

**Torres Rojas, Genara**

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**From:** sstrunsky@starledger.com  
**Sent:** Thursday, June 26, 2014 1:39 PM  
**To:** Duffy, Daniel  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree; American, Heavyn-Leigh  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: Steve  
Last Name: Strunsky  
Company: The Star-Ledger  
Mailing Address 1: One Star-Ledger Plaza  
Mailing Address 2:  
City: Newark  
State: NJ  
Zip Code: 07042  
Email Address: [sstrunsky@starledger.com](mailto:sstrunsky@starledger.com)  
Phone: 973-392-1544  
Required copies of the records: Yes

List of specific record(s):

The amended Program Management Agreement between the Port Authority and the New Jersey State DOT for the Pulaski Skyway overhaul, as amended in May 2012. I am not referring to the original agreement, dated July 29, 2011.

**THE PORT AUTHORITY OF NY & NJ**

*FOI Administrator*

July 16, 2014

Mr. Steve Strunsky  
The Star-Ledger  
One Star-Ledger Plaza  
Newark, NJ 07042

Re: Freedom of Information Reference No. 15032

Dear Mr. Strunsky:

This is in response to your June 26, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for a copy of the amended Program Management Agreement between the Port Authority and the New Jersey State DOT for the Pulaski Skyway overhaul, as amended in May 2012.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/15032-LPA.pdf>. Paper copies of the available records are available upon request.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy  
FOI Administrator

Attachment

*225 Park Avenue South, 17th Floor  
New York, NY 10003  
T: 212 435 3642  
F: 212 435 7555*

**AMENDED PROGRAM MANAGEMENT AGREEMENT**

**BETWEEN**

**THE NEW JERSEY DEPARTMENT OF TRANSPORTATION**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**THIS AMENDED PROGRAM MANAGEMENT AGREEMENT** (this “Agreement”) is entered into as May 17<sup>th</sup>, 2012 (the “Effective Date”) by and between and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by a Compact between the States of New York and New Jersey with consent of Congress of the United States of America and having an office at 225 Park Avenue South, New York, New York 10003 (the “PORT AUTHORITY”), and the NEW JERSEY DEPARTMENT OF TRANSPORTATION established under the laws of the State of New Jersey (the “NJDOT”) and having offices at 1035 Parkway Drive, P.O. Box 600, Ewing, New Jersey 08625-0600 (the Port Authority and the NJDOT are each individually a “Party” and collectively the “Parties”).

**WHEREAS**, the infrastructure in the State of New Jersey that provides access to the Lincoln Tunnel is unable to support the current level of economic activity due to the deteriorated and overburdened roadways and access routes, as use is beyond their capacity; and

**WHEREAS**, improvements to the roadways and approaches will enhance and strengthen access to and between the Lincoln Tunnel and the Holland Tunnel; and

**WHEREAS**, the State of New Jersey is the owner of roadways and approaches to the Lincoln Tunnel; and

**WHEREAS**, in order to alleviate traffic congestion in the region and facilitate movement of people and goods, the PORT AUTHORITY and the NJDOT have agreed to work together to improve the infrastructure in the State of New Jersey related to the approaches to the Lincoln Tunnel; and

**WHEREAS**, subject to the terms and conditions of this Agreement, the PORT AUTHORITY elected to provide funding through and in the amount authorized under the Port Authority’s Capital Infrastructure Fund provided for in the Port Authority’s Annual Budget and Capital Plan in an aggregate amount not to exceed One Billion Eight Hundred Million Dollars and No Cents (\$1,800,000,000.00) to complete certain improvements; and

**WHEREAS**, the Parties entered into a Program Management Agreement by and between the NJDOT and the PORT AUTHORITY dated July 29, 2011 (the “Program Management Agreement”); and

**WHEREAS**, the Parties wish to amend the Program Management Agreement by entering into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, promises and obligations contained herein, which the Parties acknowledge to be good and sufficient consideration to support this Agreement and bind and obligate the Parties hereto, the Parties hereto agree as follows:

**I. PROGRAM DESCRIPTION/ DEFINITIONS:**

Section I of the Program Management Agreement, entitled "PROGRAM DESCRIPTION/DEFINITIONS," is fully incorporated by reference into the terms of this Agreement as if fully stated at length in this Agreement.

