

Torres Rojas, Genara

From: cezary.podkul@propublica.org
Sent: Wednesday, January 28, 2015 6:16 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree; Ng, Danny
Subject: Freedom of Information Online Request Form

Information:

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Required copies of the records: Yes

List of specific record(s):

Pursuant to the Authority's Freedom of Information Code, please provide me a copy of the 2011 contract between the Authority and the State of New Jersey Department of Transportation NJDOT under which the Authority agreed to fund the Lincoln Tunnel Access Program LTAP. Please include any amendments to the contract made after it was agreed to. For reference, this agreement is referred to on page 13 of the Authority's 2014-2023 Capital Plan Summary. <http://www.panynj.gov/corporate-information/pdf/2014-public-capital-plan.pdf> I ask that you please provide the documents in an electronic format, such as PDF files, as opposed to printed paper documents. Please email the responsive documents to me at: cezary.podkul@propublica.org. As a member of the news media, I ask that you please expedite the processing of this request. Please kindly confirm receipt of this request at your earliest convenience I can be reached at 917 512 0218 with any questions about this request.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

November 12, 2015

Mr. Cezary Podkul
ProPublica
One Exchange Plaza, 55 Broadway, 23rd Floor
New York, NY 10006

Re: Freedom of Information Reference No. 15739

Dear Mr. Podkul:

This is in response to your January 28, 2015 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for a copy of the 2011 contract between the Authority and the State of New Jersey Department of Transportation NJDOT under which the Authority agreed to fund the Lincoln Tunnel Access Program LTAP. Please include any amendments to the contract made after it was agreed to. For reference, this agreement is referred to on page 13 of the Authority's 2014-2023 Capital Plan Summary. <http://www.panynj.gov/corporate-information/pdf/2014-public-capital-plan.pdf>.

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/15739-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,



Danny Ng
FOI Administrator

Enclosure

*4 World Trade Center, 18th Floor
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T: 212 435 7348 F: 212 435 7555*

PROGRAM MANAGEMENT AGREEMENT

BETWEEN

THE NEW JERSEY DEPARTMENT OF

TRANSPORTATION

AND

THE PORT AUTHORITY OF NEW YORK AND

NEW JERSEY

THIS PROGRAM MANAGEMENT AGREEMENT (this "Agreement") is entered into as of ~~August~~ ^{July} 29th, 2011 (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, NY 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, NJ 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;

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

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

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 set forth in this Agreement, the PORT AUTHORITY has 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 the NJDOT to complete certain improvements.

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:

A. PROGRAM DESCRIPTION

New Jersey infrastructure that provides access to Port Authority facilities in New York and New Jersey is hard-pressed to support the current level of economic activity. Roadways and other access routes have deteriorated and are overburdened, as use is beyond their capacity. Improvements to the main routes in the area of Port Authority facilities will improve and strengthen access to and between the Hudson River crossings. In order to move people and goods throughout the New York/New Jersey metropolitan region, and to ensure successful industrial and commercial operations, approaches and connections to the Lincoln Tunnel must be improved to facilitate the movement of this traffic to the Lincoln Tunnel.

The Port Authority and the NJDOT have therefore agreed to work together to make improvements to the Lincoln Tunnel approaches. The improvements have been identified as three separate projects, which are described below in subsection B of this Section I. The completion of these projects will mitigate

transportation costs for freight and people and address traffic congestion and issues that hamper economic competitiveness for the New York/New Jersey metropolitan region.

B. PROJECT DESCRIPTIONS:

1. **Pulaski Skyway Project ("Pulaski Skyway"):** This project shall consist of the design and construction of improvements to the existing bridge structures and its approaches, including but not limited to, (1) replacing the entire concrete deck of the bridge and all ramp structures, (2) repairing/replacing all deteriorated structural steel members and connections, (3) repainting after the existing lead paint is removed, (4) rehabilitating/replacing the substructure and other elements of the bridge such as safety, security, aesthetics, lighting and intelligent transportation systems as needed; and (5) performing seismic retrofit.
2. **Route 1 and 9T New Road Project ("New Road"):** This project shall consist of the design and construction of an extension of Route 1 & 9T from St. Pauls Avenue to Secaucus Road in Jersey City, New Jersey.
3. **Route 7 Wittpenn Bridge Project ("Wittpenn Bridge"):** This project shall consist of the replacement of the Route 7 Wittpenn Bridge over the Hackensack River and the realignment of Fish House Road on the west side of the river. The new bridge will be located north of the existing bridge. The existing Wittpenn Bridge is a vertical lift bridge with 35 feet of clearance in the closed position. The new Wittpenn Bridge will be a

vertical lift bridge with a minimum vertical clearance of 70 feet above Mean High Water in the closed position.

Pulaski Skyway, New Road and Wittpenn are sometimes hereinafter collectively referred to as the "Program" and each is individually referred to as a "Project." The term "Project" shall only refer to the design and construction of the particular improvements and structures comprising each particular Project as described above. Upon the written mutual agreement of the Parties, and subject to the approval of the Board of Commissioners of the PORT AUTHORITY (the "PORT AUTHORITY Board"), the Parties may revise the list of the particular Projects as described above to remove a Project from the list, or to include alternate and/or additional projects. The Program in no way includes any obligation on the part of the PORT AUTHORITY for the repair or maintenance of said improvements or structures or the construction of any additional improvements in the future.

C. DEFINITIONS:

1. **CATASTROPHIC EVENT:** "Catastrophic Event" shall mean: All events which significantly impact, impair, damage or destroy any significant element of a Project resulting in the inability to operate or occupy those facilities or systems or a significant portion thereof for a prolonged period of time without major monetary expenditures over and above generally anticipated routine maintenance and replacement costs, whether or not such event is natural or man-made, or caused by criminal or terrorist activity.

2. **CATASTROPHIC LOSS:** “Catastrophic Loss” shall mean: A loss which results in expenditures significantly above normal or routine maintenance costs which results from a “Catastrophic Event”; it being understood that it is the monetary value of the loss resulting directly from the occurrence of such an event, whether a particular Project is lost in part or in whole; the loss can be the value of the lost Project itself or the cost of replacing or reconstructing and/or repairing it to such a degree that it can again function as intended.

3. **NJDOT:** “NJDOT” shall mean: the New Jersey Department of Transportation, its successors and assigns, a principal department established in the Executive Branch of the State Government, pursuant to N.J.S.A. 27:1A-2.

4. **PORT AUTHORITY:** “PORT AUTHORITY” shall mean: The Port Authority of New York and New Jersey, its successors and assigns, a bi-state agency, established in 1921 (as the *Port of New York Authority*) through an interstate compact that operates certain regional transportation infrastructure, including the bridges, tunnels, airports, and marine terminals, within a statutorily-defined New York–New Jersey Port District.

II. TERM

The term of this Agreement shall commence on the Effective Date and shall expire on the earlier to occur of (i) the date the NJDOT has issued a certificate of final completion (“Final

Certificate”) 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:

- A. **GOALS:** The NJDOT and the PORT AUTHORITY agree that the goals to be accomplished pursuant to this Agreement include the efficient and effective oversight of each Project and the Program, while simultaneously minimizing risk and costs.
- B. **LEAD AGENCY:** The NJDOT and the PORT AUTHORITY shall jointly serve as co-lead agencies responsible for each Project, except as otherwise provided in this Agreement. While it is anticipated that the Program funds, including the funds expended by the PORT AUTHORITY, may be allocated to the costs of real property interest acquisitions, the NJDOT shall be responsible for handling the acquisitions of the real property interests necessary for each Project, if any.
- C. **PROJECT TEAM:** The Parties will establish an integrated Project Team (“Project Team”) for each Project, which will act as a unified body united in a concerted effort to perform each Project. Each Project Team shall consist of staff from each the NJDOT and the PORT AUTHORITY assigned to work together in carrying out a particular Project’s administration and oversight; it is not a separate legal entity but refers to the group of employees further referenced and described under this Agreement. Each Project Team shall meet on a weekly basis, or as the Project Team may otherwise agree, at the PORT AUTHORITY offices located at 2 Montgomery Street, Jersey City, New Jersey, or at any other

mutually agreeable location, including, without limitation, offices located in Newark, New Jersey or Trenton, New Jersey. Both Parties will staff the Project Teams to ensure that the common goals are met. In furtherance of this goal, the following management system will be established for the purpose of ensuring success while simultaneously minimizing risk and cost.

D. EXECUTIVE STEERING COMMITTEE: During the term of this Agreement, an Executive Steering Committee (the "Steering Committee") shall be created to provide leadership and oversight for the Program in order to achieve the common goals. The Steering Committee will meet quarterly, or on an as-needed basis as determined by the Commissioner of the NJDOT and the Chairman (the "PORT AUTHORITY Chairman") of the Port Authority Board. Any disagreements that may arise shall be resolved cooperatively by the Commissioner of the NJDOT and the PORT AUTHORITY Chairman. As of the date hereof, the members of the Steering Committee shall be those individuals holding the positions listed below:

NJDOT

Commissioner of the NJDOT

Deputy Commissioner

Asst. Commr. of Capital Program
Management

Chief Financial Officer

PORT AUTHORITY

PORT AUTHORITY Chairman

Executive Director

Deputy Executive Director

Chief Financial Officer

Each Party may substitute one of its members of the Steering Committee, from time to time, in consultation with the PORT AUTHORITY Chairman or the

Commissioner of the NJDOT, as applicable, of the other Party, provided that the position held by the replacement member with his or her respective agency is comparable to that of the position held by the member being replaced.

