

MEMORANDUM OF UNDERSTANDING

**between the
South Jersey Transportation Planning Organization
and the
New Jersey Department of Transportation
and the New Jersey Transit Corporation**

PROCEDURES TO AMEND AND MODIFY THE SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION TRANSPORTATION IMPROVEMENT PROGRAM AND STATE TRANSPORTATION IMPROVEMENT PROGRAM

In adopting a three-year Transportation Improvement Program (TIP) each year, the parties to this memorandum of understanding, the South Jersey Transportation Planning Organization (SJTPO), the New Jersey Department of Transportation (NJDOT) and New Jersey Transit Corporation (NJ TRANSIT), agree to a shared set of capital investments that implement the [MPO's] Regional Transportation Plan. Following gubernatorial (or NJDOT Commissioner, if so designated) approval of the SJTPO TIP, the three Metropolitan Planning Organization (MPO) TIPs are consolidated without modification into the State Transportation Improvement Program (STIP) that is submitted to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for their joint approval. The federal approval enables NJDOT and NJ TRANSIT to seek funding approval for individual projects that are listed in the first year of the TIP/STIP.

The purpose of this memorandum of understanding is to establish procedures for changing the TIP after adoption by the SJTPO and approved by the Governor and the STIP after approval by the federal government. Under provisions of Titles 23 and 49, United States Code, the approved TIP/STIP may be amended and modified in order to add new projects, delete projects, move projects among the three years of TIP/STIP, make cost and phase of work changes and accommodate major scope changes to a project. Fiscal constraint shall be maintained when amending and modifying the TIP/STIP.

Other provisions in Titles 23 and 49 permit the development of expedited procedures for making changes to the TIP/STIP by agreement between the State, the MPOs and the Transit Operators. This Memorandum of Understanding (MOU) shall in its entirety constitute such agreement.

The term "project sponsor" as applied in this MOU shall refer to the lead agency implementing the project, typically NJDOT or NJ TRANSIT, but may also refer to the MPO, a county or city government, or an independent authority if that agency has primary responsibility to implement the project. In all cases, the parties agree that the project sponsor shall follow the procedures contained herein.

A. PROCEDURES FOR AMENDMENTS

The parties agree that a TIP/STIP amendment shall be required for the following cases:

- (1) Addition of a project to the TIP/STIP.
- (2) Deletion of a project in its entirety from the TIP/STIP.
- (3) Major change to a project's design concept or scope that would require a new TIP/State implementation Plan (SIP) conformity determination.
- (4) Addition of a project development phase (PRD) to a project that results in moving all major phases out of the TIP STIP.

Whenever one or more of the above cases occurs, the project sponsor shall give the SJTPO sufficient notice to acquire the necessary technical and policy level approvals. For projects requiring an amendment, the project sponsor shall provide documentation with a clear explanation justifying the amendment. The project sponsor shall also provide the necessary project data required for the TIP/STIP listing including the funding source(s) and how fiscal constraint shall be maintained, and sufficient descriptive information for a conformity and/or congestion management system (CMS) determination.

The SJTPO, in consultation with the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the US Environmental Protection Agency (USEPA) and state agencies, shall determine if the proposed amendment requires a new TIP/SIP conformity determination. If the project is exempt under the Environmental Protection Agency (EPA) Air Quality Conformity Rule (40 CFR Parts 51 & 93), the amendment shall be approved through the normal SJTPO approval procedures. If the project is not exempt, the SJTPO shall determine through consultation whether a new TIP/SIP air quality conformity determination will require an analysis, and shall perform the appropriate analysis as needed. The project sponsor shall provide information on the project design and scope to enable the SJTPO to code the travel networks for the emissions analysis. Upon receipt of the project design and scope information, the SJTPO shall conduct the regional emissions analysis.

The SJTPO may establish classes of amendments for the purpose of public participation and committee review.

Following approval by the SJTPO Board, the Executive Director shall forward to the NJDOT a letter with the approving document (e.g. resolution, revised TIP page, and all necessary compliances (i.e., adherence to public participation, congestion management, conformity and fiscal constraint requirements). Upon receipt from the SJTPO of an approved amendment, the NJDOT shall submit the STIP amendment either to the FHWA for highway projects or the FTA for transit projects for their approval and inform the SJTPO when federal approval is received. For amendments requiring a new SJTPO conformity determination, the NJDOT shall forward the conformity determination to the FHWA and the FTA and request a joint conformity finding. After consultation with the EPA, the FHWA and the FTA shall make a determination on the NJDOT request to amend the STIP. Following FHWA/FTA approval, the NJDOT will notify the SJTPO of the approval.

B. PROCEDURES FOR EXPEDITED PROJECT SELECTION – MODIFICATIONS

The parties agree that all changes to the TIP/STIP that are not amendments shall be handled as modifications under the Expedited Project Selection Procedures.

1. Modifications Not Requiring Further MPO Action Beyond This Agreement

The parties agree that the following actions to a project in the TIP/STIP shall not require further action by the SJTPO beyond this agreement.

