



## NEW JERSEY TRANSIT

### REQUEST FOR QUALIFICATIONS FOR PARKING CONCESSION

OCTOBER 14, 2010

RFQ No. 11-013

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# Section 1

## Overview of RFQ and Concession Process

### 1.1 New Jersey Transit Corporation



federal government by defined formula and by discretionary grants.

NJ TRANSIT has a seven-member Board of Directors appointed by the Governor with the consent of the New Jersey Senate. NJ TRANSIT employs an Executive Director who manages day-to-day operations.

New Jersey Transit Corporation (“NJ TRANSIT”) is New Jersey’s public transportation agency. Its mission is to provide safe, reliable, convenient and cost-effective transit service. Covering a service area of 5,325 square miles, NJ TRANSIT is the nation’s third largest provider of bus, rail and light transit, linking major points in New Jersey, New York and Pennsylvania. It is one of the only public transit operators with statewide responsibilities in the United States. NJ TRANSIT operates, either directly or by private contract, a fleet of 2,200 buses, 1,076 train cars and 93 light rail vehicles. On 256 bus routes, 12 rail lines and 3 light rail lines statewide, NJ TRANSIT provides over 270 million passenger trips each year. In addition to NJ TRANSIT operations, private bus carriers provide services to NJ TRANSIT facilities and customers.

NJ TRANSIT is an instrumentality of the State of New Jersey created by the New Jersey Public Transportation Act of 1979. NJ TRANSIT is empowered with the authority to acquire, own, operate and contract for the operation of public passenger transportation services. In addition to farebox revenues, NJ TRANSIT receives operating and capital funds from several sources including the State of New Jersey via legislative appropriation and the

Additional information about NJ TRANSIT and its operations, including current information on fares and parking rates, can be found at [www.njtransit.com](http://www.njtransit.com).

NJ TRANSIT has a multimodal approach to addressing how customers access NJ TRANSIT's public transit services. This approach includes walking, bicycling, shuttle buses and parking. NJ TRANSIT owns parking facilities at most of its rail, light rail, and bus stations. The current parking inventory that is owned or controlled by NJ TRANSIT exceeds 48,000 spaces spread throughout New Jersey. Management at approximately three quarters of NJ TRANSIT parking facilities is outsourced to private parking management companies and local government entities. With future increases in NJ TRANSIT service demand, the need for parking at certain stations will outstrip supply. Already, waitlists for parking at certain stations have been growing. Along with capacity enhancement, additional benefits from this procurement, including system enhancements, technological improvements and further price rationalization, are expected.

**Table 1.1**  
Ridership (*in Millions*)

	FY10	FY09	FY08	FY07	2010/2009	2009/2008	2008/2007	%Increase (Dec)
<b>Rail Lines</b>								
Newark Division	51.0	51.9	52.9	50.3	(1.7)	(1.9)	5.2	
Hoboken Division	28.3	28.4	28.3	26.9	(0.4)	0.4	5.2	
Atlantic City	1.1	1.3	1.3	1.3	(15.4)	0.0	0.0	
Total	<b>80.4</b>	<b>81.6</b>	<b>82.5</b>	<b>78.5</b>	<b>(1.5)</b>	<b>(1.1)</b>	<b>5.1</b>	
<b>Bus Lines</b>								
Northern Division	67.9	69.6	69.0	67.7	(2.4)	0.9	1.9	
Central Division	68.9	71.1	71.2	70.9	(3.1)	(0.1)	0.4	
Southern Division	24.4	25.3	25.5	25.7	(3.6)	(0.8)	(0.8)	
Total	<b>161.2</b>	<b>166.0</b>	<b>165.7</b>	<b>164.3</b>	<b>(3.0)</b>	<b>0.2</b>	<b>0.9</b>	
<b>Light Rail Lines</b>								
Newark Light Rail	5.9	6.1	6.2	6.0	(3.3)	(1.6)	3.3	
Hudson-Bergen Light Rail	12.8	13.2	12.4	10.7	(3.0)	6.5	15.9	
River LINE	2.8	2.8	2.7	2.4	0.0	3.7	12.5	
Total	<b>21.5</b>	<b>22.1</b>	<b>21.3</b>	<b>19.1</b>	<b>(2.7)</b>	<b>3.8</b>	<b>11.5</b>	
<b>Total Ridership</b>	<b>263.1</b>	<b>269.7</b>	<b>269.5</b>	<b>261.9</b>	<b>(2.4)</b>	<b>0.1</b>	<b>2.9</b>	

Source: NJ TRANSIT

NJ TRANSIT had a modest decline in fiscal year 2010 ridership caused by the economic recession, from which it is now emerging. This degree of decline has brought NJ TRANSIT back to fiscal year 2007 ridership levels; however, ridership is still significantly greater than levels seen in 2002. There are a number of factors that drive demand for NJ TRANSIT services and parking including economic strength, growth in jobs and the price of gasoline.

## *1.2 Overview of RFQ Process*

This Request for Qualifications (“RFQ”) is the first step in a two-stage procurement process, consisting of the RFQ process followed by a Request for Proposals (“RFP”) process. Firms receiving this RFQ shall be referred to herein as “Prospective Proposers.” The purpose of this RFQ is to provide Prospective Proposers an opportunity to formally express their interest in bidding on a concession (the “Concession”) of certain NJ TRANSIT parking assets (the “Concession Assets”). Prospective Proposers who fail to respond to this RFQ or whose submissions in response to this RFQ are deemed unqualified cannot participate in the RFP process and are not eligible for award of a Concession. After a review of RFQ responses by NJ TRANSIT, Prospective Proposers that are deemed qualified will sign a Confidentiality and Data Room Usage Agreement (“Confidentiality Agreement”) and will receive access to an on-line data room which will provide additional information concerning the Concession Assets. Qualified Prospective Proposers will also have the opportunity to conduct due diligence of the Concession Assets through (i) Concession Asset tours and additional inspections by qualified Prospective Proposer representatives; (ii) management presentations; and (iii) review and discussion of a proposed concession agreement (the “Concession Agreement”) for the Concession Assets. Following this due diligence process, final and binding proposals will be submitted in accordance with a RFP to be issued to the qualified Prospective Proposers.

NJ TRANSIT reserves the right to determine in its sole discretion whether any Prospective Proposer is qualified to participate in the RFP process. NJ TRANSIT reserves the right to modify or terminate this RFQ process and or the RFP process at any stage if NJ TRANSIT determines such action to be in its best interests. The receipt of proposals or other documents at any stage of either the RFQ or the RFP process will in no way obligate NJ TRANSIT to enter into any contract at any time with any party. NJ TRANSIT will not be responsible in any manner for the costs associated with the submission of any proposals in response to this RFQ or any subsequent procurement. NJ TRANSIT reserves the right to reject any and all proposals, irrespective of whether any such proposal is the only proposal received or one of a number of proposals representing the most favorable transaction terms. Approval by the NJ TRANSIT Board will be required before the Concession is awarded.

The Concession Agreement is expected to be a long-term agreement granting the successful proposer (the “Concessionaire”) the exclusive right to operate the Concession Assets and to collect parking and certain other revenues from the Concession Assets through the term of the Concession Agreement, currently anticipated to be in the range of 30-50 years. The primary objective of NJ TRANSIT is to improve customer service and capacity by entering into a long-term partnership to provide improved parking inventory to NJ TRANSIT customers, many of whom are on waitlists. NJ TRANSIT expects to extract value from this transaction and use that value to help fund the delivery of public transit service in New Jersey. It is expected that this opportunity will enhance NJ TRANSIT’s ability to fulfill its mission “to provide safe, reliable, convenient and cost-effective transit service with a skilled team of employees, dedicated to our customers’ needs and committed to excellence.”