- E. PROGRAM MANAGEMENT COMMITTEE:** During the term of this Agreement, a Program Management Committee shall be created for the purpose of making recommendations to the Steering Committee. A NJDOT employee and a PORT AUTHORITY employee will co-chair the Program Management Committee, which will meet monthly, or on an as needed basis. As of the date hereof, the members shall include a Director of Communications (as discussed in subsection A of Section VIII below) and the following individuals holding the following positions (a Program Management Committee member may hold more than one position on the Program Management Committee for the Party it represents):

NJDOT

Co-Program Director
 State Transportation Engineer
 Director of Project Management
 Director of Construction/Right of Way
 Financial Representative

PORT AUTHORITY

Co-Program Director
 Chief of Capital Planning
 Chief Engineer
 Chief of Real Estate and
 Development
 Financial Representative

Each Party may substitute one of its members of the Program Management Committee, from time to time, in consultation with the Co-Program Director of the other Party.

- F. **PROGRAM MANAGEMENT PLAN:** The Program Management Committee will create and develop a Program Management Plan ("PMP"), which will be updated from time to time to provide for strict guidance of the Program schedule. The PMP shall provide for, among other things, the monitoring by the Project Team of the costs being expended in connection with the Program in order to address potential cost overruns in the costs of designing, constructing, operating, or maintaining the Program.

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

A. **DESIGN/CONSTRUCTION ACTIVITIES:**

1. **DESIGN AND CONSTRUCTION STANDARDS:** The Program shall be carried out, designed, and constructed in accordance with NJDOT and PORT AUTHORITY standards and design criteria; it being understood that the NJDOT's design and construction standards shall be the minimum standards utilized for the Program.
2. **DESIGN AND CONSTRUCTION MANAGEMENT:** All design and construction management contracts for each Project will be jointly procured and administered by the NJDOT and the PORT AUTHORITY and managed by the applicable Project Team. The NJDOT and the

PORT AUTHORITY will also provide technical resources for design reviews and other technical assistance that may be required from time to time during the course of each particular Project, at levels sufficient to enable successful design, construction, and implementation of each Project. These resources may be from the NJDOT's or the PORT AUTHORITY'S full time employee rosters and/or from consultants retained by the PORT AUTHORITY or the NJDOT as they each deem necessary.

3. ENGINEER OF RECORD:

- (a) There shall be an Engineer of Record ("EOR") for each Project in order to ensure that the specifications, plans and drawings issued for the construction and implementation of each Project is in conformity with NJDOT and PORT AUTHORITY standards and design criteria. The EOR shall be the New Jersey State Transportation Engineer. Prior to the commencement of construction, the EOR, or his or her designee, must approve the design of each Project.
- (b) Completion and Acceptance of Construction Projects. Upon completion of each Project, the NJDOT shall issue a Final Certificate. The NJDOT Policy/Procedure for the Completion and Acceptance of Construction Projects is attached hereto as "Exhibit A", and hereby made a part hereof, for guidance to the extent

consistent with the respective roles of the NJDOT and the PORT AUTHORITY as set forth herein.

B. BIDDING AND CONTRACT ADMINISTRATION

1. **CONSTRUCTION DELIVERY METHODOLOGY:** For each Project, construction contracts will be bid as Design/Bid/Build or Design/Build projects, in accordance with both the NJDOT's and the PORT AUTHORITY's authority to award the applicable contract to the lowest responsible bidder; as agreed upon by each Project Team in consultation with the Program Management Committee. All construction contracts will be held jointly, notwithstanding actual title ownership of the improvements, roadways, bridges and structures that comprise each Project as set forth below.
2. **RESPONSIBILITIES FOR VARIOUS ASPECTS OF PROCUREMENT AND BIDDING OF CONSTRUCTION WORK:** For each Project, the NJDOT and the PORT AUTHORITY will be responsible for solicitation of bids, awards of construction contracts and equipment procurement contracts, as well as the selection and award of contracts for various consultants, in addition to the administration of all contracts of all types.
3. **DBE/SBE ADMINISTRATION:** If any federal funds are used for the Program, the NJDOT and the PORT AUTHORITY shall determine at that time which agency will be the lead agency responsible for compliance

with 49 C.F.R. Part 26 procedures. If no federal funds are used for the Program, then all applicable laws and policies governing the Parties' contracting and procurement activities will govern the administration and contract compliance regarding the Small Business Enterprise participation ("SBE") program and the Parties shall jointly oversee and manage SBE administration and contract compliance.

4. **SPECIFICATIONS:** Specifications for the various construction contracts (including, by way of example, how a project must be set up into packages, insurance requirements, indemnifications, and claims and construction order procedures) will be established by each Project Team in accordance with the NJDOT Standard Specifications for Road and Bridge Construction ("NJDOT Standard Specifications") and PORT AUTHORITY policies and procedures. Applicable NJDOT Standard Specifications shall be the minimum specifications utilized for the Program; it being understood that the PORT AUTHORITY specifications must equal or exceed the NJDOT Standard Specifications to be utilized by the Project Teams for use on a Project. Each Project Team will also set the scope of work for each contract, as well as the schedule and the engineer's estimate of costs. The contracts shall be governed by the laws of the State of New Jersey, including but not limited to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., where the contracts are to be bid and awarded.

5. **CHANGES TO THE CONTRACTS FOR THE PROJECTS:** The NJDOT and the PORT AUTHORITY shall require the consultants and contractors for the Program to comply, as applicable, with all contractual requirements regarding changes to the contracts and the Contractual Claims Resolution Process provided in the NJDOT's standard consultant agreements and the NJDOT Standard Specifications current as of the date of procurement of contractors; provided, however, the NJDOT's Contractual Claim Resolution Process shall be modified to provide for the NJDOT and the PORT AUTHORITY to jointly review claims at each of the four steps of said process.

C. REAL ESTATE MATTERS

1. **REAL PROPERTY ACQUISITIONS:** The PORT AUTHORITY and the NJDOT shall jointly consult on matters involving acquisitions of real property interests related to the Program, however, the NJDOT shall be responsible for the acquisition of all real property interests needed to construct and operate each Project. The PORT AUTHORITY, at any time during the duration of this Agreement, may audit the NJDOT's records regarding the acquisition of any real property interest related to the Program. The NJDOT shall obtain an appraisal of any real property it intends to acquire under the Program. Any purchase price for the acquisition of a real property interest that is in excess of ten percent (10%) of the appraised amount shall require the prior written consent of the PORT AUTHORITY, which consent shall not be unreasonably

delayed or withheld. Acquisition of the same will be pursuant to, and in accordance with the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., the Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72 et seq. and regulations pursuant to N.J.A.C. 16:6-1.2 et seq. The NJDOT also will be responsible for acquiring all necessary real property rights, grants, easements, and permits from applicable governmental entities or utilities. The NJDOT will provide to all affected occupants relocation benefits and services in accordance with applicable law, and where necessary, power of condemnation is exercised in accordance with applicable law. The NJDOT will ensure that all real property interests to be acquired shall be investigated, to the extent customarily required, as to existence of contamination, hazardous material or solid or hazardous waste within the confines of the property, and appropriate action shall be taken to recover costs to be incurred by each Project from the owner and/or responsible party in accordance with applicable New Jersey law. Use of real property acquired shall be subject to applicable New Jersey rules and regulations.

2. **OPERATIONS SOLELY BY NJDOT:** The NJDOT shall be solely responsible for the operation and maintenance of all improvements, structures, roadways and bridges comprising each Project. Upon the issuance of a Final Certificate for a Project, or the earlier termination or expiration of this Agreement, the PORT AUTHORITY shall have no further obligation or responsibility with respect to such Project and in all

events the PORT AUTHORITY shall have no further obligations or responsibilities for the improvements, structures, roadways and bridges comprising each Project.

3. **ACCESS DURING CONSTRUCTION:** Each Party hereby grants to the other Party permission to enter upon any property owned by it as may be necessary in connection with the performance of the Program.
4. **OWNERSHIP:** Title to all of the improvements, roadways, bridges and structures that comprise each Project shall be and remain in the NJDOT.
5. **ACQUISITIONS OF ADDITIONAL PROPERTY:** The NJDOT may acquire whatever additional property rights it deems necessary for other uses at the same time it acquires needed Project property rights. The NJDOT also may acquire by lot lines as opposed to by the neat lines of the construction or Right of Way (ROW) drawings, but it must acquire at least the real property interests required as provided under the ROW Plans and descriptions approved by the Project Team. The costs for additional acquisitions beyond those needed for each Project will not be considered Program costs and PORT AUTHORITY Program Funds will not be used for said acquisitions. All necessary environmental reviews required for additional property rights as well as for any property rights acquired for each Project shall be performed by the NJDOT.
6. **USE AND SALE OF EXCESS PROPERTY:** The sale, other disposition, or use of property by the NJDOT, or any other state agency,

that was originally acquired specifically for the Program with PORT AUTHORITY Program Funds, but which is subsequently determined to be in excess of that needed for the Program, shall be subject to the applicable laws of the State of New Jersey as appropriate. The PORT AUTHORITY shall be reimbursed for the costs and expenses associated with the purchase of any property determined to be in excess of that needed for the Program within ten (10) years of the issuance of the Final Certificate for the Project for which the property was purchased. Any such reimbursement shall be made only from the proceeds of the applicable sale, less any costs and expenses associated with the sale. All proceeds received from a sale or other disposition shall either be paid directly to the PORT AUTHORITY or reimbursed by the NJDOT to the PORT AUTHORITY within thirty (30) days of the closing on such sale or disposition. This provision shall survive the expiration or earlier termination of this Agreement.

