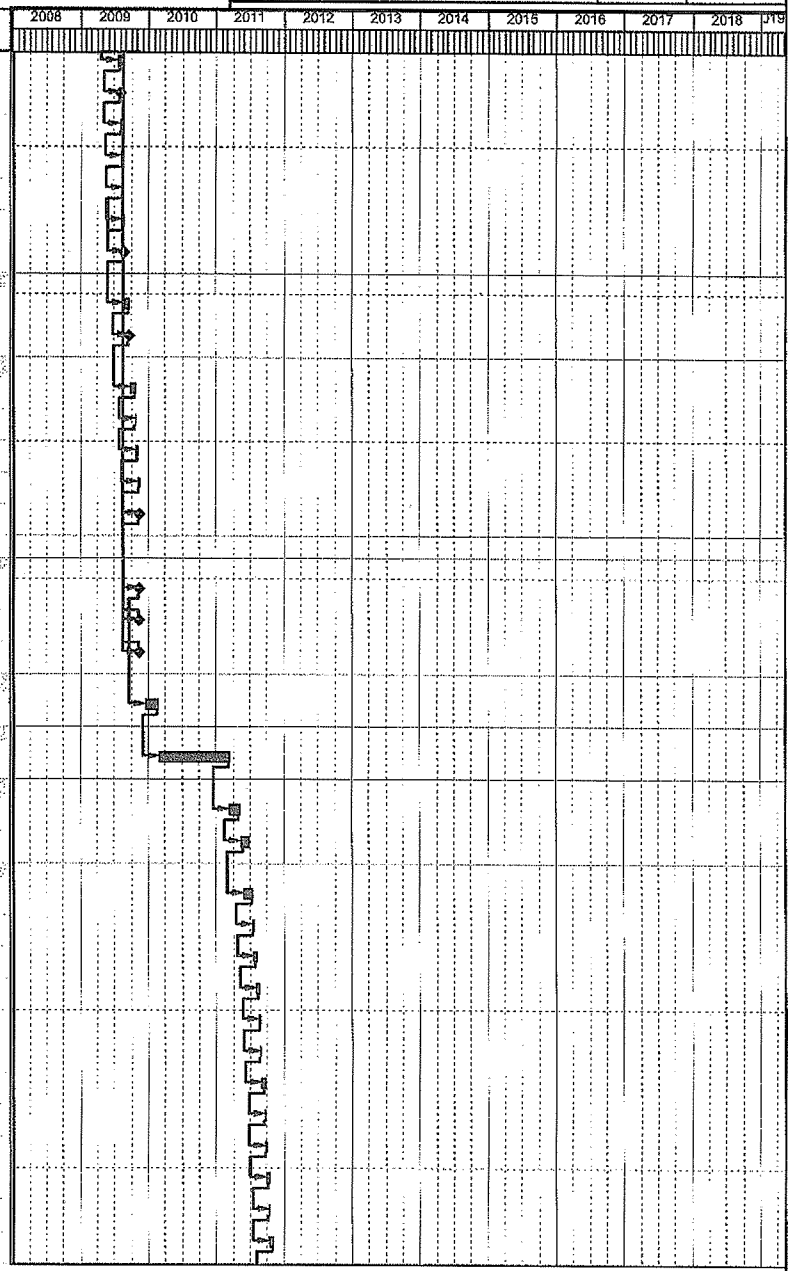
Milestone

ACCESS TO THE REGION'S CORE

THE Tunnel

Date	Revision	Checked	Approved
May-09	Rev. 8b (Hoboken shaft in C...		

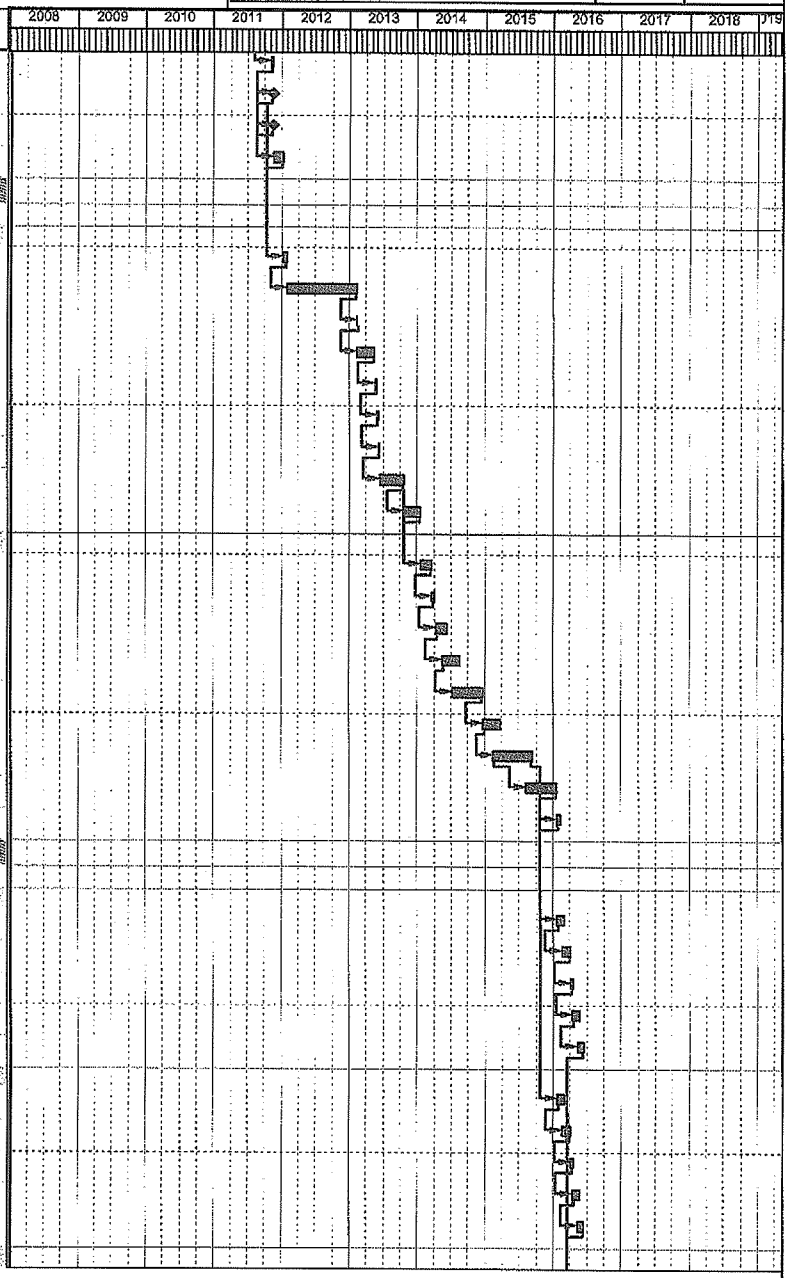
Activity ID	Activity Name	Curr. Dur.	Current Start	Current Finish
A12_2570	Bidders Prepare Final Technical Proposals	10	17-Jul-09	30-Jul-09
A12_2580	Receive Technical Proposals	0	31-Jul-09	
A12_2590	Procurement Office Review To Ensure That Technical Proposals Are Complete	5	31-Jul-09	06-Aug-09
A12_2600	Review Final Technical Proposals	5	07-Aug-09	13-Aug-09
A12_2610	Conduct Bidder's Presentations	2	14-Aug-09	17-Aug-09
A12_2620	Complete Evaluation Of Technical Proposals & Identify Bidders	5	18-Aug-09	24-Aug-09
A12_2630	Notify Qualified Bidder's Of Acceptance	0		24-Aug-09
Bidders Submit Cost Proposals		20	25-Aug-09	22-Sep-09
A12_2640	Bidder's Prepare Cost Proposals	20	25-Aug-09	22-Sep-09
A12_2650	Bidder's Submit Cost Proposals	0		22-Sep-09
Contract Award		36	23-Sep-09	11-Nov-09
A12_2660	Review Cost Proposals	20	23-Sep-09	20-Oct-09
A12_2670	NJT Board Approves Contract	1	21-Oct-09	21-Oct-09
A12_2680	Governor's Veto Period	10	22-Oct-09	04-Nov-09
A12_2690	Prep. Notice of Award	5	05-Nov-09	11-Nov-09
A12_2700	Award Contract	0		11-Nov-09
Construction		545	11-Nov-09	11-Jan-12
Contract Milestones		0	11-Nov-09	12-Nov-09
A12_3000	Issue NTP	0	12-Nov-09	
A12_3005	Coned Property Available	0		11-Nov-09
A12_3010	Block 675 Needed By	0		11-Nov-09
Tunnels Submittals & Approvals		50	16-Dec-09	26-Feb-10
A12_3280	Prepare, Submit & Approve TBM Technical Information	50	16-Dec-09	26-Feb-10
Procure TBM		263	01-Mar-10	14-Mar-11
A12_3570	Procure TBM 1	263	01-Mar-10	14-Mar-11
East Tunnel - Upper Bore - 4722 ft		72	15-Mar-11	23-Jun-11
A12_3970	Assemble TBM & Test TBM , Install Trailing Gear , Rail Eqp.	50	15-Mar-11	11-May-11
A12_3980	TBM Run East Tunnel#2 - Learning Curve 1 - 499 ft (14 ft/day)	36	12-May-11	23-Jun-11
West Tunnel - Upper Bore - 4722 ft		156	31-May-11	11-Jan-12
A12_4130	TBM Run West Tunnel#1 - Learning Curve 1 - 499 ft (14 ft/day)	36	31-May-11	12-Jul-11
A12_4140	TBM Run West Tunnel#1 - Learning Curve 2 - 499 ft (50 ft/day)	10	13-Jul-11	23-Jul-11
A12_4150	TBM Run West Tunnel#1 - Production 1 - 817 ft (86 ft/day)	10	25-Jul-11	04-Aug-11
A12_4160	TBM Run West Tunnel#1 - Curvature - 495 ft (50 ft/day)	10	05-Aug-11	16-Aug-11
A12_4170	TBM Run West Tunnel#1 - Production 1 - 518 ft (92 ft/day)	6	17-Aug-11	23-Aug-11
A12_4180	TBM Run West Tunnel#1 - Production 2 - 469 ft (109 ft/day)	4	24-Aug-11	27-Aug-11
A12_4190	TBM Run West Tunnel#1 - Poor Zone - 456 ft (22 ft/day)	20	29-Aug-11	20-Sep-11
A12_4200	TBM Run West Tunnel#1 - Production 3 - 298 ft (118 ft/day)	3	21-Sep-11	23-Sep-11
A12_4210	TBM Run West Tunnel#1 - Production 2 - 200 ft (112 ft/day)	2	24-Sep-11	26-Sep-11
A12_4220	TBM Run West Tunnel#1 - Poor Zone - 371 ft (26 ft/day)	14	27-Sep-11	12-Oct-11
A12_4230	TBM Run West Tunnel#1 - Production 3 - 100 ft (108 ft/day)	1	13-Oct-11	13-Oct-11
A12_4240	Remove TBM	18	14-Oct-11	03-Nov-11



THE Tunnel

Date	Revision	Checked	Approved
May-09	Rev. 8b (Hoboken shaft in C...		

Activity ID	Activity Name	Curr. Dur.	Current Start	Current Finish
A12_4250	Clean Tunnel Invert - WB #1	9	04-Nov-11	14-Nov-11
A12_4260	Complete Upper Bores and Handover to C16 Contractor (24 Months)	0		14-Nov-11
A12_4570	Complete Upper Bores and Handover to C13 Contractor (24 Months)	0		14-Nov-11
A12_4580	Internal Schedule Contingency	38	15-Nov-11	11-Jan-12
Contract 16 A & 16 B - 33rd & 35th St Shaft Excavation, NYPSE Cavern & Concrete		1036	12-Jan-12	12-Feb-16
Construction		1036	12-Jan-12	12-Feb-16
Station Cavern Excavation - 33rd Shaft		512	12-Jan-12	19-Jan-14
A16_3220	Develop Cavern @ Fan Plant@ 33rd - Top Heading - 3222 bcy	17	12-Jan-12	31-Jan-12
A16_3230	Mine Top Heading - 61566 bcy	312	01-Feb-12	06-Feb-13
A16_3240	Bench Adit Connection - 112 lf	5	07-Feb-13	12-Feb-13
A16_3250	Mine Bench - 45487 bcy	85	07-Feb-13	16-May-13
A16_3260	Excavate Shaft To Bottom Heading Elevation - 3126 bcy	9	17-May-13	28-May-13
A16_3270	Bottom Heading Adit Connection - 112 lf	5	29-May-13	03-Jun-13
A16_3280	Bottom Heading Development - 1845 bcy	8	04-Jun-13	12-Jun-13
A16_3290	Mine Bottom Heading - 61780 bcy	110	13-Jun-13	21-Oct-13
A16_3870	Contingency	90	22-Oct-13	19-Jan-14
Station Concrete From 33rd & 35th Shafts		524	20-Jan-14	12-Feb-16
A16_3620	Station Cavern Gravel Base - 7297 cy	50	20-Jan-14	18-Mar-14
A16_3630	Station Cavern Footing Concrete - 3704 cy	16	19-Mar-14	05-Apr-14
A16_3640	Station Cavern Invert Concrete - 11867	57	07-Apr-14	12-Jun-14
A16_3650	Station Cavern Lower External Wall Concrete - 12510 cy	81	17-May-14	21-Aug-14
A16_3660	Mezzanine Deck - Steel & Concrete	140	05-Jul-14	18-Dec-14
A16_3670	Station Cavern Mezzanine External Wall Concrete - 9119 cy	79	19-Dec-14	23-Mar-15
A16_3680	Upper Mezzanine Train Deck Concrete	180	12-Feb-15	11-Sep-15
A16_3690	Station Cavern Arch Concrete - 28087 cy	140	07-Aug-15	22-Jan-16
A16_3700	Concrete Adits @ Bench & Top Heading	18	23-Jan-16	12-Feb-16
Contract 18 - 33rd & 35th Station Fan Plant Structure & Fit Out		247	23-Jan-16	12-Jan-17
Construction		247	23-Jan-16	12-Jan-17
Below Grade Structure & Shaft Liner - 33rd Shaft		101	23-Jan-16	14-Jun-16
A18_3930	Shaft Liner	35	23-Jan-16	03-Mar-16
A18_3940	Shaft Interior Walls	40	18-Feb-16	04-Apr-16
A18_3950	Basement Invert Slab	16	05-Apr-16	22-Apr-16
A18_3960	Basement Interior & Exterior Walls	35	14-Apr-16	25-May-16
A18_3970	Basement Supported Slabs	30	10-May-16	14-Jun-16
Below Grade Structure & Shaft Liner - 35th Shaft		101	23-Jan-16	14-Jun-16
A18_3880	Shaft Liner	35	23-Jan-16	03-Mar-16
A18_3890	Shaft Interior Walls	40	18-Feb-16	04-Apr-16
A18_3900	Basement Invert Slab	16	05-Apr-16	22-Apr-16
A18_3910	Basement Interior & Exterior Walls	35	14-Apr-16	25-May-16
A18_3920	Basement Supported Slabs	30	10-May-16	14-Jun-16
Fan Plant Structure @ 33rd & 35th St @ 7th & 8th Avenue		103	15-Jun-16	08-Nov-16



THE Tunnel

Date	Revision	Checked	Approved
May-09	Rev. 8b (Hoboken shaft in C...		

Activity ID	Activity Name	Curr. Dur.	Current Start	Current Finish
A18_3030	Fan Plant Structure @ 33rd & 35th Super Structure	125	15-Jun-16	08-Nov-16
Demob, Contingency & Closeout		42	10-Nov-16	12-Jan-17
A18_3040	Demob & Handover Site To System Finishes Contractor	22	10-Nov-16	13-Dec-16
A18_3045	Contingency	30	14-Dec-16	12-Jan-17
A18_3050	Contract Complete & Handover To Systems & Track Contractor	0		12-Jan-17
Contract 25 - MEP Finishes (T Fans, Facility Power Sub Sta & Controllers)		156	13-Jan-17	23-Aug-17
Construction		156	13-Jan-17	23-Aug-17
Install - Ventilation Systems , Controller Furnish & Install		156	13-Jan-17	23-Aug-17
A25_3060	MEP Finishes - Fan Plant @ 33 rd St & 35 th St. - F & I T Fans , Controllers Etc	112	13-Jan-17	21-Jun-17
A25_3070	Field Test & Commission	22	22-Jun-17	24-Jul-17
A25_3110	Contingency	30	25-Jul-17	23-Aug-17
Systems Integrated Testing & Commissioning		88	24-Aug-17	29-Dec-17
Integrated Testing		88	24-Aug-17	29-Dec-17
ST5010	Systems Integrated Testing & Commissioning	88	24-Aug-17	29-Dec-17
ST5020	Project Substantial Completion	0		29-Dec-17
Project Float		0	30-Dec-17	30-Dec-17
PF5010	Internal Contingency Float (Built In The Internal Critical Contracts)	0	30-Dec-17	30-Dec-17

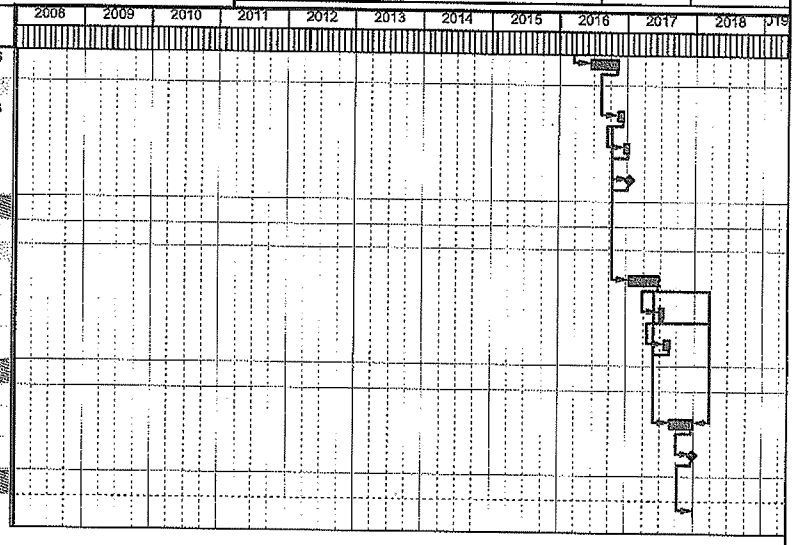


EXHIBIT 11

From: PGarino@njtransit.com [mailto:PGarino@njtransit.com]
Sent: Friday, June 05, 2009 11:52 AM
To: Branche, Ralph (FTA)
Cc: Carr, Anthony (FTA); Hynes-Cherin, Brigid (FTA); SSantoro@njtransit.com; RAndreski@njtransit.com; KSchrempp@njtransit.com; ASilber@njtransit.com
Subject: ESWA

Ralph: Thanks for your comments on the ESWA from last night. The grant has been revised to reflect your comments. The Reponses to your comments is summarized below. Pls let me know if FTA has any additional comments coming.

Thx.
Pete

R1 Indicate that the supporting documentation is in the application letter. **RESPONSE: Additional text included in grant. I reached out to Andreski, who does not recall need for separate "application letter." He is reaching out to Brigid to clarify. Hope you do the same. But check what's in the grant now and see if that is what you need.**

R2 In the following list of projects, indicate which line items will be covered in the following scopes **RESPONSE: The line item numbers were cross referenced in the list of ESWA projects as requested.**

R3 In this section, list the line items that cover the ESWA (for example, 14.01.10)., or in the Budget, where you have indicated ESWA , identify Manhattan Tunnels, etc. **RESPONSE: The line item numbers were cross referenced in the list of ESWA projects as requested.**

R4 This should come out. **RESPONSE: See response to question R7 below.**

R5 For the ESWA scope items, please add the information identifying the elements that made up the budget. **RESPONSE: We included a line in each extended budget description indicated how the remaining "Total Eligible Cost" is included in other grants as we discussed.**

R6 The LONP indicated $21.6M. What are extra cost? **RESPONSE: In addition to the primary contract for Tonnelle Avenue, there may be other smaller contracts for miscellaneous work. If not needed, the funds would be moved via budget revision to the contingency line item in the future.**

R7 We were under the impression that the PE cost was under budget. We have PE cost around $85M which has been paid out with other grants. Please clarify. **RESPONSE: The ESWA scope is for $1.352 B of the total $8.7 B project. Just of $400 M of that $1.352 B represents New Starts funding, including:**

- A prior New Starts grant that was closed, $6 M of which was used PE activities and the balance of which used for EIS activities (which are not included in the $8.7 B)

- $14.7 M of FY08 New Starts
- Just under $48 M of FY09 New Starts
- $332 M of new CCA (which includes the $200 M in FY10 President's budget).

