THE SECRETARY OF TRANSPORTATION
WASHINGTON DC 20590

April 29, 2011

The Honorable Robert Menendez
United States Senate
Washington, DC 20510

Dear Senator Menendez:

Thank you for your letter of February 15, cosigned by your congressional colleagues, regarding the repayment of Federal funding expended in the planning, design, and construction of the Access to the Region's Core (ARC) project. As you know, the ARC project was terminated unilaterally by Governor Christie this past October.

The Governor's unfortunate decision will affect the commuters of New Jersey and the entire Northeast region for generations. Not only did it eliminate the opportunity for thousands of crucial jobs, but it also halts the much-needed effort to modernize the rail system's tunnel infrastructure in this region, which is more than a century old. The mobility improvements promised by the ARC project would have improved the daily commute for people who drive and take the train, as well as provided greater opportunities for economic growth in the region. The planning, design, and environmental approval processes for the ARC project spanned decades. Any substitute project, should one emerge, will take a great many years to develop and deploy.

Following an exhaustive review of the State of New Jersey's response to the Federal Transit Administration's (FTA) Demand for Repayment of November 2010, the Agency's Chief Financial Officer has determined that the State is obligated to repay $271 million to the Federal taxpayer—the full amount covered by the Early Systems Work Agreement (ESWA) between New Jersey Transit (NJT) and FTA. An ESWA, like the Full Funding Grant Agreements that NJT has benefited from in the past, constitutes a contract between the American taxpayers and NJT.

The taxpayers, acting through FTA, committed more than a billion to NJT in exchange for which NJT was committed to build a defined transit improvement for the benefit of the American people. In this case, after the initial contract was entered into and later expanded at Governor Christie's request, the State of New Jersey broke the terms of the contract.

The law is clear on this matter. In very specific and clear language, the statute requires FTA to collect the taxpayers' funds if the project sponsor—in this case, NJT—disavows its responsibilities under the contract and fails to complete the project. Moreover, Governor Christie and the leadership of NJT were fully aware of these consequences and the requirements under the law when the Governor made his decision to terminate the project.

In February 2010, Governor Christie sat in my office and expressed his full commitment to the completion of the ARC project. In March of 2010, when several news stories called Governor Christie's commitment to the completion of the ARC project into question, I asked the Governor to restate that commitment in writing. He did so in a letter to me dated April 6, 2010. In that same letter, he even asked me to expedite the expansion of the ESWA, which I did.

When the Governor suddenly announced 5 months later that he was putting the project on hold, I began a series of conversations with the Governor that culminated in my making two separate trips to New Jersey to meet with him personally. As part of those meetings, I presented several different possible scenarios regarding the financing and scope of the ARC project, all with the goal of keeping the project alive. The purpose of my efforts was to avoid the very circumstance in which we now find ourselves: no jobs, no congestion relief, and an enduring debt whereby New Jersey must return $271 million to the Nation's taxpayers.

Governor Christie has explained that an important rationale in his canceling the ARC project pertained to new information indicating that the project was at risk of substantial cost growth. The FTA routinely establishes cost ranges for large projects of this kind at all stages of their development. Indeed, the possibility that this project's cost could run between $8.4 billion and $12 billion was first shared with NJT as far back as August 2008. As is customary, there were dozens of meetings between FTA and NJT staff, including the NJT Executive Director, during which refinements were made to these cost ranges. Any notion that the potential for cost growth constituted new and emergent information when the Governor made his decision is simply not accurate.

The U.S. Department of Transportation and the U.S. Department of Treasury have many tools under the Debt Collection Act to recoup the lost Federal taxpayer funds, including withholding future State funding from a wide variety of sources. However, in consideration of the current economic challenges burdening New Jersey and all other States, I am not pursuing these collection methods at this time in the hope that we and the State of New Jersey can develop a workable payment schedule that will result in the least harm to New Jersey residents.

In your letter, you address the issue of fairness in the treatment of New Jersey. Indeed, not only is my decision fair to the taxpayers of New Jersey, it is the only one that is fair to all taxpayers across the United States who made the financial investment in what was to be the largest public works project in the Nation. My decision considers their needs, including those of citizens from Montana and Wyoming who wrote to me asking that I do all in my power to protect their jobs, which depend on contracts related to the ARC project.

I have enclosed a copy of FTA's decision. The NJT should contact FTA to make arrangements to pay the amount due. In the interim, should you have any questions, please feel free to call me.

Sincerely yours,

Ray LaHood

Enclosure