

Torres-Rojas, Genara

From: wbierce@biercekenerson.com
Sent: Friday, August 07, 2015 1:00 PM
To: Olivencia, Mildred
Cc: Torres-Rojas, Genara; Van Duyne, Sheree; Ng, Danny
Subject: Freedom of Information Online Request Form

Information:

First Name: William
Last Name: Bierce
Company: Bierce & Kenerson, P.C.
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State: NY
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Email Address: wbierce@biercekenerson.com
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Required copies of the records: Yes

List of specific record(s):

Any and all contracts and agreements with Statue Cruises, or any of its subsidiaries, including copies of all amendments, modifications, renewals and addenda to said contracts or agreements.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

September 18, 2015

Mr. William Bierce
Bierce & Kenerson, P.C.
420 Lexington Avenue, Suite 2920
New York, NY 10170

Re: Freedom of Information Reference No. 16229

Dear Mr. Bierce:

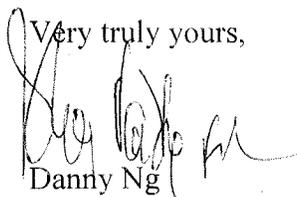
This is in response to your August 7, 2015 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for copies of "any and all contracts and agreements with Statue Cruises, or any of its subsidiaries, including copies of all amendments, modifications, renewals and addenda to said contracts or agreements."

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/16229-C.pdf>. Paper copies of the available records are available upon request.

Pursuant to the Code, certain portions of the material responsive to your request are exempt from disclosure as, among other classifications, personal privacy.

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
150 Greenwich Street
New York, NY 10007
T: 212 435 7348 F: 212 435 7555*

THE PORT AUTHORITY OF NY & NJ

One World Trade Center
New York, N.Y. 10048

Law Department

Patrick J. Falvey
General Counsel
(212) 466-7691
(201) 622-6600 x7691

Contract Division
(212) 466-8732

November 3, 1988

V.J. Rubino, Esq.
Hartz Mountain Industries, Inc.
400 Plaza Drive
P.O. Box 1411
Seacaucus, New Jersey 07094

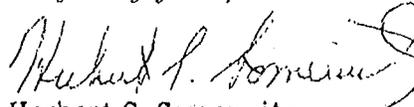
G.N. Schragar, Esq.
Dreyer & Traub
101 Park Avenue
New York, New York 10178

Re: Letter - S. Berger to A. Imperatore and G. Heller Re Ferry
Transportation Agreement Between The Port Authority of New York and
New Jersey and Arcorp/Hartz Dated November 3, 1988

Gentlemen:

I have reviewed the above referenced letter, and it is my opinion that such
letter is duly authorized and binding upon the Port Authority.

Very truly yours,



Herbert S. Somerwitz
Assistant Chief
Contract Division

THE PORT AUTHORITY OF NY & NJ

One World Trade Center
New York, N.Y. 10048

Stephen Berger
Executive Director

(212) 466-7271
(201) 622-6600 x7271

November 3, 1988

Mr. Arthur Imperatore
A.P.A. Transport Corp
A.P.A. Truck Leasing Corp
Remus Realty Corp
c/o Arcorp Properties
Pershing Road
Weehawken, NJ 07087

Mr. Gene Heller
Hartz Mountain Industries, Inc.
400 Plaza Drive
P.O. Box 1411
Secaucus, New Jersey 07094

**RE: FERRY TRANSPORTATION AGREEMENT BETWEEN THE PORT AUTHORITY OF NEW
YORK AND NEW JERSEY AND ARCORP/HARTZ**

Dear Gentlemen:

Your staff and counsel have asked for a statement of certain clarifications regarding understandings that we have reached concerning the referenced agreement. The following are such understandings.

PROPERTY RIGHTS

The agreement incorporates by reference the final property rights agreements with Battery Park City and with New Jersey Transit. During our negotiations we forwarded to you the drafts of the initial property rights agreement with Battery Park City and the draft of the initial lease agreement with New Jersey Transit. It is understood by us that we will provide, under the agreement, the property rights necessary for you to operate the service and perform all the obligations imposed upon you in our agreement. Further, you shall not be subjected to additional impositions not currently reflected in those draft property rights agreements, and we will, of course, seek your counsel and advice on the permanent property rights agreements during their negotiations and prior to their execution. However, we have not agreed that the permanent property rights agreements should be subject to your prior consent.

MAINTENANCE DREDGING COSTS

Our agreement provides that you undertake the responsibility for operation and maintenance costs for the terminal facilities and that you are permitted to recoup those

THE PORT AUTHORITY OF NY & NJ

Messrs. Imperatore and Heller

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costs from terminal revenues, as more fully set forth in the agreement. It is our understanding that the operations and maintenance costs will include certain maintenance dredging costs and that you are permitted to recoup costs associated with dredging from terminal revenues, including landing fees from other services. However, as provided for in our agreement, landing fees must be imposed on a non-discriminatory basis and have to be in all other respects reasonable.