**II. TERM:**

Section II of the Program Management Agreement, entitled "TERM," deleted in its entirety and is replaced by the following provision:

"The term of this Agreement shall commence on the Effective Date of this Agreement and shall expire on the earlier to occur of (i) the date the NJDOT has issued a certificate of final completion ("Certificate of Final Completion") for each of the Projects comprising the Program; or (ii) the date the PORT AUTHORITY has expended the PORT AUTHORITY Program Funds (as hereinafter defined)."

**III. COOPERATIVE RELATIONSHIP OF NJDOT AND PORT AUTHORITY:**

Section III of the Program Management Agreement, entitled "COOPERATIVE RELATIONSHIP OF NJDOT and PORT AUTHORITY," is deleted in its entirety and has no further force and effect.

**IV. DESIGN, CONSTRUCTION, RIGHT OF WAY:**

Section IV, Subsection A of the Program Management Agreement, entitled "DESIGN/ CONSTRUCTION ACTIVITIES," is deleted in its entirety and is replaced by the following provision:

**A. DESIGN/CONSTRUCTION ACTIVITIES:** The NJDOT is solely responsible for the design, procurement, acquisition of real property and all construction related services of each Project and the ongoing operation and maintenance of the improvements, structures, roadways, and bridges comprising each Project. The PORT AUTHORITY'S sole responsibility with respect to the Program is to allocate and make available to the NJDOT the funding set forth in Section V of this Agreement. The PORT AUTHORITY will have no responsibility of any kind under or in connection with any agreement or contract utilizing the PORT AUTHORITY Program Funds."

Section IV, Subsection B of the Program Management Agreement, entitled "BIDDING AND CONTRACT ADMINISTRATION," is deleted in its entirety and has no further force and effect.

Section IV, Subsection C, Sub-subsections 1 and 2 of the Program Management Agreement, entitled "REAL ESTATE PROPERTY ACQUISITIONS" and "OPERATIONS

SOLELY BY NJDOT,” respectively, are deleted in their entirety and have no further force and effect.

Section IV, Subsection C, Sub-subsection 3 of the Program Management Agreement, entitled “ACCESS DURING CONSTRUCTION,” is deleted in its entirety and is replaced by the following provision:

**“3. ACCESS DURING CONSTRUCTION:** The PORT AUTHORITY, upon reasonable notice to the NJDOT’s field manager, may access any of the Project sites for observation in order to verify the completion of work invoiced.”

Section IV, Subsection C, Sub-subsections 4 through 9 of the Program Management Agreement, entitled “OWNERSHIP,” “ACQUISITIONS OF ADDITIONAL PROPERTY,” “USE AND SALE OF EXCESS PROPERTY,” “REVENUES FROM TRANSMISSION AND OTHER LINES,” “NJDOT PARTY FOR UTILITY AGREEMENTS,” “PARTICIPATION AS PROJECT PARTNER IN PERMITS,” respectively, are deleted in their entirety and have no further force and effect.

Section IV, Subsection C, Sub-subsection 10 of the Program Management Agreement, entitled “MAINTENANCE IN STATE OF GOOD ORDER/REPAIR,” is fully incorporated by reference into the terms of this Agreement as if fully stated at length in this Agreement.

**V. FUNDING AND ACCOUNTING:**

Section V of the Program Management Agreement, entitled “FUNDING AND ACCOUNTING,” is fully incorporated by reference into the terms of this Agreement as if fully stated in this Agreement, except as follows:

Section V, Subsection A1: Section V, Subsection A1, entitled “FUNDS DRAWDOWN,” is deleted in its entirety and is replaced by the following provision:

**“1. FUNDS DRAWDOWN:** The NJDOT staff, in consultation with the PORT AUTHORITY staff, will work in good faith throughout the course of the Program to ensure a fair and reasonable drawdown of funding. Any PORT AUTHORITY Program Funds allocated for a given year under Exhibit B that are not invoiced for that year will be made available in future years through and in the amount authorized under the Port Authority’s Annual Budget and Capital Plan.”