- (a) The parties agree that action shall not be required for a cost increase of **\$500,000** or less to a planning or project development phase of a project. The parties also agree that action shall not be required for a cost increase of **\$1,000,000** or less to the design or right-of-way (ROW) phase of a project or a cost increase of **\$5,000,000** or less to the construction phase of a project.
- (b) The parties agree that if a project is listed in an approved TIP/STIP for design and or construction and an incidental ROW need is discovered during the design phase, the ROW purchase may be authorized and funded as part of the design or construction phase of the project without modifying the TIP/STIP. Incidental ROW is the purchase of a minor piece of property (e.g., utility relocation) that shall not involve the taking of residential or business structure(s) or environmentally sensitive property.
- (c) All federal highway funding categories except Surface Transportation Program (STP) urbanized area and Congestion Management and Air Quality (CMAQ) funds shall be considered interchangeable funding sources for highway projects. Section 5309 and Section 5307 funds shall be considered interchangeable funding sources for transit projects. When either NJDOT or NJ TRANSIT deems it appropriate to shift funding between interchangeable federal funding sources, to change the federal and state funding mix of a project and/or to introduce state funds to a project (except as limited by sections B.2(g) and B.3©), this agreement permits such substitution without further action by the SJTPO. Following such action the FHWA/FTA and the SJTPO shall be notified through the NJDOT and NJ TRANSIT reporting systems.
- (d) The parties agree that the NJDOT may use funds from the Final Scope Development (FSD) line item to fund projects listed in the Study & Development (S & D) Program without prior notification but only for those projects listed in the SJTPO approved S & D Program for the FSD in the current year. The amount of funds authorized for each program shall be included in the NJDOT quarterly reporting system to the SJTPO.
- (e) The parties agree that the NJDOT and NJ TRANSIT may use statewide line items throughout the state without going to each MPO for approval. NJDOT shall continue to break down these line items, by MPO, wherever appropriate. The amount of funds authorized within each program by MPO shall be included in the NJDOT/NJ TRANSIT quarterly reporting system to the SJTPO.

- (f) The parties agree that the project sponsor can apply federal Advance Construction procedures to a project in the TIP/STIP without SJTPO approval, provided federal funding is shown for the project in the TIP/STIP except for the situation covered by Part B.2.(f).
- (g) The parties agree that the NJDOT and NJ TRANSIT may move project phases from the second or third year of the TIP/STIP into the first year of the TIP/STIP without SJTPO approval, provided those projects appear on the SJTPO priority project selection list.

2. Modifications That May Be Approved by Administrative Action

The parties agree that under the following circumstances changes to the TIP/STIP may be handled by the Executive Director as Administrative Modifications. In each case, the Executive Director of the SJTPO upon consultation with the affected subregions may approve the action administratively. The Executive Director retains the right to have the modification considered under the process described in Section B.3.

- (a) When the cost of a planning or project development phase increase between **\$500,000 and \$1,000,000.**
- (b) When the cost of the design or right-of-way phase increases between ~~\$500,000~~ **\$1,000,000 and \$5,000,000.**
- (c) When the cost of a construction phase increases between ~~\$1,000,000 and~~ **\$5,000,000 and \$10,000,000.**
- (d) When a project phase is moved among the three years of the TIP/STIP, if the project phase does not appear on the SJTPO priority project selection list.
- (e) When a major phase of work is added or deleted from the current year of the TIP/STIP and the overall project schedule is not adversely affected (i.e., the construction phase is not delayed).
- (f) When the project sponsor chooses to apply federal Advance Construction procedures to a project listed in current year of the TIP/STIP for which federal funding has not been provided in any future year.
- (g) When changing a federally funded project to state funding.
- (h) When adding transition project phases to the first year of the TIP/STIP as described in Section D.
- (i) The parties agree that this process shall also apply to all other modifications not covered in Section B.
- (j) **In the case of bid overruns, the administrative action shall take place within the 30 day window from project bid opening to contract award.**

The parties agree to maintain fiscal constraint in all administrative modifications.

3. Modifications Requiring SJTPO Board or Committee Action

The parties agree that the following circumstances require action by the SJTPO at either the Board or the Committee level.

- (a) When the cost increase to a phase exceeds the limits set in items B.2.(a), B.2.(b), or B.2.(c).
- (b) When the Executive Director determines that Board or Committee action is appropriate.
- (c) When changing a non-federally funded project to federal funds.
- (d) **In the case of bid overruns which exceed the thresholds in Sections 2 (a) (b) & (c), the action shall take place within the 30 day window from project bid opening to contract award.**

C. PROCEDURE FOR FISCAL CONSTRAINT BANK

The federal statewide and metropolitan planning rule stipulates that each year of the TIP/STIP must be fiscally constrained to available resources. The parties agree to manage the demonstration of fiscal constraint for amendments and modifications through the establishment of a “Fiscal Constraint Bank” for each MPO and one for statewide projects. Fiscal constraint for amendments and modifications may be demonstrated by using any outstanding balances in the Fiscal Constraint Bank.