If the $6 M prior New Starts grant were removed from the ESWA, then an amount of "Non-Section 5309 New Starts funding" would need to be removed from the ESWA scope consistent with the approximate two thirds/one third New Start match . If that were done, the total ESWA scope would fall by approximately $18 million from $1.352 billion and the New Starts amount would fall by approximately $6 M from $400 M. ($12 M non-New Starts and $6 M New Starts)

Similarly, if the over $100 M of non-New Starts funds expended on PE were removed from the ESWA, then New Starts funds would need to be removed from the ESWA as well --consistent with the New Start/Non New Start ratio of about one third to two thirds. So over $100 M of non-New Starts and $50 M of New Starts would need to be removed from the scope of the ESWA, lowering the total ESWA and the New Starts amount. Neither of these outcomes is desirable.

EXHIBIT 12

U.S. Department
of Transportation
**Federal Transit
Administration**

REGION II
Connecticut (Rail),
New Jersey,
New York

One Bowling Green
Room 429
New York, NY 10004-1415
212-668-2170
212-668-2136 (fax)

August 14, 2009

Mr. Richard R. Sarles
Executive Director
New Jersey Transit
1 Penn Plaza East
Newark, NJ 07105

Re: Approval of Early System Work Agreement for the Access to the Region's Core Project

Dear Mr. Sarles:

The Federal Transit Administration (FTA) has reviewed and approved New Jersey Transit's (NJT) June 26, 2009, request for an Early System Work Agreement (ESWA) for the Access to the Region's Core (ARC) project. The ESWA, in the amount of $1,352,000,000, will allow NJT to incur costs for the activities listed below in advance of a Full Funding Grant Agreement (FFGA). The ESWA commits $395,020,000 in Section 5309 New Starts funds, representing a 29.2 percent share of the total ESWA amount, as the initial installment of the $3,000,000,000 that FTA intends to commit to this project under an FFGA. Finally, the ESWA authorizes the use of $130,000,000 in Section 5307 funds from the American Recovery and Reinvestment Act (ARRA) and $125,000 in Title 23 Congestion Mitigation and Air Quality (CMAQ) funds for the ARC project. Expenditure of any of these funds is subject to the obligation of specific grant funds as they become available through the appropriations process. Funds in the amount of $14.7 million in Section 5309 New Starts and $130 million in Section 5307 ARRA are being obligated contemporaneously with this ESWA approval.

FTA acknowledges NJT's plans to advance the ARC Project through the award of 26 contract construction packages, including three tunnel segment contract packages. NJT has finalized a complete and comprehensive package of drawings and specifications for the first of these three tunnel segment construction packages, the Manhattan Tunnels contract. In order to maintain the current project schedule and costs, NJT advertised the Invitation for Bids for the Manhattan Tunnels Contract on June 16, 2009. NJT expects to award the Manhattan Tunnels contract in November 2009. The Manhattan Tunnels contract is the beginning of the critical path for the ARC Project. Accordingly, this ESWA is needed to advance the Manhattan Tunnels contract, help maintain the project schedule, and make efficient and long-term management of the ARC Project easier. Activities supported under the ESWA are as follows:

- Manhattan Tunnels Design/Build contract;
- Tonnelle Avenue Underpass contract;
- Property acquisition for all property and easements in New Jersey and New York;

Professional services for preliminary engineering and extended preliminary engineering activities already expended, as well as professional services for final design, permitting, construction management, insurance, and wetlands mitigation supporting the overall project scope; and
Unallocated contingency for the preceding elements at 24 percent.

The ARC Project Baseline Cost Estimate (BCE) is $7.3 billion in 2008 baseyear dollars and $8.7 billion in Year of Expenditure (YOE) dollars. The Section 5309 NewStarts funding for the ARC Project is expected to be $3 billion and will represent a 34.5 percent share of the total project cost. Consistent with FTA's established policy, the level of New Starts funding was set at the time of entry into final design, and will be the maximum amount of New Starts funds provided by FTA for any Full Funding Grant Agreement (FFGA) for the ARC project. Any New Starts funds awarded under this ESWA, as well as all previously awarded New Starts funds, would be included in the total of New Starts funding for an FFGA.

The ARC Project schedule does not include an anticipated date for the execution of an FFGA because FTA does not have sufficient commitment authority to enter into an FFGA for the $3 billion of New Starts fundingthat FTA intends to commit to this project. Hence, an FFGA for the project will not be possible until additionalcommitment authority is authorized by Congress.

In addition to the need for additional commitment authority, there are a number of other items that must be addressed by NJT prior to FTA's approval of an FFGA for the ARC Project. These include the items that have not yet been addressed from FTA's final design approval letter dated January 27, 2009, as well as the recommendations described in FTA's draft Financial Capacity Assessment dated May 7, 2009. A summary of these items is provided below.

Financial Issues

Although the financial plan submitted by NJT is sufficient forentry into final design and award of an ESWA, NJT will need to provide addtional information before the ARC project can be considered for an FFGA in order to satisfy FTA's financial capacity requirements. NJT must update the financial plan prior to an application for an FFGA and/or as part of the next annual rating cycle to reflect any changes in funding assumptions that occur between now and then. In addition, the following financial issues will need to be satisfactorily addressed prior to FTA's consideration of the ARC project for anFFGA:

FTA's Financial Management Oversight Contractor (FMOC) indicated a concern about the long term availability of funds from the New Jersey Transportation Trust Fund (TTF). Projections provided by the Transportation Trust Fund Authority indicate that all current-law revenues are fully programmed to cover current and authorized, but not-yet-issued, debt service through the horizon year of NJT's forecast (Fiscal Year 2028). Because NJT's state of good repair program (as well as lesser capital projects) is dependent on future allocations from the TTF, NJT will need to provide a more precise plan as to how thesefunds will be made available,as well as its priorities for modifying the capital program should a lesser amount of funds be made available.

FTA will examine the Port Authority of New York and New Jersey's (PANYNJ) ability to provide the $3billion it has committed to the ARC project. In December

2007, PANYNJ included $3 billion for the ARC project in its ten-year capital plan (2007-2016). In March 2008, FTA performed a brief review of PANYNJ's financial capacity to provide the funding committed to the ARC project. However, since that time the credit market has changed significantly and PANYNJ is re-examining its ten-year capital plan. Because of the rapidly changing credit market conditions, a detailed examination at this time would not prove useful. Rather, it will be examined closer to when the ARC project will be considered for an FFGA. At that time, FTA will also examine the impact of the credit market on the availability of New Jersey Turnpike Authority (NJTA) funds.

The financial plan assumes a very minimal cost for the purchase of the Amtrak right-of-way. In March 2009, NJT and Amtrak executed a formal agreement which provides for a negotiated sale as the process for determining the cost of the right-of-way. Amtrak and NJT are currently in negotiations on the cost. An updated cost for the Amtrak right-of-way that reflects the status of the negotiations must be submitted as part of the FFGA request.

The financial plan assumes significantly higher annual appropriations of New Starts funding than have historically been given by Congress to any single project and includes assumptions on annual appropriations that exceed levels previously discussed with FTA. The amount of annual New Starts appropriations is specified in the FFGA, and must be agreed to by FTA and reflected in the financial plan that supports the FFGA application.

The FFGA request will need to be supported by an amended general project agreement between NJT and PANYNJ that clearly states how the agencies will allocate the responsibility for cost overruns and/or any delays in the receipt of New Starts funds.

NJT will need to provide an executed agreement with NJTA, memorializing NJTA's financial commitment to the Project and addressing the respective roles and responsibilities of the agencies, including NJTA's participation, if any, in funding additional cost overruns and/or any delays in the receipt of New Starts funds.

NJT will need to provide FTA with a copy of the funding proposal attached to the North Jersey Transportation Planning Authority resolution that commits to "flexing" $1 billion of National Highway System and/or Congestion Mitigation and Air Quality Improvement Program funds to the ARC Project.

The operating financial plan will need to reflect the current assumption for the opening date of the ARC Project at the time the FFGA request is submitted.

Risk Management Issues

As NJT completes final design for the project, it needs to take actions to address the major risk factors noted during the risk assessment concluded in January 2009. The following areas of uncertainty still need to be addressed by NJT prior to FTA's consideration of an FFGA for the ARC project:

As part of the risk management review process, FTA was not able to identify any meaningful capacity for NJT to effectuate secondary cost mitigation or scope deferrals, although NJT is committed to reviewing the possibility of implementing three cost saving items. This means that there is no effective cost risk mitigation

buffer capability for the project. Therefore, as the project moves closer to an FFGA, FTA will evaluate whether a Capital Reserve Account (CAPRA) is needed to ensure set-aside funds are available for any overruns that may occur as the project moves through construction. The function of the CAPRA is to preserve the existing contingency funds for requirements that the project will experience in mid to late construction. If FTA determines that an integrated CAPRA/cost contingency management plan is needed to assure that the project will be completed in an efficient and effective manner, funding arrangements for the CAPRA must be committed to the ARC Project before execution of an FFGA.

NJT contracted with two consultant teams, THE Partnership (THEP) as its design consultant and THE Consortium as its construction management consultant (CMC). The CMC was brought on board during PE and has been involved in the review of designs and the design consultant's cost estimates, development of project control procedures, risk management, and outreach to potential bidders. The final design approval letter required that NJT integrate the work scopes of the THEP and the CMC within 60 days of entry into final design, so that FTA could assure that each contractor has discrete, non-duplicative responsibilities. NJT provided FTA with both consultant work scopes, but these scopes were prepared before NJT had developed risk management processes required in the Project Execution Plan (PEP). In order to be effective, these processes need to be incorporated into these scopes of work without being duplicative. In a letter dated May 13, 2009, FTA indicated that based on comments provided on various PEP process documents, these scopes will need to be updated to reflect the PEP requirements and to clearly delineate which consultant is responsible for which action. To date the scopes have not been updated to reflect this delineation. For example, to date THEP has not developed and maintained the Integrated Master Schedule, although it is a requirement of the CMC contract. NJT needs to negotiate updated, non-duplicative statements of work that are consistent with the PEP for the design and construction management contractors as soon as possible.

The scheduled completion date for the project is extremely optimistic and has the potential to slip, with possible delays ranging from nine to 22 months. Several risk elements exist with activities that are included on the critical path. These risks must be addressed through NJT's schedule float and/or contingency planning as part of the final design effort. NJT submitted a schedule management plan to FTA on June 12, 2009. After review of the plan, FTA finds that it provides an overview of the various schedules used to monitor and control the schedule to ensure the project is completed on time. The plan does not, however, provide an overview or summary of how the schedules for each of the individual work breakdown structure elements (WBS) will be used to manage the project. The plan also does not identify the individual(s) who will be responsible for importing each of the WBS schedule updates into the master schedule on a timely basis and for assuring consistency between the individual WBS schedules and the master schedule. FTA will work with NJT to correct these issues as soon as possible so that NJT can begin using the schedule management plan. NJT must submit an updated schedule and schedule contingency plan 90 days prior to any application for an FFGA.

The Project Management Plan (PMP) defines theproject management structure, organization, reportingrelationships and processes which will guide the ARC project development and implementation. While NJT submitted PMP Revision 11 within the 60 day time frame specified in the final design approval letter, this submittal did not fully address FTA's specific comments on PMP Revision 10 and did not fully incorporate the mitigation approaches included in the agreed to PEP. FTA is currently reviewing subsequent submittals and will work with NJT to have a fully approved PMP document in place as soon as possible. Prior to execution of an FFGA, NJT must have a fully approved PMP, and provide evidence that it is operating in conformance with the PMP.

Coordination with Amtrak is vital to the success of the ARC project. Prior to entry into final design, NJT and Amtrak reached agreement on the terms and conditions that will govern the purchase of Amtrak right-of-way by NJT, the process for Amtak approval of design changes that affect the Northeast Corridor,a commitment by Amtrak to provide force account resources during the project, and a preference that NJT expand its own traction power facilities rather than rely on Amtrak's, subject to a supplemental environmental review process. NJT and Amtrak executed a formal a Memorandum of Agreement (MOA) describing the details of these terms and conditions in March 2009. FTA will review Amtrak and NJT compliance with the MOA as part of its consideration of the FFGA request.

Other Issues

Several additional areas require action during final design:

The 2030 forecast year operating plan developed for the ARC Project (upon which the benefits of the project are calculated) is reliant upon the Portal Bridge over the Hackensack River being expanded from two tracks to four tracks, which is a separate project under the Federal Railroad Administration's (FRA) jurisdiction. The locally preferred alternative for the Portal Bridge includes a three-track fixed northern bridge and a two-track moveable southern bridge with a capital cost of approximately $1.2 billion. The Record of Decision for the Portal Bridge project was issued by FRA in December 2008. Priorto execution of an FFGA for the ARC project, FTA will require identification of a complete and reasonable funding plan for the Portal Bridge project. Currently, NJT's financial plan shows $728 million committed to the Portal Bridge project. Theremaining funding of approximately $472 million is assumed to be provided by Amtrak.

NJT is considering a change in the traction power system from a 12kV, 25 Hz system, which is the current basis for Amtrak and the NEC, and would utilize an Amtrak power supply, to a 25kV,60 Hz traction power system built for the ARCproject that would be independent of Amtrak. But upgrading to 60 HZ would require an installation of a buffer zone (also known as phase gaps) to allow interoperability between the two frequencies. NJT's operations department has expressed concerns over theuse of phase gaps on the system. NJT has convened a technical working group to study the feasibility of this option and its design consultant has hired a specialized consultant to assist in the analysis of the phase gap issue. Before a decision

is made to pursue this traction power change, a supplemental environmental review process must be completed. In addition, prior to consideration of an FFGA for the ARC project, FTA will require that a final decision on traction power be made and that NJT demonstrate that such power source supports the technology for the new dual power vehicles.

NJT must submit to FTA as soon as possible the preservation of data required for the Before and After Study for both the preliminary engineering and final design approval points. This submittal should include a memo describing what changed between the two data collection points for travel forecasts, service levels, scope, capital costs, and operating and maintenance costs. FTA must review and approve this data prior to execution of an FFGA.

This ESWA approval allows NJT to incur costs for the scope of work referenced above and have it reimbursed by future FTA grant assistance as funds become available through the appropriations process. The issuance of this ESWA should not be construed as FTA's final decision on the ARC Project. As with all award authority, NJT must meet all Federal grant requirements prior to incurring costs under this ESWA in order to be reimbursed by future FTA grant assistance. Grant number NJ-03-0069 must be executed in FTA's TEAM system. This ESWA expires upon FTA execution of an FFGA for the ARC Project.

Please contact me or my staff at 212-668-2170 with any questions you may have about proceeding under the authority to incur costs provided in this letter.

Sincerely,

Brigid Hynes-Cherin
Regional Administrator

cc: Ralph Branche, FTA
Rich Andreski, NJT
Art Silber, NJT
Howard Sackel, PANYNJ
Susan Bass Levin, PANYNJ

EXHIBIT 13

DOT FTA

U.S. Department of Transportation Federal Transit Administration

Application

Recipient ID:	1414
Recipient Name:	NEW JERSEY TRANSIT CORPORATION
Project ID:	NJ-03-0169-00
Budget Number:	1 - Budget Prior Approved
Project Information:	ARC Early System Work Agreement

Part 1: Recipient Information

Project Number:	NJ-03-0169-00
Recipient ID:	1414
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Part 2: Project Information

Project Type:	Grant
Project Number:	NJ-03-0169-00
Project Description:	ARC Early System Work Agreement
Recipient Type:	State Agency
FTA Project Mgr:	Ralph A. Branche Jr.
Recipient Contact:	Peter Garino
New/Amendment:	None Specified
Amend Reason:	Initial Application
Fed Dom Asst. #:	20500
Sec. of Statute:	5309-5
State Appl. ID:	None Specified
Start/End Date:	-
Recvd. By State:	Jun. 08, 2009
EO 12372 Rev:	Not Applicable
Review Date:	None Specified
Planning Grant?:	NO
Program Date (STIP/UPWP/FTA Prm Plan) :	Sep. 17, 2008
Program Page:	III-1
Application Type:	Electronic
Supp. Agreement?:	No
Debt. Delinq. Details:	

Gross Project Cost:	$1,097,000,000
Adjustment Amt:	$0
Total Eligible Cost:	$1,097,000,000
Total FTA Amt:	$14,700,000
Total State Amt:	$1,082,300,000
Total Local Amt:	$0
Other Federal Amt:	$0
Special Cond Amt:	$0
Special Condition:	None Specified
S.C. Tgt. Date:	None Specified
S.C. Eff. Date:	None Specified
Est. Oblig Date:	None Specified
Pre-Award Authority?:	Yes
Fed. Debt Authority?:	No
Final Budget?:	No

Urbanized Areas

UZA ID	UZA Name
340010	NEW YORK--NEWARK, NY-NJ-CT

Congressional Districts

State ID	District Code	District Official
34	13	Albio Sires

Project Details

Project Details

Overview

Funds sought under this grant will support the Access to the Region's Core project (ARC). The Baseline Cost Estimate for the ARC project is $8,699,979,000 in year-of-expenditure dollars.

By allowing for reimbursement of preliminary costs incurred prior to issuance of the Full Funding Grant Agreement (FFGA), the Early Systems Work Agreement (ESWA) will allow the project to award contracts on schedule for early underground tunnel construction and tunnel portal site preparation. In addition to these on schedule contracts, this ESWA also covers efforts for property acquisition; related design; construction management; project administration work; insurance; and other supporting elements. This grant serves three purposes: (1) to outline the components of the ESWA for $1,352,000,000, the amount needed to advance construction and support activities for the initial tunnel and shaft construction contracts; (2) to formalize the $3,000,000,000 Section 5309 New Starts Federal contribution to the Project as noted in the FTAÆs January 27, 2009 letter which approved entry into Final Design and (3) to authorize the reimbursement of Section 5309 New Starts funds to NJ TRANSIT in the amount of $395,020,000 for initial costs.

JUSTIFICATION FOR ESWA

NJ TRANSIT expects the project to be recommended for an FFGA. The ESWA will allow aspects of the project to begin construction prior to the issuance of the FFGA and allow the project to continue on schedule.

Executing the ESWA will promote ultimate completion of the project more rapidly and at less cost. NJáTRANSIT provided the critical path method (CPM) to FTA that demonstrates 5 months of schedule contingency to maintain the 2017 project completion date. That CPM is dependent on those contracts and other activities that are on the critical path being awarded at specific milestones. Failure to achieve critical path milestones impacts either the completion date or the schedule contingency. Federal funding commitments (such as this ESWA) must be in place in order to award critical path contracts. Project elements included in the ESWA include the Manhattan Tunnel Contract, the Tonnelle Avenue Contract, Property Acquisition and Professional Services during final design. Each of these is on the critical path as described below.

MANHATTAN TUNNELS: The critical path for the Access to the RegionÆs Core Project begins with Manhattan Tunnels. The estimated $636 million contract ($511M Base, $9M Design, $116M Allocated Contingency) must be awarded by November 2009 in order to maintain the project schedule and project budget of $8.7 billion. Failure to award the Manhattan Tunnels contract by this date would jeopardize completion of the project in 2017 and would increase costs by approximately $1 million for each day of delay consistent with the FTA-recommended escalation rate of 4.25 percent annually.

TONNELLE AVENUE UNDERPASS: Construction of the Palisades Tunnel and other adjacent contracts at the same time as the Tonnelle Avenue Underpass would cause serious impacts for the future tunnel contractor, regional traffic and the community. Substantially completing the Tonnelle Avenue Underpass before these other activities will improve traffic flow, haul routes for excavated materials, and contractor access associated with five future contracts. Construction of this Underpass will take advantage of an exceptionally favorable bid climate and advancing the Tonnelle Avenue contract now will also spur greater interest in the future ARC contracts that are advancing through procurement. A Letter of No Prejudice was issues for this project on May 13, 2009 allowing for non-federal expeditures. This ESWA will allow federal funds to be used to support Tonnelle Avenue project.

PROPERTY ACQUISITION: Property acquisition is also on critical path to meeting the overall project completion date. Contractors on the various tunneling contracts cannot have access to the site until property acquisition is completed.

PROFESSIONAL SERVICES - The ESWA scope also includes professional services costs to support contract awards. Subsequent contracts cannot be advertised until design is sufficiently complete. NJáTRANSIT's owner controlled insurance program must be in place to provide contractor insurance prior to the award for the construction of the Manhattan tunnels.

