NJ TRANSIT

Memorandum

TO: Chris Christie, Governor, State of New Jersey

FROM: James Weinstein, Executive Director, NJ TRANSIT

DATE: October 26, 2010

SUBJECT: ARC Project Negotiation Review and Recommendation

Recommendation:

Despite strong efforts by the federal and state participants in the ARC discussions during the last two weeks, we have been unable to reach agreement on terms that would assure New Jersey's taxpayers would not pay more than $2.7 billion for a completed Trans Hudson Express ARC project. In view of this, I recommend we continue to move forward with the orderly and expeditious shutdown of the project while continuing to explore solutions to the trans-Hudson transportation challenge.

Background:

On October 7, 2010, the ARC Executive Steering Committee unanimously recommended to terminate the project and immediately begin an expeditious and orderly shutdown.

This recommendation was based on the fact that after 5 months of intense negotiations, New Jersey Transit and the Federal Transit Administration (FTA) were unable to reach an agreement on a final ARC project cost projection. Throughout these negotiations, the federal government has insisted that any costs above $8.7 billion must be paid by the State of New Jersey or other non-federal sources.

In August 2010, each party submitted their respective projected cost range for the project based on their professional judgment and experience; an integral and standard step in the Full Funding Grant Agreement (FFGA) process.

NJ Transit put forth a project range of $8.7 billion to $10 billion. On August 16, 2010 the FTA put forth a project range of $10.9 billion to $13.7 billion. Based on a detailed financial analysis submitted by the FTA to NJ TRANSIT on August 16, 2010 (document A), the FTA determined that the final project cost would range from $10.9 billion up to $13.7 billion.

Based on this cost estimate, the FTA made it clear that New Jersey would have to demonstrate an ability to fund an additional $2 billion to $5 billion. This cost does not include Portal Bridge South.

On October 7, 2010, faced with the FTA's requirement that New Jersey guarantee all costs above $8.7 billion in order to qualify for the $3 billion federal share of the project, and recognizing the extraordinarily difficult financial condition of the State, the Executive Steering Committee of the ARC project recommended that Governor Christie terminate the project.

On October 8, 2010, in a joint meeting between Governor Christie and US DOT Secretary LaHood and their respective teams, federal officials put forward an updated project cost range of $9.8 billion as the low end estimate, $10.9 billion as the mid range estimate and $12.7 billion as the high end estimate.

Federal transportation officials have advised us that there is an approximately 10 percent probability of the project being completed at or below the low range cost, approximately 40 to 50 percent probability of the project being completed at or below the mid range cost and approximately 83 percent probability of the project being completed at or below the high range cost.

Furthermore, this range did not include the additional $775 million that New Jersey would be required to spend to build the Portal Bridge South. The FTA is requiring New Jersey to build the Portal Bridge South as part of the ARC project through the Record of Decision (ROD) for the project. Consequently, the additional $775 million cost of the Portal Bridge South must be included in the cost of this project to New Jersey.

Discussion Points:

As a result of the meeting, the Governor and Secretary directed their teams to spend the next two weeks attempting to find ways to address the issues and concerns raised with particular emphasis on how potential cost overruns would be handled and identifying a solution that did not put New Jersey taxpayers at risk.

To this end the efforts of the group focused on key areas and concerns raised during the October 8, 2010 meeting.

Phasing in the project by reducing scope in the near term.
A thorough review made it clear that this approach would only delay, but not eliminate, New Jersey's responsibility for the higher costs while significantly diminishing the value of the project to large numbers of transit users.

Financing the project through the Federal Railroad Rehabilitation & Improvement Financing (RRIF) loan program.
Under the RRIF loan program the Federal Rail Administration (FRA) is authorized to provide direct loans and loan guarantees of up to $35 billion. These loans can fund 100% of a qualified railroad project with repayment periods of up to 35 years at interest rates equal to the cost of borrowing to the government. Additionally, repayment would not begin for six years after first draw down of the loan. This was discussed as a way of covering New Jersey's full share of project costs ($2.7 billion) as well as any amount above the $8.7 billion budget. Ultimately, regardless of the terms, this is a loan that the taxpayers of New Jersey are responsible for repaying. In no way does this option

diminish the burden on New Jersey and in fact this option ensures that New Jersey taxpayers will be paying for any project costs above the $8.7 billion budget.

Securing a Public Private Partnership (PPP).

The Federal team pointed to the success of PPPs involving the Port of Miami Tunnel, Denver Union Station and the Denver Eagle transit project. It was pointed out that there is interest in doing some part of the ARC project as a PPP and that such a partnership could be used to address cost and technical risk while fixing the price of elements such as the new rail station and the tunnels. It would, however, take a significant amount of time (at least 18 months) to develop and implement a PPP and there is no guarantee it would be at an acceptable price or on acceptable terms. Ultimately, even if a PPP could be secured, New Jerseyans would be responsible in some fashion for the costs to pay for it.

New Station Location.

There was discussion on ways to more closely tie the proposed new ARC station under 34th Street to existing Penn Station, as well as using the new station to create increased regional and national benefits that will in turn attract additional funds for the project in the future. Even if this aspect of the project was successfully implemented, it would not provide a means for covering current cost overruns nor the contingencies necessary to conclude a funding agreement with the FTA. Simply, it would not hold New Jersey's taxpayers harmless from cost increases and overruns that have already emerged and may continue to emerge as the project is constructed.