# Section 2

## Description of Parking Assets

### *2.1 Description of Parking Assets*

The Concession Assets include assets owned or controlled by NJ TRANSIT that are located in various municipalities. The Concession Assets are used by commuters who access the rail, light rail and bus services provided by NJ TRANSIT and other private transportation companies.

At this time, only a portion of NJ TRANSIT's parking assets are being considered for this Concession. Inclusion is dependent on certain factors including revenue potential, market share and expansion needs. Parking lots that are currently free are expected to be subject to the imposition of parking fees on a schedule to be determined by NJ TRANSIT with input from the Concessionaire. Certain assets may be added or removed during the RFQ and due diligence process. Consequently, the following Table 2.1 should be viewed only as illustrative. The final list of Concession Assets will be determined prior to the receipt of proposals pursuant to the RFP process. An explanation of certain table columns is as follows:

The number of spaces in the "NJ TRANSIT Controlled/ Station Total Spaces" column is not inclusive of spaces that accommodate those with disabilities pursuant to the Americans with Disabilities Act of 1990 ("ADA"). There are a small number of ADA spaces located throughout the Concession Assets. More information about the location and number of ADA spaces in the Concession Assets can be found on the NJ TRANSIT website.

Unless noted otherwise, the source for the column "2008 Weekday Occupancy" is the Parking Guide produced by NJ TRANSIT. The Parking Guide represents a snapshot of conditions at commuter parking facilities at or near NJ TRANSIT stations and Park & Rides. This includes sites owned by NJ TRANSIT, municipal, state, and county sites and some private locations. Utilization numbers are derived largely through aerial surveys. These surveys are typically conducted in the spring, during peak demand (weekdays, non-holidays, between the hours of 10:00 AM – 2:00 PM). Parking utilization numbers represent a single-day sample, and should not be interpreted as an average. Parking data is then supplemented by information provided by lot operators, site visits, and other sources. The parking utilization numbers do not include ADA spaces.

The "Annual Gross Revenue" column is derived from several sources, including operators' financial statements, responses to a revenue survey, and estimates by NJ TRANSIT. Due to the use of various operators for these facilities, the time period reflected in annual revenue figures varies among the listed facilities. All annual revenue numbers represent actual or estimated gross revenues accumulated through a consecutive 12-month period within calendar years 2008, 2009, and 2010.

**Table 2.1**

Indicative List of Concession Assets

Station	Mode	Line	Municipality	County	FY10 Avg. Weekday Boardings	NJ TRANSIT Controlled/ Station Total Spaces %	2008 Weekday Occupancy	Annual Gross Revenue
Broadway- Fair Lawn	Rail	Bergen	Elmwood Park	Bergen	270	80/80 100%	66%	Not Available
Radburn- Fair Lawn	Rail	Bergen	Fair Lawn	Bergen	1,372	65/325 20%	99%	Not Available
Berkeley Heights	Rail	Gladstone Branch	Berkeley Heights	Union	483	165/219 75%	91%	Not Available
Gillette	Rail	Gladstone Branch	Long Hill	Morris	135	82/82 100%	104%	\$30,000 <sup>2</sup>
Stirling	Rail	Gladstone Branch	Long Hill	Morris	88	38/38 100%	89%	\$11,700 <sup>2</sup>
Lyons	Rail	Gladstone Branch	Bernards Township	Somerset	439	236/331 71%	90%	\$65,918 <sup>1</sup>
Gladstone	Rail	Gladstone Branch	Gladstone	Somerset	172	186/186 100%	91%	Currently Free
Lyndhurst	Rail	Main	Lyndhurst	Bergen	726	470/562 84%	50%	Currently Free

<b>Clifton</b>	Rail	Main	Clifton	Bergen	754	431/431 100%	88%	Currently Free
<b>Ramsey Route 17</b>	Rail	Main	Ramsey	Bergen	760	1,251/1,251 100%	45%	\$475,946 <sup>1</sup>
<b>Mountain Avenue</b>	Rail	Montclair- Boonton	Montclair	Essex	119	23/23 100%	35%	Not Available
<b>Montclair Heights</b>	Rail	Montclair-Boonton	Montclair	Essex	320	63/63 100%	57%	Not Available
<b>Montclair State University</b>	Rail	Montclair-Boonton	Little Falls	Passaic	525	1,530/1,530 100%	33%	\$783,723 <sup>1</sup>
<b>Little Falls</b>	Rail	Montclair-Boonton	Little Falls	Passaic	188	194/194 100%	52%	Currently Free
<b>Mountain View</b>	Rail	Montclair-Boonton	Wayne	Passaic	203	389/389 100%	48%	Currently Free
<b>Towaco</b>	Rail	Montclair-Boonton	Montville Township	Morris	117	222/222 100%	42%	Currently Free
<b>Netcong</b>	Rail	Montclair-Boonton	Netcong	Morris	202	247/247 100%	65%	Currently Free
<b>East Orange</b>	Rail	Morristown	East Orange	Essex	318	52/52 100%	100%	\$5,000 <sup>3</sup>
<b>Brick Church</b>	Rail	Morristown	East Orange	Essex	1,571	115/115 100%	106%	\$89,387 <sup>1</sup>

<b>Orange</b>	Rail	Morristown	Orange	Essex	1,143	80/175 46%	95%	\$45,141 <sup>1</sup>
<b>Highland Avenue</b>	Rail	Morristown	Orange	Essex	250	31/31 100%	77%	\$5,161 <sup>1</sup>
<b>Mountain Station</b>	Rail	Morristown	South Orange	Essex	300	90/90 100%	78%	\$43,625 <sup>2</sup>
<b>South Orange</b>	Rail	Morristown	South Orange	Essex	3,584	264/513 51%	87%	\$266,673 <sup>2</sup>
<b>Morristown</b>	Rail	Morristown	Morristown	Morris	2,014	475/574 83%	60%	\$278,798 <sup>2</sup>
<b>Morris Plains</b>	Rail	Morristown	Morris Plains	Morris	695	190/238 80%	89%	\$129,133 <sup>1</sup>
<b>Mount Tabor</b>	Rail	Morristown	Denville	Morris	42	48/48 100%	31%	\$5,700 <sup>3</sup>
<b>Denville</b>	Rail	Morristown	Denville	Morris	588	237/237 100%	98%	\$127,233 <sup>1</sup>
<b>Woodbridge</b>	Rail	North Jersey Coast	Woodbridge	Middlesex	1,706	423/500 85%	81%	\$235,000 <sup>2</sup>
<b>South Amboy</b>	Rail	North Jersey Coast	South Amboy	Middlesex	1,130	625/657 95%	76%	\$300,000 <sup>3</sup>

<b>Aberdeen</b>	Rail	North Jersey Coast	Matawan	Monmouth	2,790 (Aberdeen-Matawan)	702/740 95%	81% (Aberdeen-Matawan)	\$448,404 <sup>2</sup>
<b>Matawan</b>	Rail	North Jersey Coast	Matawan	Monmouth	2,790 (Aberdeen-Matawan)	597/1,410 42%	81% (Aberdeen-Matawan)	\$399,993 <sup>2</sup>
<b>Hazlet</b>	Rail	North Jersey Coast	Hazlet	Monmouth	971	248/553 45%	90%	\$125,502 <sup>1</sup>
<b>Red Bank</b>	Rail	North Jersey Coast	Red Bank	Monmouth	1,508	455/794 57%	72%	\$199,880 <sup>1</sup>
<b>Little Silver</b>	Rail	North Jersey Coast	Little Silver	Monmouth	916	487/517 94%	93%	\$186,815 <sup>2</sup>
<b>Long Branch</b>	Rail	North Jersey Coast	Long Branch	Monmouth	1,362	331/331 100%	90%	\$170,245 <sup>1</sup>
<b>Elberon</b>	Rail	North Jersey Coast	Long Branch	Monmouth	217	222/222 100%	39%	Currently Free
<b>Manasquan</b>	Rail	North Jersey Coast	Manasquan	Monmouth	243	141/141 100%	74%	Currently Free
<b>Alling Street (Newark Penn)</b>	Rail	Northeast Corridor	Newark	Essex	26,449	136/136 100%	100%	\$357,301 <sup>1</sup>
<b>North Elizabeth</b>	Rail	Northeast Corridor	Elizabeth	Union	442	123/123 100%	65%	\$27,748 <sup>1</sup>