An Early Systems Work Agreement is critical not only to maintain schedule and budget, but also to demonstrate a federal funding commitment to the project to match the local funding commitments that have been in place. The ESWA will begin to unleash more than $5.7 billion in local funding that has been allocated to the project, generating much-needed jobs and taking advantage of a favorable response from tunneling firms in the prequalification process.

Finally, service disruptions and crowding on trains confront existing commuters everyday, a product of a system that is over capacity. Transit riders deserve the benefits of this project without delay. The construction documents are ready, the local funding is in place, stakeholders support the project û only the federal commitment of the ESWA federal funding is needed to put the project on a path to completion on schedule and on budget.

FULL PROJECT SCOPE

The major elements of the Access to the RegionÆs Core project (ARC) are outlined by geographic segment below.

New Jersey:

ò New loop tracks (Secaucus Connection) to connect NJ TRANSITÆs Main Line directly to the new ARC tracks west of Frank R. Lautenberg Station. The connecting loop tracks will provide transfer-free ride service to New York City on the Main Line (including MTA Metro-North express service on the Port Jervis Line); NJ TRANSITÆs Pascack Valley Line (including New York MTA Metro-North express service to Rockland County); and NJ TRANSITÆs Bergen County Line;

ò Modifications to Frank R. Lautenberg Station to include a new center platform on the south side of the existing station. This will accommodate transfers between the two new upper-level ARC tracks and the lower-level tracks, servicing the Main Line, Bergen County and Pascack Valley Lines;

ò A new rail yard on an inactive brownfield property in Kearny, New Jersey. Train access to the yard will be via a new lead track from the M&E Lines on the west side of the Lower Hack Bridge. The design includes fueling, sanding and car wash facilities.

ò Two new ARC tracks just south of AMTRAKÆs NEC between the west side of Frank R. Lautenberg Station and the west side of the Palisades in New Jersey. From the west side of the Palisades, the new tracks lead to two new ARC tunnels.

Palisades/Hudson River:

ò The proposed ARC tunnels will descend and turn southward under the Palisades through Union City and Hoboken. The new tunnels will cross under the Hudson River from Hoboken and under the east shore bulkhead in New York City near West 28th Street, then turn northeasterly and pass under West 34th Street to NYPSE.

New York:

ò An expanded New York Penn Station (NYPSE) provides passenger access to New York City TransitÆs Sixth, Seventh, Eighth Avenue and Broadway subway lines, and the Port Authority Trans-Hudson (PATH) 33rd Street Station via the Herald Square concourse.

ESWA SCOPE

The ESWA will allow the project to advance construction and support activities for the first major underground construction contract (Manhattan Tunnels and cross passages) as well as the Tonnelle Avenue Underpass contract. The Tonnelle Avenue Underpass is scheduled for award in June 2009. In addition, acquisition of property along with overall project design and related support activities would be advanced under this ESWA. These contracts and their support activities entail the activities listed below, which are estimated to cost a total of $1,352,000,000, including 24% contingency.

ò Manhattan Tunnels Design/Build Package - The ESWA scope includes modifications for the Con Ed site and temporary relocation of some Con Ed activities; construction of a slurry wall supported Twelfth Avenue shaft; ground stabilization at the Twelfth Avenue launch shaft site; excavation of Warrington Interlocking Cavern; construction of approximately 21,200 feet of bored tunnels using a hard rock tunnel-boring machine (TBM); five cross passages mined in rock; and lining of the Warrington Interlocking. Work will be conducted between the Twelfth Avenue Shaft and Broadway. The estimated cost of the construction portion of this contract is $511,000,000, excluding contingencies. The cost for the design portion of the design build contract ($9,000,000) is captured in the professional services line item. This is included in budget line item 14.01.10 GUIDEWAY & TRACK

ELEMENTS (ESWA).

ò Tonnelle Avenue Underpass - The ESWA scope includes a new underpass structure to carry Route 1&9 over the new ARC tracks and modifications to the building located at 2001 Tonnelle Avenue. The work is located along Tonnelle Avenue just south of the Amtrak Northeast Corridor crossing and east of the Conrail Northern Branch. Project elements include a new structure for Tonnelle Avenue over the proposed ARC tracks; Culverts with a new drainage system; retaining walls; wing walls for the new bridge structure; and retaining walls connecting to the future Palisades Tunnels. The estimated construction cost of this project is $23,000,000, excluding contingencies. This is included in budget line item 14.01.10 GUIDEWAY & TRACK ELEMENTS (ESWA).

ò Property Acquisition û The ESWA scope includes the acquisition of all property and easements in New Jersey and New York needed for the ARC construction and operation. The estimated cost of property acquisition in this ESWA is $243,000,000. This is included in budget line item 14.06.60 ROW,LAND,EXISTING IMPROVEMENTS (ESWA).

ò Professional Services - The ESWA covers professional services expenses for preliminary engineering and extended preliminary engineering activities already expended as well as professional services expenses supporting the final design, permitting, construction management, insurance and wetlands mitigation supporting the overall project scope. The estimated cost of professional services requested under this ESWA is $250,000,000, excluding contingencies. There is no NJ TRANSIT Force Account in the ESWA. This is included in budget line item 14.08.80 PROFESSIONAL SERVICES (ESWA).

ò Contingency û In addition to the costs listed above, the program of work covered by this ESWA includes $325 million in contingency, or 24%. This is included in budget line item 14.09.90 UNALLOCATED CONTINGENCY. This is included in budget line item 14.09.90 UNALLOCATED CONTINGENCY (ESWA).

The ESWA also authorizes the reimbursement of Section 5309 New Starts funds to NJ TRANSIT in the amount of $395,020,000($14,700,000 from the initial ESWA funding, 47,520,000 for FY09 and $332,800,000 for FY10 and beyond), representing a 29.22% share of the total ESWA amount.

NEPA

The projectÆs environmental work is complete. The Final Environmental Impact Statement (FEIS) for the project was accepted by the FTA and notice of its availability was published in the November 7, 2008 issue of the Federal Register. The FTA issued a Record of Decision (ROD) for ARC on January 14, 2009.

NEW STARTS STATUS

The FTA approved the project into the final design phase on January 27, 2009.

STIP

ARC is included on page 1 of Section 3 of the FY09 STIP. The FY09 STIP was approved on September 17, 2008.

This project was published in NJ TRANSITÆs Federal Program Public Notice, which was published on December 23, 2008 and January 12, 2009.

GRANT IN TEAM

This grant outlines future New Starts funds that will be allocated to the ESWA. All future New Starts funds, including state match are shown in the column labeled ôTotal Eligible Cost,ö ($1,097,000,000). Each year, the ôNew Starts Amountö will increase by the amount of that yearÆs New Starts allocation. The ôTotal State Amountö will decrease by the amount of that yearÆs New Starts allocation. In addition to this grant,$125M of Federal Highway Administration flex funds have been or will be used to fund this project. An additional $130,000,000 of ARRA funds are anticipated as well. The ARRA funds and the flex funds have been subtracted out of the ESWA cost($1,352,000,000). As a result, the ôTotal Eligible Cost" for this grant is $1,097,000,000.

The full $8.7B project anticipates New Starts allocations totaling $3,000,000,000, as indicated in the FTAÆs Final Design approval letter dated January 27, 2009.

Previous Federal Funding

Previous federal CMAQ funds awarded for ARC Preliminary Engineering include NJ-90-X086 ($766,000); NJ-95-X002 ($34,756,000); and NJ-95-X003 ($94,680,000). Budget Revision to NJ-95-X003 will reduce ARC funding in the grant to

$39,478,000. A grant application of $130,000,000 of ARRA funds is pending. A grant application of $50,000,000 of CMAQ funding is also pending.

STATUS

The project received permission to enter final design in January 2009. Three bidders were prequalified for the Manhattan package in May 2009. The Tonnelle Avenue under pass was advertised in March 2009. NJ TRANSIT's Board of Directors approved award of the contract at its May 2009 Board Meeting. NTP is expected in June 2009.

PRE-AWARD AUTHORITY

Pre-award authority is being used for final design and property acquisition as well as the scope of the ESWA. Expenditures as of 3/30/09 on professional services activities during design are $119 million. Expenditures as of 3/30/09 on property acquisition are $35 million.

COORDINATION

NJ TRANSIT is coordinating with Port Authority of New York and New Jersey, AMTRAK and New York MTA on this project. Coordination efforts are ongoing. NJ TRANST is also coordinating efforts between the Portal Bridge Project and ARC.

CONTACT INFORMATION:
Karen F. Schrempp
Director, Grant Administration and Compliance
NJ TRANSIT
973-491-8057

Status as of June 1, 2009
No new activity

Earmarks

Earmark Details

Earmark ID	Earmark Name	Orig. Balance	Amount Applied
E2008-NWST-038	Trans-Hudson Midtown Corrido	$14,700,000	$14,700,000

Number of Earmarks: 1

Total Amount Applied: $14,700,000

Date Sent for Release: 7/27/2009 12:53:26 PM

Date Released: 8/14/2009

Security

No information found.

Part 3: Budget

Project Budget

	Quantity	FTA Amount	Tot. Elig. Cost
SCOPE			
140-00 NEW START	0	$14,700,000.00	$454,000,000.00
ACTIVITY			
14.01.10 GUIDEWAY & TRACK ELEMENTS (ESWA)	0	$14,700,000.00	$454,000,000.00
SCOPE			
140-03 NEW START	0	$0.00	$643,000,000.00
ACTIVITY			
14.01.10 GUIDEWAY & TRACK ELEMENTS (ESWA)	0	$0.00	$3,000,000.00
14.06.60 ROW, LAND, EXISTING IMPROVEMENTS (ESWA)	0	$0.00	$225,000,000.00
14.08.80 PROFESSIONAL SERVICES (ESWA)	0	$0.00	$90,000,000.00
14.09.90 UNALLOCATED CONTINGENCY (ESWA)	0	$0.00	$325,000,000.00
		Estimated Total Eligible Cost:	**$1,097,000,000.00**
		Federal Share:	**$14,700,000.00**
		Local Share:	**$1,082,300,000.00**

OTHER (Scopes and Activities not included in Project Budget Totals)

None

SOURCES OF FEDERAL FINANCIAL ASSISTANCE

UZA ID	Accounting Classification	FPC	FY	SEC	Previously Approved	Amendment Amount	Total
340010	2008.47.03.33.1	00	2009	03	$0.00	$14,700,000.00	$14,700,000.00
					Total Previously Approved:		**$0.00**
						Total Amendment Amount:	**$14,700,000.00**
						Total from all Funding Sources:	**$14,700,000.00**

Alternative Fuel Codes

Extended Budget Descriptions

14.01.10	GUIDEWAY & TRACK ELEMENTS (ESWA)	0	$14,700,000.00	$454,000,000.00

MANHATTAN TUNNELS

The project cost associated with this line item is $511,000,000, excluding contingencies. The `Total Eligible Cost` for this line item covered in this grant application is $454,000,000. The balance of the `Total Eligible Cost` will be included in separate federal highway flex funds grant applications. The remaining costs will be included in separate annual FHWA flex funds grant applications.

The scope includes modifications for the Con Ed site and temporary relocation of some Con Ed activities; construction of a slurry wall supported Twelfth Avenue shaft; ground stabilization at the Twelfth Avenue launch shaft site for the tunnel boring machine (TBM) launching; excavation of Warrington Interlocking Cavern; construction of approximately 21,200 feet of bored tunnels from 12th Avenue in Manhattan to 6th Avenue using a hard rock tunnel-boring machine; five cross passages mined in rock and lining of the Warrington Interlocking. The cost of construction services are included in this scope($511,000,000). The cost for the design portion of this design build contract is captured in the professional services line item.

This scope is included in the ESWA.

The FTA issued a Record of Decision (ROD) for ARC on January 14, 2009.

ARC is included on page 1 of Section 3 of the FY09 STIP. The FY09 STIP was approved on September 17, 2008.

14.01.10	GUIDEWAY & TRACK ELEMENTS (ESWA)	0	$0.00	$3,000,000.00

TONNELLE AVENUE UNDERPASS

The project cost associated with this line item is $23,000,000, excluding contingencies. The `Total Eligible Cost` for this line item covered in this grant application is $3,000,000. The balance of the `Total Eligible Cost` is included in the ARRA grant application. The remaining costs will be included in separate annual FHWA flex funds grant applications.

The scope includes a new underpass structure to carry Route 1&9 over the new ARC tracks and modifications to the building located at 2001 Tonnelle Avenue. The work is located along Tonnelle Avenue just south of the Amtrak Northeast Corridor crossing and east of the Conrail Northern Branch. Project elements include new structure for Tonnelle Avenue over the proposed ARC tracks; culverts with a new drainage system; retaining walls; wing walls for new bridge structure; and retaining walls connecting to the future Palisades Tunnels.

The cost of construction services are included in this scope($23,000,000). The cost for design, CM and Project Administration is captured in the professional services line item.

This scope is included in the ESWA.
The FTA issued a Record of Decision (ROD) for ARC on January 14, 2009.

ARC is included on page 1 of Section 3 of the FY09 STIP. The FY09 STIP was approved on September 17, 2008.

14.06.60	ROW, LAND, EXISTING IMPROVEMENTS (ESWA)	0	$0.00	$225,000,000.00

ESWA PROPERTY ACQUISITION

The project cost associated with this line item is $243,000,000, excluding contingencies. The `Total Eligible Cost` for this line item covered in this grant application is $225,000,000. The balance of the `Total Eligible Cost` will be included in separate federal highway flex funds grant applications. The remaining costs will be included in separate annual FHWA flex funds grant

applications.

The scope includes the acquisition of all property and easements in New Jersey and New York needed for the ARC construction and operation.

The FTA issued a Record of Decision (ROD) for ARC on January 14, 2009.

ARC is included on page 1 of Section 3 of the FY09 STIP. The FY09 STIP was approved on September 17, 2008.

14.08.80	PROFESSIONAL SERVICES (ESWA)	0	$0.00	$90,000,000.00

ESWA PROFESSIONAL SERVICES

The project cost associated with this line item is $250,000,000, excluding contingencies. The `Total Eligible Cost` for this line item covered in this grant application is $90,000,000. The balance of the `Total Eligible Cost` has been or will be included in NJ-03-0138, the ARRA grant application and federal highway flex funds. The remaining costs will be included in separate annual FHWA flex funds grant applications.

The scope includes professional services expenses for preliminary engineering and extended preliminary engineering activities already expended as well as professional services expenses supporting the project scope for final design, permitting, construction management, insurance and wetlands mitigation for the overall project. Costs for project management and, project administration, and non-NJ TRANSIT Force Account services needed to support the ESWA contracts are also included in the professional service line item.

The FTA issued a Record of Decision (ROD) for ARC on January 14, 2009.

ARC is included on page 1 of Section 3 of the FY09 STIP. The FY09 STIP was approved on September 17, 2008.

14.09.90	UNALLOCATED CONTINGENCY (ESWA)	0	$0.00	$325,000,000.00

ESWA CONTINGENCY

This line item includes contingencies associated with ESWA work.

The FTA issued a Record of Decision (ROD) for ARC on January 14, 2009.

ARC is included on page 1 of Section 3 of the FY09 STIP. The FY09 STIP was approved on September 17, 2008.

Changes since the Prior Budget

Unable to find change amount information.

Part 4. Milestones

14.01.10	GUIDEWAY & TRACK ELEMENTS (ESWA)	0	$14,700,000	$454,000,000

	Milestone Description	Est. Comp. Date
1.	ADVERTISE	Apr. 26, 2009
	MANHATTAN TUNNELS	

2.	BOARD APPROVAL	Oct. 09, 2009
	MANHATTAN TUNNELS	
3.	NTP	Nov. 26, 2009
	MANHATTAN TUNNELS	
4.	TBM Delivery Date	Apr. 15, 2011
	MANHATTAN TUNNELS	
5.	50% COMPLETE	Jun. 26, 2011
	MANHATTAN TUNNELS	
6.	SUBSTANTIAL COMPLETE	Dec. 31, 2012
	MANHATTAN TUNNELS	
7.	CLOSEOUT	Dec. 09, 2013
	MANHATTAN TUNNELS	

14.01.10 GUIDEWAY & TRACK ELEMENTS (ESWA) 0 $0 $3,000,000

	Milestone Description	Est. Comp. Date
1.	ADVERTISE	Mar. 26, 2009
	TONNELLE AVENUE UNDERPASS	
2.	BOARD APPROVAL	May. 11, 2009
	TONNELLE AVENUE UNDERPASS	
3.	NTP	Jun. 23, 2009
	TONNELLE AVENUE UNDERPASS	
4.	50% COMPLETE	Oct. 23, 2010
	TONNELLE AVENUE UNDERPASS	
5.	SUBSTANTIAL COMPLETION	Feb. 12, 2012
	TONNELLE AVENUE UNDERPASS	
6.	CLOSEOUT	Apr. 12, 2012
	TONNELLE AVENUE UNDERPASS	

14.06.60 ROW, LAND, EXISTING IMPROVEMENTS (ESWA) 0 $0 $225,000,000

	Milestone Description	Est. Comp. Date
1.	FIRST EXPENDITURE	Apr. 24, 2008
	PROPERTY ACQUISITION	
2.	50% COMPLETE	Dec. 31, 2009
	PROPERTY ACQUISITION	
3.	PARCEL ACQUISITION COMPLETE	Dec. 31, 2010
	PROPERTY ACQUISITION	

4.	CLOSEOUT	Dec. 31, 2013
	PROPERTY ACQUISITION	

14.08.80 PROFESSIONAL SERVICES (ESWA) 0 $0 $90,000,000

	Milestone Description	Est. Comp. Date
1.	FIRST EXPENDITURE	Jan. 27, 2009
	ESWA PROFESSIONAL SERVICES	
2.	FINAL EXPENDITURE	Jan. 31, 2011
	ESWA PROFESSIONAL SERVICES	

14.09.90 UNALLOCATED CONTINGENCY (ESWA) 0 $0 $325,000,000

	Milestone Description	Est. Comp. Date
1.	FINAL EXPENDITURE	Jan. 30, 2016
	ESWA CONTINGENCY	

Part 5. Environmental Findings

140110 GUIDEWAY & TRACK ELEMENTS (ESWA) 0 $14,700,000 $454,000,000

Finding No. 1 - Class I

Draft EIS Date: None Specified
Final EIS Date: None Specified
FTA ROD Date: Jan. 14, 2009

140110 GUIDEWAY & TRACK ELEMENTS (ESWA) 0 $0 $3,000,000

Finding No. 1 - Class I

Draft EIS Date: None Specified
Final EIS Date: None Specified
FTA ROD Date: Jan. 14, 2009

140660 ROW, LAND, EXISTING IMPROVEMENTS (ESWA) 0 $0 $225,000,000

Finding No. 1 - Class I

Draft EIS Date: None Specified
Final EIS Date: None Specified
FTA ROD Date: Jan. 14, 2009

140880 PROFESSIONAL SERVICES (ESWA) 0 $0 $90,000,000

Finding No. 1 - Class I

Draft EIS Date: None Specified
Final EIS Date: None Specified
FTA ROD Date: Jan. 14, 2009

140990 UNALLOCATED CONTINGENCY (ESWA) 0 $0 $325,000,000

Finding No. 1 - Class I

Draft EIS Date: None Specified
Final EIS Date: None Specified
FTA ROD Date: Jan. 14, 2009

Part 6: Fleet Status

Fixed Route

		Before	Change	After
I.	**Active Fleet**			
	A. Peak Requirement	0	0	0
	B. Spares	0	0	0
	C. Total (A+B)	0	0	0
	D. Spare Ratio (B/A)	0.00%	0.00%	0.00%
II.	**Inactive Fleet**			
	A. Other	0	0	0
	B. Pending Disposal	0	0	0
	C. Total (A+B)	0	0	0
III.	**Total (I.C and II.C)**	0	0	0

NJ TRANSIT sent updated copies of NJ TRANSIT's Fleet Plans to the Fedral Transit Administration on March 24, 2009.

The number of Active Vehicles in NJ TRANSIT's Commuter Rail Fleet is 1,095. The Shop margins for the Fleet as per Volume II, page 2 of the Fleet Plan is as follows:

Locomotive Diesels 20%
Locomotive Electric 20%
Electric Multiple Units - Arrow III - 20%
Push Pull Cab Cars - Comets 15%
Push Pull Cab Cars - Multi-Level 18%

Part 7. FTA Comments

FTA Internal

Comment Title:	Regional Admin Approval
Comment By:	Anthony G Carr
Date Created:	Aug. 18, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 8/18/2009

Comment Title:	Planner Recomm #
Comment By:	Donald C Burns
Date Created:	Jul. 14, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	The STIP and environmental information are complete.