7. **REVENUES FROM TRANSMISSION AND OTHER LINES:** All revenues received for transmission of data over lines or utilities or any other form of communication or transmission by any means through the roadways, bridges and structures of each Project shall accrue to the NJDOT.
8. **NJDOT PARTY FOR UTILITY AGREEMENTS:** The NJDOT shall be the Party to all utility agreements necessary to construct, implement, operate and maintain each Project wherever the utility is located, whether

it be for relocation, for services or for other reasons, on a temporary or permanent basis, in its capacity as owner and the principal contracting entity for each Project. All costs arising from or related to such utility agreements shall be paid for from PORT AUTHORITY Program Funds.

9. PARTICIPATION AS PROJECT PARTNER IN PERMITS:

The PORT AUTHORITY and the NJDOT will participate in and negotiate as project partners memoranda of understanding, agreements, or permits from all agencies (e.g. NJDEP) when necessary for Program purposes, except as to those permits already obtained by the NJDOT or regarding those permits to be issued by the NJDOT. The NJDOT and the PORT AUTHORITY will both be parties to all such memoranda of understanding, permits, or agreements with state or local agencies of New Jersey. The NJDOT will be a party to those memoranda, agreements and permits for real property interests acquired for each Project. The PORT AUTHORITY will not be a signatory to such memoranda and agreements for real property interests acquired for each Project.

10. MAINTENANCE IN STATE OF GOOD ORDER/REPAIR:

- (a) **NJDOT Obligation:** Upon NJDOT's issuance of a Certificate of Final Completion for each Project, the NJDOT shall have the sole obligation, as between the Parties, at its sole cost and expense, to maintain in a state of good order/repair, pursuant to N.J.S.A. 27:7-11, the components of such Project, subject to appropriations. Such

obligation shall extend to all elements of each Project, including any applicable national or local building or fire codes and standards governing each Project.

(b) **Obligation to Replace Due to Catastrophic Events:**

Notwithstanding any statement or provision to the contrary, neither the NJDOT nor the PORT AUTHORITY shall not be contractually responsible or obligated to replace, reconstruct or repair or contractually responsible for the cost of replacing, reconstructing or repairing components of each Project as a result of a Catastrophic Event, which event will include, but not be limited to, acts or force of nature, acts of terrorism or other criminality or for any other similar reason. However, in such an event, the NJDOT shall utilize the amount of the insurance proceeds actually received by reason of the occurrence of such an insured event, as well as any other funds that may be made available to the NJDOT for the replacement, reconstruction or repair of the components of each Project in whole or part, but only to the extent the aforementioned funds permit. In no event shall the NJDOT be obligated to replace, reconstruct or repair the components of each Project due to a Catastrophic Event beyond the extent to which the amount of funds (insurance proceeds and other sources designated for such use) actually received will permit, whether or not such funds are

sufficient to complete said work necessary to allow each Project to be fully operational.

V. FUNDING AND ACCOUNTING

A. **PORT AUTHORITY COMMITMENT:** The PORT AUTHORITY shall 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) (the "PORT AUTHORITY Program Funds") for the Program. The PORT AUTHORITY Program Funds shall be provided on a quarterly basis for the duration of the Program as described in subsection B of this Section. Both Parties recognize that the availability of the PORT AUTHORITY Program Funds are subject to and conditioned upon the approval by the Port Authority Board.

1. **FUNDS DRAWDOWN:** The NJDOT staff, in consultation with the PORT AUTHORITY Director for Budget and Finance, will work in good faith throughout the course of the Program to ensure a fair and reasonable drawdown of funding.

2. **ADDITIONAL FUNDS:**

(a) It is understood and agreed by the Parties that the PORT AUTHORITY has not agreed to provide any further financial assistance above and beyond the PORT AUTHORITY Program

Funds for the design, construction, operation or maintenance of the Program, and nothing contained in this Agreement shall obligate the PORT AUTHORITY, or constitute any agreement, promise, guaranty, or commitment by the PORT AUTHORITY, to provide any such additional financial assistance. The PORT AUTHORITY shall have no obligation to provide any funds in excess of the PORT AUTHORITY Program Funds for any costs or expenses relating to or arising out of, in whole or in part, the planning, design, construction, operation or maintenance of the Program, and the infrastructure improvements resulting from or the work in connection with each Project in the Program. It is understood and agreed by the Parties that the NJDOT shall be responsible for all costs, expenses, and funding requirements over and above the PORT AUTHORITY Program Funds resulting from or arising out of the planning, design, construction, operation or maintenance of the Program, and the infrastructure improvements resulting from or the work in connection with each Project in the Program. This provision shall survive the termination or earlier expiration of this Agreement.

- (b) The NJDOT may contribute additional funding to the Program at the NJDOT's discretion, or seek additional funding from sources other than the PORT AUTHORITY.

B. FUNDING OF EXPENDITURES:

1. **PORT AUTHORITY PAYMENTS:** The PORT AUTHORITY Program Funds may include payments for, among other items, in-kind services provided by the PORT AUTHORITY to advance each Project, payments for property acquisition, payments for project design, construction, and construction management services and for a fraud prevention program, provided the property acquisition and project design, construction, and construction management services are performed in accordance with the applicable provisions 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 days.

- (b) **Amendments to the PORT AUTHORITY Annual Cash Flow Schedule:** The PORT AUTHORITY Annual Cash Flow Allocation Schedule will be monitored by the Port Authority Director for Budget and Finance, who may from time to time recommend amendments to the Schedule to the Co-Program Directors for approval by the Steering Committee.

(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) **Final True up:** The Program Management Committee will 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.

C. **DIGITAL COST AND EXPENSE LEDGER:** The Program Management Committee will maintain a digital cost and expense ledger or other accepted form of tracking and maintaining financial records for each Project with respect to all capital expenditures and costs for design and construction work, materials and

services incurred during the course of each Project. All financial records and contracts will be available to each Party and its auditors, including any other public agency having jurisdiction.

- D. DEVELOPMENT OF BUDGET:** The Program Management Committee will develop a budget with respect to costs and other financial information for the Program, to be approved by the Steering Committee, which will include a cash flow plan. The NJDOT and PORT AUTHORITY will also provide ongoing financial reviews for the Program as required from time to time.
- E. AUDIT:** The Program Management Committee will create an acceptable internal control system and an acceptable fraud prevention program, with which to manage payments, expenses and audit expenses of contractors and consultants, which shall be approved by the Inspector General of the NJDOT and the Inspector General for the PORT AUTHORITY.

VI. INSURANCE

- A. Insurance:** The NJDOT shall procure and maintain policies of insurance and pay the corresponding premium(s) using the PORT AUTHORITY Program Funds to sufficiently cover the construction program(s) for the entire period of construction before project completion provided such coverage is deemed by the NJDOT and the PORT AUTHORITY to be necessary and actually obtainable and commercially available at commercially reasonable rates given the amount and condition of coverage. The NJDOT shall have the right, as part of its overall risk management program, to provide for the insurance coverages required by this

Section with such deductible or retained amounts as the NJDOT may determine appropriate from time to time, except, however, all claims and damages which fall within such deductible or retained amounts shall be paid for from the PORT AUTHORITY Program Funds and not from NJDOT funds. Moreover, the NJDOT, in consultation with the PORT AUTHORITY, shall work together to develop an owner controlled insurance program ("OCIP"), including the structure, applicable coverage and limits for such insurance program. Insurance carriers furnishing the aforementioned coverage under this Agreement shall maintain an A.M. Best rating of "A-" or better (or successor equivalent). The NJDOT shall provide the PORT AUTHORITY with thirty (30) days written notice of cancellation of any such insurance policy(ies) as well as its plan to provide replacement coverage for the policy(ies) so canceled. The NJDOT retains, however, the right to utilize a Captive Insurance Company to provide the aforementioned coverage in combination with a commercial insurance carrier, it being understood that the NJDOT shall periodically, at the request of the PORT AUTHORITY, allow the PORT AUTHORITY to review all financial information related to its Captive Insurance Policy. The Commissioner of the NJDOT and the Executive Director of the PORT AUTHORITY, or their designees, will jointly review and approve the final OCIP(s) that will be implemented by the NJDOT or any insurance coverage to be provided in lieu of OCIP(s). The NJDOT shall give the PORT AUTHORITY prompt notice of any claims or loss notices filed by the NJDOT under such policies. Any such insurance policies procured by the NJDOT shall provide that the PORT AUTHORITY will be an additional named

insured, as appropriate, and shall have the ability to assert a claim (and pursue collection of insurance proceeds) by submitting any third party or direct claims arising from the Program by the PORT AUTHORITY (or any of its wholly-owned subsidiaries) to the NJDOT, which will in turn cause them to be filed, where and when necessary, with the appropriate broker. The NJDOT shall confirm in writing that it filed any claim the PORT AUTHORITY directed it to file within thirty (30) business days of direction being given. In the event the NJDOT declines or fails to file any directed claim within forty-five (45) business days of written direction, or within the term dictated by the applicable policy(ies) if less than forty-five (45) business days, the PORT AUTHORITY shall have the right to file a claim directly with the applicable broker. Alternatively, if an OCIP is not utilized for the Program, the NJDOT and the PORT AUTHORITY shall require the contractors and consultants to provide sufficient insurance coverage, consistent with the coverages that would have been afforded under an OCIP, to protect the interests of the NJDOT and the PORT AUTHORITY throughout the term of design and construction, with the PORT AUTHORITY, the State of New Jersey, the NJDOT, and their officers, employees and agents being additional insureds under any coverage so procured.