Section V, Subsection B1: Section V, Subsection B1, entitled “PORT AUTHORITY PAYMENTS,” is deleted in its entirety and is replaced by the following provision:

**“1. PORT AUTHORITY PAYMENTS:** The PORT AUTHORITY Program Funds will include payments for, among other items, the NJDOT’s property acquisitions, project design, construction, and construction management services, and a fraud prevention program, including the NJDOT’s procurement and

management of an integrity monitor. The PORT AUTHORITY Program Funds will also include payments for:

(i) the PORT AUTHORITY's direct and indirect in-house costs arising from the Program in an amount not to exceed Five Hundred Thousand Dollars and No Cents (\$500,000.00) per year; provided, however, if the in-house costs in any given year are less than Five Hundred Thousand Dollars and No Cents (\$500,000.00) then the difference between Five Hundred Thousand Dollars and No Cents (\$500,000.00) and the amount expended will be available for payment in future years, but the PORT AUTHORITY's total direct and indirect in-house costs for the Program may not exceed Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00); and

(ii) the NJDOT's direct and indirect in-house costs arising from the Program, which indirect costs shall be in accordance with the federally approved indirect costs allocation plan, in an amount not to exceed Twelve Million Dollars and No Cents (\$12,000,000.00) per year; provided, however, if the in-house costs invoiced by the NJDOT in any given year are less than Twelve Million Dollars and No Cents (\$12,000,000.00) then the difference between Twelve Million Dollars and No Cents (\$12,000,000.00) and the amount invoiced will be available for payment in future years, but the NJDOT shall in no event invoice more than a total amount of Sixty Million Dollars and No Cents (\$60,000,000.00) for the Program during the term of this Agreement.

The PORT AUTHORITY shall reimburse the NJDOT with the PORT AUTHORITY Program Funds for the type of payments covered under this Agreement for work performed by the NJDOT, or its consultants and contractors, on the Program during the period commencing on July 29, 2011 through the expiration or earlier termination of this Agreement. The PORT AUTHORITY Program Funds shall not include payments for any interest expenses incurred by the PORT AUTHORITY to finance the Program during the term of this Agreement.

**(a) PORT AUTHORITY FUNDING by Quarter:** The PORT AUTHORITY shall make available for each Project by year the amounts listed on the PORT AUTHORITY Annual Cash Flow Allocation Schedule (Exhibit "B") subject to and conditioned upon the approval by the PORT AUTHORITY Board for such amounts to be made available by the PORT AUTHORITY. Payment of funds by the PORT AUTHORITY in connection with each Project shall take place as follows:

(i) Within twenty (20) business days of the end of each quarter, the PORT AUTHORITY will provide the NJDOT with a

detailed accounting of the amount expended for the Program by the PORT AUTHORITY from the annual allocation of the quarter just ended, indicating that the remainder shall be made available by the PORT AUTHORITY to the NJDOT for the payment of Program expenses for which certified invoices have been received.

- (ii) After receipt of the detailed accounting referenced in the preceding subsection, the NJDOT shall submit to the PORT AUTHORITY an invoice certified by a fiscal officer of the NJDOT for the Program invoiced expenses up to the remaining amount available from the annual allocation in the PORT AUTHORITY Annual Cash Flow Allocation Schedule. Upon receipt of a certified invoice from the NJDOT stating that the invoice accurately reflects the value of work performed in connection with the Program, the PORT AUTHORITY will make every effort to pay the invoice amount within fifteen (15) business days of the PORT AUTHORITY's receipt of each certified invoice from the NJDOT, after reviewing the invoice and approving the payment. In the event that the PORT AUTHORITY determines that the invoice should not be paid in full or in part, within the fifteen (15) business days after receipt of the invoice from the NJDOT, the PORT AUTHORITY shall inform the NJDOT of its objections(s) to said invoice and request a "corrected invoice" from the NJDOT. Upon receipt of such corrected invoice or having been satisfied that its objection(s) have been answered, the PORT AUTHORITY shall approve and pay the invoice or corrected invoice within fifteen (15) business days. The Parties will establish an agreed upon payment mechanism that may include electronic wire transfer. In the event a late payment penalty or interest is due by reason of PORT AUTHORITY tendering payment of the approved invoice beyond fifteen (15) business days from receipt of an approved invoice, such interest or penalty shall be borne directly by the PORT AUTHORITY from funds other than the PORT AUTHORITY Program Funds, provided that the payment request is received by the PORT AUTHORITY at least fifteen (15) business days before any contractual payment due dates, and that there are no objections to the invoice by the PORT AUTHORITY which arise within those fifteen (15) business day.
- (iii) Upon conclusion of the quarter ending June 30, 2012, each party shall submit to the other party the requisite

documentation in accordance with this Section V.B1 for the period commencing on July 29, 2011 through June 30, 2012.