Comment Title:	Development
Comment By:	Donald C Burns
Date Created:	Jul. 14, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 7/14/2009

Comment Title:	RCRO Comment
Comment By:	John H Prince
Date Created:	May. 11, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	RCRO states a number can be assign when this grant application is completed.

Comment Title:	Prel Legal
Comment By:	Maisie Grace
Date Created:	Jun. 14, 2009
Date Updated:	None Specified
Ref Section:	Unknown

Comment:	I gave my comments to RB.

Comment Title:	FTA Environment Concurrence
Comment By:	Donald C Burns
Date Created:	Jul. 14, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 7/14/2009

Comment Title:	Operations
Comment By:	Larry Penner
Date Created:	Jun. 11, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 6/11/2009

Comment Title:	FTA Legal Concurrence
Comment By:	Maisie Grace
Date Created:	Jul. 27, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 7/27/2009

Comment Title:	FTA Engineering Concurrence
Comment By:	Ralph A Branche, Jr.
Date Created:	Jul. 23, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 7/23/2009

Comment Title:	Dir of Plng Recommends #
Comment By:	Nancy Danzig
Date Created:	Jun. 03, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	I recommend a number.

Comment Title:	FTA STIP Approval
Comment By:	Donald C Burns
Date Created:	Jul. 14, 2009
Date Updated:	None Specified
Ref Section:	Unknown

Comment:	Approval Stamp 9/17/2008

Comment Title:	Transport. Program Specialist
Comment By:	Faye Ellison
Date Created:	Jul. 24, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Application Complete 7/24/2009

Comment Title:	Planning
Comment By:	Nancy Danzig
Date Created:	Jun. 15, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 6/15/2009

Comment Title:	FTA Civil Rights Concurrence
Comment By:	John H Prince
Date Created:	Jul. 24, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	Approval Stamp 7/24/2009

Conditions of Award

Comment Title:	Funding Information
Comment By:	Ralph A Branche, Jr.
Date Created:	Jul. 23, 2009
Date Updated:	None Specified
Ref Section:	Unknown
Comment:	This grant outlines future New Starts funds that will be allocated to the ESWA. All future New Starts funds, including state match are shown in the column labeled ôTotal Eligible Cost,ö ($1,097,000,000). Each year, the ôNew Starts Amountö will increase by the amount of that yearÆs New Starts allocation. The ôTotal State Amountö will decrease by the amount of that yearÆs New Starts allocation. In addition to this grant,$125M of Federal Highway Administration flex funds have been or will be used to fund this project. An additional $130,000,000 of ARRA funds are anticipated as well. The ARRA funds and the flex funds have been subtracted out of the ESWA cost($1,352,000,000). As a result, the ôTotal Eligible Cost" for this grant is $1,097,000,000.

Part 8: Results of Reviews

The reviewer did not find any errors

Part 9: Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

GRANT AGREEMENT
(FTA G-15, October 1, 2008)

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official's electronic signature is entered for this Grant Agreement, FTA has Awarded Federal assistance in support of the Project described below. Upon Execution of this Grant Agreement by the Grantee named below, the Grantee affirms this FTA Award, and enters into this Grant Agreement with FTA. The following documents are incorporated by reference and made part of this Grant Agreement:

(1) \"Federal Transit Administration Master Agreement,\" FTA MA(15), October 1, 2008, http://www.fta.dot.gov/documents/15-Master.pdf
(2) The Certifications and Assurances applicable to the Project that the Grantee has selected and provided to FTA, and
(3) Any Award notification containing special conditions or requirements, if issued.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE GRANTEE DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING THE DATE OF THIS FTA AWARD SET FORTH HEREIN.

FTA AWARD

FTA hereby awards a Federal grant as follows:

Project No: NJ-03-0169-00

Grantee: NEW JERSEY TRANSIT CORPORATION

Citation of Statute(s) Authorizing Project: 49 USC 5309 - New Starts

Estimated Total Eligible Cost (in U.S. Dollars): $1,097,000,000

Maximum FTA Amount Awarded [Including All Amendments] (in U.S. Dollars): $14,700,000

Amount of This FTA Award (in U.S. Dollars): $14,700,000

Maximum Percentage(s) of FTA Participation:

Percentages of Federal participation are based on amounts included in the Approved Project Budget, modified as set forth in the text following the Project Description.

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Project Certification Date: 7/13/2009

Project Description:

ARC Early System Work Agreement

The Project Description includes information describing the Project within the Project Application submitted to FTA, and the Approved Project Budget, modified by any additional statements displayed in this Grant Agreement, and, to the extent FTA concurs, statements in other documents including Attachments entered into TEAM-Web.

This grant outlines future New Starts funds that will be allocated to the ESWA. All future New Starts funds, including state match are shown in the column labeled ôTotal Eligible Cost,ö ($1,097,000,000). Each year, the ôNew Starts Amountö will increase by the amount of that yearÆs New Starts allocation. The ôTotal State Amountö will decrease by the amount of that yearÆs New Starts allocation. In addition to this grant,$125M of Federal Highway Administration flex funds have been or will be used to fund this project. An additional $130,000,000 of ARRA funds are anticipated as well. The ARRA funds and the flex funds have been subtracted out of the ESWA cost($1,352,000,000). As a result, the ôTotal Eligible Cost" for this grant is $1,097,000,000.

Awarded By:
Mr. Anthony G Carr
Deputy Regional Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
08/18/2009

EXECUTION OF GRANT AGREEMENT

The Grantee, by executing this Grant Agreement, affirms this FTA Award; adopts and ratifies all statements, representations, warranties, covenants, and materials it has submitted to FTA; consents to this FTA Award; and agrees to all terms and conditions set forth in this Grant Agreement.

By executing this Grant Agreement, I am simultaneously executing any Supplemental Agreement that may be required to effectuate this Grant Agreement.

Executed by:
Peter J Garino
Senior Director of Capital Programming a
NEW JERSEY TRANSIT CORPORATION
08/20/2009

NJ-03-0169-00 Quarterly Narrative Report

Jul. 01, 2010 through Sep. 30, 2010
As Of Dec. 10, 2010
MS/P Report Submitted , FFR Submitted

Part 1: Recipient Information

Project Number:	NJ-03-0169-00
Recipient ID:	1414
Recipient Name:	NEW JERSEY TRANSIT CORPORATION
Address:	ONE PENN PLAZA EAST , NEWARK, NJ 07105 2246
Telephone:	(973) 491-7107
Facsimile:	(973) 461-4481

Part 2: Project Information

Project No:	NJ-03-0169-00
Brief Desc:	ARC Early System Work Agreement
FTA Project Mgr:	Ralph A. Branche Jr.
Start/End Date:	-
Gross Project Cost:	$1,097,000,000

Adjustment Amt:	$0
Total Eligible Cost:	$1,097,000,000
Total FTA Amt:	$14,700,000
Total State Amt:	$1,082,300,000
Total Local Amt:	$0
Other Federal Amt:	$0

Part 3: Federal Financial Report

Financial Status

	Previous	This Period	Cumulative
A. Federal Cash on Hand at Beginning of Period			$0
B. Federal Cash Receipts			$45,520,000
C. Federal Cash Disbursements			$45,520,000
D. Federal Cash on Hand at End of Period			$0
E. Total Federal Funds Authorized			$62,220,000
F. Federal Share of Expenditures	$44,740,044	$779,956	$45,520,000
G. Recipient Share of Expenditures	$0	$11,421,458	$11,421,458
H. Total Expenditures(F + G)	$44,740,044	$12,201,414	$56,941,458
I. Federal Share of Unliquidated Obligations			$0
J. Recipient Share of Unliquidated Obligations			$0
K. Total Unliquidated Obligations(I + J)			$0
L. Total Federal Share (F + I)			$45,520,000
M. Unobligated Balance of Federal Funds (E - L)			$16,700,000
N. Total Recipient Share Required			$1,614,710,068
O. Remaining Recipient Share to be provided N - (G + J)			$1,603,288,610
P. Federal Program Income on Hand at Beginning of Period			$0
Q. Total Federal Program income earned			$0
R. Federal Program income expended in accordance with the deduction alternative			$0
S. Federal Program income expended in accordance with the addition alternative			$0
T. Federal Program income expended on allowable Transit Capital and Operating expenses			$0
U. Federal Unexpended Program income (			$0

P + Q - R or s or T)			

Indirect Expense

Type	Fixed
Rate	0.00%
Base	$0
Amount Charged	$0
Federal Share	$0

Part 4. Milestone/Progress Report

		Quantity	FTA Amount	Elig. Proj. Cost
14.01.10	 GUIDEWAY & TRACK ELEMENTS (ESWA)	 0	$14,700,000	$454,000,000

	Milestone Description	Orig. Est. Comp. Date	Rev. Est. Comp. Date	# Rev	Actual Comp. Date	Cont. Code
 1.	 NTP	 11/26/2009				
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
 2.	 TBM Delivery Date	 4/15/2011				
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
 3.	 50% COMPLETE	 6/26/2011				
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
 4.	 SUBSTANTIAL COMPLETE	 12/31/2012				
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
 5.	 CLOSEOUT	 12/9/2013				
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
 6.	 ADVERTISE	 4/26/2009	 3/30/2009	 1	 3/30/2009	
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
 7.	 BOARD APPROVAL	 10/9/2009	 11/30/2009	 1		
	DETAILED DESCRIPTION: MANHATTAN TUNNELS					
	PROGRESS: FY2009, 4TH					

	QUARTER Coordinated with Con Edison on future development and final design of Block 675. Received technical proposals from the bidders for final design and construction of Manhattan Tunnels on August 17, 2009. Bidders made presentations on September 18, 2009. Addressed Manhattan Bidders RFIs and prepared Addenda. Completed analysis of temporary TBM substation relocation to Block 675. Continue to review technical proposals from all three bidders. Completed geotechnical and environmental borings on Con Edison property. Continue to evaluate potential overbuild loads on ConEd and Hudson Properties for Tunnels.						

		Quantity	FTA Amount	Elig. Proj. Cost
14.01.10	 GUIDEWAY & TRACK ELEMENTS (ESWA)	 0	$0	$3,000,000

	Milestone Description	Orig. Est. Comp. Date	Rev. Est. Comp. Date	# Rev	Actual Comp. Date	Cont. Code
 1.	 ADVERTISE	 3/26/2009			 3/30/2009	
	DETAILED DESCRIPTION: TONNELLE AVENUE UNDERPASS					
 2.	 BOARD APPROVAL	 5/11/2009			 5/15/2009	
	DETAILED DESCRIPTION: TONNELLE AVENUE UNDERPASS					
 3.	 NTP	 6/23/2009			 6/30/2009	
	DETAILED DESCRIPTION: TONNELLE AVENUE UNDERPASS					
 4.	 50% COMPLETE	 10/23/2010				
	DETAILED DESCRIPTION: TONNELLE AVENUE UNDERPASS					
 5.	 SUBSTANTIAL COMPLETION	 2/12/2012				
	DETAILED DESCRIPTION: TONNELLE AVENUE UNDERPASS					

 6.	 CLOSEOUT	 4/12/2012				
	DETAILED DESCRIPTION: TONNELLE AVENUE UNDERPASS					

		Quantity	FTA Amount	Elig. Proj. Cost
14.06.60	 ROW, LAND, EXISTING IMPROVEMENTS (ESWA)	 0	$0	$225,000,000

	Milestone Description	Orig. Est. Comp. Date	Rev. Est. Comp. Date	# Rev	Actual Comp. Date	Cont. Code
 1.	 FIRST EXPENDITURE	 4/24/2008				
	DETAILED DESCRIPTION: PROPERTY ACQUISITION					
 2.	 50% COMPLETE	 12/31/2009				
	DETAILED DESCRIPTION: PROPERTY ACQUISITION					
 3.	 PARCEL ACQUISITION COMPLETE	 12/31/2010				
	DETAILED DESCRIPTION: PROPERTY ACQUISITION					
 4.	 CLOSEOUT	 12/31/2013				
	DETAILED DESCRIPTION: PROPERTY ACQUISITION					

		Quantity	FTA Amount	Elig. Proj. Cost
14.08.80	 PROFESSIONAL SERVICES (ESWA)	 0	$0	$90,000,000

	Milestone Description	Orig. Est. Comp. Date	Rev. Est. Comp. Date	# Rev	Actual Comp. Date	Cont. Code
 1.	 FIRST EXPENDITURE	 1/27/2009				
	DETAILED DESCRIPTION: ESWA PROFESSIONAL SERVICES					
 2.	 FINAL EXPENDITURE	 1/31/2011				
	DETAILED DESCRIPTION: ESWA PROFESSIONAL SERVICES					

		Quantity	FTA Amount	Elig. Proj. Cost
14.09.90	 UNALLOCATED CONTINGENCY (ESWA)	 0	$0	$325,000,000

	Milestone Description	Orig. Est. Comp. Date	Rev. Est. Comp. Date	# Rev	Actual Comp. Date	Cont. Code
 1.	 FINAL EXPENDITURE	 1/30/2016				
	DETAILED DESCRIPTION: ESWA CONTINGENCY					

EXHIBIT 14

NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246
973-491-7000

JAN 08 2010

Ms. Brigid-Hynes-Cherin
Regional Administrator
Federal Transit Administration
One Bowling Green, Room 429
New York, NY 1004-1415

Dear Ms. Hynes-Cherin:

This letter is to officially request an amendment to the Early Systems Work Agreement (ESWA) for the Access to the Region's Core (ARC) project. As you know, NJ TRANSIT submitted the amended ESWA in TEAM on October 23, 2009. NJ TRANSIT appreciates the FTA sending the ESWA amendment to the U.S. Department of Labor last month for their required review. We expect DOL certification early next week.

The project costs covered by this ESWA amendment now total $2.117 billion, a $765 million increase over the original $1.352 billion original ESWA. The amended ESWA will increase the authorized reimbursement of Section 5309 New Starts funds to NJ TRANSIT by $206,069,932 to a total of $601,089,932.

The original ESWA provided authorization for the Tonnelle Avenue Underpass and Manhattan Tunnels contracts as well as property acquisition, contingency and professional services for design, construction management and insurance. These project elements are now underway and authorization for subsequent contracts and services is required now for additional project elements.

The scope of the amended ESWA has since been negotiated with your office and now includes additional project elements of Palisades Tunnels, Amtrak Towers and Kearny Yard Earthwork. Adjustments have also been made to line items in the original ESWA to reflect changes to costs of individual project elements, such as those resulting from the receipt of bids.

NJ TRANSIT continues to expect the project to be recommended for an FFGA. The ESWA will allow additional aspects of the project to begin construction prior to the

issuance of the FFGA and allow the project to continue on schedule.

Executing the ESWA amendment will promote ultimate completion of the project more rapidly and at less cost. NJ TRANSIT provided the critical path method (CPM) to FTA that demonstrates 5 months of schedule float. That CPM is dependent on those contracts and other activities that are on the critical path being awarded at specific milestones. Failure to achieve critical path milestones impacts either the completion date or the schedule contingency. Federal funding commitments (such as this ESWA) must be in place in order to award critical path contracts. A more detailed justification of the additional elements included in the ESWA amendment is provided below.

PALISADES TUNNELS - This contract is the second of three design-build tunnel segments and a prerequisite for the signal, power, communication, and track system contracts that follow. Additionally, the Palisades Tunnel contract includes the Hoboken Shaft, which will serve as the launch site for the Hudson River TBM.

AMTRAK TOWERS RELOCATION - This contract is a prerequisite for several subsequent contracts. Amtrak's existing 138kV transmission lines are located within 50 feet of the Northeast Corridor and the future right-of-way of the ARC project. New foundations and towers must be installed and the transmission lines relocated to make the property available for construction of the new viaducts, bridges, and embankments for the ARC tracks.

KEARNY YARD EARTHWORK -This contract is on the critical path and is required now to prepare the site to receive muck from the Manhattan Tunnels contract approved in the first Early Systems Work Agreement. Kearny Yard will be used as a mid-day storage yard for trains using the ARC station. The rail yard design requires raising the overall elevation of the site by more than 20 feet, which will be accomplished by depositing muck on the site from all three tunnel contracts.

As in the previous ESWA request letter, NJ TRANSIT is again providing a status update (below) on nine prerequisites to a Full Funding Grant Agreement that were identified in your letter to Rich Sarles dated January 27, 2009, which approved entry of the project into final design. I am pleased to report that we have advanced these items.

- NJ TRANSIT provided an updated ARC Financial Plan as part of its New Starts Annual Report submittal in September 2009. The plan demonstrates sufficient non-Section 5309 New Starts funding is available and committed to the project.

- NJ TRANSIT will continue to work with FTA's Financial Management Oversight Consultant to provide whatever material is necessary to examine the impact of recent credit market conditions with regard to Port Authority of New York & New Jersey and New Jersey Turnpike commitments to the project.

- NJ TRANSIT executed a Memorandum of Agreement with Amtrak for all property and force account support. We recently also executed a lease with Amtrak for the

Tonnelle Avenue Underpass property. Negotiations are underway for the balance of the project Amtrak elements.

- The 2-year and full scope for THE Partnership and CM Consortium have been provided to FTA. As we have discussed, the scopes of work include support for all FTA activities including Project Execution Plan requirements.

- A revised project baseline schedule with the PEP-required float and contingency was provided to FTA in September 2009. Also, as you requested, Cost and Schedule Management Plans have been issued, implemented, and forwarded to the FTA. A schedule and budget update is underway and will be provided to FTA when completed.

- Project Management Plan, Revision 13 was issued on January 8, 2010 and is available on the project's document system now.

- NJ TRANSIT and Amtrak have signed a Memorandum of Understanding to advance the Portal Bridge project.

- NJ TRANSIT has completed its analysis of traction power alternatives. As you know, we have previously provided the FTA with NJ TRANSIT's determination that it will design and construct an independent 60Hz system. We have also recently provided the FTA with a technical memorandum that addresses the Environmental Impact Statement (EIS) or Record of Decision (ROD) updates.

- The Before & After Study was completed submitted to the FTA several months ago. This submittal included the full modeling requirements required by the FTA.

An Early Systems Work Agreement amendment is critical not only to maintain schedule and budget, but also to demonstrate a federal funding commitment to the project to match the local funding commitments that have been in place. The ESWA amendment will continue to unleash more than $5.7 billion in funding allocated by local sources, generating much-needed jobs and taking advantage of a favorable response from tunneling firms in the prequalification process.

The work authorized by this amended ESWA will continue to put people to work during these tough economic times, allow NJ TRANSIT to take advantage of a favorable bidding climate, and advance further towards opening day of the new transportation services and options.

The Palisades Tunnels contract is ready to be awarded immediately upon receipt of the amended ESWA. NJ TRANSIT received favorable bids for the contract and the NJ TRANSIT Board of Directors has already approved the contract award, subject to the approval of this ESWA amendment. Only the additional federal commitment of the amended ESWA is needed to put the project on a path to completion on schedule and on budget.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven Santoro
Assistant Executive Director
Capital Planning and Programs

C: Ralph Branche, Jr. (FTA)
Anthony Carr (FTA)
Pete Garino (NJ TRANSIT)
Karen Schrempp (NJ TRANSIT)
Art Silber (NJ TRANSIT)
Rich Andreski (NJ TRANSIT)
Michael Goldblatt (NJ TRANSIT)

EXHIBIT 15

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

March 26, 2010

The Honorable Christopher Christie
Governor of New Jersey
Trenton, NJ 08625-0001

Dear Governor Christie:

It was a pleasure to meet with you last month and, later, speak by telephone to discuss the Access to the Region's Core (ARC) project. I was pleased to hear of your continued support for it. As you know, the ARC project has received an Early Systems Work Agreement (ESWA), which obligated Federal Transit Administration (FTA) New Starts funds to allow certain elements of the project to proceed on schedule. In addition, the project was recommended in President Obama's Fiscal Year (FY) 2011 budget for a Full Funding Grant Agreement (FFGA) that would provide up to $3.0 billion in total New Starts funding and a $200 million appropriation in that fiscal year.

As we discussed, this recommendation for an FFGA and appropriation in FY 2011 are predicated on the premise that total New Starts funding for this project will not exceed $3.0 billion. This would be the largest commitment of New Starts funds to any single project in the history of the U.S. Department of Transportation.

