

APPENDIX D

Memorandum of Understanding on Procedures to Amend and Modify the TIP



February 22, 2007

**Memorandum of Understanding
between the
Delaware Valley Regional Planning Commission and the
New Jersey Department of Transportation and the New
Jersey Transit Corporation**

**PROCEDURES TO AMEND AND MODIFY THE DVRPC
TRANSPORTATION IMPROVEMENT PROGRAM AND
STATEWIDE TRANSPORTATION IMPROVEMENT
PROGRAM**

Re-Affirmed July 28, 2011

In adopting a four-year Transportation Improvement Program (TIP) each year, the parties to this memorandum of understanding, the Delaware Valley Regional Planning Commission (DVRPC), 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 DVRPC's Regional Transportation Plan. Following gubernatorial (or NJDOT Commissioner, if so designated) approval of the DVRPC TIP, the three Metropolitan Planning Organization (MPO) TIPs are consolidated without modification into the Statewide 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 current year of the TIP/STIP.

The purpose of this memorandum of understanding is to establish procedures for changing the TIP after adoption by the DVRPC and approval 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 four 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 DVRPC 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 process (CMP) determination.

The DVRPC, 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 DVRPC approval procedures. If the project is not exempt, the DVRPC 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 DVRPC to code the travel networks for the regional emissions analysis. Upon receipt of the project design and scope information, the DVRPC shall conduct the regional emissions analysis.

The DVRPC may establish classes of amendments for the purpose of public participation and committee review. DVRPC and its member agencies have agreed to recognize two classes of amendments. **Major amendments** include those projects which require a new regional conformity determination. Major amendments will require not less than a 30 day public comment period before Board action. **Minor amendments** include those projects which are exempt from the conformity requirements or which have been assessed using project level analysis procedures and found not to change the finding of conformity. Minor amendments will not require a 30 day comment period, but will seek public involvement through DVRPC's RTC and Regional Citizen Committee (RCC).

Following approval by the DVRPC Board, the Executive Director shall forward to the NJDOT a letter acknowledging Board approval, the revised TIP page(s), and assurance of all necessary compliance (i.e., adherence to public participation, congestion management, conformity and

fiscal constraint requirements). Upon receipt from the DVRPC 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 DVRPC when federal approval is received. For amendments requiring a new DVRPC 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 DVRPC 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 DVRPC beyond this agreement.

- (a) A cost increase of \$500,000 or less to a planning or project development phase of a project.
- (b) A cost increase of \$1,000,000 or less, but not more than 50% of the Design or Right-of-Way cost, whichever is lower.
- (c) A cost increase of \$5,000,000 or less, but not more than 50% of the construction phase of work, whichever is lower.
- (d) 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.
- (e) 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(c)), this agreement permits such substitution without further

action by the DVRPC. Following such action the FHWA/FTA and the DVRPC shall be notified through the NJDOT and NJ TRANSIT reporting systems.

- (f) 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 DVRPC 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 DVRPC.
- (g) 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 DVRPC.
- (h) The parties agree that the project sponsor can apply federal Advance Construction procedures to a project in the TIP/STIP without DVRPC approval, provided federal funding is shown for the project in the TIP/STIP except for the situation covered by Part B.2.(f).
- (i) The parties agree that the NJDOT and NJ TRANSIT may move project phases from the second, third, or fourth year of the TIP/STIP into the first year of the TIP/STIP without DVRPC approval, provided those projects appear on the DVRPC 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 DVRPC 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 increases by more than \$500,000 but less than \$1,000,000.
- (b) When the cost of the design or right-of-way phases increases between \$1,000,000 and \$2,000,000 or 50% of the cost of the phase of work, whichever is lower.
- (c) When the cost of a construction phase of work increases between \$5,000,000 and \$10,000,000 or 50% of the cost of the phase of work, whichever is lower.
- (d) When a project phase is moved among the four years of the TIP/STIP, if the project phase does not appear on the DVRPC 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) For an excessive bid overrun that is subject to a 30-day acceptance by NJDOT, when the following conditions are met: 1) the scope of the project has not expanded from that anticipated in the TIP; 2) the final estimated cost in the PS&E package agrees with the TIP programmed amount or is within the threshold permitted for a construction phase by administrative action [B.2.(c)]; and, 3) NJDOT has or will have concurrence from FHWA that the bid would otherwise be acceptable.

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

3. Modifications Requiring DVRPC Board or Committee Action

The parties agree that the following circumstances require action by the DVRPC 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), except as provided for in B.2.(j).
- (b) When the Executive Director determines that Board or Committee action is appropriate.
- (c) When changing a non-federally funded project to federal funds.

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 DVRPC bank will have no outstanding balances for any year. Funds may be added to the bank for a given year in five ways:

- 1. De-obligation of funds from projects authorized under prior TIPs**
- 2. Excess funds available from low bids/awards on current projects**
- 3. Deletions of projects from the current TIP**
- 4. As a result of a modification to the TIP which results in a net decrease to the cost of project(s) in a given year**
- 5. 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 DVRPC with a list of programmed project phases that will not be obligated during the current federal fiscal year. DVRPC 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) or 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 four year TIP period must also be a zero or positive balance. This will allow for temporary imbalances in the second, third, and fourth 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 DVRPC agree that projects appearing in the first 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 DVRPC 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 DVRPC shall make available to the public.

The NJDOT and the DVRPC 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 DVRPC shall follow its adopted public participation procedures for amendments, modifications and conformity determinations to provide the appropriate level of public involvement prior to the DVRPC Board taking action. The DVRPC may establish classes of amendments for the purpose of public participation and committee review. The parties agree that the DVRPC public participation procedures shall also serve as the public participation procedures for the STIP. The DVRPC 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

NJDOT and NJ TRANSIT agree to provide information on the TIP/STIP and project status to the MPOs. NJDOT maintains a Project Reporting System (PRS). Project-specific information from the PRS includes schedule dates, federal/state authorization dates, project costs and pertinent issues are available to the MPOs on-line. It will be the Department's responsibility to keep the information in the PRS current. It will be the responsibility of the MPOs to reformat the data into reports they deem usable.

The NJDOT Office of Program Management will be the clearinghouse for additional information related to MPO project inquiries. NJDOT shall respond to all MPO inquiries within three business days. The Office of Community Relations will be the clearinghouse for project inquiries from local elected officials.

NJ TRANSIT is required to submit Quarterly Progress Reports to FTA on a quarterly basis. These reports will continue to be shared with the MPOs in a data base format.

The MPOs will continue to have rights to request meetings for projects with critical issues at any time. Invited attendees can include local elected officials and staff; MPO staff; NJDOT and/or NJ TRANSIT project management staff; capital programming staff and NJDOT/NJ TRANSIT liaison staff. The purpose of the meetings on key projects is to enhance the information flow on important projects to the community and shall supplement information provided to the MPO in the reporting requirements enumerated above.

NJDOT and NJTRANSIT will each produce an Annual Listing of Obligated Projects report within 60 days after the end of the federal fiscal year. The report will contain all federally funded projects that were obligated during the previous federal fiscal year. It will also provide information for bicycle and pedestrian projects. A similar listing for 100% state funded projects will be provided under separate cover.

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

Chairperson, DVRPC

Date

Commissioner,
New Jersey Department of Transportation

Date

Executive Director, NJ TRANSIT Corporation

Date