<b>Linden</b>	Rail	Northeast Corridor	Linden	Union	2,161	511/679 75%	58%	\$392,528 <sup>2</sup>
<b>Metropark</b>	Rail	Northeast Corridor	Woodbridge	Middlesex	7,145	3,718/3,718 100%	98%	\$5,029,740 <sup>1</sup>
<b>Edison</b>	Rail	Northeast Corridor	Edison	Middlesex	3,102	626/834 75%	55%	\$264,504 <sup>1</sup>
<b>Jersey Avenue</b>	Rail	Northeast Corridor	New Brunswick	Middlesex	1,535	824/1,471 56%	93%	\$630,000 <sup>3</sup>
<b>Princeton Junction</b>	Rail	Northeast Corridor	Princeton Junction	Mercer	7,030	2,625/3,635 72%	94%	\$3,130,122 <sup>1</sup>
<b>Hamilton<sup>4</sup></b>	Rail	Northeast Corridor	Hamilton	Mercer	4,986	1,479/3,512 42%	98%	\$4,762,455 <sup>1</sup>
<b>Trenton Deck<sup>4</sup></b>	Rail	Northeast Corridor	Trenton	Mercer	5,215	1,781/3,442 52%	70%	\$2,806,001 <sup>1</sup>
<b>Wood-Ridge</b>	Rail	Pascack Valley	Wood Ridge	Bergen	285	118/118 100%	79%	\$56,622 <sup>1</sup>
<b>Teterboro</b>	Rail	Pascack Valley	Wood Ridge	Bergen	88	27/27 100%	104%	\$11,355 <sup>1</sup>
<b>Essex Street</b>	Rail	Pascack Valley	Hackensack	Bergen	292	236/236 100%	85%	\$101,785 <sup>1</sup>
<b>Anderson Street</b>	Rail	Pascack Valley	Hackensack	Bergen	320	50/50 100%	68%	\$16,895 <sup>1</sup>

<b>New Bridge Landing</b>	Rail	Pascack Valley	River Edge	Bergen	440	291/291 100%	82%	\$125,050 <sup>1</sup>
<b>Montvale</b>	Rail	Pascack Valley	Montvale	Bergen	177	139/203 68%	57%	Currently Free
<b>Roselle Park</b>	Rail	Raritan Valley	Roselle Park	Union	864	190/250 76%	78%	\$124,590 <sup>1</sup>
<b>Cranford</b>	Rail	Raritan Valley	Cranford	Union	1,155	165/460 36%	77%	\$97,200 <sup>3</sup>
<b>Netherwood</b>	Rail	Raritan Valley	Plainfield	Union	566	153/153 100%	91%	\$64,902 <sup>1</sup>
<b>Plainfield</b>	Rail	Raritan Valley	Plainfield	Union	1,038	50/196 26%	93%	\$33,070 <sup>1</sup>
<b>Bound Brook</b>	Rail	Raritan Valley	Bound Brook	Somerset	713	275/275 100%	74%	\$132,930 <sup>1</sup>
<b>Somerville</b>	Rail	Raritan Valley	Somerville	Somerset	652	416/466 89%	70%	\$155,511 <sup>1</sup>
<b>Raritan</b>	Rail	Raritan Valley	Raritan	Somerset	697	274/284 96%	97%	\$164,561 <sup>1</sup>
<b>Annandale</b>	Rail	Raritan Valley	Clinton Township	Hunterdon	107	77/77 100%	97%	Currently Free
<b>22<sup>nd</sup> Street</b>	Light Rail	Hudson- Bergen	Bayonne	Hudson	1,995 (FY09)	159/159 100%	91%	\$92,593 <sup>2</sup>

<b>34<sup>th</sup> Street</b>	Light Rail	Hudson- Bergen	Bayonne	Hudson	1,720 (FY09)	397/397 100%	88%	\$220,277 <sup>2</sup>
<b>West Side Avenue</b>	Light Rail	Hudson- Bergen	Jersey City	Hudson	1,693 (FY09)	804/804 100%	28%	\$63,656 <sup>2</sup>
<b>Liberty State Park</b>	Light Rail	Hudson- Bergen	Jersey City	Hudson	2,771 (FY09)	1,248/1,248 100%	75%	\$685,794 <sup>2</sup>
<b>Tonnelle Avenue</b>	Light Rail	Hudson- Bergen	North Bergen	Hudson	1,071 (FY09)	681/681 100%	61%	\$291,561 <sup>2</sup>
<b>Grove Street</b>	Light Rail	Newark	Bloomfield	Essex	750 (FY09)	160/160 100%	83%	\$56,788 <sup>2</sup>
<b>Trenton</b>	Light Rail	River	Trenton	Mercer	1,600 (FY09)	105/105 100%	83%	\$360,788 <sup>2</sup>
<b>Garden State Pkwy Ext 165</b>	Bus	N/A	Paramus	Bergen	Not Available	323/323 100%	100%	Currently Free
<b>Vince Lombardi</b>	Bus	N/A	Ridgefield	Bergen	Not Available	1,002/1,002 100%	50%	\$208,566 <sup>3</sup>
<b>Avandale</b>	Bus	N/A	Sicklerville	Camden	Not Available	322/322 100%	84%	Currently Free
<b>Walter Rand Trans. Center</b>	Bus	N/A	Camden	Camden	Not Available	451/451 100%	85%	\$577,156 <sup>1</sup>
<b>North Bergen</b>	Bus	N/A	North Bergen	Hudson	Not Available	1,498/1,498 100%	96%	\$1,372,267 <sup>3</sup>

<b>Garden State Pkwy Ext 120</b>	Bus	N/A	Woodbridge	Middlesex	Not Available	104/104 100%	100%	Currently Free
<b>Old Bridge</b>	Bus	N/A	Old Bridge	Middlesex	Not Available	528/895 59%	97%	\$203,510 <sup>1</sup>
<b>Howell</b>	Bus	N/A	Howell	Monmouth	Not Available	441/441 100%	57%	\$105,907 <sup>1</sup>
<b>Brick</b>	Bus	N/A	Brick	Ocean	Not Available	347/347 100%	34%	Currently Free
<b>Toms River</b>	Bus	N/A	Toms River	Ocean	Not Available	552/552 100%	85%	\$258,315 <sup>2</sup>
<b>Allwood Road</b>	Bus	N/A	Clifton	Passaic	Not Available	678/678 100%	81%	\$207,000 <sup>3</sup>
<b>Mothers</b>	Bus	N/A	Wayne	Passaic	Not Available	350/350 100%	52%	\$66,200 <sup>3</sup>
<b>Wayne Rt 23</b>	Bus	N/A	Wayne	Passaic	Not Available	996/996 100%	100%	\$384,900 <sup>3</sup>
<b>West Milford</b>	Bus	N/A	Greenwood Lake	Passaic	Not Available	250/250 100%	52%	Currently Free

Source: NJ TRANSIT

<sup>1</sup> Financial reports submitted to NJ TRANSIT

<sup>2</sup> Response to survey conducted by NJ TRANSIT

<sup>3</sup> Estimate by NJ TRANSIT

<sup>4</sup> NJ TRANSIT parking decks at both Hamilton and Trenton train stations are encumbered by long-term ground leases with Nexus Parking. The Trenton deck, constructed by Nexus in 1994, is leased to Nexus for 60 years; the Hamilton deck, constructed by Nexus in 2005, is leased to Nexus for 37.5 years. At Trenton, NJ TRANSIT proposes to enter into a new lease with the Concessionaire pursuant to which the Concessionaire will be NJ TRANSIT's tenant (and a sublessor to Nexus) receiving a share of net revenues in accordance with the terms of the existing

lease with Nexus. At Hamilton, there are 1,479 surface lot spaces adjacent to the parking deck that are proposed to be included in the Concession. These spaces are managed under contract by Nexus but are not part of the long-term ground lease that encumbers the deck. The deck lease contains certain requirements related to the manner in which rent is determined which involve revenue adjustments which take into account both surface and deck parking. The revenues for Hamilton displayed above reflect the operation of the deck and surface parking.