As you also are aware, the current cost estimate is based on the assumption of vigorous project management and cost control measures on the part of New Jersey Transit. Since the FFGA will cap the total amount of New Starts funding available for the project at $3.0 billion, any costs exceeding this amount will be the responsibility of the State and its non-Federal funding partners. For this reason, I am asking for your assurance of continued commitment to a project implementation plan that will keep this project on schedule and on budget.

Before proceeding with an additional ESWA, I request that you obtain a firm commitment from the Port Authority of New York and New Jersey reiterating their $3.0 billion contribution to this project, as we discussed. I also request that you confirm the commitment of funds under the control of the State of New Jersey for the remaining project costs that are not covered by the Port Authority or the New Starts funding. This commitment will need to include sufficient funding to cover any additional costs that emerge during the Final Design and FTA review process prior to issuance of FFGA.

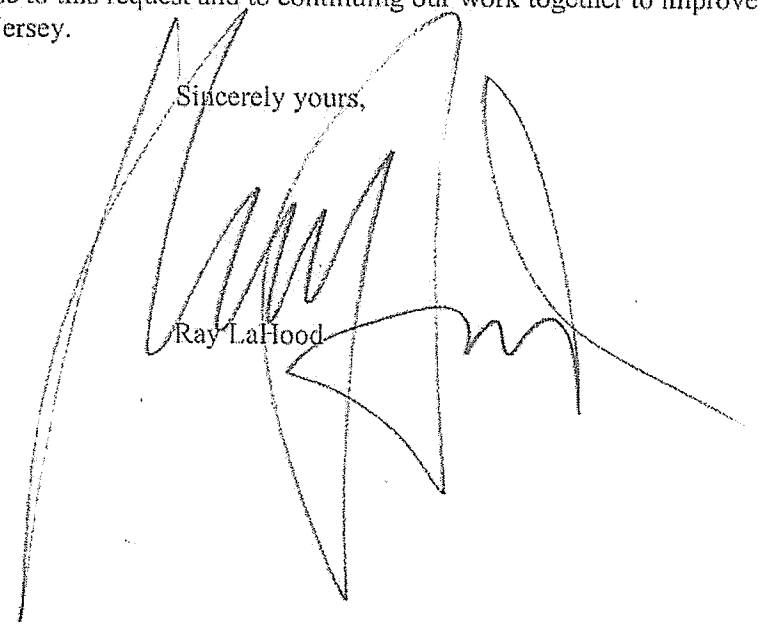
In a letter to New Jersey Transit, FTA stated its approval of the ARC project into Final Design and provided additional details related to the State's financial commitment to this project. The FTA's Region II Office also has provided a "roadmap" defining the steps needed to be completed by New Jersey Transit before the FFGA can be executed.

As stated in the letter and roadmap, FTA must perform a detailed financial capacity assessment of the funding commitments to the project. This assessment will rely on the above commitments as well as a determination that the New Jersey Toll Authority has taken the necessary action to set aside the $1.5 billion in toll revenues proposed to be used for the ARC project as those funds start to accumulate in FY 2011. The FTA must then assess the likelihood that the $1.0 billion in Federal flexible funds, which are to be committed to the project, will be available in the year that they are programmed by the State. The FTA also will assess whether issues related to continued funding for the New Jersey Transportation Trust Fund can be resolved, as this assessment is needed to assure that sufficient funding is available for continued operation and recapitalization of public transportation throughout the existing New Jersey Transit system.

Finally, we must ensure that sufficient funds have been committed to allow the Portal Bridge to be built and opened on or before the beginning of revenue service for the ARC project. The ARC project depends on the construction of the Portal Bridge to produce the projected transit benefits.

I look forward to your response to this request and to continuing our work together to improve public transportation in New Jersey.

Sincerely yours,



Ray LaHood

EXHIBIT 16

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
P.O. BOX 001
TRENTON
08625
(609) 292-6000

CHRIS CHRISTIE
GOVERNOR

April 6, 2010

The Honorable Ray LaHood
Secretary
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary LaHood:

Thank you for your letter of March 26, 2010. I appreciate your efforts on our behalf to advance the Access to the Region's Core (ARC) project, which is critical for the transit riders of New Jersey and the region.

I want to restate my commitment of those funds controlled by the State of New Jersey, specifically funding from the New Jersey Turnpike Authority (NJTA), the Federal Highway Administration and the New Jersey Transportation Trust Fund (TTF). Also attached is a reconfirmation of the Port Authority of New York and New Jersey (PANYNJ) $3 billion commitment to the project.

As you may know, the New Jersey Turnpike Authority Board authorized the use of $1.25 billion of toll revenue for the ARC project in October of 2008. Subsequently, New Jersey Transit entered into an agreement with the NJTA to utilize these funds for the project in November of 2009.

New Jersey also reaffirms the allocation of Federal Highway Flex funding for the ARC project. While this funding is dependent on the reauthorization of SAFETEA-Lu, I am confident Congress will reauthorize the surface transportation program. At the local level, the North Jersey Transportation Planning Authority (NJTPA), the Metropolitan Planning Organization (MPO) of jurisdiction, acted to authorize the flex of these funds to the ARC project in May of 2007.

The TTF funding allocated to ARC is provided for cash flow purposes only, in order to lessen the demand for Federal New Starts funding in the early years of the project. Ultimately, TTF funds will be reimbursed once the requisite Federal funds become available. Importantly, all of the TTF funding for ARC is provided in FY11 and prior and has already been authorized.

Given time constraints of current contractor bids, I look forward to an expeditious award of the second Early Systems Work Agreement.

Regarding the Full Funding Grant Agreement, I am directing New Jersey Transit Executive Director Jim Weinstein to begin work with your Department to finalize the agreement as soon as possible. Jim and his team are currently finalizing internal reviews and will shortly provide you with the Portal Bridge financial plan, as well as an up-to-date budget, schedule and cash flow for the ARC project and a revised 20-year financial plan for the entire agency. The Portal Bridge financial plan will make use of the TTF funding that is being provided to ARC for cash flow purposes (once it is reimbursed by the Federal Transit Administration), as well as other available sources. Furthermore, the 20-year financial plan for New Jersey Transit will demonstrate our ability to recapitalize the entire system.

With respect to the reauthorization of the TTF as it relates to the recapitalization of the transit system, the State of New Jersey has a long history of reauthorizing the TTF on time and I will not let the TTF expire on my watch.

Sincerely,

Chris Christie
Governor

c: U.S. Senator Frank R. Lautenberg
U.S. Senator Robert Menendez

THE PORT AUTHORITY OF NY & NJ

The Honorable Christopher Christie
Office of the Governor
Trenton, New Jersey 08625-0001

April 6, 2010

Dear Governor Christie:

We are in receipt of the March 26, 2010 letter to you from U.S. Secretary of Transportation Ray LaHood, asking you to "obtain a firm commitment from the Port Authority" regarding the agency's contribution of $3 billion to the Access to the Region's Core ("ARC") project. On behalf of the Port Authority, we are pleased to provide you with the requested commitment.

The Port Authority's twelve-member Board of Commissioners, appointed by the Governors of the two States, holds final and ultimate responsibility for authorizing the expenditure of agency funds on specific projects. In recent years, the Board has repeatedly expressed the agency's unvarying commitment of $3 billion for the ARC project. In December 2007, the Board adopted an Updated 10-Year Capital Plan that includes $3 billion for the ARC project. In June 2008, the Board certified the ARC project as a new additional facility of the Port Authority – an essential precondition to the expenditure of agency funds on the project (other than funds used solely for preliminary planning and engineering activities). Contemporaneous with the ARC facility certification, the Board authorized the Port Authority's participation in the project for a total of $3 billion. Copies of the June 2008 facility certification and project authorization are attached hereto.

Should you need any additional information, please let us know.

Sincerely,

Anthony R. Coscia
Chairman

Christopher O. Ward
Executive Director

225 Park Avenue South
New York, NY 10003
T: 212 435 7000

ACCESS TO THE REGION'S CORE (ARC) PROJECT (FORMERLY KNOWN AS "THE TUNNEL") – FACILITY CERTIFICATION

On July 27, 2006, the Board authorized Port Authority expenditures of at least $1 billion to implement the Access to the Region's Core Project (the Project), to facilitate efficient mass transportation and ease congestion on the Port Authority's transportation infrastructure and the New York-New Jersey region, subject to: (1) an increase of up to a total aggregate amount of $2 billion as the Project's financing plan evolves during the approval process; (2) further Board approval for implementation of the Project; and (3) certification of the Project as an additional facility of the Port Authority, pursuant to bond covenants, with respect to implementation of the Project other than for preliminary planning and engineering costs in connection therewith. In addition, the Board authorized the expenditure of up to $10 million for preliminary planning and engineering activities pertaining to the design, development and construction of the Project, including reimbursement of costs incurred by New Jersey Transit Corporation (NJ Transit) for such activities. On October 19, 2006, the Board authorized the identification, and subject to further authorization, the acquisition of real property in New York City that will be necessary to effectuate the Project, through the Port Authority's Pre-development Site Acquisition Program. Additionally, the Port Authority's Updated 2007-2016 Ten-Year Capital Plan, adopted on December 16, 2007, allocates $3 billion for the Project.

As currently proposed, the Project will include, among other items, the construction of a new passenger rail tunnel under the Hudson River and a new underground passenger terminal adjacent to the Pennsylvania Station in New York City, expanding links between NJ Transit's extensive commuter-rail network and Pennsylvania Station. The Project also will provide associated rail improvements to the Northeast Corridor between New York and New Jersey.

Overall responsibility for the effectuation of the various components of the Project will be set forth in a General Project Agreement to be entered into between NJ Transit and the Port Authority. It is anticipated that the Port Authority will not incur any operating and maintenance expenses or replacement costs relating to the Project, and that all such operating and maintenance expenses and, to the extent of available insurance or federal funds received by NJ Transit, replacement costs, shall be borne by NJ Transit. Total project costs are currently estimated to be $7.6 billion, and it is anticipated that any costs in excess of the Port Authority's participation will be provided through federal grants and other New Jersey funding sources identified by NJ Transit.

In accordance with resolutions establishing the outstanding series of Consolidated Bonds (which also includes Consolidated Notes), since the Project would be a new additional facility of the Port Authority, before any Port Authority funds (other than solely for preliminary planning and engineering activities) can be used in connection with the effectuation of the Project, at the time of issuance of the first series of Consolidated Bonds for purposes which include capital expenditures in connection with the Project, the Port Authority must first certify its opinion as to certain matters relating to the financial effect upon the Port Authority of the effectuation of the Project as an additional facility of the Port Authority.

So that the Commissioners, in the exercise of sound business judgment, may act on this certification of opinion, the Chief Financial Officer reviewed with the Commissioners the projected overall financial standing and condition of the Port Authority and the economics of the Project on the basis of the issuance of Consolidated Bonds to provide $3 billion of the currently estimated project costs.

It is the Chief Financial Officer's opinion that, subject to reaffirmation of this opinion at the time of issuance of the first series of Consolidated Bonds for purposes which include capital expenditures for the Project, the application of any portion of the proceeds of such series of Consolidated Bonds in connection with the Project will not, during the periods 2008 through 2037, reflecting the traditional 30-year term of long-term Consolidated Bonds, and 2009 through 2018, the immediately ensuing ten-year period associated with Consolidated Bonds, including Consolidated Notes, with a maturity of less than ten years, in the light of the Port Authority's estimated expenditures in connection with the Project and the total anticipated revenues and expenses of the Port Authority during those periods, materially impair the sound credit standing of the Port Authority or the investment status of Consolidated Bonds or the ability of the Port Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds.

The Chief Financial Officer's opinion incorporated anticipated results for the Port Authority for the period 2009-2018, and schedules showing presently anticipated cash flows for the Project, which did not include the receipt of revenues from the Project by the Port Authority, and anticipated revenues and expenses of the Port Authority. The opinion was based upon these forecasts and other conditions existing at the present time. The Chief Financial Officer's opinion also indicated that it was not reasonable to forecast accurately beyond this ten-year period. Therefore, his judgment with respect to the financial ability of the Port Authority to continue to maintain net revenues sufficient to pay debt service on its obligations was based upon the continued ability of the Port Authority to function and fulfill its agreements with the holders of its obligations.

In reaching the conclusions set forth in his opinion, the Chief Financial Officer considered the covenants with holders of Consolidated Bonds and his assumption that the Port Authority will continue to comply with such covenants, including its covenant to establish charges in connection with the Port Authority's facilities to the end that at least sufficient net revenues may be produced therefrom to provide for the debt service on all Consolidated Bonds, including those issued for purposes of capital expenditures in connection with the Project. The conclusions set forth in the opinion were also based on the Chief Financial Officer's consideration of the present financial condition of the Port Authority and its continued ability to conduct its business affairs, the assumption that the Port Authority's ability to continue to honor such covenants will necessitate increases from time to time in the Port Authority's tolls, fares, fees, rentals and other charges, or reductions in services and associated expenditures, and the assumption set forth in the preceding sentence. As such, it is, therefore, the judgment of the Chief Financial Officer that the Port Authority will, at all times during the ensuing 30-year period, continue to maintain sufficient net revenues to pay debt service on all Consolidated Bonds.

The Chief Financial Officer's opinion noted that any forecast is subject to uncertainties. Inevitably, some assumptions will not be realized and unanticipated events and circumstances may occur. Therefore, estimates of future revenues and expenses constitute present estimates and statements of expectation, which may or may not be fulfilled in the future. Additionally, there are likely to be differences between the forecasts underlying the opinion and actual results, and those differences may be material. However, the Chief Financial Officer's opinion and these estimates were based in part on information supplied by the Project Director, the Comptroller, and the Director of Management and Budget, which information the Chief Financial Officer believed to be accurate.

The Executive Director, Deputy Executive Director, Chief Financial Officer or Treasurer would be authorized to reaffirm the certification at the time of issuance of such Consolidated Bonds, provided that there is no substantial adverse change in the economic basis for the certification.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Blakeman, Chasanoff, Coscia, Holmes, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

RESOLVED, that certification is hereby made as of June 30, 2008, that, in the opinion of The Port Authority of New York and New Jersey, the issuance of Consolidated Bonds (which includes Consolidated Notes) for purposes which include capital expenditures in connection with the Access to the Region's Core Project (the Project) will not, during the periods 2008 through 2037 and 2009 through 2018, in light of the Port Authority's estimated expenditures in connection with the Project, and the total anticipated revenues and expenses of the Port Authority during those periods, materially impair the sound credit standing of the Port Authority or the investment status of Consolidated Bonds or the ability of the Port Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds; and it is further

RESOLVED, that the Executive Director, Deputy Executive Director, Chief Financial Officer or Treasurer be and each hereby is authorized to reaffirm said certification on behalf of the Port Authority at the time of issuance of the first series of Consolidated Bonds (which includes Consolidated Notes) for purposes which include capital expenditures in connection with the Project, provided that there is no substantial adverse change in the economic basis for said certification, in which event said certification shall remain in effect as the opinion of the Port Authority at such time of issuance.

ACCESS TO THE REGION'S CORE (ARC) PROJECT (FORMERLY KNOWN AS "THE TUNNEL") – INCREASE IN PROJECT AUTHORIZATION AND AUTHORIZATION OF ADDITIONAL PORT AUTHORITY FUNDING

It was recommended that the total project authorization for the Port Authority's participation in the Access To the Region's Core Project (the Project) be increased to a total aggregate amount of $3 billion, consistent with the Port Authority's Updated 2007-2016 Ten-Year Capital Plan adopted on December 18, 2007, and that the Executive Director be authorized to expend up to $100 million of such amount for costs in connection with property acquisitions, administrative expenses, planning, final design and engineering and construction of the Project through year-end 2008, including prior expenditures and commitments totaling approximately $34 million.

As currently proposed, the Project will include, among other items, the construction of a new passenger rail tunnel under the Hudson River and a new underground passenger terminal adjacent to the Pennsylvania Station in New York City, expanding links between New Jersey Transit Corporation's (NJ Transit) extensive commuter-rail network and Pennsylvania Station. The Project also will provide associated rail improvements to the Northeast Corridor between New York and New Jersey. Overall responsibility for the effectuation of the various components of the Project will be set forth in a General Project Agreement to be entered into between NJ Transit and the Port Authority.

It is anticipated that the Port Authority will not incur any operating and maintenance expenses or replacement costs relating to the Project, and that all such operating and maintenance expenses and, to the extent of available insurance or federal funds received by NJ Transit, replacement costs, shall be borne by NJ Transit. Total project costs are currently estimated to be $7.6 billion, and it is anticipated that any costs in excess of the Port Authority's participation will be provided through federal grants and other New Jersey funding sources identified by NJ Transit. It is expected that the Board will be asked to approve additional incremental funding requests until the cumulative authorized capital expenditures by the Port Authority reach $3 billion.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Blakeman, Chasanoff, Coscia, Holmes, Mack, Pocino, Silverman and Steiner voting in favor; none against; Commissioner Sartor recused:

> **RESOLVED**, that the project authorization for the Access To the Region's Core Project (the Project) be and it hereby is increased, to a total aggregate amount of $3 billion, and that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to expend up to $100 million of such amount for costs incurred through year-end 2008 in connection with property acquisitions, administrative expenses, planning, final design and engineering and construction of the Project, including prior expenditures and commitments totaling approximately $34 million; and it is further
>
> **RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take any and all action to effectuate the foregoing, including the execution of agreements, contracts and other documents to facilitate the Project, together with amendments and supplements thereof, or

amendments and supplements to existing agreements, including amendments or supplements to the existing Memorandum of Understanding between the Port Authority and New Jersey Transit Corporation, dated August 10, 2007, and to take action in accordance with the terms of such agreements, contracts and other documents, as may be necessary in connection therewith; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take action in connection with the identification of real property in New York City that will be necessary to effectuate the development of the Project, and to incur all costs and expenses and execute all documents, including, without limitation, conveyances or other documents relating to transfer of property interests to the Port Authority, and agreements with public and private entities which, among other matters, may involve utility relocation, environmental studies and investigations, appraisals, surveys, title searches and title insurance necessary and incidental to such identification and acquisition; and it is further

RESOLVED, that the Committee on Operations be and it hereby is authorized to approve the final terms of the purchase or transfer of real property interests required in connection with the development of the Project; and it is further

RESOLVED, that the form of all agreements, contracts and other documents in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

EXHIBIT 17

U.S. Department
of Transportation
**Federal Transit
Administration**

REGION II
Connecticut (Rail),
New Jersey,
New York

One Bowling Green
Room 429
New York, NY 10004-1415
212-668-2170
212-668-2136 (fax)

April 14, 2010

Mr. James Weinstein
Executive Director
New Jersey Transit
1 Penn Plaza East
Newark, NJ 07105

Re: Approval of an Amendment to the Early System Work Agreement for the Access to the Region's Core Project

Dear Mr. Weinstein:

The Federal Transit Administration (FTA) has reviewed and approved New Jersey Transit's (NJT) January 8, 2010, request for an amendment to the Early System Work Agreement (ESWA) for the Access to the Region's Core (ARC) project. The ESWA amendment, in the amount of $765,049,000, will allow NJT to incur costs for the new activities listed below in advance of a Full Funding Grant Agreement (FFGA). The ESWA amendment commits an additional $206,069,932 in Section 5309 New Starts funds, as an installment of the maximum $3,000,000,000 that FTA intends to commit to this project under an FFGA. Finally, the ESWA authorizes the use of an additional $179,050,000 in Title 23 Congestion Mitigation and Air Quality (CMAQ) funds for the ARC project. Expenditure of any of these funds is subject to the obligation of specific grant funds as they become available through the appropriations process. Funds in the amount of $47.52 million in Section 5309 New Starts are being obligated contemporaneously with this ESWA approval.

NJT requested this ESWA amendment to advance construction and support activities to maintain the project budget and schedule. NJT anticipates awarding the Palisades Tunnels contract in early April upon approval of this ESWA amendment. NJT has already received bids for the contract and the Board of Directors has approved the contract award subject to receipt of the ESWA amendment. Accordingly, this ESWA amendment is needed to advance the Palisades Tunnels contract, help maintain the project schedule, and make efficient and long-term management of the ARC Project easier. The new activities supported under the ESWA amendment are as follows:

- Palisades Tunnels Contract;
- Amtrak Tower Relocation Contract; and
- Kearny Yard Earthwork Management Contract;

The ARC Project Baseline Cost Estimate (BCE) is $7.7 billion in 2009 base year dollars and $8.7 billion in Year of Expenditure (YOE) dollars. The Section 5309 New Starts funding for the ARC Project is expected to be $3 billion and will represent a 34.5 percent share of the total project cost. Consistent with FTA's established policy, the level of New Starts funding was set at the time of entry into final design, and will be the maximum amount of New Starts funds provided by FTA for any Full Funding Grant Agreement (FFGA) for the ARC project. Any New Starts funds awarded under this ESWA, as well as all previously awarded New Starts funds, would be included in the $3 billion total New Starts funding for an FFGA.

