

**Memorandum of Understanding
between the
North Jersey Transportation Planning Authority and the
New Jersey Department of Transportation and the
New Jersey Transit Corporation**

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

In adopting a four-year Transportation Improvement Program (TIP) each year, the parties to this memorandum of understanding, the North Jersey Transportation Planning Authority (NJTPA), 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 NJTPA's Regional Transportation Plan. Following gubernatorial (or NJDOT Commissioner, if so designated) approval of the NJTPA 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 NJTPA 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.

- Addition of a project to the TIP/STIP.
- Deletion of a project in its entirety from the TIP/STIP.
- Major change to a project's design concept or scope that would require a new TIP/State Implementation Plan (SIP) conformity determination.
- 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 NJTPA 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 NJTPA, 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 NJTPA approval procedures. If the project is not exempt, the NJTPA 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 NJTPA to code the travel networks for the regional emissions analysis. Upon receipt of the project design and scope information, the NJTPA shall conduct the regional emissions analysis.

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

Following approval by the NJTPA Board, the Executive Director shall forward to the NJDOT a letter with the approving document (e.g. resolution), revised TIP page, and all necessary compliance (i.e., adherence to public participation, congestion management, conformity and fiscal constraint requirements). {The letter may state that the approval is subject to the Governor's review for a period of ten days from the Governor's receipt of the Board minutes.} Upon receipt from the NJTPA 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 NJTPA when federal approval is received. For amendments requiring a new NJTPA 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 NJTPA 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 NJTPA 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 but not more than 50%, whichever is lower, to the design or right-of-way (ROW) phase of a project , or
- (c) A cost increase of \$2,000,000 but not more than 50%, whichever is lower, to the construction phase of a project.
- (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 NJTPA. Following such action the FHWA/FTA and the NJTPA shall be notified through the NJDOT and NJ TRANSIT reporting systems.
- (f) The parties agree that the NJDOT may use funds from the Preliminary Design (PD) line item to fund projects listed in the Project Development Work Program (PDWP) without prior notification but only for those projects listed in the NJTPA approved

PDWP Program for the PD in the current year. The amount of funds authorized for each program shall be included in the NJDOT Project Reporting System (PRS) to the NJTPA.

- (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 obligated within each program by MPO shall be included in the NJDOT/NJ TRANSIT Project Reporting System (PRS) to the NJTPA.
- (h) The parties agree that the project sponsor can apply federal Advance Construction procedures to a project in the TIP/STIP without NJTPA 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 NJTPA approval, provided those projects appear on the NJTPA list of Projects Eligible for Priority Advancement (a TIP appendix).

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

- (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 phase 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 \$2,000,000 and \$6,000,000 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 NJTPA list of Projects Eligible for Priority Advancement (a TIP appendix).
- (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 non-federal 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) When processing a Bid Cost Overrun (a project in the first year of the TIP that has already been authorized but whose construction bid is more than \$1,000,000 higher than the original estimate).

3. Modifications Requiring NJTPA Board or Committee Action

The parties agree that the following circumstances require action by the NJTPA 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.

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

- De-obligation of funds from projects authorized under prior TIPs
- Excess funds available from low bids/awards on current projects
- Deletions of projects from the current TIP

- 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
- 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 NJTPA with a list of programmed project phases that will not be obligated during the current federal fiscal year. NJTPA 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 NJTPA 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 NJTPA 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 NJTPA shall make available to the public.

The NJDOT and the NJTPA 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 NJTPA shall follow its adopted public participation procedures for amendments, modifications and conformity determinations to provide the appropriate level of public involvement prior to the NJTPA Board taking action. The NJTPA may establish classes of amendments for the purpose of public participation and committee review. The parties agree that the NJTPA public participation procedures shall also serve as the public participation procedures for the STIP. The NJTPA 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 NJ TRANSIT Departments of Capital Planning and Capital Funding will be the clearinghouse for additional information related to MPO project inquiries. NJ TRANSIT shall respond to all MPO inquiries for projects in the TIP within three business days.

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.

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

Daniel P. Sullivan

Honorable Daniel P. Sullivan
Chairman, NJTPA

Date 4-6-07

[Signature]
Honorable Kris Kolluri
Commissioner, NJDOT

Date 5/1/07

[Signature]
Mr. Richard R. Sarles
Executive Director, NJ Transit Corp.