VII. SECURITY OF RECORDS:

- A. RECORDS SECURITY:** Security of the Program records shall be administered by the Program Management Committee under guidelines to be established by the Program Management Committee. The Parties' agreement as to the handling of Program records is set forth below.

B. EXCHANGE OF SENSITIVE PROJECT INFORMATION: In order to undertake their respective duties and/or responsibilities with regard to the Program, the Parties may provide and/or exchange certain information in their possession that may contain or include confidential, privileged, classified, proprietary or sensitive information. Such information, documents, drawings, etc. may relate to the security, safety and protection of the Program and may include information regarding the design, physical construction, and the current and future operations of each Project (hereinafter collectively referred to as "Sensitive Project Information"). Sensitive Project Information may also include guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement, investigation and prosecutorial purposes, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto.

1. The Parties recognize that unauthorized disclosure of such information could result in a significant compromise of public safety and security, as well as financial and other damage to the Parties, the Program, the users of the applicable roadways, bridges and other Project components, the surrounding communities and the general public. It is also recognized that there is the need for providing the respective employees of the Parties as well as related parties with access to certain information, which may contain or include Sensitive Project Information, on a need to know and/or on an as-needed basis. Every person having access to Sensitive Project

Information has the obligation and the responsibility to properly safeguard such information and prevent its unauthorized disclosure or release.

2. The NJDOT and the PORT AUTHORITY shall only provide Sensitive Project Information directly to the other Party's employees. However, the NJDOT and PORT AUTHORITY employees may provide Sensitive Project Information to their respective related third parties (such as consultants, contractors and subcontractors, fire safety, police and other governmental employees and officials etc.) on a need to know or as-needed basis, provided the third party executes a Non-Disclosure Agreement approved by the Party disclosing the Sensitive Project Information, all in accordance with the applicable requirements provided for below, except that in the case of police and fire safety officials, officers and employees, access to Sensitive Project Information shall comply with the requirements set forth in subsection D of this Section.
3. The NJDOT and the PORT AUTHORITY do hereby agree that each Party may so designate Sensitive Project Information in its possession in accordance with each Party's respective policies and procedures in effect at the time.
4. The disclosing Party is responsible for clearly identifying to the receiving Party the sensitive nature of the transmitted material.
5. The receiving Party and its related third parties (such as consultants, contractors and subcontractors) agrees to handle all Sensitive Project Information in accordance with the disclosing Party's requirements.

C. DURATION AND SURVIVAL OF CONFIDENTIALITY OBLIGATIONS:

The obligations under this Agreement shall be perpetual (unless otherwise provided in this Agreement) or until Sensitive Project Information is no longer considered sensitive, confidential and/or privileged by the Parties.

- D. BACKGROUND SCREENING:** With the exception of police and fire safety officials, officers and employees, all individuals will be subject to the background screening criteria of the applicable Project with respect to receiving access to Sensitive Project Information and shall be required to sign an Acknowledgment or a Non-Disclosure Agreement as required by the employing Party.

VIII. OTHER PROGRAM MATTERS:

- A. PUBLIC AFFAIRS AND PUBLIC INFORMATION:** The Commissioner of the NJDOT and the PORT AUTHORITY Chairman will jointly select a person to be designated as the Director of Communications for the Program. The Director of Communications will serve on the Program Management Committee and will report to such person to be designated by the NJDOT and to the Chief of Public Affairs of the PORT AUTHORITY. All work performed by the Director of Communications shall be coordinated with the communications offices of the NJDOT and the public affairs department of the PORT AUTHORITY.

- B. COOPERATION AMONG THE PARTIES:** Each Party to this Agreement will work cooperatively and devote all reasonably available resources to the overall success of the Program. Each Party will act in good faith and reasonably to carry out the terms and intent of this Agreement.

- C. SECURITY OF CONSTRUCTION SITES:** Security of the construction sites shall be maintained by all contractors in accordance with all applicable contract documents. The security specifications and procedures set forth in the contract documents shall be established by the Program Management Committee.
- D. COMMON INTEREST; JOINT DEFENSE:** It is recognized that it will be in both Parties' interests to share communication and information amongst each other for the common good of the Program. While each Party may retain separate legal counsel it is agreed that communications between the Parties, including oral or written communications or provision of documents, maps, plans, sketches or any other such documents shall not be deemed to be a waiver of any privilege, including but not limited to "attorney/client" or "attorney work product" privileges. Both Parties jointly and severally will defend any demand for a document which is jointly agreed to be protected by an applicable privilege and will maintain such a position to the extent permitted by applicable law and policies subject to approval of the Attorney General of the State of New Jersey or designee and the General Counsel of the PORT AUTHORITY or designee. The Parties will work together in the defense of any claim that may arise or be claimed to arise out of the Program and enter into a joint defense agreement where appropriate, subject to approval of each Party to this Agreement and the approval of the Attorney General of New Jersey or his or her designee and the General Counsel of the PORT AUTHORITY or his or her designee, without waiving any applicable immunity, claim of sovereign immunity or defense.

- E. OPRA AND FOI POLICY:** Notwithstanding Section VII above, the NJDOT is subject to the Open Public Records Act ("OPRA") and common law. The NJDOT is obligated under law to respond to requests by members of the public for documents subject to applicable law. When received, a copy of such a request will be provided to the PORT AUTHORITY, which may take such action as it deems necessary to protect its position independent of the NJDOT, where it is determined by the NJDOT that information related to the Program must be released under applicable law. Likewise, notwithstanding Section VII above, the PORT AUTHORITY is subject to a Freedom of Information Policy ("FOI Policy") under which it has agreed to respond to requests by members of the public for information. When PORT AUTHORITY receives a request related to the Program, a copy of such request will be provided to the NJDOT, which may take such action as it deems necessary to protect its position independent of the PORT AUTHORITY, where it is determined by the PORT AUTHORITY that information related to the Program must be released under its FOI Policy or applicable law.
- F. NOTICES AND COMMUNICATIONS:** Notices and communications under this Agreement shall be in writing and sent by either (a) certified or registered mail, return receipt requested, postage prepaid, or (b) express delivery (e.g., Federal Express), or (c) personal delivery, and shall be directed as follows or to such other address as either Party has previously directed by notice or to the successors of each respective position with each respective agency:

If to the NJDOT:

Commissioner
NJ Department of Transportation
P.O. Box 600
1035 Parkway Avenue
Ewing, NJ 08625-0600

With a copy to:

Assistant Commissioner, Capital Program Management
New Jersey Department of Transportation
P.O. Box 600
1035 Parkway Avenue
E&O 2nd Floor
Ewing, NJ 08625-0600

If to the PORT AUTHORITY:

The Port Authority of New York and New Jersey
225 Park Avenue South, 15th Floor
New York, New York 10003
Attn: Executive Director

With a copy to:

The Port Authority of New York and New Jersey
225 Park Avenue South, 15th Floor
New York, New York 10003
Attn: General Counsel

Any notice, communication, or delivery will be deemed given or made (a) on the third business day after it is mailed by registered or certified mail (b) one business day after having been deposited for overnight delivery with any nationally recognized overnight delivery service, or (c) on the date of delivery if delivered in person (or upon the date of attempted delivery where delivery is refused).

G. RESOLUTION OF DISPUTES: When any dispute arises amongst the Parties as to the interpretation of this Agreement, or other matters set forth herein, Project Team members will confer with one another in a good faith attempt to resolve any

such disputes. In the event they are unable to resolve any differences of interpretation or any other issue in dispute between them, the Program Management Committee will address the issue and attempt to develop a resolution. If the Program Management Committee is unable to resolve the matter within a reasonable period of time, the issue will be referred to the Steering Committee

H. SEVERABILITY: In the event any provision of this Agreement is found unenforceable or invalid by a court of competent jurisdiction, such a determination will not in any manner invalidate the remaining provisions of this Agreement or otherwise adversely affect or impact the enforceability of the remaining provisions.

I. AMBIGUITY RULE AS TO PUBLIC CONTRACT SHALL NOT APPLY: The legal doctrine that where an ambiguity exists in a government contract, the writing is to be strictly construed against the draftsman shall not apply to the interpretation of this Agreement, it being understood that this Agreement was freely negotiated between both governmental Parties.

J. COUNTERPARTS: This Agreement may be signed in any number of counterparts; each of which shall be deemed to be an original, but all such counterparts together shall constitute one and the same instrument.

K. INDIVIDUALS NOT LIABLE: No elected or appointed official, commissioner, member, trustee, member of the Board, officer or employee of the NJDOT or the PORT AUTHORITY will be personally liable under, or by reason

of, this Agreement, or any of its articles, covenants or provisions; nor shall any such person be personally liable, or be sued individually, for damages on account of any breach of this Agreement, no matter what their involvement may be.

- L. BINDING EFFECT ON THE PARTIES:** This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Each signatory warrants that they are authorized to represent and bind the Party they purport to represent and have secured the necessary and required approval and authority to do so. It is further represented that each Party had an opportunity to confer with legal counsel of their own choosing and discussed the terms and obligations of this Agreement with legal counsel. This Agreement was freely entered into without duress or coercion by any entity and with full knowledge of its intent and meaning as well as the nature and extent of obligations undertaken.
- M. LIMIT OF MONETARY OBLIGATION:** The PORT AUTHORITY is not obligated to the support of the Program beyond the specific monetary commitment stated in this Agreement. This Agreement shall not be interpreted to create any greater obligation. No Party shall claim any credit for expenses incurred in carrying out this Agreement or for non-monetary obligations, except as to those specifically provided herein.
- N. NO TERMINATION:** This Agreement shall not be terminated for any reason except with the mutual written consent of both Parties.