At the beginning of the first fiscal year of a new TIP, the SJTPO bank will have no outstanding balances for any year. Funds may be added to the bank for a given year in five ways:

- a. De-obligation of funds from projects authorized under prior TIPs.
- b. Excess funds available from low bids/awards on current projects.
- c. Deletions of projects from the current TIP.
- d. As a result of a modification to the TIP which results in net decrease to the cost of project(s) in a given year.
- e. As a result of a modification to the TIP which moved a project phase from that year to another year in the TIP or to a year beyond the current TIP period.

At the beginning of each fiscal quarter, the NJDOT shall provide the SJTPO with a list of programmed project phases that will not be obligated during the current federal fiscal year. SJTPO action (under Part A, Part B(2) or Part B(3)) may be required for projects that will not be obligated. The funds associated with these projects may be used for subsequent amendments or modifications to address fiscal constraint within the MPO.

The parties agree that in accounting for fiscal constraint when making TIP amendments (under Part A) or modifications (under Part B(2) of Part B(3)), the net result for the first fiscal year must be that the bank has a zero or positive balance, and that the net result for the entire three year TIP period must also be a zero or positive balance. This will allow for temporary imbalances in the second and third years, but will still maintain the overall fiscal constraint of the TIP.

At the end of each quarter, fiscal constraint by year shall be demonstrated by the parties through such other amendments and/or modifications as may be necessary.

If there are no outstanding balances in the fiscal constraint bank, the parties shall demonstrate fiscal constraint for each amendment and modification on a project by project basis.

The parties agree that NJDOT shall apply the same procedures to the “statewide projects” fiscal constraint bank.

D. 60 DAY GRACE PERIOD

The NJDOT and the SJTPO agree that projects appearing in the fiscal year of the prior year’s TIP/STIP can be authorized by FHWA after September 30th for a period not to exceed 60 days without requiring an action by the SJTPO to amend or modify the TIP. This option has been offered by FHWA in the spirit of flexibility and is non-regulatory. The projects in question shall be listed in an appendix in the TIP/STIP to be labeled “Transition Projects”. These projects shall also be shown in the normal NJDOT reporting cited in Section F. below that the SJTPO shall make available to the public.

The NJDOT and the SJTPO also agree that any transition projects not obligated within the 60 day grace period can be added to the first year of the TIP/STIP at any time by administrative modification provided the project has another phase of work in the current TIP/STIP and fiscal constraint is maintained. The parties agree that the requirements for public involvement have been met for these actions by virtue of the project’s presence in the prior TIP/STIP and the continuance of the project in the current TIP/STIP. If the project does not have another phase of work in the current TIP/STIP, it will be treated as an amendment.

E. PUBLIC PARTICIPATION

The SJTPO shall follow its adopted public participation procedures for amendments, modifications, and conformity determinations to provide the appropriate level of public involvement prior to the SJTPO Board taking action. The SJTPO may establish classes of amendments for the purpose of public participation and committee review. The parties agree that the SJTPO public participation procedures shall also serve as the public participation procedures for the STIP. The SJTPO shall state in notices to the public that comments received on the proposed action to the TIP are comments on the same action to the STIP.

F. PROJECT REPORTING

The NJDOT and NJ TRANSIT shall provide information on TIP/STIP program and project status in various reports to the SJTPO. This information shall enable the SJTPO to make informed decisions on TIP changes requested by project sponsors including the demonstration of fiscal constraint.

The NJDOT and NJ TRANSIT shall provide the following information to the SJTPO: Federal/State authorizations, Federal/State transactions, project schedule changes with potential TIP impacts, federal obligations completed in the previous quarter, federal obligations anticipated to occur in the upcoming quarter, and status of each project in the TIP/STIP with information in key issue areas and impact to the project schedule.

The NJDOT and NJ TRANSIT shall transmit the information to the SJTPO in a mutually agreed to format after the close of each federal year quarter. The SJTPO shall disseminate the information to local members.

The SJTPO shall identify projects that local members consider critical projects. The NJDOT and NJ TRANSIT shall schedule periodic meetings to provide status updates and issue discussions on the critical projects. Invited attendees shall include: local member elected officials and staff, SJTPO staff, NJDOT and NJ TRANSIT project management staff, NJDOT and NJ TRANSIT capital programming staff, and NJDOT and NJ TRANSIT MPO liaison staff. The purpose of meetings on key projects is to enhance the information flow on important projects to the community and shall augment information provided on the SJTPO and local members in the reporting above.

We, the undersigned, agree to use the above procedures to amend and modify the SJTPO Transportation Improvement Program (TIP) and the State Transportation Improvement Program (STIP).

Chairman, SJTPO

Date

Commissioner,
New Jersey Department of Transportation

Date

Executive Director,
NJ Transit Corporation

Date

DATED: Executed and Dated August 2006