## **2.2 Parking Expansion Needs**

During the term of the anticipated Concession Agreement, some facilities included in the Concession Assets will require expansion to accommodate NJ TRANSIT rider demand.

For example, the Princeton Junction station, serviced mainly by the Northeast Corridor Line, has parking capacity constraints and is in need of an expansion of parking services. Current parking demand exceeds the 3,635 spaces that are available, leading to a substantial waitlist. Proposals currently being discussed call for the construction of a parking deck, containing at least 2,000 spaces, on NJ TRANSIT owned property to accommodate current and anticipated demand at the station. The successful Proposer will be required to design, build, finance, operate, maintain and repair the parking deck with NJ TRANSIT oversight. This expansion of Princeton Junction parking supply is expected to be included in this Concession as an obligation of the Concessionaire.

## **2.3 Transit Oriented Development**

NJ TRANSIT recognizes that public transit plays a key role in the creation and maintenance of livable and sustainable communities. NJ TRANSIT has a strong commitment to working with New Jersey communities to implement Transit Oriented Development (“TOD”). TOD refers to various types of development which, when located in proximity to a transit facility, are expected to add to the quality of life and economy of neighboring communities while generating new public transit riders due to the availability of transit services. Historically NJ TRANSIT has assisted municipalities creating and implementing sensitive, community-based plans to guide growth and land-use in a comprehensive manner, especially in areas where transit can stimulate new development opportunities.

Many of NJ TRANSIT’s parking facilities are key properties that have the potential for TOD and certain Concession Assets are currently under active consideration for TOD<sup>1</sup>. Consequently, Prospective Proposers are advised that NJ TRANSIT is strongly interested in ensuring that TOD opportunities are not negatively impacted by the award of this Concession. To that end, Prospective Proposers will be encouraged in the RFP stage to submit TOD proposals as an option in their responses. Prospective Proposers can consider offering strategies for addressing current and projected parking needs while preserving, where appropriate, the opportunity to implement TOD at a later time. The selection of a Concessionaire will be based entirely on the proposals for the Concession Assets submitted pursuant to the RFP; however if the selected Concessionaire has submitted a TOD proposal that is deemed

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<sup>1</sup> TOD Expressions of Interest have been issued for parking facilities in the Boroughs of Somerville and River Edge and those municipalities are currently engaged with NJ TRANSIT in the selection process. NJ TRANSIT plans to release a TOD Expression of Interest for the Wayne Rt. 23 parking facility.

advantageous to NJ TRANSIT, NJ TRANSIT may, but shall not be obligated to, negotiate an independent and exclusive development agreement with the Concessionaire.

Regardless of whether the Concessionaire submits a TOD proposal for consideration, the Concessionaire should be aware that over the course of the Concession Agreement, NJ TRANSIT expects that some Concession Assets will be impacted by TOD. In such cases, NJ TRANSIT intends to work in partnership with the Concessionaire on advancing TOD while at the same time addressing current and future parking needs.

# Section 3

## Investment Highlights

### 3.1 Strong Economic Characteristics of Surrounding Region

The State of New Jersey is the 11<sup>th</sup> largest state in population and the 5<sup>th</sup> smallest in land area. With an average of 1,171 people per square mile, it is the most densely populated of all the states. New Jersey is the center of the megalopolis which extends from Boston to Washington and which includes over one-fifth of the country's population. New Jersey's central location in the northeastern corridor, with strong transportation infrastructure including port and airport facilities, makes New Jersey an attractive location for corporate headquarters and international business offices.

The State's economic base is diversified, consisting of a variety of manufacturing, construction and service industries. According to the 2000 Census, about 10 percent of New Jersey's resident workforce travels to work by public transit, the highest statewide rate found in the United States. New Jersey's economic characteristics, including per capita personal income, are stronger than comparable national levels and those of neighboring states including Pennsylvania and New York.

**Table 3.1**

Per Capita Personal Income

	New Jersey	New York	Pennsylvania	United States
1999	\$35,215	\$32,816	\$27,937	\$27,939
2000	38,377	34,898	29,698	29,847
2001	39,213	35,618	30,310	30,582
2002	39,428	35,363	31,080	30,838
2003	39,916	36,064	31,979	31,530
2004	41,971	38,338	33,550	33,157
2005	43,651	40,781	34,774	34,690
2006	46,813	43,724	36,800	36,794
2007	49,511	46,364	38,793	38,615
2008	50,919	48,076	40,265	39,751

Source: U.S. Department of Commerce, Bureau of Economic Analysis

**Table 3.2**

Per Capita Personal Income as a Percent of United States

	New Jersey	New York	Pennsylvania
1999	126.0%	117.5%	100.0%
2000	128.6%	116.9%	99.5%
2001	128.2%	116.5%	99.1%
2002	127.9%	114.7%	100.8%
2003	126.6%	114.4%	101.4%
2004	126.6%	115.6%	101.2%
2005	125.8%	117.6%	100.2%
2006	127.2%	118.8%	100.0%
2007	128.2%	120.1%	100.5%
2008	128.1%	120.9%	101.3%

Source: U.S. Department of Commerce, Bureau of Economic Analysis

### 3.2 Demographics of NJ TRANSIT Customer Base

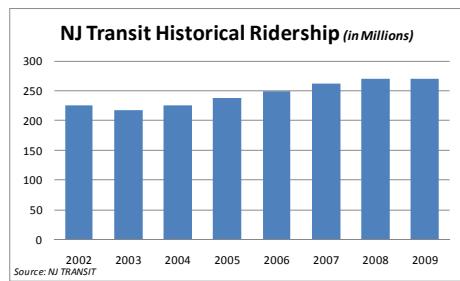
The American Community Survey estimates that in 2008, the median household income in the State of New Jersey was \$70,373 compared to a median of \$52,029 in the United States overall. NJ TRANSIT estimates the following household income of its customer base for 2008:

- Mean rail rider household income of \$126,000. Peak period rail riders have an even higher average household income of \$142,000 with off-peak period rail riders having a mean household income of \$94,800.

- Express bus riders to Manhattan have an estimated mean income of \$89,000 and express riders to Philadelphia have a mean household income of \$56,000.

The NJ TRANSIT customer base is diverse and state-wide with NJ TRANSIT servicing a wide array of communities both urban and suburban. As a result, NJ TRANSIT follows a multimodal approach to provide access to transit services and address the various needs of NJ TRANSIT customers. The relatively strong and varied demographics of the NJ TRANSIT customer base implies that there will be continued demand for the use of the Concession Assets.