- O. **BREACH:** A breach by either Party, whether or not material, shall not serve as a basis for termination. Failure to enforce a provision shall not be construed to constitute waiver of the enforceability or applicability of the provision or any other provision of this Agreement. Notice or the lack of notice by a Party of a failure to abide by the terms of this Agreement shall not create a right to notice on a subsequent occasion, nor shall it relieve the notifying party of the obligation to provide notice on subsequent occasions. Breach by one Party, no matter how significant or substantial, shall not in turn serve as a basis or allow the other Party to refuse to abide by the terms of this Agreement, or for the PORT AUTHORITY to refuse to make a monetary payment, supply a required resource or to otherwise cooperate and act in good faith towards completion of the Program.
- P. **NO THIRD PARTY BENEFICIARY CREATED:** This Agreement will not in any manner benefit a third party, directly or indirectly; nor will it bind any third party. Each Party agrees to affirmatively oppose any position asserted by a third party that this Agreement in any manner benefits that third party or another third party. This Agreement shall only bind the signatories thereto and the corresponding Parties that they represent.
- Q. **NO NEW LEGAL ENTITY IS CREATED:** The Parties do not intend to create any partnership, joint venture, subsidiary or any individual or new independent legal entity under the laws of any state or under common law. This Agreement is for the purpose of outlining a joint effort among two separate and distinct public agencies, which will continue to operate as separate entities. This Agreement is also intended to outline the various obligations and roles that the Parties are to

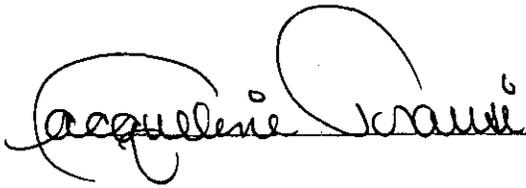
undertake for each Project through the design, construction, and operational phases.

- R. APPLICABLE LAW AND JURISDICTION.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey without regard to conflicts of law principles and, subject to Port Authority Legislation (as hereinafter defined), shall be enforceable in a state court of competent jurisdiction located within the Port District in the State of New Jersey and will be considered a legal obligation of the Parties, including the terms related to the respective monetary obligations of the Parties. As used herein, the term "Port Authority Legislation" shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney's Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).
- S. HEADINGS.** The Section headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define or limit, or describe the scope or intent of any provision of this Agreement.
- T. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties on the subject matter herein, and may not be changed, modified, discharged or extended except by an instrument in writing duly executed on behalf of all of the Parties.

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

WITNESS:

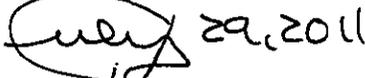
NEW JERSEY DEPARTMENT OF TRANSPORTATION



By: 
JAMES S. SIMPSON, NJDOT
COMMISSIONER

JACQUELINE TRAUSI
SECRETARY
NEW JERSEY
DEPARTMENT OF TRANSPORTATION

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY




SECRETARY, PORT AUTHORITY

By: 
CHRISTOPHER O. WARD
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 NJ DOT.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

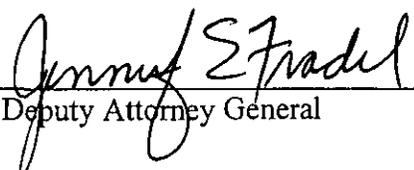
By: 
Deputy Attorney General

EXHIBIT A



DEPARTMENT OF TRANSPORTATION
POLICY/PROCEDURE

Policy No. 813
Supersedes: 3.118-C
Page 1 of 18

SUBJECT: Substantial Completion, Interim Completion, Partial Acceptance, Completion and Final Acceptance, and Final Payment for Construction Projects	Effective Date: 09-18-06	Commissioner Approval: Sponsor Approval: Richard Hammer Contact Telephone #: (609) 530-5704
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I. PURPOSE

To outline the procedures for determining Substantial Completion, Partial Acceptance, Completion and Final Acceptance, and Final Payment for Construction Contracts.

II. DEFINITIONS

The following words and terms, when used in this Procedure, shall have the following meanings, unless the context clearly indicates otherwise:

ACES – the Department’s construction management software used by construction field personnel used

Alternate Procedure – a procedure authorized by 23CFR 106(b), 23 USC 117(a) and 23 DCF 640 for administrating Federal Aid projects with Department oversight in lieu of oversight in lieu of FHWA oversight in accordance with the FHWA – NJCOT Stewardship Agreement.

Corrective Action Inspection – an inspection scheduled by the Resident Engineer to determine if the work is complete and that the project ready for Acceptance by the Department. Usually, the Resident Engineer will inspect the project and have any construction deficiencies corrected before scheduling a formal Corrective Action Inspection. If the Corrective Action Inspection identifies any corrective action, additional Corrective Action Inspections are conducted until all deficiencies are satisfactorily addressed.

FHWA Area Engineer– the FHWA’s representative responsible for federal oversight of the project.

Field Manager– means the immediate supervisor of a Resident Engineer

Final Acceptance Inspection – means the final formal step taken to determine that the project is complete and ready for Acceptance. The Final Acceptance Inspection is the last Corrective Action Inspection.

Final Acceptance package – means the collection of memos and forms used to obtain and certify Acceptance. The package consists of a Status memo, which provides all relevant dates and all information related to liquidated damages and claims, Form AD-12, Department Action Slip, and form DC-20, Certificate of Completion.

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Interim Completion – any separate completion requirement other than completion of the entire project, as specified in Subsection 108.10 of the Contract.

Program Manager – is the manager in charge of Capital Projects (delivery) for an assigned area and the immediate supervisor of the assigned Project Manager.

Project Manager – is the individual responsible for an assigned project's progress from Scope Development through to completion of construction. For projects administered by a unit other than Construction (usually Operations) the responsible unit manager will designate an individual to act as the Project Manager.

Regional Construction Engineer – means the Manager of a Construction Region and the immediate supervisor of the Field Manager. For projects that are administered by a unit other than Construction (usually Operations), the responsible unit manager will act as the Regional Construction Engineer.

Resident Engineer – is the designated individual directly responsible for supervising a construction project.

III. POLICY (None)

IV. PROCEDURE

A. Substantial Completion

Resident Engineer

1. When the Contractor has notified the Resident Engineer in that the project is substantially complete in accordance with Subsection 105.22 of the Contract Specifications, the following procedure will be followed:

NOTE: If Substantial Completion is an interim completion requirement of Subsection 108.10 of the Contract Specifications, also refer to Interim Completion, Section B.

Resident Engineer & Field Manager

2. Upon receipt of the Contractor's written notice that the project is substantially complete (a notice of completion may be accepted as a notice of substantial completion), the Resident Engineer, and the Field Manager will review and inspect the project. On Federal full oversight projects, the FHWA Area Engineer shall be notified by the Resident Engineer of this review and inspection.

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Resident Engineer

3. If the Resident Engineer determines that the project is not substantially complete, the Resident Engineer will notify the Contractor within five (5) working days. The Resident Engineer's letter will note what work remains to be completed in order for the project to be considered substantially complete. The Contractor is required to re-notify the Resident Engineer in writing upon completion of the work.

Resident Engineer, Field Manager & Project Manager

4. If the Resident Engineer with the verbal concurrence of the Field Manager determines that the project is substantially complete, the Resident Engineer will prepare a Substantial Completion Memorandum recommending that the project be found substantially complete. The memorandum will fix the date of Substantial Completion as the date of the Contractor's last acceptable notice of substantial completion.

Resident Engineer, Project Manager & Regional Construction Engineer

5. The Resident Engineer will submit the Substantial Completion Memorandum to the Regional Construction Engineer for approval. If the Regional Construction Engineer concurs, the Regional Construction Engineer shall sign the memorandum and return it to the Resident Engineer. The Resident Engineer will send the Project Manager a copy of the approved Substantial Completion Memorandum.

Following approval of the Substantial Completion memorandum, the Resident Engineer will process the next monthly estimate as a substantial completion estimate. The Resident Engineer will notify the Regional Construction Engineer when the substantial completion estimate has been processed via ACES, and is awaiting approval.

If the project has been approved as substantially complete, the Regional Construction Engineer will electronically approve the substantial completion estimate.

Manager, Accounting Operations

6. Reduce the retainage withheld for the Substantial Completion estimate and subsequent estimates in accordance with Subsection 109.07.

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Resident Engineer, Field Manager & Project Manager

7. Declaring a project substantially complete triggers the start of many closeout functions in anticipation of Completion. Some of these can be initiated prior to actual completion, but others will require Completion.

- a) Finalizing the as-built quantities.
- b) Processing of the Final Construction Order.
- c) Sending a list of missing documents to the Contractor. (e.g., payrolls, certifications, forms, etc.)
- d) Conducting a closeout meeting with the Contractor to discuss unresolved issues.
- e) Setting up and conducting the Corrective Action Inspection

B. Interim Completion

Resident Engineer, Field Manager, Project Manager

Failure to meet an interim completion date or substantial completion date:

1. The Resident Engineer will notify the Contractor in writing, that the project is behind schedule and that the appropriate liquidated damages will be assessed.

NOTE: If an extension of time, that would affect the interim completion date, is under consideration, the matter should be discussed with the Field Manager and Project Manager. Whereupon the Field Manager will evaluate the relative merits of the extension of time being considered and determine if the delay notice should be sent to the Contractor.

Resident Engineer

2. When the Contractor completes a portion of the project that has an interim completion date, the Contractor is required to notify the Resident Engineer in writing. Upon receipt of the Contractor's notice of interim completion, the Resident Engineer will review and inspect that portion of the project.