COMMENCEMENT OF SERVICE AND VESSEL PROCUREMENT

The agreement provides that you will commence service four months from the date of contract execution, subject to allowances for extension of time for procurement of permits and property rights by the Authority, as well as procurement of the operating permit for the system by Arcorp/Hartz. The operating permit referred to in the contract was the New York City DOT permit and no other. We will, at the time of your application to the City for such permit, at your request send a letter endorsing your application and request that the City expedite issuance of the permit. However, your ordering of vessels is not conditioned upon your receipt of the operating permit. In the event that we become aware of any other operating permit requirement, we would, of course, discuss this issue with you.

OPTION TO EXTEND THE TERM OF THE AGREEMENT

The agreement provides that it may be extended for 10 additional years after its initial term, and that if such option is not exercised, the Port Authority has the right to purchase vessels and equipment for purposes of continuing service. It is our understanding that the Port Authority will give you reasonable prior written notice in the event it elects to purchase same prior to the conclusion of the agreement.

SECONDARY SERVICE TO SOUTH FERRY

Paragraph i of Section 3.02e was intended to provide for a second service when the 6,000 limitation anticipated in the permanent Battery Park City agreement is exceeded. As you know, the initial property rights agreement contains the further restriction of 3,000. It is our understanding that you have no obligation to commence a second service if the initial 3,000 is exceeded, nor does the Port Authority have any obligation to underwrite the operating expense of such service other than providing the site. However, you do have the option of commencing a second service in the event the 3,000 is exceeded and the permanent property rights agreement with BPCA (with the higher limitation) is not in place.

STORAGE OF SUPPLIES AT THE TERMINALS

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With regard to Section 3.02 (k) Paragraph 7.(2)(a), the reference with regard to your obligation to keep the terminal free from stored supplies or tools was intended to provide for clear and unobstructed public areas and not to prevent your storage in non-public areas of necessary tools and equipment to support the service. Of course, any such storage would be permissible as long as it complies with all appropriate laws, codes, regulations and safety standards.

ADVERTISING AND PROMOTION

The provision with regard to advertising and marketing, Section 5, Paragraph 5.01, was intended generally to recite the method and type of advertising you would employ. We anticipate that, subsequent to the execution of the agreement, you will develop a marketing program and that we will assist you in that effort. That program will be generally in accordance with the agreement, but the agreement is not intended to impose unalterable requirements as to media or method.

RISKS ASSUMED AND INSURANCE PROVISIONS

The provision with regard to your assumption of risk and the requirement to indemnify as to acts or omissions of the Authority or third persons was clearly intended to include acts or omissions which constitute negligence, and further, as recited in the agreement, such assumption of risk is coextensive with the limits of insurance you are required to provide. There is, however, no such limitation on the assumption of risk as to your own acts or omissions or those of your employees, agents, officers or directors. Paragraph (a) of Section 6 is intended to be read in conjunction with and in light of the foregoing.

With regard to your requirement to indemnify third persons, it was clearly our understanding that the indemnification requirements in the next to final paragraph of the "risks" clause emanates from the Battery Park City agreement and the New Jersey Transit lease as to those third persons identified in those draft documents and as listed ad seriatim in our agreement and no others. Further, it is the intent of the Authority as reflected in our agreement to provide for property-casualty insurance for the permanent facilities that the Port Authority funds and owns. The comprehensive general liability policy for the operation will be provided by you. We certainly wish to coordinate our insurance efforts to provide integrated coverage. Still further with regard to the limits of insurance you are required to provide, we understand that you will provide a single limit as specified in our agreement, but that you are currently exploring the potential for providing this through primary and excess layer insurances. There is nothing in our agreement intended to

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prohibit your developing such an insurance program.

OPERATING PERMITS

With regard to Section 8, Paragraph 8.02, the Authority will certainly cooperate, support, and provide whatever assistance we can to you for the performance of your obligation to obtain all operating permits legally required for operating a service.

REPRESENTATION AND WARRANTIES

It is clearly our understanding that the representation and warranties as set forth in Section 14 are made by each of the entities of the Arcorp/Hartz group for itself.

LABOR DISPUTES

With regard to Section 22.09 - Labor Disputes, it is clearly our understanding that this implies no obligation on your part to take any action to resolve labor disputes directly with PATH.

APPROVALS

Section 22.14. It is our understanding that the provisions which require that approval shall not be unreasonably withheld implicitly requires that approvals cannot be unreasonably delayed.