### *3.3 Stable Historic and Projected Ridership Trends*



NJ TRANSIT has a long and stable history of providing services to New Jersey residents. NJ TRANSIT ridership has exhibited stable growth and it is expected that this growth will continue. Demand for NJ TRANSIT services is relatively insulated from economic fluctuations, as evidenced by steady ridership levels through the economic recession of 2008 and 2009. Future expansion projects could enhance service and increase demand, especially for New Jersey residents commuting to New York City.

### *3.4 Opportunity for Technological Improvement and Space Optimization*

The Concession Assets offer opportunities for operating enhancements through the use of new revenue collection and control systems. It is anticipated that the use of this technology could enhance value and further customer service and security. Further, space optimization could be explored as a way to enhance supply and increase potential revenue.

### *3.5 Price Rationalization Potential*

It is currently contemplated that this transaction will include an opportunity to adjust parking rates in accordance with market demand and to develop a rationalized parking policy that takes into account location, convenience and demand. The ability to set prices based on parking demand could further enhance revenue while ensuring that NJ TRANSIT customers experience improved services. As part of this procurement process, NJ TRANSIT may solicit from qualified Proposers innovative pricing structures and reasonable rationalization proposals and recommendations that are attuned to NJ TRANSIT parking customers. The price rationalization process is expected to include the transition of free parking to paid parking. Any pricing schedule will be a term of the Concession Agreement, the form of which must be approved by the NJ TRANSIT Board.

### *3.6 Potential Revenue Enhancements through Marketing Initiatives*

Potential revenue enhancement could be achieved through marketing initiatives which may include increased signage, added amenities, special offers, innovative parking programs and arrangements with local businesses.

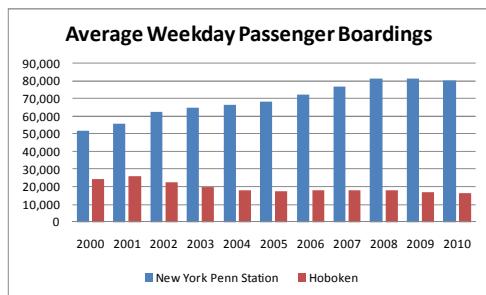
### *3.7 Geographical Diversity*

The Concession Assets are expected to be located in at least 12 different counties and over 50 different municipalities. NJ TRANSIT services customers on their daily commutes to and from New Jersey, New York and Pennsylvania. The large footprint of the Concession Assets ensures a diversity of certain risks and access to a large and varied customer base.

### *3.8 Market Advantage*

Certain Concession Assets are located in areas where new competing parking facilities are unlikely. Further, the Concession Asset locations are typically the most convenient for those parking to use NJ TRANSIT services.

### *3.9 Compelling Market Dynamics and Competitive Attractiveness*



Many customers use NJ TRANSIT services to commute to New York City. NJ TRANSIT services offer a strong value proposition compared to the alternative of driving into and parking in New York City. According to Colliers International's 2010 Parking Rate Survey, the average daily parking rate is \$31 for Downtown Manhattan and \$40 for Midtown Manhattan. Adding to the cost of driving into Manhattan are the tolls on bridges and tunnels that offer access, with tolls currently peaking at \$8 for cars for round trip access.

# Section 4

## RFQ Submission Requirements

### *4.1 Qualification Requirements and Evaluation Criteria*

This RFQ is open to Prospective Proposers who seek qualification to submit a proposal to serve as Concessionaire for the Concession Assets. Qualification will be based on a determination by NJ TRANSIT, in its sole discretion, that the Prospective Proposer meets the requirements highlighted in this RFQ. NJ TRANSIT will assess each respondent's qualifications in the areas of experience and technical and financial capability. There will be no restriction as to the number of Prospective Proposers that may qualify under this RFQ. Certain Prospective Proposers may find that forming a team with partners will enhance their ability to meet the requirements of this RFQ. A team may consist of a prime/subcontractor relationship, a partnership or a joint venture, or any other arrangement that is legally binding under the laws of the State of New Jersey. Any changes in the composition of a team after the qualification process is complete are subject to the prior consent of NJ TRANSIT.

NJ TRANSIT's evaluation will be based on the following criteria:

#### **PROPOSER STRUCTURE**

To qualify as a potential Concessionaire, the Prospective Proposer must demonstrate sufficient team structure with respect to the following areas:

1. Adequacy of proposed team legal structure to provide sufficient assurance that all technical and financial obligations will be met over the life of the Concession.
2. Adequacy of definition of roles and responsibilities of team members and key personnel.
3. Adequacy of disclosure of controlling interests and team integrity.

#### **DESIGN, BUILD AND OPERATE CAPABILITY**

To qualify as a potential Concessionaire, the Prospective Proposer should ideally demonstrate design, build and operate capability with respect to the following areas of expertise:

1. Experience in designing and constructing on schedule and within budget at least 3 parking decks that contain at least 500 spaces each.
2. Experience in operating computerized parking-access and revenue control systems at no less than 3 parking deck structures with at least 300 spaces in each.
3. At least five years of current experience managing, operating and maintaining parking facilities.
4. Current responsibility for managing, operating and maintaining (by contract, lease, or ownership) an aggregate of at least 5,000 parking spaces in multiple facilities which may include parking meters, surface lots, and parking decks.

#### **TECHNICAL CAPABILITY**

To qualify as a potential Concessionaire, the Prospective Proposer must demonstrate technical capability with respect to the following areas of expertise:

1. Operation and maintenance of parking decks and lots.
2. Customer service improvements and enhancements.
3. Customer safety and security.
4. Ability to execute an efficient, timely and seamless transition plan.
5. Capability to undertake required capital improvements.
6. Ability to offer other system enhancements with a demonstrated knowledge of technologies and parking management systems.
7. Ability to demonstrate an understanding of the goals and objectives of TOD.

#### **FINANCIAL CAPABILITY**

To qualify as a potential Concessionaire, the Prospective Proposer must demonstrate financial capability with respect to the following areas:

1. Financial capability to make any upfront payment and undertake other commitments required under the Concession Agreement.
2. Financial ability to maintain and upgrade the Concession Assets.
3. Adequate sources of operating capital.
4. Ability to secure financing.
5. Ability to finance future Concession Asset expansion, including ability to finance the construction of the Princeton Junction parking deck.

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#### *4.2 Format and Required Information*

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All RFQ submissions should follow the format outlined below. The written proposal shall be bound and prepared on 8-1/2" x 11" paper. A limited number of 11" x 17" fold-out sheets for exhibits are acceptable. All pages are to be sequentially numbered. Unnecessarily elaborate proposals are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable.

- A. Cover Page (to include identification of all team members)
- B. Cover Letter (2 pages maximum)
- C. Table of Contents
- D. Executive Summary (optional)
- E. Proposer Information
  - I. Description of Prospective Proposer: Provide a description of the team, including a description of all team members and the anticipated legal relationship (governance and capital structure) among the team members (e.g., partners, shareholders, members, operators, subcontractors, etc.) as appropriate. All equity investors should be identified.