Date 4/25/07

The NJTPA TIP Revision Protocol

INTRODUCTION

The annual publication of the TIP represents the best estimate of the projects planned for advancement and their funding levels during the first programmed year. However, it is inevitable that project changes will need to be made during the year. Such changes include: adding a new project, modifying a project's scope, adjusting funding levels or the source of funding, and changing the phasing of the project. Such actions may result in the need to amend or modify the TIP.

Due to the re-scheduling of Board and Project Prioritization Committee (PPC) meetings into bi-monthly occurrences, these procedures are recommended to codify the framework for incorporating TIP revisions (amendments and modifications) into the meeting schedules as outlined in the NJTPA Strategic Business Plan.

The Memorandum of Understanding (MOU) - which was agreed to by NJDOT, NJ Transit and NJTPA - is the document that governs TIP revisions. According to the MOU, the PPC has the authority to approve three of the four categories of TIP revisions that are as follows: (1) TIP Amendment, (2) Expedited TIP Amendment, and (3) PPC Modification. The fourth revision that does not require PPC approval is an (4) Administrative Modification. The four categories are described below in detail.

(1) TIP AMENDMENTS

According to the Memorandum of Understanding among the NJDOT, NJ Transit and NJTPA, a TIP Amendment is triggered with the:

- Addition of a project to the TIP/STIP;
- Deletion of a project in its entirety from the TIP/STIP;
- Major change to a project's design concept or scope that would require a new TIP/State Implementation Plan (SIP) Conformity Determination; or
- Addition of a project development phase to a project that results in moving all major phases out of the TIP/STIP.

Amendments to the TIP require the following actions and timeframe:

Proposed TIP Revision	Required Action	Required Calendar Days
Amendment	Subregional concurrence	10
	Public Comment Period	30
	PPC Notification	21
	Total calendar days	51

Therefore, a TIP Amendment must be submitted no later than **61 days** prior to a scheduled PPC meeting to receive their consideration for approval.

(2) EXPEDITED TIP AMENDMENTS

Expedited TIP Amendments are defined as follows:

- A project is being deleted from the TIP because of completion in prior year fiscal year or it is subsumed in a larger project, or
- It is a “transitional project” that can neither be initiated by the end of the federal fiscal year (September 30) nor the 60-day grace period that ends on November 30, and must therefore be amended in the first year of the current TIP/STIP.

Expedited Amendments to the TIP require the following actions and timeframe:

Proposed TIP Revision	Required Action	Required Calendar Days
Expedited Amendment	Subregional concurrence	10
	Public Comment Period	10
	PPC Notification	21
	Total calendar days	31

Because the comment period is only 10 calendar days, a request for an Expedited TIP Amendment will have to be submitted 31 calendar days prior to the PPC. Subregional concurrence and the public comment period will run concurrently.

(3) MODIFICATION REQUIRING PPC ACTION

All revisions to the TIP that are not amendments are considered modifications. PPC approval for modifications is required when one of the following financial thresholds are exceeded:

- A cost increase of more than \$500 thousand to a planning or project development phase of a project;
- A cost increase of more than \$1 million or to the design or right-of-way (ROW) phase of a project; or
- A cost increase of more than \$5 million or to a construction phase of a project.

In addition, a modification needing PPC approval can also be triggered when the following occurs:

- When the Executive Director determines that Board or Committee action is appropriate for an Administrative Modification; or
- When changing a non-federally funded project to federal funding.

Modifications will require the following actions and time for the PPC meeting:

Proposed TIP Revision	Required Action	Required Calendar Days
PPC Modification Approval	Subregional concurrence	10
	PPC Notification	21
	Total calendar days	31

(4) ADMINISTRATIVE MODIFICATION

The Executive Director may handle revisions to the TIP with the affected subregions as Administrative Modifications when the above financial thresholds are not exceeded.

Administrative Modifications will require the following actions and time for processing:

Proposed TIP Revision	Required Action	Required Calendar Days
Administrative Modification	Subregional concurrence	7
	Executive Director's Signature	3
	Total days	10