CONTRACT ADMINISTRATION MATTERS

The contract sets forth provisions for extension of time and further sets forth standards for service. Any request for extension of time shall be done so by way of letter to the Director of the Office of Ferry Transportation requesting an invocation of that provision, setting forth the specific reasons for the request. Such requests will receive favorable consideration if based upon good cause shown and/or result in an improvement of quality of service or if the interest of the Authority or the project are better served. Further, any departures, modifications or substitutions regarding operating provisions of the contract such as the provisions for fueling, waste disposal and vessel storage should likewise be requested in writing. The Authority will seek to obtain, where required, the property owners' consent. Such request will receive favorable treatment where the basis for such request is sound and where it results in more efficient service and/or a higher quality of service.

PERFORMANCE BOND REQUIREMENT

1. The phrase "which fully indicates the financial capacity of

THE PORT AUTHORITY OF NY & NJ

Messrs. Imperatore and Heller

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- the constituent entities to carry out the remaining financial commitments of Arcorp/Hartz under this agreement" indicates a level of comprehensiveness of the financial statement; whether such financial capacity exists shall be expressed in the opinion of the CPA.
2. In drawing his opinion, the CPA may rely on the statements and other information furnished by other CPAs meeting the standards set forth in the agreement.
 3. In the event Arcorp/Hartz cannot obtain the opinion of a CPA as contemplated, the Port Authority's Chief Financial Officer will review the comprehensive financial statements and other valuation information furnished and determine whether the constituent entities' financial position is such as to permit them to carry out their obligations for the maximum remaining period of performance and whether a Performance Bond is required.
 4. The statement that "each constituent entity agrees that it will not during the term or extended term of this agreement willfully substantially diminish or dilute its assets or resources" is intended to be read in conjunction with the remainder of the section and consistent with the intent of those provisions is intended to mean that such diminution or dilution shall not be considered substantial unless it renders insufficient the ability of the constituent entities to carry out the remaining financial commitment of Arcorp/Hartz for the maximum remaining period of performance under the Agreement.
 5. In determining the bond amount, the exposure remaining under the agreement shall be measured and the determination shall be made reasonably and not arbitrarily taking into account all relevant circumstances and taking into account any submittals or presentations which Arcorp/Hartz may wish to make to the Authority.
 6. In determining any applications by any of the constituent entities that one or more of them be released from its obligations under the agreement, such determination shall be made reasonably and not arbitrarily taking into account all relevant circumstances and taking into account the ability of the remaining constituent entities to carry out the remaining financial commitment of Arcorp/Hartz for the maximum remaining period of performance under the Agreement, and any submittals or presentations which such constituent entities may wish to make to the Authority.

ASSIGNMENT TO OPERATING ENTITY

Assignment to an operating entity in accordance with the contract provisions shall require no approval by the Port Authority, but shall require notice.

THE PORT AUTHORITY OF NY & NJ

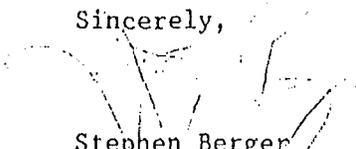
Messrs. Imperatore and Heller

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I trust the above accurately and clearly reflects our understandings.

Sincerely,



Stephen Berger
Executive Director

cc: K. Ascher, G. Cancro, P. Falvey, M. Goldfein,
J. Green, C. Maikish, J. Rubino, T. Scullin, H. Somerwitz

CC FORMED

Ferry Transportation Agreement
Between
The Port Authority of New York and New Jersey
and
Aerotp/Hartz

FERRY TRANSPORTATION AGREEMENT

BETWEEN

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

AND

ARCORP/HARTZ

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FERRY TRANSPORTATION AGREEMENT

AGREEMENT, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY having an office at One World Trade Center, 37 South, New York, New York 10048 (hereinafter referred to as the "Port Authority or Authority") and Hartz Mountain Industries Inc., a business corporation organized under the laws of the State of New York, with principal offices at 400 Plaza Drive, Secaucus, New Jersey 07794, APA Truck Leasing Corp., a business corporation organized under the laws of the State of New Jersey, with principal offices at 2100 88th Street, North Bergen, New Jersey 07047, APA Transport Corp., a corporation organized under the laws of the State of New Jersey, with principal offices at 2100 88th Street, North Bergen, New Jersey 07047, Remus Realty Corp., a business corporation organized under the laws of the State of New Jersey, with principal offices at Foot of Pershing Road, Weehawken, New Jersey 07087, (D.B.A. Arcorp Properties), hereinafter collectively referred to as "Arcorp/Hartz" having an address at 400 Plaza Drive, P.O. Box 1411, Secaucus, New Jersey 07094. All obligations of "Arcorp/Hartz" are obligations under and in connection with this agreement.