- (b) Amendments to the PORT AUTHORITY Annual Cash Flow Schedule:** The PORT AUTHORITY Annual Cash Flow Allocation Schedule will be monitored by PORT AUTHORITY staff. The NJDOT shall provide to the PORT AUTHORITY an updated schedule of planned construction and annual spending in June of each year for incorporation into the Port Authority's following year's budget.
- (c) Disputed Charges:** Payment of an invoice or corrected invoice will not operate as a waiver of the PORT AUTHORITY's right to audit any invoice or corrected invoice. If the PORT AUTHORITY questions or disputes a charge or charges on an invoice for which payment was made, and it is determined through the dispute resolution procedures provided for in this Agreement under "Resolution of Disputes" in subsection G of Section VIII that the NJDOT is required to reimburse the PORT AUTHORITY for the disputed charge(s), the NJDOT will reimburse the PORT AUTHORITY within thirty (30) days of the NJDOT's receipt of notification of the resolution of the dispute
- (d) Record Keeping and Final True-Up:** At the request of the PORT AUTHORITY, the NJDOT shall provide reports, schedules, agreements, contracts etc. with respect to utilization of the PORT AUTHORITY Program Funds provided by the PORT AUTHORITY and any other related information that the PORT AUTHORITY may reasonably request. The PORT AUTHORITY may, upon reasonable notice, during regular business hours, examine all records of the NJDOT relating to the Program or any contracts financed pursuant to the terms and conditions of this Agreement. The Parties will each maintain sufficient records and take appropriate steps to ensure that the total of invoices and corrected invoices paid by the PORT AUTHORITY along with other PORT AUTHORITY contributions to the Program do not exceed the PORT AUTHORITY Program Funds. Such steps may include making a final "true-up" payment between the Parties at Program completion."

Section V, Subsection C: Section V, Subsection C, entitled "DIGITAL COST AND EXPENSE LEDGER,") is deleted in its entirety and has no further force and effect.

Section V, Subsection D: Section V, Subsection D, entitled "DEVELOPMENT OF BUDGET," is deleted in its entirety and has no further force and effect.

Section V, Subsection E: Section V, Subsection E, entitled “AUDIT,” is deleted in its entirety and is replaced by the following:

**“E. AUDIT:** The NJDOT shall utilize its internal control system to manage and audit payments and expenses of contractors and consultants, and the NJDOT shall advise the PORT AUTHORITY of any reports or findings resulting from the internal control system, including the results of any audits conducted pertaining to the Program. In addition, the Inspector General of the NJDOT and the Inspector General of the PORT AUTHORITY shall jointly manage a fraud prevention program, which shall be comprised of integrity awareness presentations to contractors, a fraud hotline, contractor vetting, and the procurement of an integrity monitor, which shall be procured within six months of the Effective Date through the Division of Purchase and Property within New Jersey’s Department of the Treasury. The NJDOT and the PORT AUTHORITY will jointly prepare the scope of services for the integrity monitor. The PORT AUTHORITY shall participate in the selection committee and shall have one vote in the selection process. The NJDOT and the PORT AUTHORITY shall promptly advise each other of any issues that arise from the fraud prevention program and both Parties will jointly handle any investigations arising out of the program. The NJDOT’s Inspector General and the PORT AUTHORITY’s Inspector General will meet monthly to review the fraud prevention program and to address any issues that may arise regarding such program. The PORT AUTHORITY Program Funds shall include payment for the integrity monitor’s services. The PORT AUTHORITY Program Funds shall not include payment for the costs of the PORT AUTHORITY’s Inspector General regarding work concerning the fraud prevention program.”

**VI. INSURANCE:**

Section VI of the Program Management Agreement, entitled “INSURANCE” is deleted in its entirety and has no further force and effect.

**VII. SECURITY OF RECORDS:**

Section VII of the Program Management Agreement, entitled “SECURITY OF RECORDS,” is deleted in its entirety and has no further force and effect.