If the Resident Engineer determines that the portion of the project is not complete, the Resident Engineer will notify the Contractor in writing within five (5) working days. The Resident Engineer's letter will note what work remains to be completed in order for the portion of the project to be considered complete. The Contractor is required to re-notify the Resident Engineer upon completion of the work.

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Resident Engineer & Field Manager

3. If the Resident Engineer with the concurrence of the Field Manager determines that the portion of the project appears complete, the Resident Engineer will notify the Contractor of the actual interim completion date. The date of the Contractor's last required notice of interim completion shall be the actual interim completion date.

C. Partial Acceptance

Note: Partial Acceptance of an area or portion of the project is generally not performed for areas under the maintenance jurisdiction other than the Department. Additionally, Partial Acceptance is not performed where the maintenance of an area is in any way hindered by the remaining work. The decision to allow Partial Acceptance rests with Operations. The one area for which Partial Acceptance is routinely performed is the acceptance of Traffic Signals.

Resident Engineer

1. Upon receipt of the Contractor's written request for partial acceptance, the Resident Engineer will review and inspect the area(s) to be considered. The Contractor's written request shall clearly define the limits of the area to be considered. In order for an area to be accepted under the provisions of partial acceptance, the following criteria should be met:
 - All work within the area under consideration must be complete.
 - The area must be opened for the safe, convenient use by the public.
 - The area must not be required by the Contractor for the completion of the remaining areas of the project.

If the Resident Engineer determines that the area(s) should not be considered for partial acceptance, the Resident Engineer will notify the Contractor of the decision.

Resident Engineer, Field Manager & Project Manager

2. If the Resident Engineer with the concurrence of the Field Manager and Project Manager determines that the area is suitable for partial acceptance, the Resident Engineer shall set a date for a Partial Acceptance Inspection. The date of the Partial Acceptance Inspection shall be sent to the Interested Parties to allow a minimum of ten (10) working days from the receipt of the notification to review and inspect the area(s) under consideration.

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Interested Parties

3. The Interested Parties indicated in Completion (Section D - Number 5) will inspect the area under consideration for partial acceptance, and provide the Resident Engineer with a corrective action list on or before the date of the Partial Acceptance Inspection. Copies are not to be sent to the Contractor.

NOTE: On full oversight projects the FHWA shall be invited to the partial acceptance inspection; however, it does not relieve the NJDOT from correcting any deficiencies that may be noted by the FHWA in their final inspection of the entire project.

Resident Engineer

4. The Resident Engineer will prepare a Memorandum of Record, compiling all identified deficiencies noted by any of the Interested Parties. If the Resident Engineer identifies a particular deficiency as a design deficiency, the Resident Engineer will contact the initiator of the noted deficiency in question and the Project Manager to seek mutual agreement as to classifying the item as either a design deficiency or as a construction deficiency.

The Resident Engineer will prepare a memorandum to the Project Manager, listing all design deficiencies and any disputed deficiencies.

Project Manager, Executive Director of Regional Operations

5. The Project Manager will review the list and attempt to resolve disputed items with the initiator of the noted deficiency. The Project Manager will decide if any design deficiencies should be corrected under the contract. For Capital Program projects, the Project Manager will also notify the Program Manager of any remaining disputed deficiencies or design deficiencies. For projects initiated by Operations, the Project Manager will also notify the Director of Operations Support of any remaining disputed deficiencies or design deficiencies. The Project Manager shall communicate the recommended disposition of any deficiency directly with the Executive Director of Regional Operations and gain his written concurrence for the recommendation. The Project Manager will confirm the agreement via written document to the Executive Director of Regional Operations prior to taking formal action.

Program Manager or Director of Operations Support, & Project Manager

6. For Capital Program projects, the Program Manager shall decide the disposition of any remaining disputed deficiencies and/or decide if any other design deficiency shall be corrected under the contract. For Operations initiated projects, the Director of Operations Support shall decide the

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disposition of any remaining disputed deficiencies and/or decide if any other design deficiency shall be corrected under the contract. The Project Manager will inform the Resident Engineer of these findings and the appropriate Design unit of the uncorrected deficiencies.

Resident Engineer & Project Manager

7. The Resident Engineer will within thirty calendar days from the date of the Contractor's notice of partial completion, notify the Contractor that the area is not complete and inform him of the required corrective action. With the concurrence of the Project Manager, a Construction Order will be issued for any extra work or any additional work necessary to address any design deficiencies, which are required to be addressed under the contract with a time extension to complete the work. The Contractor is required to re-notify the Resident Engineer in writing upon completion of the work. If any additional or extra work is required, the Resident Engineer will notify all Interested Parties in writing. The Interested Parties will have the ability to review this additional or extra work in the subsequent Final Acceptance Inspection.

Interested Parties, Regional Construction Engineer & Resident Engineer

8. If any of the Interested Parties other than FHWA, objects to the partial acceptance under consideration, the Contractor's request for partial acceptance and the objection will be referred to the Project Manager prior to any decision. The Project Manager will advise the Resident Engineer whether the Contractor's request is to be denied or to over-rule the objection and to proceed with the partial acceptance. If the decision is to deny the Contractor's partial acceptance request, the Resident Engineer will notify the Contractor in writing that the request has been denied. If the decision is to overrule the objection, the Resident Engineer will proceed with partial acceptance. In the memorandum of partial acceptance, the Resident Engineer will note the objection and the Project Manager's decision to proceed with partial acceptance. A copy of this memorandum will be sent to the party who initially objected to the partial acceptance.

Resident Engineer

9. If there is no corrective action required and there are no objections to partial acceptance, the Resident Engineer shall prepare and sign a Memorandum of Partial Completion. Signatures recommending partial acceptance will be secured as required. The Resident Engineer will forward the Memorandum to the Regional Construction Engineer.

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Regional Construction Engineer, Executive Director of Regional Operations, Project Manager & Resident Engineer

10. If the Regional Construction Engineer concurs, the Regional Construction Engineer shall sign the Memorandum recommending partial acceptance and secure the signature of Executive Director of Regional Operations recommending partial acceptance except for Local Aid projects. The Regional Construction Engineer will forward the memorandum to the Project Manager for approval. If the Project Manager concurs, he or she will sign the memorandum. The Project Manager will send a copy of the approved memorandum to the Regional Maintenance Engineer, and the Resident Engineer. Upon receipt of the approved memorandum, the Resident Engineer will notify the Contractor of the partial acceptance in writing.

Resident Engineer

11. If any additional work is required for an area of the project, which has already received partial acceptance, the Resident Engineer will notify all of the Interested Parties.

D. Completion and Acceptance

Resident Engineer & Field Manager

1. If the Contractor fails to meet the requirements for the contract substantial completion or completion date the Resident Engineer will notify the Contractor in writing, that the Contractor is behind schedule and that the appropriate liquidated damages will be assessed.

NOTE: If an extension of time that would affect the contract substantial completion and/or completion date is under consideration, the matter should be discussed with the Field Manager and the Project Manager. Whereupon the Field Manager will evaluate the relative merits of the extension of time being considered and determine if the delay notice should be sent to the contractor.

When the Contractor is complete with all physical work on the project, the Contractor is required to notify the Resident Engineer in writing. [The letter should specify the name of the project and state that all work under the contract has been completed. It can be the same letter sent in compliance with Subsection 105.22.]

2. Upon receipt of the Contractor's written notice that the project is complete, the Resident Engineer will review and inspect the project to evaluate the notice of completion. In order for the contract to be considered finally complete and ready for acceptance, all work must be completed. This includes:

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- a) Landscaping work (except the requirements for replacement planting in accordance with Subsection 813.05 of the Contract Specifications)
- b) Final cleanup
- c) Repairs of any unacceptable work
- d) Submission of all documents required

Note: The Resident Engineer must review all materials testing results prior to Completion and Acceptance. The specifications concerning material acceptance has provisions, which may require removal or replacement of material or allow for removal and replacement of material in lieu of the application of penalties and reductions.

3. If applicable, the Resident Engineer shall obtain a Memorandum of Acceptance for Turf and/or Plantings from the Bureau of Landscape and Urban Design. If a growing season is needed to develop a stand of grass, the Resident Engineer will proceed with the directions for Completion and Acceptance except that a retainage amount equal to the value of the stand of grass will not be released until the turf is accepted. The Department Action, Form AD-12, for Final Acceptance and Final Payment will note that retainage will be held pending turf acceptance. Full retainage will be released upon notification from the Project Manager to the Director, Bureau of Accounting and Auditing after the turf has been accepted.
4. If the Resident Engineer determines that the project is not complete, he/she will notify the Contractor in writing within five (5) working days. The Resident Engineer's letter will note what work remains to be completed in order for the project to be considered complete. The Contractor is required to re-notify the Resident Engineer upon completion of the work.
5. When the Resident Engineer, with the concurrence of the Field Manager, and Regional Construction Engineer, determines that the project appears complete, the Resident Engineer shall set a date for a Corrective Action Inspection. The date of the Corrective Action Inspection shall be set to allow interested parties a minimum of ten (10) working days from the receipt of the notification to review and inspect the area(s) under consideration.

The following parties will be notified:

- Project Manager
- Field Manager
- Regional Construction Engineer
- Executive Director of Regional Operations
- Regional Maintenance Engineer (all Regions with jurisdiction)*
- Regional Electrical Engineer*
- Regional Traffic Engineer
- Manager, Maintenance Engineering (Bridge Painting contracts only)*

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Manager, Landscape and Urban Design*
FHWA*
Supervisor of Sign Shop, Maintenance Support (projects with GO signs)*
Third Party Participating Agencies (e.g. NJTPK, NJHA, Port Authority, ...)*
All County or Municipal Engineer with acceptance jurisdiction*
Utility companies (projects with work to be accepted by the utility company)*
Any other organization involved in the project

* If applicable – to be determined by the Resident Engineer and Project Manager.