W I T N E S S E T H:

WHEREAS, the Port Authority has requested proposals for the

implementation of a Ferry Transportation System between Hoboken, New Jersey and lower Manhattan pursuant to a certain request for a proposal dated October, 1987 (hereinafter referred to as "RFP"); and

WHEREAS, Arcorp/Hartz has made a Ferry Transportation System proposal; and

WHEREAS, the Port Authority and Arcorp/Hartz desire to set forth their agreement with respect to the establishment and operation of ferry service by Arcorp/Hartz between Hoboken and lower Manhattan.

NOW, THEREFORE, the parties hereby agree as follows:

SECTION 1 - GRANT OF RIGHT TO OPERATE A LOWER MANHATTAN FERRY SERVICE

1.01 - The Port Authority hereby grants to Arcorp/Hartz the exclusive right, to the extent permitted by law, to operate a lower Manhattan commuter ferry service between the property procured by the Authority at Hoboken Terminal New Jersey, to the property procured by the Authority at Battery Park City Manhattan, and from the Hoboken Terminal to such other lower Manhattan expansion sites procured by the Authority, and Arcorp/Hartz agrees to provide said service as hereinafter more particularly provided, (see par. 3.02e), said provision of service to be subject to all of the provisions of the Agreements between the property owners and The Port Authority for the procurement of the said sites (hereinafter referred to as the "property agreements"). Upon execution of said property agreements the parties shall

annex copies thereof to this Agreement and said agreements shall be deemed part of this Agreement. Said service shall bear an appropriate logo identifying Arcorp/Hartz and Port Authority participation. In consideration of the obligation of Arcorp/Hartz to provide a lower Manhattan ferry service as set forth herein, and in furtherance of the Authority's policies to foster efficient utilization of the Trans-Hudson transportation network, promote an efficient and orderly waterfront development and to promote efficient utilization of its existing vehicular trans-Hudson crossings, to the extent permitted by law, The Port Authority agrees not to grant any terminal landing rights at the Battery Park City Terminal to any ferry service not operated by Arcorp/Hartz, originating out of the Hoboken Terminal or any location within a reasonable walking distance therefrom. A reasonable walking distance shall, in no event, mean a distance in excess of two miles. For the policy reasons set forth above and in consideration of the obligations of the Port Authority set forth above, Arcorp/Hartz agrees that it will not establish a ferry service originating from the Hoboken Terminal and the area as described above, which in the sole determination of the Authority is injurious to the mass transit commuter services provided by PATH on its Hoboken to 33rd Street line, without the express written approval of the Port Authority.

1.02 - PURPOSE OF AGREEMENT-ADJUSTMENTS TO SERVICE TO BE PROVIDED

The parties recognize and agree that it is the basis for and essence of this Agreement that Arcorp/Hartz provide throughout the term of this Agreement sufficient ferry capacity to the end that the Port Authority Trans-Hudson Corporation PATH Railroad line from Hoboken, New Jersey, to World Trade

Center, New York be relieved from passenger demand beyond its then-current passenger carrying capacity. To that end, Arcorp/Hartz agrees to throughout the term of this Agreement use its best efforts to relieve PATH from such overdemand by providing a mass transportation type ferry service, as otherwise described in this Agreement, capable of relieving PATH from such overdemand; and Arcorp/Hartz further agrees to make such adjustments in the ferry service actually provided, within the specific limitations and restrictions on the ferry service set forth in this Agreement, to achieve such result. It is recognized by Arcorp/Hartz that such adjustments in ferry service may include but shall not be limited to, provision of additional or larger vessels, fare adjustments, adjustment of headways, provision of additional routes and provision of additional passenger amenities.

1.03 - CONTROL AND SUPERVISION OF SERVICE

Arcorp/Hartz will staff all operating positions and will manage and oversee the operations of the ferry service provided hereunder on a day to day basis. The Port Authority shall not be required to provide any staff or to oversee any of the day to day operations of the ferry service but will have at all times the right of inspection and observation and comment of all operations by Arcorp/Hartz.

SECTION II - TERM OF AGREEMENT

2.01 - The term of this agreement shall be 20 years plus the period of time from the execution of a formal agreement to start up of service.

2.02 - In the event the Authority requests Arcorp/Hartz, within the last three years of this agreement to make specified necessary and proper substantial capital reinvestment in the ferry system and Arcorp/Hartz agrees in writing to do so no later than six months prior to the termination date, or in the event the Authority determines that Arcorp/Hartz has made such similar reinvestment within a five year period prior to the last three (3) years of this agreement, then in that event Arcorp/Hartz shall have the option to continue this agreement for ten additional years. If Arcorp/Hartz does not exercise this option, the Port Authority will have the right to purchase at fair market value and take immediate possession of any and all plant, materials, equipment and other facilities provided by Arcorp/Hartz for the exclusive purpose of providing under this Agreement ferry service between Hoboken Terminal and lower Manhattan, and Arcorp/Hartz shall not remove any of the same without the express permission of the Port Authority.