There are a number of items that must be addressed by NJT prior to FTA's approval of an FFGA for the ARC Project. These include the items that have not yet been addressed from FTA's final design approval letter dated January 27, 2009, as well as the recommendations described in FTA's draft Financial Capacity Assessment dated May 7, 2009. A summary of the remaining outstanding items is provided below.

Financial Issues

Although the financial plan submitted by NJT is sufficient for entry into final design and award of an ESWA, NJT will need to provide additional information before the ARC project can be considered for an FFGA in order to satisfy FTA's financial capacity requirements. NJT must update the financial plan prior to any application for an FFGA to reflect any changes in funding assumptions that occur between now and then. In addition, the following financial issues will need to be satisfactorily addressed prior to FTA's consideration of the ARC project for an FFGA:

- FTA's Financial Management Oversight Contractor (FMOC) indicated a concern about the long term availability of funds from the New Jersey Transportation Trust Fund (TTF). Projections provided by the TTF Authority indicate that all current-law revenues are fully programmed to cover current and authorized, but not-yet-issued, debt service through the horizon year of NJT's forecast (Fiscal Year 2028). Because NJT's state of good repair program (as well as lesser capital projects) is dependent on future allocations from the TTF, NJT will need to provide a more precise plan as to how these funds will be made available, as well as its priorities for modifying the capital program should a lesser amount of funds be made available.

- FTA will examine the Port Authority of New York and New Jersey's (PANYNJ) ability to provide the $3 billion it has committed to the ARC project. In December 2007, PANYNJ included $3 billion for the ARC project in its ten-year capital plan (2007-2016). In March 2008, FTA performed a brief review of PANYNJ's financial capacity to provide the funding committed to the ARC project. However, since that time the credit market has changed significantly and PANYNJ is re-examining its ten-year capital plan. Because of the rapidly changing credit market conditions, a detailed examination at this time would not prove useful. Rather, it will be examined when the ARC project submits its request for an FFGA. At that time, FTA will also examine the

impact of the credit market on the availability of New Jersey Turnpike Authority (NJTA) funds.

- The financial plan assumes a very minimal cost for the purchase of the Amtrak right-of-way. In March 2009, NJT and Amtrak executed a formal agreement that provides for a negotiated sale as the process for determining the cost of the right-of-way. Amtrak and NJT are currently in negotiations on the cost. An updated cost for the Amtrak right-of-way that reflects the status of the negotiations must be submitted as part of the FFGA request.

- The FFGA request will need to be supported by information providing details on how cost overruns and/or any delay in the receipt of Federal funds will be funded.

- The operating financial plan will need to reflect the current assumption for the opening date of the ARC Project at the time the FFGA request is submitted.

Risk Management Issues

As NJT completes final design for the project, it needs to take actions to address the major risk factors noted during the risk assessment that concluded in January 2009. The following areas of uncertainty still need to be addressed by NJT prior to FTA's consideration of an FFGA for the ARC project:

- As part of the risk management review process, FTA was not able to identify any meaningful capacity for NJT to effectuate secondary cost mitigation or scope deferrals, although NJT is committed to reviewing the possibility of implementing three cost saving items. This means that there is no effective cost risk mitigation buffer capability for the project. Therefore, as the project moves closer to an FFGA, FTA will evaluate whether a Capital Reserve Account (CAPRA) is needed to ensure funds would be available for any overruns that could occur as the project moves through construction. The function of the CAPRA is to preserve the existing contingency funds for requirements that the project will experience in mid to late construction. If FTA determines that an integrated CAPRA/cost contingency management plan is needed to assure that the project will be completed in an efficient and effective manner, funding arrangements for the CAPRA must be committed to the ARC Project before execution of an FFGA.

- The scheduled completion date for the project is extremely optimistic and has the potential to slip, with possible delays ranging from nine to 22 months. Several risk elements exist with activities that are included on the critical path. These risks must be addressed through NJT's schedule float and/or contingency planning as part of the final design effort. FTA approved a schedule management plan on February 28, 2010, and asks that NJT make certain changes to reflect a project that is in construction. NJT must submit an updated schedule and schedule contingency plan 90 days prior to any application for an FFGA.

- The Project Management Plan (PMP) defines the project management structure, organization, reporting relationships and processes which will guide the ARC project development and implementation. FTA is currently reviewing NJT's PMP submittal, revision 13, submitted January 08, 2010, and will work with NJT to have a fully approved PMP document in place as soon as possible. Prior to execution of an FFGA, NJT must have a fully approved PMP, and provide evidence that it is operating in conformance with the PMP.

- Coordination with Amtrak is vital to the success of the ARC project. Prior to entry into final design, NJT and Amtrak reached agreement on the terms and conditions that will govern the purchase of Amtrak right-of-way by NJT, the process for Amtrak approval of design changes that affect the Northeast Corridor, a commitment by Amtrak to provide force account resources during the project, and a preference that NJT expand its own traction power facilities rather than rely on Amtrak's, subject to a supplemental environmental review process. NJT and Amtrak executed a formal Memorandum of Agreement (MOA) describing the details of these terms and conditions in March 2009. FTA will review Amtrak and NJT compliance with the MOA as part of its consideration of the FFGA request.

Other Issues

Several additional areas require action during final design:

- The 2030 forecast year operating plan developed for the ARC Project (upon which the benefits of the project are calculated) is reliant upon the Portal Bridge over the Hackensack River being expanded from two tracks to four tracks, which is a separate project under the Federal Railroad Administration's (FRA) jurisdiction. The locally preferred alternative for the Portal Bridge includes a three-track fixed northern bridge and a two-track moveable southern bridge with a capital cost of approximately $1.2 billion. The Record of Decision for the Portal Bridge project was issued by FRA in December 2008. Prior to execution of an FFGA for the ARC project, FTA will require identification of a complete and reasonable funding plan for the Portal Bridge project. Currently, NJT's financial plan shows $728 million committed to the Portal Bridge project. FTA will need to be provided with information on sources for the remaining funding of approximately $472 million.

- In February 2009, NJT decided to explore a change in the traction power system from the present 12kV, 25 Hz system for Amtrak and the Northeast Corridor, to a 25kV, 60 Hz traction power system built for the ARC project that would be independent of Amtrak. NJT submitted a technical memo to FTA on January 8, 2010, for environmental impacts review of the change to the project. FTA is currently reviewing the document. The environmental process must be completed before this change can proceed.

This ESWA amendment approval allows NJT to incur costs for the scope of work referenced above and have it be reimbursed by future FTA grant assistance as funds become available through the appropriations process. The issuance of this ESWA amendment should not be construed as FTA's final decision on the ARC Project. As with all award authority, NJT must meet all Federal grant requirements prior to incurring costs under this ESWA amendment in order to be reimbursed by future FTA grant assistance. Grant number NJ-03-0169-01 must be executed in FTA's TEAM system. This ESWA expires upon FTA execution of an FFGA for the ARC Project.

Please contact me or my staff at 212-668-2170 with any questions you may have about proceeding under the authority to incur costs provided in this letter.

Sincerely,

Brigid Hynes-Cherin
Regional Administrator

Cc: Richard Andreski, NJT
Art Silber, NJT
Steve Santoro, NJT
Howard Sackel, PANYNJ
Ralph Branche, FTA
Robyn Sinquefield, FTA

EXHIBIT 18

Notes for Meeting with ARC on Risk Assessment

1. Opening

- I am here to present the initial results of our risk assessment
- These are draft and will not be complete until after this workshop
- I will provide an overview of each change but the bulk of the day will be spent going over the specifics staff to staff
- Will be glad to answer general questions now but specifics should wait for detailed sessions
- We will take as long as needed to go over the basis for our assumptions
- Where we agree, we will incorporate any changes into final version
- Where we disagree, we will advise the Administrator of your point of view
- These numbers are on close hold until they are sent to you in final following this meeting and our debrief with the Administrator

2. Overview of OP40 and OP53 Risk Process

- Did two separate risk assessments.
- Very similar in that both use your stripped costs
- Added back a hard bump to the base where we disagreed with the basis for your assumptions (we used similar assumptions for both the OP40/53 bump to the base)
- Under OP40 the PMOC then assigned a risk factor (beta) to each contract package to calculate the probability of what the cost is likely to be
- OP40 is more general than OP53 and has a wider range without any specificity as to what is driving the costs. We used the OP 40 as a means of providing a range for the project to ensure that we followed our standard practice of risk assessment. This outcome produced a very wide range which was not compatible to the actual project. In order to narrow the cost range, we conducted a more detail review more tailored to the project. We took a look at your packages in order to get a sense of the management approach in the package process and to get a sense of the package development cost as the package moved from PE to EPE to FD to bid award. We used a system of Tiers in which we've matched you with similar projects in scope, complexity and project delivery
- OP53 is similar to what we did in January 2009, and therefore you shouldn't be surprised that the ranges are still consistent with what we identified at that time, although the lower ranges have already been exceeded, and we of course are concerned as there is still a long time to go on this project and it is hard to predict where we will end up on the range
- By way of background, this is the fifth time we are using the OP53 approach. The first time was as a way to get inside the management risk for the Dulles project and then for your entry into Final Design and the geotechnical risk for Seattle Ulink and most recently for resetting the FFGA amounts for the two MTA megaproject and finally for what we are presenting today since OP53 narrows the range and relies on a more project specific risk range
- Back to the OP53 process - after we applied a hard bump to the base, we assigned specific risk ranges to each category of costs
- Primarily we used a year by year step up of the RSD to define the risk ranges but that was driven by a number of factors
    - our assessment of your management practices to date and a projection of similar practices in the future (transparency, latency, schedule adherence and maintaining physical configuration)
    - the type of risks identified for your project in 2009, which you assured us at that time were covered by latent contingency in your budget, but some of which has now been realized in Rev 11
    - the experience of the 35 most recent projects in the pipeline which had similar types of risk which includes the megaprojects (only 14 of the 35 were similar enough to use)
- Mike will go over this process in detail in the following session. So while we used the OP40 to verify the validity of OP53 we are using the OP53 for negotiating the number to be used in the FFGA

3. Overview of Chart and Discussion of Main Drivers (both hard bumps and risks)

Before I go into detail, I would note that the ARC project has essentially realized the risks that we identified in January 2009 and I will get into those under each category but they were Geotech ($ 250 M-1.2B), Design ($0-300) million and Real Estate ($73-350M) – I say "realized" because these were the three areas where you primarily increased your budget under Rev 11

I will now go over each cost category, highlighting the main areas of increase but not going into detail on each change as the specifics will be provided in the detail sessions

a. Construction

First as a general observation the lack of transparency in your budget plays a huge part in our analysis of the risk. As the contracts move closer to construction, we see a dramatic increase in the cost which creates the impression that there is a lag in bringing the cost issues to the forefront of your budget reporting.

- Geotechnical Base Adjustment and Risk Ranges

Your budget has already accounted for much of the risk we identified in 2009 and reflects that C8,10 and 12 were all about 40% over their entry into final design estimate and reflects the changes through the CCR process where you moved scope around; C13R was only increased by 13% so we have adjusted the base by $135M since we assume it will face the same increases as the other tunneling contracts and added $20M per year as a risk amount

- Direct and Indirect Adjustments (Nothing added to Risk Ranges)

This was our biggest category as a bump to the base and reflects our concern about your assumptions on discounts to profit ($100M) and equipment rental fees ($30M) as well as the lag in integration of the CCRs from PE into the Final Design costs and a failure to reflect the delays in contract award ($170M)

- Pre-Award design solutions Adjustment and Risk Ranges

Based on your experience to date and the experience with other projects, and the fact that several contracts have been pushed back to PE or are on hold in FD, we expect there to be at least three more CCR changes of $50M each and we have risked 2 more for each additional year that the project is delayed. I would note that we had explicitly asked for a detailed forecast of the cost and schedule impact of each of the design changes directed in THEP Change Order 30 but you did not provide this information so we had to make our own assumptions of the impact

- Stakeholder Risk Ranges (No Adjustment)

Our experience is that there is a major risk of stakeholders either adding scope or delaying the project as you move into construction. We have added $200M per year in risk and this is closely tied to Design to Budget issues which as I will mention below drive both increased design and construction costs. was unavoidable stakeholder risk that was not accounted their budgets (MTA CM-14). We felt that a design to budget approach would have helped to mitigate risk. But we have not seen anything tangible from NJT ARC to help alleviate that concern. For example, the fifth track foundation support for AMTRAK, Requirement risk attached to the PM Peak loop track from NJT operations. As the project moves ahead, we feel this would entail increase cost in the construction contracts and professional services

b. Professional Services

- PE, Extended PE, Final Design, Post FD Adjustments and Risk Ranges

This was the biggest area of cost increase in Rev 11 and realizes most of the risk we projected in 2009 but we adjusted the budget because we didn't see you applying cost similar to what were realized in Phase 1 (first 24 months) to the Phase 2 budget. There are also going to be design cost increases because you pushed back the design of certain contract packages to PE and others are being held in FD which will ultimately increase the cost of design. Finally we had no visibility that your budget would support Force Account and Real Estate design changes and you did not provide us any basis for that conclusion. Finally, we don't see any increase in costs for design services during construction in Phase 2 even though you are have a cost overrun in your design budget by $30M in Phase 1 and not reflecting that in Phase 2. While we have seen movement on cost on the contract package level but have not seen that cost realized into the overall budget

- Construction Management Adjustments and Risk Ranges

We have adjusted the Construction Management cost to be 6% of our adjusted hard construction costs because TCRP G11 identifies CM costs at 8-12% of construction). To get closer to the TCRP range we have risked CM at 8 and 10% in the risk columns

c. Real Estate

- Commercial Property Adjustment and Risk Ranges

This is the third area of risk that we projected in 2009 and Rev 11 has increased the costs, primarily to reflect actual purchases to date. We have added an additional $376M ($69M to adjust the base year dollars from 2007 to 2009, $30M for real estate costs associated with the protection zone and $75M for additional professional services since acquisition is taking longer than expected. While restrictive covenants are a good way of protecting the project there needs to be an acknowledgment of the likely costs associated with that approach. In addition, we have also added $540 million in risk. This is also an area where most project have experienced cost increases

- Stakeholder Risk Ranges (No adjustment)

Amtrak Risk was assumed to be zero in our previous risk calculation ranges due to joint benefit use of the project. We have lowered our risk range to account for the agreement but we believe that AMTRAK will still account for some Real Estate as part of the market price cost indicated in the agreement.

d. Vehicles (No adjustment or Risk Ranges have been established since you are buying the cars now and will be transferring them to the project at a later date)

We would note that there is still risk involved since the currency risk remains unknown until issuance of the NTP for each contract and the Dual Mode Locomotives still are not a proven technology and may end up costing more as the vehicles are delivered

e. Schedule and Escalation

- Escalation Risk Range (No Adjustment)

We have used your requested escalation rate in the base but have added additional escalation (at this same rate) for each year the project is delayed in the risk ranges. If we continued to use a 4.25% annual rate, escalation would increase by $554M in the base.

- Schedule Risk Ranges (No Adjustment)

We have not adjust the schedule per se but have added two years, one in each year of the risk range, as we are concerned about some of your assumptions in the schedule logic: the C12 contract has not yet been awarded and it takes approximately a year for design and delivery of the Tunnel Boring Machine but there has been no change in the schedule; the Real Estate process has encountered considerable delays and we feel that trend may continue ; critical elements in the schedule assume no resource or space constraints which would affect the current logic causing similar delays to the project as have been realized to date. In addition, our experience with comparable projects is that none of them have been able to be completed in 120 months from entry into PE to RSD as was assumed in your original 2009 schedule nor is it likely that your current schedule of 153 months will be meet because the more relevant comparable projects, include the two MTA megaproject, or in the 180 month range

f. Contingency

- Baseline Contingency Adjustment (No Risk Ranges)

We have adjusted the base to cover the hard bumps that have been added to the base but have not added any risk as we carry the contingency out thru the risk ranges in absolute dollars

- Post-Award Retained Adjustment and Risk Ranges

We have adjusted the base to reflect that you have not have been able to maintain the schedule that you planned in 2009 and we assume this like of adherences is likely to continue through the rest of bids as well as create further complications with regard to your system contracts. This risk basic reflects that fact that contract interfaces between early and late contracts will generate claims

- Differing Site Conditions Adjustment and Risk Ranges

We have reduced the amount of Differing Site Conditions risk from the 2009 level ($314M) as the amount of geotechnical scope that you have now estimated and contracted for is roughly half of what you

identified at that time. However, we continue to carry $135M in the adjusted base which carried across the risk ranges.

4. Next Steps

- Use rest of the day for staff to go over our assumptions in detail
- This is your chance to provide more detail. As noted above had to go forward with what you gave us even though some of it wasn't supported by data that would allow us to reconstruct and/or understand your rationale (THEP30, contingency, PM simulation)
- We will take as long as we need to do this but all of this want this done before the end of the month
- When completed, we will provide the Administrator with a final cost range
- He will consider the range and discuss with the Secretary
- I will then provide that range, along with a recommended FFGA number to your agency, PANYNJ, Comptroller (and Toll Authority although they haven't been part of previous discussions) at a similar level as this morning's discussions
- While we won't necessary be the one to release it, the number would be public at that point
- You will then have time to assess the implications of the number on the financial plan and together we will determine how best to proceed

EXHIBIT 19

Millions of $	NJT Capital Cost Estimate at Entry into Final Design	NJT Capital Cost Estimate Rev 11 April 2010 Cost in	FTA 2010 Adjustments Rev11 OP 53 Optimistic	**Mid Range Risk Medium Mitigation Capacity**	**Pessimistic Low Mitigation Capacity**	**Pessimistic Very Low Mitigation Capacity**	Assumptions
Base Construction Cost	4,880						
		5,006	5,006	5,816	5,816	6,136	Marginal Cost additions for the Low and very low
Geotechnical Scope			135	0	20	20	Production rates for tunnels and caverns, TBM downtime, contractor contingencies
Geotechnical Project Delivery				0	0	0	Single bidder premium, contractor margins/overheads, procurement schedule delays, impacts to other contractors
Other (Direct and Indirect Adjustments)			525				The PMOC assessed these mechanical adjustments to the base.
Pre Award Design Solution			150		100	100	There will 200 million in CCR and we think they will hit 2-50M more. This was to cover ADA CCR, etc.
Stakeholder Risk (Amtrak, PANYNJ, NJT, Others)				0	200	200	Power distribution, Construction interfaces on the NEC and NYP, Finishes in the Caverns
Construction Subtotal	4,880	5,006	5816	5,816	6,136	6,456	
Professional Services	495						
		1057	1057	1237	1237	1,450	
PE+EPE+Final Design+Post FD			114.9	0	105.1	212.4	Historical experience on heavy rail, Seattle and Pittsburgh delays. Design Services for RE, Startup Force Account
Construction Management			65	0	108.3	261.1	Project is 12 months longer
Professional Services Subtotal	495	1057	1237	1237	1450	1924	
Real Estate	395						
		572.5	572.5	949	949	1389	
Commercial Real Estate			376.5	0	340	200	Restriction declarations on titles, Premium settlement cost, etc.
Stakeholder Risk (Amtrak)				0	100	150	NEC Corridor ROW costs, NYPSE costs, W Manhattan yards
Real Estate Subtotal	395	572	949	949	1389	1739	
Vehicles	221						
		258	258	258	258	258	
Procurement Risk (Coaches)				0	0	0	Reprocurement risk, currency risk were added to the project. In contract
Procurement Risk (Locomotives)				0	0	0	Currency risk, tax risk, performance risk. In Contract
Vehicles Subtotal	221	258	258	258	258	258	
Base Year 2009$ Total	5,991	6,894	8,260	8,260	9,233	10,377	
Escalation Assumptions	4.25% thru 2017 (1.1392)	3.2 % 2009 thru 2019 (1.113 YOE Factor)	3.2% Avg thru 2021 (1.113 YOE Factor)				
Escalation Increase				1.113	1.113	1.113	YOE Factor Allows for 2020 and 2021 RSD.
Total YOE$	6,826	7,675	9,193	9,193	10,433	11,726	
Contingency Assumptions							Contingency Allocated
	1.876	1024	1450	1,450	1,450	1,450	
Post Award Retained Risk			100	100	214	425	
Differing Site Conditions Reserve	314		135	135	135	135	Other
Grand Total (YOE$)	**8,701**	**8,699**	**10,878**	**10,878**	**12,232**	**13,736**	

EXHIBIT 20

Access to the Region's Core - Project Cost Ranges (billions of $)

Revised: August 17, 2010

Source: NJ TRANSIT

	BASE without contingency	CONTINGENCY	OPTIMISTIC Rev 11	Additional allocated contingency to OPTIMISTIC	MOST PROBABLE and recommended	Additional unallocated contingency to MOST PROBABLE	PESSIMISTIC	WHY DIFFERENCE BETWEEN NJT & FTA COST ESTIMATE?
	2009$	*2009$*	*2009$*		*2009$*		*2009$*	
Base construction cost	4.541	0.279	4.820	0.250	5.070		5.070	Production rates, TBM machine breakdowns, crewing risks and contractor contingencies already assumed in OPTIMISTIC NJT estimate. Tunnelling rate of production used in NJT OPTIMISTIC is more conservative than recent experience in NYC tunnelling projects.
Professional services	1.143	0.013	1.156	0.150	1.306		1.306	
Real Estate	0.537	0.009	0.546	0.100	0.646		0.646	Based on constant 2007 values since real estate market decline -- highest vacancy rates since 1970s and fewest construction new starts in decades. Most major new construction is publicly financed. Minimal private funds being put at risk including real estate market. Cost of restrictive declarations & premium settlements are included in $537m. Current budget for Amtrak property is sufficient based on comparables for other similar properties. 50 percent of property by value has been negotiated and agreed upon.
Vehicles	0.241	0.008	0.249		0.249		0.249	AGREEMENT WITH FTA ON COSTS FOR LOCOMOTIVES & COACHES
Contingency	0.000	0.789	0.789	0.300	1.089	0.500	1.589	NOTE: $0.789b in 2009$ when escalated is $0.947b.
SUBTOTAL 2009$	6.462	1.098	7.560		8.360		8.360	
Escalation (from 2009$ to YOE$ @3.2 percent)	0.743	0.397	1.140		1.140		1.140	AGREEMENT WITH FTA ON 3.2 PERCENT ESCALATION RATE
GRAND TOTAL YOE$	7.205	1.495	8.700	0.300	9.500	0.500	10.000	

NOTES:

OPTIMISTIC (Rev 11) incorporates the cost of delay associated with the Manhattan Tunnels and all subsequent contracts.