- II. Roles of Team Members and Key Personnel: Briefly outline the roles of the team members and key personnel. In doing so, please ensure that all the requirements as detailed in Section 4.1 are addressed.
  - III. Operator: Specifically identify the entity or entities that will act as operator of the Concession Assets under the proposed Concession.
  - IV. Contact Person: Provide a single contact person for all future communication between NJ TRANSIT and the Prospective Proposer. Please identify the contact person's name, title, organization, address, telephone number, fax number, and email address.
  - V. Controlling Interest: Identify the individuals or companies who hold a major or controlling interest in each team member.
  - VI. Expected Advisors: Identify the companies and individuals who are expected to act as legal, financial, or other advisors for the team.
  - VII. Comparable Projects: Provide a list of comparable projects in which team members have participated. Prospective Proposers should specify how these comparable projects relate to the proposed Concession, their specific role(s) on these other projects, and the extent to which team members have worked together in prior projects.
  - VIII. Design and Build Experience: Provide specific information about parking facilities that have been designed, built, operated and maintained by team members.
  - IX. References: Provide a list of team member references. Include each reference's organization, title, e-mail and phone number. These references should be able to describe the relevant qualifications and capabilities of each team member seeking to take leading roles in the governance, operations, and maintenance of the Concession Assets.
- F. Design, Build and Operate Capability. Prospective Proposers must demonstrate that the requirements listed under Section 4.1 are clearly met.
- G. Technical Capability. Prospective Proposers must address the following areas with respect to technical capability:
- I. Operations and Maintenance Expertise: Prospective Proposers must provide evidence demonstrating their ability to operate and maintain facilities similar to the Concession Assets. Specifically, Prospective Proposers should have:
    - a. substantial parking facility maintenance and operation experience.
    - b. advanced knowledge of parking facilities maintenance, repair, construction, and practical application of equipment and materials in parking facility operations.
    - c. demonstrated understanding in parking facility aging behavior to assess and determine the applicability of remedial maintenance action.
    - d. all the capabilities necessary to successfully operate and maintain the Concession Assets including parking fee management and operations, administration, marketing and public relations.
  - II. Customer Service: Prospective Proposers must demonstrate their commitment to achieving the highest standards of customer service and satisfaction. Specifically, the Prospective Proposer must highlight its experience and qualifications providing excellent customer service to the public using its parking services. Additionally, the Prospective Proposer must provide a plan to execute a seamless transition to concessionaire operations while maintaining the highest standards of customer service. The plan should address all elements of transition such as operations, communications, contingency, etc. and include, at a minimum, the necessary steps, the time frame, and any NJ TRANSIT resources/support required. Prospective Proposers may, at their option, include

- additional information concerning their experience in maintaining productive ongoing relationships with government entities, similar to the relationship that the winning Concessionaire will have with NJ TRANSIT.
- III. Safety and Security: Prospective Proposers must demonstrate their ability to address and resolve safety and security issues. Specifically, the Prospective Proposer should have:
- a. knowledge of parking and public safety and security techniques and methodologies.
  - b. experience in emergency response support.
- IV. Capital Improvements. Prospective Proposers must demonstrate their ability to efficiently undertake required capital improvements to the Concession Assets during the term of the Concession Agreement. Prospective Proposers must demonstrate expertise in relevant parking engineering standards, specifications, policies, practices, and processes.
- V. Transit Oriented Development. Prospective Proposers must demonstrate an understanding of NJ TRANSIT's goals and objectives in the area of TOD.
- VI. Additional Concession Asset Capacity. Prospective Proposers must demonstrate their ability, willingness, and financial capability to add additional parking capacity for stations within the Concession Assets that show parking demand above what is offered. Prospective Proposers should offer a proposed process for the addition of new capacity, including steps to identify need and to prioritize, design, build and finance projects. Describe your approach to fair compensation between the Concessionaire and NJ TRANSIT for such projects.
- H. Financial Capability. Prospective Proposers should address the following areas with respect to financial capability.
- I. Financial Capacity to Make Upfront Payment, Maintain the Concession Assets, and Offer New Supply: Prospective Proposers must demonstrate their financial capacity to pay the prepaid rent and to maintain the Concession Assets for the term of the Concession. To demonstrate sufficient financial capacity, the primary equity providers and operators must provide copies of audited financial statements for the past three years, together with any other relevant financial information. If audited financial statements cannot be provided, team members should provide enough financial information to demonstrate that they have the financial resources to successfully execute a project of this nature and scope.
  - II. Ability to Raise Financing. Prospective Proposers must provide specific evidence demonstrating their ability to raise financing for a project of this nature and scope. Specific factors that will be assessed include:
    - a. capability of issuing debt and raising equity in the current capital market.
    - b. the number and size of past relevant transactions.
    - c. specific experiences on past relevant transactions.
- I. Confidentiality and Data Room Usage Agreement. Prospective Proposers must submit any proposed revisions to the Confidentiality and Data Room Usage Agreement ("Confidentiality Agreement") for NJ TRANSIT approval prior to signing the required Confidentiality Agreement exhibited in Section 5. Prospective Proposers will be required to sign the Confidentiality Agreement to have access to the due diligence process described in Section 1.2 and are encouraged to keep changes to the Confidentiality Agreement to a minimum. Each individual team member will be required to sign the Confidentiality Agreement.

Should the submission contain proprietary data which the Prospective Proposer does not want disclosed for any purpose other than evaluation of qualifications, NJ TRANSIT will entertain requests for non-disclosure provided the firm identifies the appropriate sections/pages of the submission and the reason for doing so. However, Prospective Proposers are advised that NJ TRANSIT is subject to the New Jersey Open Public Records Act and the provisions of that Act govern the release or retention of information submitted to NJ TRANSIT. NJ TRANSIT's decision with respect to this issue will be final.

Submission of more than one qualification package from an individual, firm, partnership, corporation or combination thereof under the same or different names shall be cause for disqualification of the submissions from such entities. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested as a principal in more than one team for the Concession contemplated may cause the rejection of all submissions submitted by such individual, firm, partnership, corporation or combination thereof. Prospective Proposers and team members may only submit qualifications as a member of one team. Team members that are included in more than one response to this RFQ may cause disqualification of all qualification packages that they are included in.

NJ TRANSIT reserves the right to request additional information from any Prospective Proposer at any time if it determines in its sole discretion that such information is necessary for consideration of the Prospective Proposer's qualifications.

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#### *4.3 Advisors and Consultants to NJ TRANSIT*

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The following firms are serving as advisors or consultants to NJ TRANSIT and are not able to provide service to any Prospective Proposers or participate as members of any team:

Financial Advisor: Scott Balice Strategies

Parking Consultant: AECOM

Legal Advisor: Wolff & Samson PC

Prospective Proposers may not rely on any of the foregoing firms or this RFQ in determining any course of action in relation to the proposed transaction or otherwise, and are advised to seek their own independent financial and legal advice with respect thereto.

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#### *4.4 Registration, Questions and Answers, and Submission Instructions*

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Prospective Proposers that anticipate responding to this RFQ must indicate their intention by October 20, 2010 by providing contact information via e-mail to the NJ TRANSIT Procurement Representative listed below with a copy to the Advisor Representative. Once the Prospective Proposer provides contact information, they will receive access to NJ TRANSIT's most current Parking Guide which will provide additional information related to the Concession Assets, including pricing. The most current version of

the Parking Guide is 2008. Interim updates to parking rates, policies and capacity are continuously made to the NJ TRANSIT website ([www.njtransit.com](http://www.njtransit.com)). Providing contact information will also enable NJ TRANSIT to contact the Prospective Proposer if necessary to amend this RFQ or for any other reason.

Any questions shall be submitted via e-mail to the Procurement Representative with a copy to the Advisor Representative. All questions must be submitted no later than 5 p.m. Eastern Standard Time on October 22, 2010. Questions will be answered by October 29, 2010. Questions and responses will be made available to those that provided contact information, with the official response made by the Procurement Representative.

All contact should be directed only to the Procurement Representative listed below, with electronic copy to the Advisor Representative. Prospective Proposers should not contact any officials or staff at NJ TRANSIT or any State of New Jersey official other than the Procurement Representative regarding this RFQ. Proposers should not contact any representative of NJ TRANSIT's advisors listed in Section 4.3 regarding this RFQ (except for electronic copies to the Advisor Representative, as noted above). Any such contact will be grounds for disqualification.