**VIII. OTHER PROGRAM MATTERS:**

Section VIII of the Program Management Agreement, entitled “OTHER PROGRAM MATTERS,” is fully incorporated by reference into the terms of this Agreement as if fully stated in this Agreement, except as follows:

Section VIII, Subsection A: Section VIII, Subsection A, entitled “PUBLIC AFFAIRS AND PUBLIC INFORMATION,” is deleted in its entirety and has no further force and effect.

Section VIII, Subsection B: Section VIII, Subsection B, entitled “COOPERATION AMONG THE PARTIES,” is deleted in its entirety and has no further force and effect.

Section VIII, Subsection C: Section VIII, Subsection C, entitled “SECURITY OF CONSTRUCTION SITES,” is deleted in its entirety and has no further force and effect.

Section VIII, Subsection G: Section VIII, Subsection G, entitled “RESOLUTION OF DISPUTES,” is deleted in its entirety and is replaced by the following provision:

**“G. RESOLUTION OF DISPUTES:** All disagreements under this Agreement shall be submitted to the Deputy Executive Director of the Port Authority and the Commissioner of the NJDOT for their review and decision, which decision shall be binding upon the Parties. In the event that the Deputy Executive Director of the Port Authority and the Commissioner of the NJDOT shall disagree, then either Party may seek all available legal or equitable remedies to the extent permitted by law.”

**IX. COMPLETION OF PROGRAM.** The NJDOT hereby acknowledges that the PORT AUTHORITY Program Funds may not cover the costs to complete the Program in its entirety and it further acknowledges that it may need to seek additional funding to complete the Program. The NJDOT represents that it shall complete each of the Projects and shall seek additional funding from sources other than the PORT AUTHORITY in order to do so.

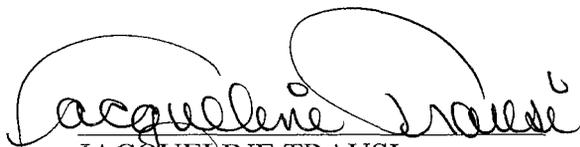
**X. TERMS OF PROGRAM MANAGEMENT AGREEMENT:** Except as stated herein, all other terms and provisions of the Program Management Agreement are incorporated by reference into this Agreement as if fully stated in this Agreement and shall have full force and effect.

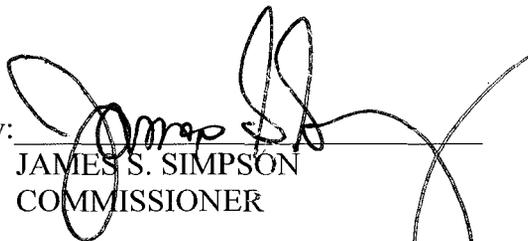
[Signatures on Following Page]

IN WITNESS WHEREOF, the NJDOT has caused this instrument to be signed by its Commissioner or designee, and witnessed by the Secretary of the NJDOT, and the PORT AUTHORITY has caused this instrument to be signed by its Executive Director or designee and witnessed by the Secretary of the PORT AUTHORITY, on the day, month and year first written above.

WITNESS:

NEW JERSEY DEPARTMENT OF  
TRANSPORTATION

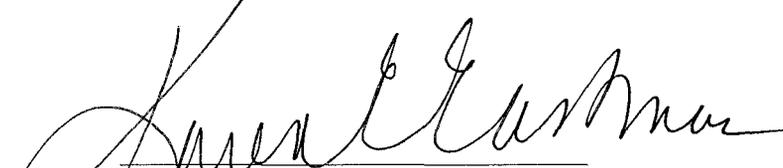
  
JACQUELINE TRAUSI  
SECRETARY

By:   
JAMES S. SIMPSON  
COMMISSIONER

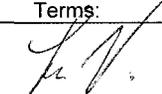
May 17, 2012

WITNESS:

THE PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY

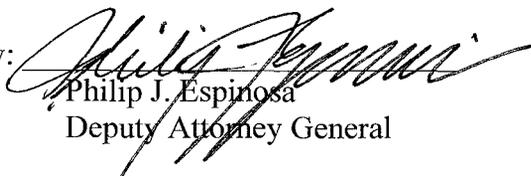
  
KAREN E. EASTMAN  
SECRETARY

By:   
PATRICK J. FOYE  
EXECUTIVE DIRECTOR

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
	

This Agreement has been reviewed and approved as to form for the NJDOT.

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Philip J. Espinosa  
Deputy Attorney General