MOST PROBABLE and recommended scenario adds $800m including $250m for construction activities, specifically for station fitout and entrances C17 ($30m), below grade entrance structures C19 ($50m), railroad systems C21 ($35m) and geotechnical contracts for Hudson Tunnels and station cavern C10/C13 ($135m per FTA recommendation), $150m for professional services, and $100m for real estate.

EXHIBIT 21

Access to the Region's Core - Project Cost Ranges (billions of $)

Revised: August 23, 2010

DRAFT; FOR DISCUSSION PURPOSES ONLY

	Source: NJ TRANSIT								Source: FTA		
	BASE without contingency	CONTINGENCY	OPTIMISTIC Rev 11	Plus additional allocated contingency to	MOST PROBABLE and recommended	Plus additional unallocated contingency to	PESSIMISTIC	DIFFERENCE BETWEEN NJT MOST PROBABLE & FTA SCENARIOS	Low OPTIMISTIC FTA 2010 Adjustments	Mid PROBABLE	High PESSIMISTIC
	2009$	*2009$*	*2009$*		***2009$***		*2009$*		*2009$*	*2009$*	*2009$*
Base construction cost	4.541	0.279	4.820	0.250	**5.070**		5.070	At FTA direction, NJT performed a thorough analysis of production rates, TBM machine breakdowns, crewing risks and contractor contingencies. Appropriate adjustments have already been reflected in NJT's OPTIMISTIC scenario. Tunnelling rate of production used in NJT's OPTIMISTIC scenario is more conservative than recent experience in NYC tunnelling projects. FTA has indicated recently that the base construction cost is incorrect in their scenarios.	5.006	5.816	6.136
Geotechnical Scope								**AGREEMENT WITH FTA ON AN ADDITIONAL $135m FOR GEOTECHNICAL SCOPE.** An additional $115m has been added to cover construction risks identified below.	0.135	0.020	0.020
Geotechnical Project Delivery								Single bidder scenarios and other possible procurement impacts have not materialized, nor are they anticipated. Manhattan Tunnels contract had three bidders, Palisades Tunnels had four bidders, and the Hudson River Tunnels has five teams entering the final procurement phase. Significant interest is already developing for the last underground excavation			
Other (Direct & Indirect Adjustments)								NY metro & national experience validates NJT market adjustments to contractor profit & equipment discounts. Adjustments were made to NJ surface contracts only. Rev 11 also reflects delayed start of C12 and subsequent contracts. See note below	0.525		
Pre-Award Design Solution								Project scope is well defined; major issues have been identified and accounted for either in the design or the risk register. NJT's contingency budget of more than $1b is more is more than sufficient to cover the remainder of design development.	0.150	0.100	0.100
Stakeholder Risk (Amtrak, PANYNJ, NJT, Others)								NJT & PA have coordinated extensively with major stakeholders (i.e. Amtrak, MTA, ConEd, major developers and local Community Boards). Agreements have been negotiated and/or executed with Amtrak, MTA, & ConEd. There are no anticipated changes in stakeholder agreement or final negotiations.		0.200	0.200
Base construction cost SUBTOTAL									5.816	6.136	6.456
Professional services	1.143	0.013	1.156	0.150	**1.306**		1.306		1.057	1.237	1.450
PE+FD+Final Design Post FD								Rev 11 amended the design services cost estimate and embedded contingency for possible re-directed and supplemental design activities. Further, an additional $150m for professional services has been allocated by NJT for future adjustments and a potential extended project schedule.	0.115	0.105	0.212
Construction Management								Rev 11 amended the construction management services cost estimate and embedded contingency for possible as-directed and supplemental construction management activities. Further, an additional $150m for professional services has been allocated by NJT for future adjustments and a potential extended project schedule	0.085	0.103	0.261
Professional Services SUBTOTAL									1.237	1.450	1.924
Real Estate	0.537	0.009	0.546	0.100	**0.646**		0.646	Based on constant 2007 values since real estate market decline – highest vacancy rates since 1970s and fewest construction new starts in decades. Most major new construction is publicly financed. Minimal private funds being put at risk including real estate market. The 2007 values are appropriate if not conservative. Despite that, the NJT MOST PROBABLE and recommended scenario adds another $100m in real estate contingency.	0.573	0.949	1.389
Commercial Real Estate								Extensive discussions with NY property owners corroborate NJT estimates. Cost of restrictive declarations & premium settlements are included in $537m. Potential protection zone impacts are minimal because there will be no impact to overbuild opportunity based on current zoning.	0.377	0.340	0.200
Stakeholder risk (Amtrak)								Current budget for Amtrak property is more than sufficient based on expert appraisals and comparables for other similar railroad properties		0.100	0.150
Real Estate SUBTOTAL									0.949	1.389	1.739
Vehicles	0.241	0.008	0.249		**0.249**		0.249	**AGREEMENT WITH FTA ON COSTS FOR LOCOMOTIVES & COACHES.** NJT Board of Directors approvals for vehicles are complete.	0.258	0.258	0.258
Procurement Risk (Coaches)											
Procurement Risk (Locomotives)											
Vehicles SUBTOTAL									0.258	0.258	0.258
Contingency	0.000	0.789	0.789	0.300	**1.089**	0.500	1.589	$0.789b in 2009$ when escalated is $0.947b. NJT opines that FTA has no basis for the addition of "hard humps" to the base budget. The current design and construction contingency budget already accounts for possible scope adjustments, additions and deletions. NJT added a further $300m in unallocated contingency in the MOST PROBABLE scenario and $500m for unforeseen scope, schedule, or cost adjustments in the most PESSIMISTIC scenario.	1.450	1.450	1.450
Post-Award Retained Risk									0.100	0.214	0.425
Differing Site Conditions Reserve									0.135	0.135	0.135
Contingency SUBTOTAL									1.685	1.799	2.010
SUBTOTAL 2009$	6.462	1.098	7.560		**8.360**		8.860		9.945	11.032	12.387
Escalation (from 2009$ to YOE$ @3.2 percent)	0.743	0.397	1.140		**1.140**		1.140	**AGREEMENT WITH FTA ON 3.2 PERCENT ESCALATION RATE**	0.933	1.200	1.349
GRAND TOTAL YOE$	7.205	1.495	8.700	0.800	**9.500**	0.500	10.000		10.878	12.232	13.736

NOTES:

All of NJ TRANSIT's scenarios incorporate the cost of delay associated with the Manhattan Tunnels and all subsequent contracts.

NJ TRANSIT's MOST PROBABLE and recommended scenario adds $800m to the OPTIMISTIC scenario including $250m (hard bumps) for construction activities, specifically for station fitout and entrances C17 ($30m), below grade entrance structures C19 ($50m), railroad systems C21 ($35m) and geotechnical contracts for Hudson Tunnels and station cavern C10/C13 ($135m per FTA recommendation), $150m for professional services, and $100m for real estate.

EXHIBIT 22

Millions of $	NJT Capital Cost Estimate Rev 11 April 2010 Cost in 2009$ (OP40 Stripped)	FTA 2010 Adjustments Rev11	NJTC Most Probable	NJTC PESSIMISTIC	FTA LOW	FTA MEDIUM	FTA HIGH	Basis of Adjustment
Base Construction Cost	4,541	4,541	4,541	5,070	5,070	5,573	5,893	*While NJT identifies all of their increases as unallocated contingency, they have indicated agreement with certain items in FTA adjustments, and they have been shown that way in this chart in order to better abble identify the differences between our*
Geotechnical Scope		135	135					FTA and NJT agree on this item. FTA has deleted its previously identified $20M in outyear risk as being deminimus
Other(Direct and Indirect adjustments)		747			747	0	0	Elevate direct costs (eg, restore equipment costs) by $200M and indirect costs (eg, restore profit, duration dependent indirects, labor premiums) by $286
Pre award Design Solutions		150	115		6	100	100	FTA and NJT are in agreement on the increase in costs but FTA continues to risk
Stakeholder Risk (Amtrak, PANYNJ, NJT, others)						200	200	Power distribution, Construction interfaces on the NEC and NYP
NJT Unallocated Contingency			279		-250			FTA has reduced its costs in recognition of the additonal contingency added by NJT.
Construction Subtotal	4,541	5,573	5,070	5,070	5,573	5,873	6,193	
Professional Services	553	1,143	1,143	1,306	1,306	1,323	1,536	*Given the minor difference($17M), FTA accepted NJT's costs for Professional Services for the Low but added risk as described below:*
PE+EPE+Final Design+Post FD	264	115	163		0	105	212	Increased to reflect costs of retaining these services for one and two additional years beased on our RSD assumptions
Construction Management	326	65			0	108	261	Base reflects CM to 6% of constr cost. Risked amts for Med and High ranges elevate to 8% and 10%.consistent with TCRP and because services will be needed for one and two additional years based on our RSD assumptions
Professional Services Subtotal	1,143	1,323	1,306	1,306	1,306	1,536	2,010	
Real Estate	537	537	537	537	646	796	1,236	
Commercial Real Estate		259	109	109	150	340	200	Related to elevated service costs, judgement fees, and indirect costs. Risked amts related to overbuild impacts
Stakeholder Risk (Amtrak)					0	100	150	NEC Corridor ROW costs, NYPSE costs, W Manhattan yards
Real Estate Subtotal	537	796	646	646	796	1,236	1,586	
Vehicles	241	258	241	249	249	249	249	*No disagreement between NJT and FTA*
Procurement Risk (Coaches)		0	9	9	9	0	0	
Procurement Risk (Locomotives)					0	0	0	
Vehicles Subtotal	241	258	249	249	258	249	249	
Base Year 2009$ Total	6,462	7,950	7,271	7,271	7,933	8,894	10,038	
Escalation Assumptions	**3.2% 2009 thru 2019 for a YOE$s adjustment factor of 1.115**	3.2% Avg thru 2020 (1.125 YOE Factor)			3.2% thru 2020 (1.125)	3.2% thru 2020 (1.125)	3.2% thru 2021(1.132)	*NJT and FTA agree on escalation rate*
Escalation Increase	743	994	743	1,140 (**)	1072	1454	1,325	YOE Factor Allows for 2020 and 2021RSD
Total YOE$	7,205	8,944	8,411	8,411	8,925	10,006	11,363	(**) Fixed amount
Contingency Assumptions								Contingency Allocated
Total	1,495	1,685	1,589	1,589	1,685	1,799	2,010	
Unallocated Contingency		1,450		500	1,450	0	0	Unallocated
Post Award Retained Risk		100			100	114	211	
Differing Site Conditions Reserve		135			135	0	0	Other
Grand Total (YOE$)	**8,700**	**10,629**	**9,500**	**10,000**	**10,610**	**11,805**	**13,373**	

EXHIBIT 23

NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105-2246
973-491-7000

MEMORANDUM

TO: Chris Christie, Governor

FROM: ARC Executive Steering Committee
James Weinstein, Chairman (Executive Director, NJ TRANSIT)
James S. Simpson (recused) (Chairman, NJ TRANSIT)
Anthony R. Coscia (Chairman, PANYNJ)
Chris Ward (Executive Director, PANYNJ)
Bill Baroni (Deputy Executive Director, PANYNJ)
Kim Vaccari (CFO, NJ TRANSIT)
Paul Blanco (CFO, PANYNJ)
Lynn Bowersox (Assistant Executive Director, NJ TRANSIT)

DATE: October 7, 2010

SUBJECT: ARC Project Recommendation

Recommendation:

The current ARC project budget is $8.7 billion. The federal government requires that any costs above $8.7 billion must be absorbed by the State of New Jersey or other local sources. Based on a detailed financial analysis, it has been determined that the final project is likely to top $11 billion and could exceed $14 billion.

As such, the Executive Committee unanimously recommends that the ARC project be terminated and that staff immediately begin an expeditious and orderly shutdown of the project. The Committee also recommends to the Governor that a sensible and affordable alternative for the Northeast corridor be explored.

Background:

Since May 2010, the staff of the ARC project and over 50 engineers and other professionals from both New Jersey and the federal government have been involved in an intensive and exhaustive review of all aspects of the project, including but not limited to: budget, schedule, design and operational integrity, real estate and an extremely detailed risk analysis.

The purpose of this review was to reach an agreement on a final contract between the Federal Transit Administration (FTA) and New Jersey Transit (NJ Transit), known as a federal Full Funding Grant Agreement (FFGA) in order to qualify for the $3 billion federal share of the ARC project.

This contract would bind the State of New Jersey to fund all of the identified project costs to completion.

In August 2010, each party submitted their respective projected cost range for the project based on their best judgment and experience; an integral and standard step in the FFGA process. To this end, NJ Transit put forth a project range of $8.7 billion to $10 billion and the FTA regional staff put forth a project range of $10.9 billion to $13.7 billion. It is critically important to note, that these ranges do not include the additional cost for the construction of a new railroad bridge (Portal Bridge South) which is necessary for the operation of the railroad after the tunnel is constructed. Such additional costs are estimated at $775 million and must be paid for by the State of New Jersey.

On September 10, 2010, the Executive Committee recommended, and the Governor directed a 30-day pause in the execution of new contracts and any new expenditures in order to fully understand the status of project funding and the likely cost of moving the project forward as originally planned.

The 30-day analysis confirmed the total project cost would be in the range of $11 - 14 billion, including the Portal Bridge South.

Project Costs:

The cost of the project, without Portal Bridge South, is shown in the chart below:

	September 2003	**February 2007**	**March 2008**	**October 2008**	**January 2009**	**September 2010**
	Major Investment Study (MIS) Alternative P	Draft Environmental Impact Statement (DEIS) completed	Supplemental DEIS (SDEIS) completed	Final Environmental Impact Statement (FEIS) completed	Record of Decision/Final Design	FFGA Negotiation Range
Cost (in billions)	$4.3	$7.4	$7.6	$7.6	$8.7	$8.7 – $13.7
Construction Completion Schedule	2015	2016	2017	2017	December 2017	2018
Notes	Conceptual-level construction cost estimate **did not include real estate costs, escalation or contingency.** Comparison with subsequent cost estimates not relevant.	First comprehensive cost estimate for the project which provided contingency, real estate, and escalation from estimate date to construction time.	Modified project alignment and depth to mitigate geotechnical, environmental and community concerns. Schedule extended by one year to account for additional environmental review (SDEIS).	No change to budget or schedule from SDEIS cost estimate in March 2008.	FTA required an additional $1 billion in contingencies and a higher escalation rate than previously calculated (3.2% to 4.25% annually), raising the project cost to $8.7 billion.	The purpose of the final review was to reach agreement on a final contract between the FTA and NJ TRANSIT, known as a federal Full Funding Grant Agreement (FFGA) in order to qualify for the $3 billion federal share of the project.

It is important to reiterate that any ARC cost above the $8.7 billion must be absorbed by the State of New Jersey. The federal commitment is capped at $3 billion. Based on the range of estimates, New Jersey and/or its non-federal sponsors would have to demonstrate an ability to fund anywhere from $2 billion up to $5 billion, more than the current budget.

Expenditures to Date:

The actual cash spent through September 30, 2010 is approximately $478 million, some of which may be partially recovered if the project is terminated. These funds have been expended for engineering, property acquisition, construction, insurances and professional services. Some of the funds expended for items such as real estate have enduring value for the holder of the project (NJ Transit or the Port Authority of New York and New Jersey).

These expenditures were largely undertaken under the auspices of two Early Systems Work Agreements issued in 2009 and earlier this year by the FTA as the parties progressed toward FFGA. Those agreements gave specific authority to undertake certain tasks and expenditures that would be reimbursed by the FTA once the FFGA was agreed upon.

All of the expenditures were consistent with the project management plan and Record of Decision (ROD) for the Environmental Impact Statement which demonstrated the justification for the project.

In Conclusion:

The Committee fully recognizes the value and benefit that a cross Hudson transportation improvement would bring to New Jersey's transportation system and that of the entire region. The Committee also understands that this action may result in the loss of $3 billion in discretionary federal New Starts money. Nonetheless, it is the judgment of the Committee that in the current economic climate, New Jersey and its project partners cannot afford this project and recommend its immediate and orderly shutdown.