2.03 - The parties agree that both 1) the obtaining by the Port Authority of the property rights at Hoboken and Battery Park City as set forth in this agreement and 2) the obtaining of the appropriate Project Authorizations and Project Certifications by the Port Authority Board of Commissioners as required in connection with the obligations of the Port Authority as set forth in this Agreement, are of the essence of this Agreement and constitute conditions precedent to its continuance.

Therefore, in the event that at any time during the term of this Agreement either 1) the Port Authority is unable to provide the contemplated property rights despite its exercise of all reasonable efforts, or 2) the appropriate

authorizations and certifications of the Port Authority Board of Commissioners required for the Port Authority to fulfill its obligations as set forth in this Agreement cannot be obtained, then this Agreement shall be deemed suspended at 30 days from the time the Port Authority notifies Arcorp/Hartz of such an occurrence without further obligation by either party except as set forth expressly in this Agreement, notice of such an event not to be unreasonable delayed. Upon such notice Arcorp/Hartz may elect, within 30 days, at its sole option, to finally and irrevocably terminate this agreement without further obligation of either party excepting that the Port Authority shall reimburse Arcorp/Hartz for:

- a. Arcorp/Hartz's necessary continuing expenditures after such termination of this Agreement under binding non-terminable agreements in connection with providing the ferry service, subject to Arcorp/Hartz's obligation to mitigate such expenditures.
- b. Unamortized development costs, including up to the first 3 years of accumulated operating losses, subject to Arcorp/Hartz's obligation to mitigate such expenditures, not to exceed \$3 million.
- c. If Arcorp/Hartz shall elect in writing within 30 days after receipt by the Port Authority of such notice of termination described above to transfer title to the equipment purchased by Arcorp/Hartz for the providing of the ferry service (including but not limited to temporary terminals and vessels), then the Authority shall reimburse Arcorp/Hartz for the unamortized cost of

such equipment and shall receive title from Arcorp/Hartz free and clear of any third party rights; if Arcorp/Hartz agrees to retain title to such equipment after termination there shall be no payment by the Port Authority. Arcorp/Hartz may request that the Authority purchase some but not all of the equipment, and the parties may agree that Arcorp/Hartz will convey title to the Port Authority to a portion of the said equipment and retain title to the balance in which case the Authority shall reimburse Arcorp/Hartz for the unamortized cost of the equipment conveyed to the Authority.

- d. In the event that Arcorp/Hartz does not elect such termination, the parties may agree in writing, subject to such approvals and certifications as may be required, to continue trans-Hudson ferry service on such a modified basis as may be reflected in such writing. Arcorp/Hartz may elect to run trans-Hudson lower Manhattan ferry service from an alternate site procured by the Authority (as per 3.02e) for a trial period of one year, under the same terms and conditions as under this Agreement, and after such trial period may elect to continue such service under the same terms and conditions as under this Agreement or may elect termination of this Agreement under the provisions set forth above in this paragraph.

In the event this Agreement is suspended as set forth above, since the exclusivity of the route was an inducement to Arcorp/Hartz to enter into this Agreement, and Arcorp/Hartz would have expended

monies to establish ferry service as contemplated under this Agreement, the Authority agrees not to run or have run by another operator service from Hoboken to Battery Park City for such period of suspension of this Agreement, which shall, in no event, exceed five years in duration. Further, in the event during the period of such suspension or subsequent to termination, the Authority obtains the property rights or obtains the Project Authorizations or Certifications necessary to continue this Agreement, Arcorp/Hartz shall have the option to reinstate service under the terms and conditions of this Agreement which shall be deemed revived at the point in the term remaining at the time of suspension.

SECTION III - DESCRIPTION OF FERRY SERVICE

3.01 - Arcorp/Hartz agrees to commence ferry service by the date which is four (4) months from the date of execution of this agreement subject to an extension of the time equal to the elapsed time between execution of the agreement and the occurrence of the latest event set forth below:

- a. The receipt by Arcorp/Hartz of those permits and approvals to be provided by the Authority.
- b. The procurement of all necessary property rights by the Authority.
- c. The procurement of all operating permits to be obtained by

Arcorp/Hartz, provided Arcorp/Hartz has made timely and diligent application for such permits.