*NJ TRANSIT Procurement Representative:*

John Wasilak

Acting Director of Contracts

NJ TRANSIT Procurement Department

Phone: (973) 491-7525

[jwasilak@njtransit.com](mailto:jwasilak@njtransit.com)

*Advisor Representative:*

Claire Goodman

Vice President

Scott Balice Strategies

Phone: (312) 263-7900

[claire@scottbalance.com](mailto:claire@scottbalance.com)

To respond to this RFQ, interested parties must deliver to the addresses below an electronic copy of the RFQ submission no later than 4 p.m. Eastern Standard Time on November 11, 2010 and 7 hard copies of the RFQ no later than 4 p.m. Eastern Standard Time on November 12, 2010.

Electronic copy should be sent to each of the following email addresses:

[jwasilak@njtransit.com](mailto:jwasilak@njtransit.com)

[claire@scottbalance.com](mailto:claire@scottbalance.com)

Hard copies should be sent to the following address:

Bid Desk  
NJ TRANSIT  
One Penn Plaza East, 6<sup>th</sup> Floor  
Newark, NJ 07105

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#### *4.5 RFQ Evaluation Process*

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Upon submission of the qualification documents, a Technical Evaluation Committee (“TEC”) composed of NJ TRANSIT staff will evaluate each Prospective Proposer against the criteria set forth in Section 4.1 based upon the information provided in response to Section 4.2. Submissions will be evaluated in their entirety on a Pass/Fail basis. The TEC will also obtain technical input and analysis from NJ TRANSIT’s Advisors.

Upon notification by the Procurement Representative, Prospective Proposers will be offered an opportunity to make any necessary modifications to their submission to make it acceptable. Prospective Proposers are cautioned that this opportunity will be limited with regard to the time that will be granted to cure deficient qualifications. The TEC will evaluate modified submissions following the same procedure as set forth in the previous paragraph.

After a final evaluation by the TEC, if a Prospective Proposer is notified that it is not qualified to submit a Concession Proposal, it may request reconsideration by writing to the Chief of Procurement & Support Services within ten (10) calendar days of receipt of the Notice, setting forth in writing the reasons the determination should be reconsidered. The Chief of Procurement & Support Services will notify the Prospective Proposer of its final determination within a reasonable time after receiving the request for reconsideration. The ultimate decision of the Chief of Procurement & Support Services will be final and conclusive regarding this RFQ.

NJ TRANSIT reserves the right to modify or terminate this solicitation at any stage if NJ TRANSIT determines such action to be in its best interests.

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#### *4.6 Post RFQ Requirements*

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The following general requirements are expected to be included in the RFP. These requirements may not be comprehensive and are subject to change and are provided for informational purposes only. Prospective Proposers are required to perform their own due diligence regarding all compliance requirements.

##### **Business Registration**

In accordance with P.L. 2004, c.57, all New Jersey and Out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury Division of Revenue, prior to conducting business with NJ TRANSIT. The business registration form (Form NJ-REG) can be found online at <http://www.state.nj.us/treasury/revenue/gettingregistered.htm#busentity>.

##### **EEO/AA Regulations**

The Concessionaire will be required to comply with the requirements of P.L. 1975, c.175 (N.J.A.C. 17:27) regarding Equal Employment Opportunity Laws and Regulations.

### **Corporate Registration**

All Out-of-State companies contracting to do business with NJ TRANSIT must have a registered agent in the State of New Jersey.

### **Executive Order 134 (P.L. 2005, c.51), Executive Order 117 and Executive Order 7**

Business entities shall comply with PL 2005, c. 51 (EO 134), Executive Order 117 (Corzine 2008) and Executive Order 7 (Christie 2010), to the extent applicable and as required by law.

### **Professional Engineering Services**

All design work for capital improvement projects must be performed by a Professional Engineer licensed to do business in the State of New Jersey.

### **Contractor Registration and Prevailing Wage Acts**

The Design/ Build elements of the Concession require that all construction contractors comply with the Public Works Contractor Registration Act (P.L. 1999 c. 238) and the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.).

### **Performance/ Payment Bonds**

The Concessionaire will be required to provide Performance and Payment bonds in the amount of 100% of the value of any construction subcontract. Insurance or surety companies issuing such bonds must be authorized to conduct business in the State of New Jersey and be listed in the most current U.S. Treasury Department Circular 570.

### **Corporate Guarantee**

Depending on NJ TRANSIT's evaluation of the Concessionaire's financial capability, the Concessionaire may be required to provide a Corporate Guarantee from its parent company.

## *4.7 Transaction Schedule*

Prospective Proposers who are deemed qualified by NJ TRANSIT, in its sole discretion, will be asked to participate in further due diligence as described in Section 1.2, and to ultimately provide final and binding proposals to NJ TRANSIT to become a Concessionaire for the Concession Assets. The approximate timing of this transaction will be as follows:

Qualification Notification	November 18, 2010
Sign Confidentiality Agreements:	November 19, 2010
Due Diligence Process:	November 2010-March 2011
Final RFP Released:	March 2011
Receive Final Proposals:	April 2011

NJ TRANSIT Board Approval

To Be Determined

Closing:

June 2011

Once final proposals have been received, a recommendation for award of the Concession to the Proposer whose proposal is determined to be in the best interest of, and provide the best value to, NJ TRANSIT will be made for review and approval by NJ TRANSIT's Board of Directors.

Should the Board approve the award of a Concession, it is anticipated the financial close will be soon thereafter. Proposers must be able to react quickly to meet the timetable and provide good faith efforts to meet financial close prior to the end of NJ TRANSIT's 2011 fiscal year (June 30, 2011).

# Section 5

## Confidentiality Agreement

### 5.1 Form of Confidentiality Agreement

#### CONFIDENTIALITY AND DATA ROOM USAGE AGREEMENT

This Confidentiality and Data Room Usage Agreement ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the New Jersey Transit Corporation, an instrumentality of the State of New Jersey ("NJ TRANSIT"), and \_\_\_\_\_, a(n) [insert business entity type and State of formation] (the "Receiving Party").

NJ TRANSIT agrees to disclose to the Receiving Party certain information through a secure, virtual data room. The virtual data room will contain NJ TRANSIT information, which may include but is not limited to, ridership statistics, financial data, statistical data, number of bus stops, number of rail stations, number of rail cars, number of buses, and existing equipment. The Receiving Party agrees to access the virtual data room under the following terms and conditions.

1. Confidentiality. Subject only to the provisions of paragraph 2 below, the Receiving Party will not disclose any Confidential Information (as defined below) received from NJ TRANSIT to anyone except employees of the Receiving Party and those members of the Receiving Party's "project team" ("Team Members") with a need to know who have been informed by the Receiving Party of the confidentiality of such information. The Receiving Party agrees that it and its Team Members will use such information only for the purpose of preparing the Receiving Party's submittal in response to NJ TRANSIT's Request for Proposal for Concessionaires (the "RFP").

a. "Confidential Information" shall be information disclosed by NJ TRANSIT to the Receiving Party, including all documents, data and/or information contained in NJ TRANSIT's virtual data room.

b. With respect to the Confidential Information, the Receiving Party specifically agrees to and shall cause all its Team Members to:

i. Protect and preserve the confidential and proprietary nature of all Confidential Information and the information contained therein;

ii. Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information or the information contained therein to any third party for any

purpose, except as permitted in advance in writing by NJ TRANSIT;

- iii. Not use, transcribe or make records or copies of the Confidential Information except as necessary to prepare the Receiving Party's submittal to the RFP;
- iv. Limit the dissemination of the Confidential Information within the Receiving Party's own organization to those individuals whose duties justify the need to know the Confidential Information, and then only provided that there is a clear understanding by such individuals of their obligation to maintain the confidential and proprietary nature of the Confidential Information in accordance with this Agreement;
- v. Notify NJ TRANSIT immediately of any loss or misplacement of Confidential Information, in whatever form; and
- vi. Promptly advise NJ TRANSIT if it learns of any unauthorized use or disclosure of the Confidential Information. In addition, the Receiving Party agrees to cooperate fully and provide any assistance necessary to protect against the unauthorized use or disclosure of such Confidential Information.