Note: For projects administered by units other than Construction, the list of parties will be adjusted by the unit manager responsible for administration).

6. The Resident Engineer will confirm the date and time of the Corrective Action Inspection with the FHWA Area Engineer on all Full Oversight and Alternate Procedures projects. Furthermore, the Resident Engineer will notify the Project Manager that Form FHWA 1446-C must be submitted for Alternate Procedures project only.

Project Manager

7. The Project Manager will complete, sign, and submit the Form FHWA 1446-C to the FHWA Area Engineer. The form will include a statement noting the date, time and location of the Corrective Action /Acceptance Inspection.

Interested Parties

8. Interested Parties indicated in Number 5 (above) will inspect the area under consideration for acceptance, and provide the Resident Engineer with a corrective action list on or before the Corrective Action Inspection date. No copies are to be sent to the Contractor.

Resident Engineer

9. The Resident Engineer will prepare a Memorandum of Record, compiling all identified deficiencies noted by any of the Interested Parties. If the Resident Engineer identifies a particular deficiency as a design deficiency, the Resident Engineer will contact the initiator of the noted deficiency in question and the Project Manager to seek mutual agreement as to classifying the item as either a design deficiency or as a construction deficiency.

The Resident Engineer will prepare a memorandum to the Project Manager, with copies to the Field Manager and Regional Construction Engineer, listing all design deficiencies and any disputed deficiencies.

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Project Manager, Program Manager, Executive Director of Regional Operations (or initiator of deficiency comment)

10. The Project Manager will review the compiled list of deficiencies and attempt to resolve disputed items with the initiator of the noted deficiency. The Project Manager will decide if any design deficiencies should be corrected under the contract. For Capital Program projects, the Project Manager will also notify the Program Manager of any remaining disputed deficiencies or design deficiencies. For projects initiated by Operations, the Project Manager will also notify the Director of Operations Support of any remaining disputed deficiencies or design deficiencies. The Project Manager shall communicate the recommended disposition of any deficiency directly with the Executive Director of Regional Operations and gain his written concurrence for the recommendation. The Project Manager will confirm the agreement via written document to the Executive Director of Regional Operations prior to taking formal action.

Program Manager or Director of Operations Support & Project Manager

11. For Capital Program projects, the Program Manager shall decide the disposition of any remaining disputed deficiencies and/or decide if any other design deficiency shall be corrected under the contract. For Operations initiated projects, the Director of Operations Support shall decide the disposition of any remaining disputed deficiencies and/or decide if any other design deficiency shall be corrected under the contract. The Project Manager will inform the Resident Engineer of these findings and the appropriate Design unit of the uncorrected deficiencies.

Resident Engineer & Project Manager

10. The Resident Engineer will within thirty (30) calendar days from the date of the Contractor's notice of completion, notify the Contractor that the area is not complete and inform him of the required corrective action. With the concurrence of the Project Manager, a Construction Order will be issued for any extra work or any additional work necessary to address any design deficiencies, which are required to be addressed under the contract including a time extension to complete the work. The Contractor is required to re-notify the Resident Engineer in writing upon completion of the work. If any additional or extra work is required, the Resident Engineer will notify all the interested parties in writing. The interested parties will have the ability to review this additional or extra work in the subsequent Corrective Action/Acceptance Inspection.

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11. If there was corrective work, the Resident Engineer, upon re-notification from the contractor that all work is complete, the Resident Engineer will arrange another Corrective Action/Acceptance Inspection.

On all Federal Aid projects with full oversight, if the FHWA Area Engineer noted any corrective action on their Final Report, the Resident Engineer will write a letter to the FHWA certifying that any identified deficiencies were corrected.

12. If there is no corrective action required, the last Corrective Action Inspection is defined as the Final Acceptance Inspection. The Resident Engineer will prepare a memorandum of record noting that the Final Acceptance Inspection was held and noting that either no corrective work was required or all previously identified corrective action was satisfactorily completed. A copy of this memorandum will be sent to the Regional Construction Engineer, Field Manager and Project Manager.

After the Final Acceptance Inspection has been held and all submissions have been received, the project is deemed to be Complete and the project is ready for Final Acceptance.

13. The Resident Engineer will obtain a Letter of Acceptance for projects with areas, which are under the jurisdiction of an outside agency. The Resident Engineer will contact the representative of the agency and request an Acceptance Letter. In the event that the Resident Engineer cannot obtain a Letter of Acceptance, the following procedure will be followed:

If no deficiencies have been noted by the agency or the agency is unresponsive to the Resident Engineer's verbal request for a Letter of Acceptance, the Resident Engineer with the concurrence of the Field Manager will write a letter to the agency within two working days following the Corrective Action/Acceptance Inspection. The letter will note that the agency did not request any corrective action and request of Letter of Acceptance.

Resident Engineer & Field Manager

14. If the agency again fails to respond, the Resident Engineer, with the concurrence of the Field Manager, will write a memorandum to the Project Manager requesting acceptance without having received written acceptance by the outside agency. The memorandum will note that there were no unresolved deficiencies, but that the agency was non-responsive.

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If the agency refuses to write a Letter of Acceptance because a Design deficiency was not addressed under the contract (as per the decision of the Program Manager), the Resident Engineer will write a memorandum to the Project Manager. The memorandum will request acceptance without having received acceptance by the outside agency. The memorandum will note the reason for the agency's refusal to write a Letter of Acceptance.

Regional Construction Engineer & Resident Engineer

15. Concurrent with the Completion and Corrective Action Inspection process, the Resident Engineer will work to complete all asbuilts, resolve disputes with the Contractor, and process the final Construction Order.
16. Upon Completion, at the request of the Resident Engineer, the Regional Construction Engineer will prepare the Certificate of Completion, Form DC-20. The Resident Engineer will sign the Form DC-20 (5 copies) certifying Completion and recommending Acceptance. The Form DC-20 will then be submitted to the Regional Construction office for the Regional Construction Engineer's signature.

Regional Construction Engineer, Field Manager & Executive Director for Regional Operations

17. The Regional Construction Engineer will secure the following signatures on the five (5) Certificate of Completion; Form DC-20's as required:
 - Field Manager
 - Regional Construction Engineer
 - Executive Director for Regional Operations (for projects with State Maintenance jurisdiction)

Regional Construction Engineer

18. The Regional Construction Engineer will prepare a Status Memorandum (with all relevant dates, liquidated damage information, and information related to outstanding claims) and will forward it with the signed DC-20's, to the Project Manager.

NOTE: If the Contractor has submitted a Form DC-161 "Contractual Notice Form" in accordance with Specifications Subsection 107.02, and it remains unresolved, the Project Manager will proceed with the Completion and Acceptance process, except that the Department Action and Status Memorandum will note that a dispute is pending. If after Final Payment has been made, the resolution of the dispute results in a settlement for additional completion time, or a decrease in the amount of Liquidated Damages

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assessed, or additional compensation, a Department Action, Form AD-12 will be prepared and processed

Project Manager & Program Manager or Manager of Maintenance Engineering

19. The Project Manager will review the documents and if found acceptable will sign the Certificate of Completion, Form DC-20, and prepare and sign a Department Action, Form AD-12, for Final Acceptance and Final Payment. For Capital Program projects, the Project Manager will forward the DC-20, Department Action, Form AD-12, and Status Memorandum to the Program Manager. For projects initiated by Operations, the Project Manager will forward the DC-20, Department Action Form, AD-12, and Status Memorandum to the Manager of Maintenance Engineering Support.
20. For Capital Program projects, the Program Manager will review the documents and if found acceptable will sign the Certificate of Completion, Form DC-20, and the Department Action Form AD-12, and forward the documents to the Manager, Agreement Accounting. For projects initiated by Operations, the Manager of Maintenance Engineering Support will review the documents and if found acceptable will sign the Certificate of Completion Form DC-20, and the Department Action Form AD-12, and forward the documents to the Manager, Agreement Accounting.

Manager, Agreement Accounting

21. Ascertain the current conditions of funds for this project and if acceptable, certify the funds by signing the Department Action, Form AD-12. Return the Department Action to the Project Manager.

Project Manager

22. For Capital Program projects, the Project Manager will forward the DC-20, Department Action, Form AD-12 and Status Memorandum, originals and copies, to the Director of Project Management. For projects initiated by Operations, the Project Manager will forward the DC-20, Department Action Form AD-12 and Status Memorandum, originals and copies, to the Director of Operations Support.

Director of Project Management or Director of Operations Support

23. For Capital Program projects, the Director of Project Manager will review the documents; and if found acceptable, will sign the Certificate of Completion, Form DC-20, and the Department Action, Form AD-12 for Final Acceptance

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and Final Payment, and forward the documents to the Assistant Commissioner for Capital Program Management. For projects initiated by Operations, the Director of Operations Support will review the documents, and if found acceptable, will sign the Certificate of Completion, Form DC-20, and the Department Action, Form AD-12 for Final Acceptance and Final Payment, and forward the documents to the Assistant Commissioner for Operations.

Assistant Commissioner & the State Transportation Engineer

24. The Assistant Commissioner, will review the documents and if found acceptable, will sign the Certificate of Completion, Form DC-20 and the Department Action, Form AD-12 for Final Acceptance and Final Payment, and forward the documents to the State Transportation Engineer.
25. The State Transportation Engineer will sign the Certificate of Completion, Form DC-20 and the Department Action, Form AD-12 for Final Acceptance and Final Payment, and forward the documents to the Department Secretary.