Notwithstanding the above Arcorp/Hartz shall contract for the procurement of all vessels and proceed with the construction thereof as required for initial service when so ordered in writing by the Executive Director of the Authority. The Authority shall have the right to issue such notice to proceed prior to the Authority procuring the required permits and rights detailed under (a) and (b) above and in such event will reimburse Arcorp/Hartz for any additional expenses incurred as a result of said proceeding with vessel construction by reason of any Authority delay in obtaining such and for all expenses incurred as the result of failure to procure such permits or rights. The sum of such expense is defined as (1) vessel storage charges, (2) operating expenses if any, and (3) interest on funds expended by Arcorp/Hartz for the purchase of the boats at the prime rate after completion of the vessels but before the placing in service of such vessels. In the event the aforesaid delay period exceeds one year, the Authority shall have the option to end its obligation to further reimburse Arcorp/Hartz for such additional expenses by purchasing the vessels at Arcorp/Hartz's contract price and shall have the right to otherwise end this agreement. Arcorp/Hartz may, after the Authority exercises its option elect to extend this Agreement beyond the one-year period at its sole risk and expense. It is expressly understood that Arcorp/Hartz's obligation to proceed with construction of the vessels is not contingent on paragraph (c) above.

3.02 - Service - Arcorp/Hartz shall initiate service with the following minimum characteristics and shall expand same as required by this Agreement.

- a. Initial Headway - Arcorp/Hartz will provide peak period departures Monday through Friday on a year round basis with departures on the best achievable headways with initial vessels but in no event shall such headway exceed every ten (10) minutes; or more frequently at the election of Arcorp/Hartz, from Hoboken.
- b. Service Capacity - The ferry system provided by Arcorp/Hartz will initially consist of 4 vessels, providing an initial peak hour passenger capacity of at least 2100.
- c. Hours of Operation - In general, hours of operation will be as follows:
 - a. AM peak period - 7 AM to 10 AM.
 - b. PM peak period - 4 PM to 7 PM.

In addition, Arcorp/Hartz will be able to provide non close headway off-peak service, provided such service is mutually agreed upon, is consistent with relevant property rights agreements, and is not injurious to PATH.

- d. Schedules - Arcorp/Hartz will post Port Authority-approved schedules twice a year (concurrent with PATH schedule changes), or

more frequently, upon mutual agreement. Arcorp/Hartz shall have the right to undertake minor changes in the posted schedule due to daily operational considerations.

- e. Site Locations - Initial service will begin between Hoboken, New Jersey and Battery Park City, New York City, New York. Arcorp/Hartz agrees to operate a second service to a non-Battery Park City location in lower Manhattan, at the OMI Coast Guard site (Exhibit 1) at South Ferry or such other site that the parties may mutually agree upon, in the event that;

- i. The volume of passengers in the peak hour and peak direction exceeds those permissible under the Battery Park City Agreement, irrespective of market conditions elsewhere, and if requested in writing by the Port Authority and/or;
 - ii. Earlier, if the market supports service at this second location.

Arcorp/Hartz agrees at its sole cost and expense to provide initial floating dock facilities similar to the interim facilities specified hereinafter for the Hoboken to Battery Park City service. The Port Authority may elect at its sole cost and expense to provide more substantial facilities.

- f. Backup Systems/Service Disruptions - Arcorp/Hartz agrees to maintain a Port Authority - approved spare vessel for use on this

service meeting the requirements for vessels in this Agreement. Use of this vessel for any other service during the peak period requires Port Authority approval.

- g. Fare Collection - Arcorp/Hartz will initially implement a fare collection system as set forth in Exhibit 2. A more sophisticated system will be investigated at a later date by Arcorp/Hartz, in cooperation with the Port Authority and New Jersey Transit.
- h. Security and Emergency Response - Arcorp/Hartz will provide appropriate security on a 24-hour basis. Security and emergency response plans will be submitted to the Port Authority for approval at least 60 days prior to the commencement of ferry operations and shall meet all requirements of the Property Agreements.
- i. Fueling and Waste Disposal - Fueling for vessels and garbage disposal (including liquid and solid waste) will be accomplished in a safe and environmentally sound manner at Arcorp's Weehawken Ferry facility. Terminal waste will be disposed of in a safe and environmentally sound manner by the terminal operator.
- j. Interim Terminals - The Authority shall provide Arcorp/Hartz with rights consistent with the Authority rights obtained from the property owners, for the term and extended term of this agreement for a nominal consideration, which shall provide Arcorp/Hartz with the right to use land for Terminal Facilities adequate to comply