2. Exceptions. Notwithstanding the provisions of paragraph 1:

a. The Receiving Party's obligation with respect to keeping the Confidential Information confidential and with respect to the use of Confidential Information shall terminate with respect to any part of such information which appears in printed or online publications or which ceases to be confidential through no fault of the Receiving Party.

b. The Receiving Party shall not be precluded from disclosing or making any use whatsoever of any information which it can show was in its possession prior to the disclosure made by NJ TRANSIT or which subsequently comes into its possession through channels independent of NJ TRANSIT or which was independently developed by it.

c. For the purpose of keeping confidential the Confidential Information received by it, the Receiving Party agrees that it shall treat all such Confidential Information with no less than the same degree of care to avoid disclosure to any third party as the Receiving Party employs with respect to its own proprietary and confidential information.

d. In the event that the Receiving Party is ordered by a court of competent jurisdiction to release to a third party or to such court any of the

Confidential Information provided by NJ TRANSIT, the Receiving Party may release such Confidential Information provided, however, that the Receiving Party promptly notifies NJ TRANSIT of such legal action in advance of the release of such Confidential Information. NJ TRANSIT shall have, to the extent provided by law, the opportunity to contest such legal action seeking release. Nothing contained herein shall be deemed to require the Receiving Party to disclose Confidential Information.

3. Accessing the Virtual Data Room. Within a reasonable time after both parties execute this Agreement, the Receiving Party will receive up to two usernames and passwords to access the virtual data room.

4. Rules of Use. The virtual data room and all content within the virtual data room may not be copied, reproduced, republished, uploaded, posted, or transmitted; provided, however, that NJ TRANSIT grants the Receiving Party non-exclusive, non-transferable, limited permission to access and display the Web pages within the virtual data room, solely on a computer or computers owned and operated by the Receiving Party. All materials contained within the virtual data room that are made available for downloading, access, or other use shall constitute Confidential Information and shall be governed by the terms of this Agreement.

5. Indemnification. The Receiving Party agrees that its compliance with this Agreement is of utmost importance and, accordingly, the Receiving Party agrees to indemnify, defend and hold harmless NJ TRANSIT and any third party (to the extent a breach of this Agreement affects the proprietary rights of such third party) with respect to any claims, losses, damages and expenses (including reasonable outside attorney's fees) which are attributable to or arise out of the Receiving Party's and or the Team Members' breach of this Agreement. The obligations of the Receiving Party under this Agreement and the indemnification provisions provided herein shall survive termination of this Agreement.

6. Termination. Upon the completion of the RFP process, or at such time if earlier that the Receiving Party decides that it does not wish to pursue the RFP process further, the Receiving Party acknowledges and agrees that its access to the virtual data room shall be terminated and it further agrees to destroy all copies of Confidential Information in its possession, as directed by NJ TRANSIT.

7. Waiver. No failure or delay by NJ TRANSIT in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

8. Disclaimer of Warranty. All Confidential Information is provided "as is." NJ TRANSIT does not make any representation or warranty, either express or implied, as to its quality, adequacy, completeness, accuracy, fitness for a particular purpose, sufficiency or freedom from defects of any kind. NJ TRANSIT shall not be liable in

damages of whatever kind as a result of the Receiving Party's reliance on or use of the Confidential Information provided hereunder.

9. Remedies. The Receiving Party acknowledges that the breach of any of the covenants or agreements contained in this Agreement on the part of the Receiving Party and/or its employees will result in irreparable harm and continuing damages to NJ TRANSIT, and that NJ TRANSIT's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to NJ TRANSIT at law or in equity, in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including, but not limited to, an injunction restraining the Receiving Party and/or its employees from disclosing, in whole or in part, any Confidential Information. The Receiving Party shall pay all of NJ TRANSIT's costs and expenses incurred in enforcing such covenants.

10. Ownership. Confidential Information disclosed hereunder shall be and remain the property of NJ TRANSIT. No license, right, title or interest is granted herein, directly or indirectly, by implication or otherwise, to the Confidential Information by virtue of NJ TRANSIT disclosing said Confidential Information to the Receiving Party, except such license or other rights as may be mutually and expressly agreed upon between the parties by separate written agreement.

11. Notice. Whenever notice is required to be given pursuant to this Agreement, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the parties at their respective addresses as set forth on the signature page of this Agreement, or at such other addresses as any party, by written notice in the manner specified above to the other party hereto, may designate from time to time. All notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

12. Parties. This Agreement inures to the benefit of NJ TRANSIT and is binding upon NJ TRANSIT and the Receiving Party, and their respective successors and assigns. This Agreement shall not be construed to recognize or create a joint venture, partnership, or other formal joint business or agency relationship.

13. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed within such State without regard to the conflict of laws principles thereof. Any dispute arising out of this Agreement, if litigated, shall be resolved by a State Court in the City of Newark, New Jersey, and the parties hereby consent to the jurisdiction of such court.

14. Severability. In the event any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this

Agreement shall not be affected thereby, the provisions of this Agreement being severable in such circumstances.

15. Entire Agreement. This Agreement (a) constitutes the entire agreement and supersedes all written and oral communications between the parties relating to the subject matter hereof, and (b) may be modified or amended only by a written instrument specifically stating that it modifies this Agreement, signed by the parties hereto.

16. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, NJ TRANSIT and the Receiving Party have executed this Agreement as of the day and year first above written.

#### **RECEIVING PARTY**

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

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Facsimile ( ) \_\_\_\_\_ - \_\_\_\_\_

**NJ TRANSIT CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

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Facsimile (    ) \_\_\_\_\_ - \_\_\_\_\_

# Section 6

## Disclaimer

### *6.1 Disclaimer*

This RFQ has been prepared for informational purposes relating to the proposed transaction only and upon the express understanding that it will be used solely for the purposes set forth herein. This RFQ is based on information provided by NJ TRANSIT and other sources believed to be reliable; however, such information is not guaranteed as to accuracy or completeness and is not to be construed as a representation or warranty of NJ TRANSIT. This RFQ does not purport to be all-inclusive or to contain all the information that a Prospective Proposer may desire in investigating the Concession Assets. Neither NJ TRANSIT nor the State of New Jersey nor any consultant or advisor to NJ TRANSIT (collectively, the "Project Team") makes any express or implied representation or warranty as to the accuracy or completeness of the information contained herein or made available in connection with any further investigation of the Concession Assets (the "Information"). Each member of the Project Team expressly disclaims any and all liability which may be based on the Information or any errors contained therein or omissions therefrom. No other person has been authorized by NJ TRANSIT to provide any information with respect to the proposed transaction or the Concession Assets other than the Information, and, if given or made, such other information must not be relied upon as having been authorized by NJ TRANSIT. In furnishing this RFQ, no member of the Project Team undertakes any obligation to provide any Prospective Proposer with access to any additional information. A Concessionaire entering into a final and binding Concession Agreement with NJ TRANSIT shall be entitled to rely solely on the representations and warranties made to it by NJ TRANSIT in any such final agreement.

This RFQ shall not be deemed an indication of the state of affairs of the Concession Assets or NJ TRANSIT nor shall it constitute an indication that there has been no change in the business or affairs of the Concession Assets or NJ TRANSIT since the date hereof. The information and expressions of opinion contained herein are subject to change without notice, and neither the issuance of this RFQ nor any transaction that may be consummated pursuant to the RFP process shall, under any circumstances, create any implication that there has been no change in any of the information contained herein since the date hereof or the date as of which such information is given, if earlier.