EXHIBIT 24

Millions of $	NJTC Capital Cost Estimate Rev11 May 2010 in 2009$	NJTC Capital Cost Estimate Rev11A Sept 2010 in 2009$	FTA 2010 Adjustments Rev11A LOW	FTA MEDIUM	FTA HIGH	Basis of Adjustment
Base Construction Cost	4,821	4,821	5,153	5,026	5,466	
Geotechnical Scope			135			Elevate estimated cost of C13R in based to match cost growth trend of other geotechncial contracts
Other(Direct and Indirect adjustments)			40	140	200	Elevate direct costs in base for increase in C21 indrects; risk adjustments for profit and equipment in the Medium and High range presumes economy improves and project takes longer
Pre award Design Solutions				200	200	Design changes and rework similar to the work on C-3 and C-4 and the need repackage work similar to C-19
Stakeholder Requirements Risk (Amtrak, PANYNJ, NJT, others)			75	100	125	Increase in prjoect cost to meet stakeholder requirements similar to what occurred to date (BiDirectional track and KorPenn) which could also extend the schedule and impact design costs
NJT Adjustments to Rev 11 contract budgets		(45)				NJT reduced construction costs on certain contracts presumably for design development
NJT Allocated Contingency		377	-377			Of the $377M, $250 was converted to budget adjustments and $127M was transferred to unallocated contingency below
Construction Subtotal	4,821	5,153	5,026	5,466	5,991	
Professional Services	1,134	1,134	1,271	1,271	1,376	
Construction Management			65	108	261	Elevates CM to 6% of constr cost. Risked amts for Med and High ranges elevate to 8% and 10%.
PE+EPE+Final Design+Post FD+StartUp			72	105	212	Represents added costs for Phase 1 and Phase 2 design, DSDC, and design support for procurement. Risked amount covers design support for force account and start up as well as schedule delays
NJT Allocated Contingency		137	-137			The $137M has been converted into budget adjustments
Professional Services Subtotal	1,134	1,271	1,271	1,376	1,588	
Real Estate	547	547	642	617	717	
Commercial Real Estate			70	100	200	Related to elevated service costs, judgement fees, and indirect costs. Risked amts related to underground easements and dedicated restrictions and appraisal updates.
AllocatedContingency		95	-95			Of the $95M, $70M was converted to a budget adjustment and $25M was transferred to unallocated contingency below
Real Estate Subtotal	547	642	617	717	917	
Vehicles	271	271	271	271	271	The number used in Rev 11 was actually $258M but has been increased to $271 for consistency
Vehicles Subtotal	271	271	271	271	271	
Base Year 2009$ Total	6,773	7,337	7,185	7,884	8,898	
Escalation Factor	1.1133	1.142	1.142	1.15	1.16	3.2% thru midpoint of construction or expenditures
Escalation Increase	767	1,042	1,020	1,183	1,424	YOE Factor Allows for 2020 and 2021 RSD
Total YOE$	7,752	8,379	8,205	9,067	10,322	
Total	948	1,121	1,570	1,780	2,110	
Unallocated Contingency	948	1,123	1,450	0	0	Reduced from $1.562B at entry into final design to reflect risk mitigation accomplished by grantee
NJT Allocated Contingency Transfer			35	60	80	$152M in 2009 $ equals $175M in YOE and need to be managed on a risk specific basis over time
Post Award Retained Risk			50	100	200	Reflects impacts to means and methods which may need to be changed due to the delay in award for contracts already bid; the risk range reflects a continuing pattern of award delays which would impact already awarded contracts
Differing Site Conditions Reserve			35	50	50	NJT retained geotechnical risk based on allocation of risk in GBRs and technical specs
Grand Total (YOE$)	**8,700**	**9,500**	**9,775**	**10,847**	**12,432**	
Revenue Service Date	Q42019	Q42019	Q42019	Q42020	Q42021	
Probability costs will exceed this number			86%	64%	20%	The probability range used as basis is $9.21 tB o $14 B consisting of 15 projects. The probability of the project costing less than $9.21B is 1%. The probability of the project costing more than 14B is 1%. The probability of the project costing more than $10.99 B is 50%

ARC Risk numbers 09-10-08
Updated 10-4-10

EXHIBIT 25

October 27, 2010 - Governor Chris Christie – "I'm executing my responsibility in the way that I believe is best for the people of the State of New Jersey and our long-term fiscal health."

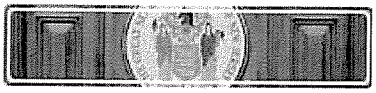
For Immediate Release:

Contact: Michael Drewniak
Kevin Roberts
609-777-2600

Date: Wednesday, October 27, 2010

Only **55** Days Left to Enact Governor Christie's Reform Agenda

Full Transcript

Press Releases

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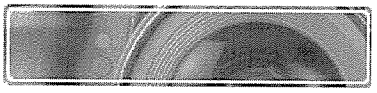
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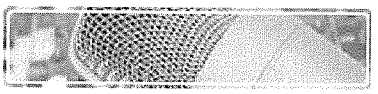
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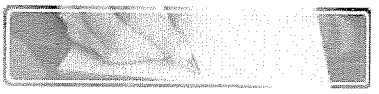
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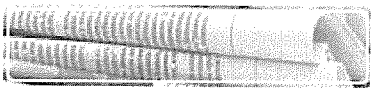
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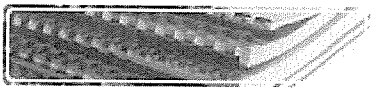
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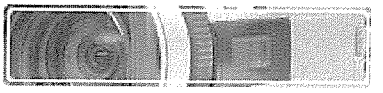

Full Transcript

Part 1:

Governor Christie: Good morning. Yesterday, I received a final memorandum from Jim Weinstein, the Executive Director of New Jersey Transit, and the person in charge of the working group I put together about two and a half weeks ago to work with the federal government on the ARC project to see if there was a way to work around the unacceptable level of risk and cost that was being asked to be borne by the taxpayers of the state of New Jersey. And over the last two weeks, Mr. Weinstein, Bill Baroni, Deputy Executive Director of the Port Authority, and Wayne Hasenbalg, my policy director, have met with federal officials both in person and telephonically through conference calls to discuss various aspects of this plan to determine whether or not we could responsibly move forward for the taxpayers of the state.

Let me be clear on a few things to make sure we're all on the same page in terms of background. This project, in August, was estimated by the FTA to have a cost range between $10.9 billion and $13.7 billion. When that was brought to my attention in August, it became clear to me that this was a project that had the potential for crowding out everything else that New Jersey is trying to do regarding fiscal responsibility. The potential for $2-5 billion cost overruns was something that was unacceptable for me to contemplate, knowing that it was just the beginning, potentially, of what this project would cost.

Now, FTA and the New Jersey Transit worked together thereafter. There has not been significant change in those $2-5 billion numbers, as Secretary LaHood announced to all of you by press release last Friday. 1.9 to 4.8 is a whole heck of a lot different in my mind when you're talking about the scope of this project, as compared to $2 billion to $5 billion. Now, the FTA's full funding agreement required that any money over the $3 billion put forward by the federal New Start's program would have to be the responsibility of the state of New Jersey. $3 billion of that was to come from the Port Authority of New York and New Jersey. They need to stop there as well because that $3 billion is New Jersey money, because that $3 billion has to be matched by $3 billion in projects that will spent on the New York side of the river. So it's not as if that's free money from someplace that the toll payers and taxpayers of the state of New Jersey have no role in creating, or in fact, in order to keep the 50/50 equity that is the basis of the Port Authority of New York and New Jersey, $3 billion in projects was committed to the New York side of the river in response to the $3 billion that we have for the ARC project.

Every dollar over that was again the responsibility of the taxpayers of New Jersey, including the portal bridge south, which for reasons that I will never understand, were not included in the original project. You need to understand that the $800 million for the portal bridge south and the building of the portal bridge south was an indispensible element to this project. The trains heading to what would be the ARC Tunnel would fall into the river without the portal bridge south and never get to the tunnel. Why the Corzine Administration excluded the portal bridge south from the whole scope of this pricing of this job is something that, you know, you'll have to ask the Corzine Administration, I don't know.

But FTA, Federal DOT, New Jersey Transit, New Jersey DOT all confirmed to me during the time I have been Governor that the Portal Bridge South was not an optional project regarding ARC. It was a mandatory project and that every bit of the costs of that had to be borne by New Jersey. So, you are not taking New Jersey's price, even under the original Corzine estimates, up to $3.5 billion. The 2.7 that we were committed to under the 8.7 price tag plus $800 million for portal bridge. Now you're up to 3.5 billion for New Jersey with no cost overruns with the project coming in exactly on budget. So, federal transportation officials put out as you know their range of the low, medium, and high range for this project. Understand this – the low range that 9.77 billion dollar number that they used, by federal transit authority estimates had a 10% probability of the project being completed at or below that range, 10% probability. The mid-range number had a 40-50% probability by their estimates of coming in at or below that range and the high range had an 83% probability of coming at or below that range. So put this in perspective. Even on the high range, there was still a 1 in 6 chance that the price would exceed the high range of 5 billion dollars in cost overruns. Still a one in six chance that that would happen and a one in ten chance that it would come in at or below the low range. We then asked this working group to work on potential ways to deal with the cost overruns and the expense that it would mean for the people of this state.

There are some issues that were raised and I want to walk you through those. First, phasing in the project to reduce the scope of it in the near term. There was a thorough review done by the group that made it clear that this approach would only delay, but not eliminate New Jersey's responsibility for the higher costs while

significantly diminishing the value of the project to a large number of transit users. Scaling down this project would merely reduce the utility for the project to the people who would ultimately use it and would not reduce, in the end, any significant way the price that New Jersey tax payers would be on the hook for. Next, the idea of financing this project through the Federal Railroad Rehabilitation and Improvement Financing loan program. The federal rail administration is authorized to provide in instances like this direct loans and loan guarantees of up to 35 billion dollars. The loans can fund up to 100% of these qualified railroad projects and they ultimately need to be repaid. It is just another way of issuing debt. Except that you borrow the money from the federal government instead of New Jersey Transit or the State of New Jersey issuing bonds. Regardless of the terms that would be offered, in the end the tax payers of New Jersey would be on the hook for every nickel of the cost overruns. They just would get to pay it back with interest over a longer period of time rather than pay it up front. No way does that option diminish the burden on the tax payers. No way does it allow anyone else to help share the burden with us.

There also was the issue raised of a public/private partnership. The federal team has pointed to the success of these three P's as they are called in the business – the Port of Miami Tunnel, the Denver Union Station, the Denver Eagle Transit project. There is – it was pointed out to us that there was some interest in the ARC project from some private facilities. But remember this, none of that will address the cost or the technical risk in the project. None of it will absorb additional costs from the tax payers because in the end, New Jerseyans are going to be responsible in some fashion to pay for the costs of it. In essence, it's the difference between public financing and private financing. It's really the only difference. You bring a partner in – we are still, the State of New Jersey and its citizens are going to have to pay for the cost of it.

Part 2:

There was also some discussion of ways to more closely tie the proposed ARC station below 34th street to the existing Penn Station which has been one of the problems with the project from the beginning. As well as using the new station to have some increased regional and national benefits that would in turn attract additional funds for the project in the future - as a way once again - to try to take some of the burden off of the taxpayers of New Jersey, and place it elsewhere. Even if that aspect of the project was successfully implemented, it would not provide a means for covering current cost overruns nor the contingencies necessary to conclude a funding agreement with the FTA, and I'll get back to that in a second. Simply put, it wouldn't hold taxpayers harmless in New Jersey for cost increases and cost overruns that have already emerged, and could continue to be even greater as the project moved forward over the next eight years.

So on Sunday, I met with Secretary LaHood and Deputy Secretary Porcari to discuss those options. Those were the four options that they laid out for me, and we discussed what else the federal government might be willing to do. One of the proposals was to increase federal funding, Port Authority funding, and New Jersey funding by $378 million each to get to cover the overage now on the low-end estimate, that would exclude the portal bridge south and any contingency for the approximately ninety percent likelihood that it would cost more than that. So I want to be clear: the money that was brought to the table on Sunday when we met was $378 million additional dollars in federal funding. The rest had to absorbed by the state of New Jersey and the Port Authority, and that would only bring us to the 9.77 number, which had a ninety percent likelihood of being higher than $9.77 billion. If that ninety percent likelihood came in, the taxpayers of the state of New Jersey are on the hook for every dollar over the 9.77 billion.

A federal railroad loan ranging from a low of $775 million to cover the cost of construction of the portal bridge to $2.3 billion to cover the increased state share of the difference between the $8.7 billion budget and the FTA low-end estimate of $9.8 billion could've been secured by us, but again, that's just borrowing money from one place that we're eventually going to have pay back as the people of New Jersey have to pay it back. A public-private partnership contribution of $1.85 billion, representing the difference between the $8.7 billion and again the low-range estimate of the 9.77, plus the portal bridge south. But again, the citizens, the taxpayers, the riders, would have to come up with a way to pay this private entity through additional fees and costs to be able to make that a viable alternative.

Lastly, there were suggestions of near-term scope reductions of the project of about $700 million. Even that, as I mentioned earlier, would make the tunnel less beneficial to the folks who were going to use it, and in the scope of a $2-5 billion projected overrun now, is only taking $700 million off the table by reducing the scope of the project and reducing the effectiveness and efficiency of the project.

So I want to - first off by saying - I really appreciate the efforts of Secretary LaHood and Deputy Secretary Porcari. They are real professionals, I have great admiration for both of them. They conducted themselves in a completely professional apolitical way throughout this entire process, despite the politics that others were injecting into this process all during the time period that we were working together. They were complete professionals, and I think they came forward with the best faith offer that they were authorized to come forward

with. In the end, the decision-making on this kind of thing rests with others above their pay grade or in a different branch of government, and so I want to thank Secretary LaHood and the Deputy Secretary for their efforts for personally meeting with me on a Sunday to review all of these options. A great deal of time was put in by their staff and by our staff to prepare for that meeting, and it was a very frank and direct meeting. And I appreciate that, and I think the Secretary – I did not know him well before this interaction, I had only met him once at the National Governors Association in Washington back in February.

But I come away from this an enormous fan of Ray LaHood. He is an experienced public servant and somebody who I believe had the best interests in trying to move this project forward at heart, but never once made it a political issue. He understood that for me, it is a dollar and cents issue and he dealt with me that way very forthrightly and upfront manner. In the end, my decision is not changed. I cannot place upon the citizens of the State of New Jersey an open-ended letter of credit. And that's what this project represents, because to sign the full funding agreement – and this is what I wanted to follow up with you on from my earlier comment - the full funding agreement requires two things: That the State of New Jersey shows the source of the revenue for any projected cost overruns and as Governor on behalf of the state, to accept full responsibility for the payment of anything above the $3 billion federal new starts grant. Nothing in the last two weeks has changed that, and so in the end what the proponents of this plan are asking me to do, on behalf of citizens of this state, is to hand them over a blank check. I simply will not do that to the people of the State of New Jersey.

This is how we got ourselves into the third highest debt load in America. This is how we got ourselves in to the awful fiscal mess that we're in, and often during the campaign, I would say that if I were elected I would make the hard decisions that were necessary in order to return our state to fiscal health. And there were many in the press and in the public that said – what are those hard decisions? Can you be specific? You can't, because as Governor you don't know what's going to come across your desk, and all during the campaign I relied upon the Corzine Administration's representations about this project and I supported it. But when you become Governor and you start to be presented with the information I was presented with, you're presented now with a choice of a project that I do think is a worthwhile project, but that we simply cannot afford. And so if you want one of the examples of what I meant back in the campaign about a hard decision to eliminate a project that has some worth to it, but that because of the fiscal conduct of Republicans and Democrats that came before me that we simply no longer can afford, here's an example. And so I do this with no sense of happiness at all but I do this with an absolute sense of resolve and commitment to the promises that I made to the people of the state and what I believe is responsible conduct of the chief executive of the state. And so we move on from here. I have instructed Mr. Weinstein to continue the orderly wind down and closing of this project. This decision is final. There is no opportunity for reconsideration of this decision on my part. I am done. We are moving on.

The last two and a half weeks were meant to give thoughtful consideration to options that were available, that's why when all of you were clamored and following me around asking me for a position on Friday or Saturday or Sunday – you know, I got this information on Friday. I wanted to meet with the Secretary personally to make sure I understood all of it and that I had every bit of information that I needed to be able to make this decision. And then after meeting with him on Sunday, I told my staff that I wanted another 48 hours to think about it myself before I made a final decision. And so when I said to all of you curtly in the last couple of days, I'll make this decision when I'm ready to make the decision, I think I said that to you in particular. You know, I was telling you exactly how I felt. I didn't want to announce this decision until I was ready to make the decision. I made the decision last night and we're announcing it this morning. I want to think Jim Weinstein and Bill Baroni and Wayne Hasenbalg for all the time and the hard work that they put into this. And again I want to reiterate my thanks to Secretary LaHood and Deputy Secretary Porcari. They are complete professionals and I appreciate their input to this. I know they wish the project was going forward but I also know that they understand that my responsibility is different than theirs and I'm executing my responsibility in the way that I believe is best for the people of the State of New Jersey and our long-term fiscal health.

(End)

# # #

Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000

EXHIBIT 26

U.S. Department
of Transportation
Federal Transit Administration

REGION II
New Jersey,
New York

One Bowling Green
Room 429
New York, NY 10004-1415
212-668-2170
212-668-2136 (fax)

November 8, 2010

Mr. James Weinstein
Executive Director
New Jersey Transit
1 Penn Plaza East
Newark, NJ 07105

Dear Mr. Weinstein:

Re: Repayment of Federal Funding Associated with Termination of the Access to the Region's Core (ARC) Project

Based on Governor Christie's statements during his announcement on October 27, 2010, and your agency's issuance of termination notices to third-party contractors the following day, the Federal Transit Administration (FTA) has determined that New Jersey Transit (NJT) has terminated the Access to the Region's Core (ARC) project. As such, FTA is initiating action to deobligate and recover all Federal funding for the ARC project including funds provided pursuant to the Early Systems Work Agreement (ESWA) governing the project. Under the ESWA, which was issued in August 2009 and amended in April 2010, more than $350 Million in Federal funds were obligated for ARC.

In accordance with 49 U.S.C. § 5309(g)(3)(B)(iv), NJT must immediately repay all the Federal financial assistance expended for ARC under the ESWA which is currently estimated to be $271.091 million, plus reasonable interest and penalty charges that will be determined by FTA. Moreover, FTA is immediately deobligating the Federal financial assistance under any grant for the ARC project that was obligated but has not yet been expended; an amount that is currently estimated to be at least $78.909 million under the ESWA. The final amount of funds obligated but not yet expended will be determined through a complete audit of the project. FTA expects immediate reimbursement of the amounts listed above even while this audit is ongoing.

FTA will advise you shortly of the appropriate procedures for transmitting monies associated with the full repayment of all requested Federal funding.

Please call me at (212) 668-2174 if you have any questions about the above matter.

Sincerely,

Brigid Hynes-Cherin
Regional Administrator

cc: Peter Rogoff, FTA Administrator

EXHIBIT 27

U.S. Department
of Transportation
Federal Transit
Administration

Headquarters

1200 New Jersey Avenue SE
Washington, DC 20590
(202) 366-4050
(202) 366-7989 (fax)

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 24, 2010

Mr. James Weinstein
Executive Director
New Jersey Transit
1 Penn Plaza East
Newark, NJ 07105

Re: Notification of Outstanding Debt and Demand for Payment

Dear Mr. Weinstein:

This letter serves as a formal demand for payment of a debt to the United States. Information regarding this debt was previously forwarded to New Jersey Transit (NJT) in a letter from the Federal Transit Administration (FTA) Regional Administrator Brigid Hynes-Cherin on November 8, 2010. NJT is hereby notified that it owes a debt to the United States in the amount of **$271,101,291**. FTA demands payment in full within thirty days from the date of this letter, hereinafter referred to as the "delinquency date."

The basis for the indebtedness is as follows:

1) Termination of the Access to the Region's Core (ARC) Project

Based on Governor Christie's statements during his announcement on October 27, 2010, and your agency's issuance of termination notices to third-party contractors the following day, the FTA has determined that NJT has terminated the Access to the Region's Core (ARC) project.

2) Authority to Collect Funds

In accordance with 49 U.S.C. Section 5309(g)(3)(B)(iv) NJT must immediately repay all Federal financial assistance expended for ARC under the Early Systems Work Agreement (ESWA). FTA is initiating action to deobligate and recover all Federal funding for the ARC project, including funds provided pursuant to the ESWA governing the project.

3) Repayment Amount -- $271,101,291

Under the ESWA, which was issued in August 2009 and amended in April 2010, more than $348 million in Federal funds were obligated for ARC. FTA will deobligate $77,185,709 that NJT has not yet expended.

NJT has thirty days from the date of this letter to pay this debt in full; otherwise the debt will become delinquent. If the debt becomes delinquent, FTA shall charge interest on the delinquent debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with Title 31 of the United States Code Section 3717, unless FTA determines that a higher rate is necessary to protect the interest of the United States. FTA shall charge a late payment penalty at a rate of six percent per year on any portion of the debt that is more than ninety days past due. FTA shall assess administrative charges to cover costs incurred in processing and handling the debt beyond the delinquency date identified above.

If the debt becomes delinquent, FTA may report this claim to commercial credit bureaus (or appropriate bond rating agencies). FTA retains all rights to forward this claim to the United States Department of Justice for collection of the debt.

NJT has the right to request review of the validity or amount of FTA's claim within thirty days of receipt of this letter. If NJT requests a review, then NJT shall state the basis for the dispute and provide all factual information, documents, citation to authority, argument, and any other matters for FTA's consideration. If NJT disputes only part of the debt, then NJT shall pay the undisputed portion by the delinquency date. If NJT admits liability in whole or in part, then NJT may propose remedial action, including a repayment plan, subject to FTA's approval. NJT has the right to inspect and copy FTA records related to this claim, with any reasonable costs of copying and inspection to be borne by NJT.

Please know that FTA reserves the right to collect this debt through administrative offset, should it be necessary. NJT has the right to make voluntary payment of the debt in full, including all interest, administrative charges, and penalties, before FTA begins collection by administrative offset.

If you have any questions, concerns, or comments regarding this matter, please contact me.

Sincerely,

Robert J. Tuccillo
Associate Administrator/Chief Financial Officer
Office of Budget and Policy