with the terms of this agreement at Battery Park City, New York and Hoboken, New Jersey. The Port Authority shall lease the Hoboken terminal site from New Jersey Transit. Arcorp/Hartz will construct and install at its own expense two floating docks in Hoboken in the vicinity of the Old Ferry Terminal and two floating docks in locations obtained for such purposes by the Port Authority at or in the vicinity of North Cove of the World Financial Center of Battery Park, Manhattan (herein referred to as the "Interim Docking facilities"). Said interim docking facilities will serve as interim docking facilities until such time as the Port Authority has constructed permanent terminal facilities in Hoboken and at Battery Park in Manhattan. The interim docking facilities provided by Arcorp/Hartz at their sole expense will have two (2) slips, and waiting areas and other passenger areas will be covered, heated (with radiant fixtures), and wind-shield protected. All ramps will also be covered and wind-shield protected. Appropriate lighting, public address and communication systems, signage, and non-slip walking materials will be used. At Hoboken, land side improvements provided by Arcorp/Hartz will consist of covered walkways and other amenities set forth in Exhibit 3. At Battery Park City, landside Arcorp/Hartz improvements will consist of walkways (covered, if permitted by Battery Park City) from the ferry terminal to the cul-de-sac on North End Avenue and other amenities as set forth in Exhibit 3.

1. DESIGN AND CONSTRUCTION

- a. The Port Authority will have the right of final review, comment and approval.
 - b. Arcorp/Hartz will be subject to the guidelines and procedures listed in the Port Authority's Tenant Construction Review Manual in effect at the time of the execution of this Agreement to the extent applicable.
 - c. The Port Authority reserves the right, at its sole cost and expense, to assign a construction inspector during part or all of the time during terminal construction.
 - d. Arcorp/Hartz will promptly comply with all design and construction guidelines, instructions and directives by all appropriate regulatory review agencies.
 - e. Arcorp/Hartz will fund the capital cost for all initial terminal design and construction.
 - f. The construction schedule will be supplied by Arcorp/Hartz within 15 days of contract execution.
2. Interim Docking Facilities Operations/Maintenance - Arcorp/Hartz, as owner of the interim docking facilities will be responsible for the operation and maintenance of these facilities, including but not limited to those responsibilities set forth in Exhibit 4.

3. Additional Usage Of Interim Docking Facilities - At the request of the Port Authority and, subject to the grant of exclusivity in this agreement, Arcorp/Hartz will allow other ferry services to land at these terminals so long as (a) they do not interfere with the operation of the Hoboken commuter service and (b) they do not violate the terms of the Agreements between the Port Authority and the Battery Park City Authority and New Jersey Transit. Arcorp/Hartz agrees to provide the Port Authority with reasonable written notice in advance of granting permission for landing rights to other ferry service providers. Unless such time period is otherwise waived in writing by the Port Authority, reasonable notice shall mean at least 60 days prior to such grant. For the policy reasons set forth in paragraph 1.01 and in recognition of the limitation of capacity at the Battery Park City New York Terminal, the parties agree that terminal access for ferry services, other than the prime service of Hoboken to Battery Park City, shall be governed by the following principles:

(1) Capacity shall be reserved on a priority basis, for the then existing and reasonably foreseeable future, for relief of the PATH Hoboken to World Trade Center line haul demand including the Pavonia and Exchange Place Stations. Capacity relief for the Hoboken PATH Station shall receive priority over relief for Pavonia and

Exchange Place stations.

- (2) Arcorp/Hartz shall be entitled to a reasonable reserve of terminal capacity at The Battery Park City terminal, for the then existing and reasonably foreseeable future demand requirements of the Hoboken to World Trade Center Service to ensure an orderly growth of the prime services detailed above.
- (3) The Port Authority's Trans-Hudson policy considerations shall be taken into account.

All landing fee revenues from such additional services to initial terminals will be for the benefit of Arcorp/Hartz. Arcorp/Hartz shall set reasonable and non-discriminatory landing fees for accommodating any other services. Arcorp/Hartz will provide the Port Authority with reasonable written notice of changes in its schedule of landing fees. Unless such time period is otherwise waived in writing by the Port Authority, reasonable notice shall mean at least 30 days prior to such proposed changes taking place.

- k. Permanent Terminals - The Port Authority shall design and construct, at its own expense, using designs and specifications chosen by the Port Authority, consistent with the provisions of k.4 below, permanent terminal facilities at both Hoboken Terminal and Battery Park City in lower Manhattan. The Port Authority has allocated in its Five Year Capital Program \$156 million for