On Sunday, October 24, 2010 the Governor and Secretary met to discuss the Federal government's proposals. Deputy Secretary John Porcari outlined four approaches based on the assumption that the total cost of the project is $11.7 billion (FTA mid-range cost estimate together with the Portal Bridge South).

The approaches included one or more of the following elements:

- Increased Federal, PANY/NJ and State of New Jersey contributions of $378 million each to fund the difference between the $8.7 billion budget and the FTA low end cost estimate of $9.8 billion, excluding both the Portal Bridge South and any contingency for the approximately 90 percent likelihood that the project cost will exceed the low end cost estimate;
- A federal RRIF loan ranging from a low of $775 million to cover the cost of construction of the Portal Bridge South to $2.3 billion to cover the increased state share of the difference between the $8.7 billion budget and the FTA low end cost estimate of $9.8 billion ($378 million) plus the cost of the Portal Bridge South and contingency funds required based on the mid-range cost estimate;
- A Public Private Partnership contribution of $1.85 billion, representing the difference between the $8.7 billion budget and the FTA low range cost estimate of $9.8 billion plus the amount required for the Portal Bridge South; and,
- Near-term scope reductions of $700 million.

Conclusion

While significant effort and thought was put into this by all involved, the federal New Starts contribution to this project of regional and national significance would be capped at $3.378 billion (even with $378 in additional federal funds), regardless of the ultimate cost of the project. When the contingency required by the Federal government for the mid-range cost estimate is included, it would mean the Federal share would be less than 29% of the funding challenge facing New Jersey.

The Federal government continues to insist that New Jersey and the PANYNJ be financially liable for substantial costs beyond the current project budget of $8.7 billion. The value and benefit that a cross Hudson transportation improvement would bring to New Jersey and the entire region is not in question. However, at a time when New Jersey's economy is under extreme stress and the financial strength of the State is at a low point, the taxpayers are in no position to bear the open-ended cost for this project that would be required to obtain a Full Funding Grant Agreement from the FTA.

Based on the foregoing, the October 7, 2010 recommendation of the ARC Executive Steering Committee should continue to be implemented while New Jersey Transit pursues alternate, affordable solutions to the trans-Hudson transportation challenge.

Document A

Millions of $	NJT Capital Cost Estimate at Entry into Final Design Jan	NJT Capital Cost Estimate Rev 11 April 2010 Cost in	FTA 2010 Adjustments Rev11 OP 53 Optimistic	Mid Range Risk Medium Mitigation Capacity	Pessimistic Low Mitigation Capacity	Pessimistic Very Low Mitigation Capacity	Assumptions
Base Construction Cost	4,880	5,006	5,006	5,816	5,816	6,136	Marginal Cost additions for the Low and very low
Geotechnical Scope			135	0	20	20	Production rates for tunnels and caverns, TBM downtime, contractor contingencies
Geotechnical Project Delivery				0	0	0	Single bidder premium, contractor margins/overheads, procurement schedule delays, impacts to other contractors
Other (Direct and Indirect Adjustments)			525				The PMOC assessed these mechanical adjustments to the base.
Pre Award Design Solution			150		100	100	There will 200 million in CCR and we think they will hit 2-50M more. This was to cover ADA CCR, etc.
Stakeholder Risk (Amtrak, PANYNJ, NJT, Others)				0	200	200	Power distribution, Construction interfaces on the NEC and NYP, Finishes in the Caverns
Construction Subtotal	4,880	5,006	5816	5,816	6,136	6,456	
Professional Services	495	1057	1057	1237	1237	1,450	
PE+EPE+Final Design+Post FD			114.9	0	105.1	212.4	Historical experience on heavy rail, Seattle and Pittsburgh delays. Design Services for RE, Startup Force Account
Construction Management			65	0	108.3	261.1	Project is 12 months longer
Professional Services Subtotal	495	1057	1237	1237	1450	1924	
Real Estate	395	572.5	572.5	949	949	1389	
Commercial Real Estate			376.5	0	340	200	Restriction declarations on titles, Premium settlement cost, etc.
Stakeholder Risk (Amtrak)				0	100	150	NEC Corridor ROW costs, NYPSE costs, W Manhattan yards
Real Estate Subtotal	395	572	949	949	1389	1739	
Vehicles	221	258	258	258	258	258	
Procurement Risk (Coaches)				0	0	0	Reprocurement risk, currency risk were added to the project. In contract
Procurement Risk (Locomotives)				0	0	0	Currency risk, tax risk, performance risk. In Contract
Vehicles Subtotal	221	258	258	258	258	258	
Base Year 2009$ Total	5,991	6,894	8,260	8,260	9,233	10,377	
Escalation Assumptions	4.25% thru 2017 (1.1392)	3.2 % 2009 thru 2019 (1.113 YOE Factor)	3.2% Avg thru 2021 (1.113 YOE Factor)				
Escalation Increase				1.113	1.113	1.113	YOE Factor Allows for 2020 and 2021 RSD.
Total YOE$	6,826	7,675	9,193	9,193	10,433	11,726	
Contingency Assumptions							Contingency Allocated
Post Award Retained Risk	1.876	1024	1450	1,450	1,450	1,450	
Differing Site Conditions Reserve	314		100	100	214	425	
			135	135	135	135	Other
Grand Total (YOE$)	**8.701**	**8,699**	**10,878**	**10,878**	**12,232**	**13,736**	