Department Secretary

The Department Secretary will:

26. Sign and Date the Certificate of Completion, Form DC-20.
27. Prepare a "Letter of Acceptance" with ten (10) copies and forward as follows: Original "Letter of Acceptance" The letter to the Bonding Company and the Contractor instructs the bond company to release the Performance and Payment bond) to the Contractor and Copies to: the Bonding Company, Assistant Commissioner, Capital Project Management, Program Manager, Project Manager, Regional Construction Engineer, Regional Maintenance Engineer, Bureau of Accounting Operations/Agreement Accounting, Bureau of Construction Engineering, Bureau of Maintenance Engineering, and Bureau of Construction Services. An original of the Certificate of completion and copies will be distributed to the Project Manager upon completion of the final audit by Accounting Operations.
28. Sign and certify Department Action, Form AD-12, and assign Schedule of Approval number as per NJDOT Procedure No. 401.
29. Forward Original Schedule of Approval and attachments to E&O Copy Center for printing. When the Schedule of Approval is returned distribute in accordance with the list approved by the Commissioner, Department of

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Transportation and retain one (1) official copy to be maintained by the Department Secretary.

30. Schedule Microfilming of original certified Department Action (100), Form AD-12 and RE-27 and attachments. When the Department Action, Form AD-12 and attachments are returned from Microfilming distribute in accordance with the approved distribution list.

Manager, Accounting Operations/Agreement Accounting

31. Log in the Department Action, Form AD-12 as executed by the Department's Secretary and send Form AD-12 to the Bureau of Accounting Operation, (BAO).
32. Accounting Operations will record the date the Department Action Form AD-12, for Final Acceptance and Payment, was approved by the Department's Secretary, and will file it with an original Certificate of Completion, Form DC-20, and Status Memorandum.

Project Manager

32. The Project Manager will distribute copies of the Department Action, Form AD-12 and the Certificate of Completion, Form DC-20 in accordance with the approved distribution list. The Project Manager will distribute an original signature version of the Form DC-20 to the Contractor and, if applicable, copies to the Bureau of Structural Evaluation and Bridge Management (if the project involved work on structures), Manager, Bureau of Traffic Signals and Safety Engineering, Manager, Bureau of Landscape and Urban Design; and Manager, Bureau of Maintenance Engineer (Bridge Painting Contracts only).
33. On all projects, copies of the Form DC-20 and Form AD-12 will be sent to the Regional Construction Engineer. On Federal Aid projects receipt of The Form DC-20 and Form AD-12 by the Regional Construction Engineer will initiate the preparation and processing of the Federal Certification and Closeout documents.

E. Final Payment

After Acceptance (approval of the Department Action, Form AD-12) the Final Payment process may be initiated.

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Resident Engineer and Regional Construction Engineer

1. The Resident Engineer will prepare a Final Engineer's Monthly Estimate, via ACES upon finalization of As-Builts, and approval of the Final Construction Order. If the Department Action form AD-12, for Final Acceptance and Final Payment, has been approved, the Regional Construction Engineer will electronically approve the monthly estimate.

Manager, Bureau of Accounting Operations

2. Accounting Operations staff enters the data on the Contractor Payment System (CPS) to produce a Proposed Final Certificate, and forwards the Proposed Final Certificate to the Regional Construction Engineer.

Regional Construction Engineer and Resident Engineer

3. The Resident Engineer will review the Proposed Final Certificate to ensure it conforms to the Resident Engineer's records. If it is acceptable, the Resident Engineer will return it to the Regional Construction Engineer. If there is a discrepancy, the Resident Engineer will work to correct the error.
4. The Regional Construction Engineer will forward the Proposed Final Certificate to the Contractor with a Payment Voucher and a Form DL-72. The transmittal letter will request the Contractor's written acceptance of the Proposed Final Certificate. The acceptance is to be noted as an unconditional release on the Payment Voucher or as a conditional release if there are unresolved claims, as specified in Subsection 109.11 of the Specifications. The request will also note that if the Contractor does not respond within 30 days the failure to respond will be construed as acceptance of the Proposed Final Certificate.
5. The Regional Construction Engineer will track the Contractor's response and forward the response to Accounting, or if the Contractor fails to respond, forward a Payment Voucher with the statement noting the Contractor's failure to respond within the required time. The Contractor must certify on the Form DL-72 that all subcontractors have been paid any amounts due in previous progress payments and shall pay any amount due from the current payment, or has a valid basis to withhold payment. The payment process cannot proceed without a signed DL-72.

NOTE: Notification of claims must have been previously submitted in accordance with contract provisions on Form DC-161, "New Jersey Department of Transportation Contractual Notice Form".

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Manager, Bureau of Accounting Operations

1. When the executed payment voucher, and Form DL-72 is received from the Regional Construction Engineer, payment is made including cash retainage, if applicable. If the Department held bonds in lieu of retainage, then a memorandum is sent to the Bureau of Construction Services for release of bonds.

Manager Bureau of Construction Services, Procurement

7. Authorize the bank holding the escrow account to release bonds held to the proper amount.

NOTE: Release of bonds or payment of cash retainages should not occur until it is determined that all retainages may be released with this estimate.

Appropriate Claim Manager or Secretary, Department Claims Committee

NOTE: When final payment has been made and claims remain unresolved, the Administrative Process for the Review of Contract Disputes in the project specifications will be followed.

This process is terminated when either, the Contractor accepts the decision of an administrative review step or, the Contractor chooses to pursue resolution of the claims through litigation or, the final administrative review step has been held and the Contractor rejects the decision or, does not respond within the required time frame.

If the Contractor accepts the decision of an administrative review step for the settlement of the unresolved claim(s), the disposition of any claim including any claim settlement payment and adjustment to contract time and Liquidated Damages will be accomplished by Department Action, Form AD-12 in accordance with Procedure 401 and by Payment Voucher (Vendor Invoice).

On all FHWA funded projects, at each step of the administrative process for the review of contract disputes, the FHWA is to be kept informed of the following: the scheduled administrative review of the unresolved claims(s), the decision of the particular administrative review body along with a request for federal participation if a financial settlement of the claim(s) is indication and, the contractor's acceptance or rejection of the decision.

VI. AUTHORITY

N.J.S.A. Title 27

Current NJDOT Specifications for Road and Bridge Construction

EXHIBIT B

Port Authority Annual Cash Flow Allocation Schedule

Pulaski Skyway

Year	Annual Allocation
2012	\$164,000,000
2013	\$200,000,000
2014	\$210,000,000
2015	\$260,000,000
2016	\$235,000,000

Route 7, Hackensack River (Witpenn) Bridge

Year	Annual Allocation
2012	\$174,000,000
2013	\$135,000,000
2014	\$166,000,000
2015	\$90,000,000
2016	\$90,000,000

Route 1 & 9T, Extension

Year	Annual Allocation
2012	\$5,000,000
2013	\$18,000,000
2014	\$0
2015	\$25,000,000
2016	\$28,000,000

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 17th, 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.”

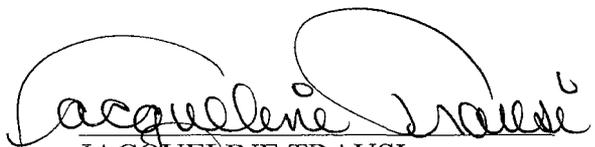
IX. COMPLETION OF PROGRAM. The NJDOT hereby acknowledges that the PORT AUTHORITY Program Funds may not cover the costs to complete the Program in its entirety and it further acknowledges that it may need to seek additional funding to complete the Program. The NJDOT represents that it shall complete each 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]

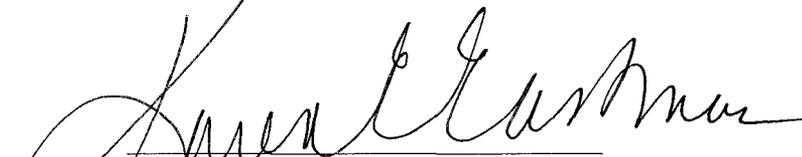
IN WITNESS WHEREOF, the NJDOT has caused this instrument to be signed by its Commissioner or designee, and witnessed by the Secretary of the NJDOT, and the PORT AUTHORITY has caused this instrument to be signed by its Executive Director or designee and witnessed by the Secretary of the PORT AUTHORITY,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

WITNESS:

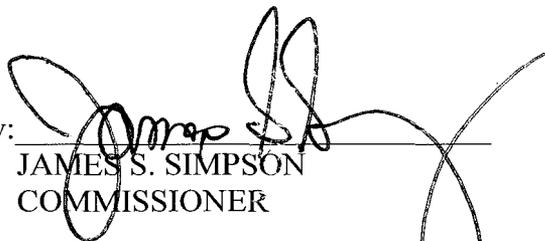

JACQUELINE TRAUSI
SECRETARY

May 17, 2012

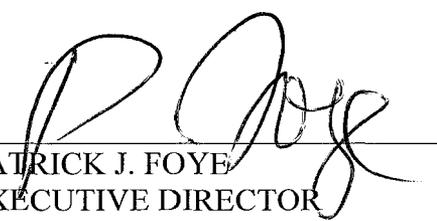
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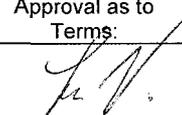
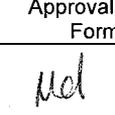

KAREN E. EASTMAN
SECRETARY

NEW JERSEY DEPARTMENT OF
TRANSPORTATION

By: 
JAMES S. SIMPSON
COMMISSIONER

THE PORT AUTHORITY OF NEW
YORK AND NEW JERSEY

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