U.S. Department
Of Transportation
Federal Transit
Administration

Headquarters

1200 New Jersey Avenue S.E.
Washington DC 20590

December 20, 2010

Robert S. Brams, Esq.
Michael J. Schaengold, Esq.
Patton Boggs LLP
2550 M Street NW
Washington, DC 20037-1350

Re: New Jersey Transit Repayment of Federal Funding under Early System Work Agreement
For Access to the Region's Core

Dear Messrs. Brams and Schaengold:

I am in receipt of your request for an extension of time to respond to my letter of November 24, 2010, addressed to the Executive Director of the New Jersey Transit Corporation (NJT), and your request for records and documents in addition to those already given you. As you know, my November 24 letter demanded full repayment of the $271,101,291 in Federal funding expended under the Early System Work Agreement (ESWA) for the Access to the Region's Core ("ARC") project. The demand for repayment is based on 49 U.S.C. § 5309(g)(3)(B)(iv), which states in full:

> ...(iv) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant *shall repay all Government payments made* under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement. [Emphasis added]

I am hereby extending the deadline for a response to my November 24 letter to January 10, 2011. You have already been given copies of the records and documents on which I based my November 24 demand for repayment of the $271,101,291 in Federal funding expended by NJT under the ESWA. If your client has records or documents reflecting that the sum total of Federal funding expended under the ESWA is an amount other than $271,101,291, please submit that material together with your response on or before January 10, 2011. Likewise, any argument that NJT need not repay all or part of that sum as a matter of law based on your own interpretation of 49 U.S.C. § 5309(g)(3)(B)(iv) or any other statutes or regulations should also be submitted on or before January 10, 2011.

As you know, of course, the sum total of $271,101,291 is derived from three separate sources of Federal financial assistance under the ESWA: $51,589,932 under the Major Capital Investment ("New Starts") program authorized by 49 U.S.C. § 5309; $91,501,954 under the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5; 123 Stat. 115; Feb. 17, 2009); and $128,009,405 under the Congestion Mitigation Air Quality (CMAQ) program authorized by Title 23 of the United States Code. Moreover, Secretary LaHood recently informed Senators Lautenberg and Menendez that the U.S. Department of Transportation is prepared to replenish the $128,009,405 in CMAQ funding for eligible projects in the State of New Jersey, once NJT fulfills its obligation to repay the full amount of Federal funding

expended under the ESWA. It is necessary, however, that NJT make payment in full pursuant to my letter of November 24 before we can move to replenish the CMAQ funding.

As I stated previously, the Federal Transit Administration (FTA) reserves the right to collect this debt through any means authorized, including those set forth in 31 U.S.C. § 3716, and NJT has the right to make voluntary payment of the debt in full, including all interest, administrative charges, and penalties.

If you have any questions regarding these matters, please contact FTA's Deputy Chief Counsel, Scott Biehl, on 202.366.0826.

Sincerely,

Robert J. Tuccillo

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