effectuation of its ferry program, including an allocation for the permanent ferry terminals anticipated by this Agreement. In order to provide for compatibility of terminal design with vessel design, Arcorp/Hartz shall provide all necessary assistance through its in-house capabilities with respect to the design of the permanent terminal facility proposed for Hoboken, New Jersey. Arcorp/Hartz has agreed to consider defraying the cost of construction of the permanent terminal facility proposed for Hoboken, New Jersey, provided: (i) Arcorp/Hartz is permitted to design said facility, (ii) Arcorp/Hartz is permitted to control construction of said facility, (iii) an adequate mechanism is developed to permit Arcorp/Hartz to recover any sums expended by Arcorp/Hartz in such design and construction, (iv) the Port Authority makes available any programs (i.e., low interest loans, etc.) which may be available to facilitate such expenditures, and (v) such participation by Arcorp/Hartz would, in the judgment of Arcorp/Hartz, enhance the operation of the ferry service as a business enterprise. In any event, Arcorp/Hartz would be permitted to submit a proposal on all phases of design and construction of said permanent terminal facilities. Nothing contained herein shall be construed as an endorsement by Arcorp/Hartz of the conceptual plans previously furnished to Arcorp/Hartz by the Port Authority with respect to said permanent terminal facility. Arcorp/Hartz shall promptly remove the interim docking facilities upon completion of the permanent terminal. Said permanent facilities shall be leased on mutually acceptable terms by the Authority to Arcorp/Hartz for \$10.00 per

annum.

Arcorp/Hartz shall operate the permanent terminal facility (as substantially shown on Exhibit 5) as hereinafter provided.

Construction shall take place subsequent to the commencement of ferry service by Arcorp/Hartz and shall replace the interim docking facilities constructed by Arcorp/Hartz. The construction and opening of permanent terminal facilities shall be coordinated with the need for such as a result of the demand for ferry service and the completion of New Jersey Transit's "Waterfront Connection", which will provide direct commuter railroad service between Pennsylvania Station in Newark, New Jersey and Hoboken terminal. Construction of the permanent terminal facilities shall be done with as little interference to the Arcorp/Hartz ferry operations as is reasonably possible.

1. Operation of Permanent Terminals - The following sections shall govern the operation and maintenance of the permanent terminal facilities by Arcorp/Hartz for the duration of this agreement.

2. Facility Use - As facility operator, Arcorp/Hartz will ensure priority of terminal use of both facilities during the hours of operation for the Hoboken to Lower Manhattan ferry service: 7:00 AM to 10:00 AM and 4:00 PM to 7:00 PM, Monday through Friday. Neither the Port Authority, its agents or assigns, shall undertake any activity which may be disruptive to the operation of Hoboken - Lower Manhattan ferry service

or any aspect thereof.

3. Additional Usage - Arcorp/Hartz, as the operator of the permanent terminals, will be responsible for the operation and maintenance of these facilities. With the concurrence of the Port Authority, or at its request and subject to the grant of exclusivity in this Agreement, Arcorp/Hartz will allow other ferry services to land at these terminals, so long as (a) they do not interfere with the operation of the commuter Hoboken to Battery Park Service and (b) they do not violate the terms of the Agreements between the Port Authority and Battery Park City Authority and New Jersey Transit. Arcorp/Hartz shall set reasonable and non-discriminatory landing fees for accommodating such other services, which fees shall be subject to Port Authority approval. For the policy reasons set forth in paragraph 1.01 and in recognition of the limitation of capacity at the Battery Park City New York Terminal, the parties agree that Terminal access for ferry services, other than the prime service of Hoboken to Battery Park City, shall be governed by the following principles:

- (1) Capacity shall be reserved on a priority basis, for the then existing and reasonably foreseeable future, for relief of the PATH Hoboken to World Trade Center line haul demand including the Pavonia and Exchange Place Stations, capacity relief for the Hoboken PATH Station shall receive priority over relief for Pavonia and

Exchange Place station.

- (2) Arcorp/Hartz shall be entitled to a reasonable reserve of terminal capacity, for the then existing and reasonably foreseeable future demand requirement of the Hoboken to World Trade Center service, to ensure an orderly growth of the prime services detailed above.
- (3) The Port Authority's Trans-Hudson policy considerations shall be taken into account.

The same considerations shall govern with regard to other Lower Manhattan sites.

All revenues derived from terminal operations shall be applied as detailed below. Arcorp/Hartz shall be responsible for the leasing of all retail concession space, if any, and the allocation of docking rights, which shall be subject to the Battery Park City and NJ Transit agreements and shall be subject to the prior approval of the Port Authority.

4. Facility Design - The Port Authority will be responsible for designing and constructing at its own expenses permanent terminal facility structures in the vicinity of the old ferry terminal in Hoboken and in the vicinity of the World Financial Center in Lower Manhattan (excepting if any subsequent proposal by Arcorp/Hartz for financial participation is accepted by the Authority). Arcorp will

participate in and promptly review the design of these facilities to ensure adequate accommodation of the commuter ferry service. The Port Authority shall promptly provide Arcorp/Hartz with the opportunity to review and comment on the design, engineering, and layout of all vessel docking facilities, all public spaces and all revenue generating spaces contained within the permanent terminal facilities. Arcorp/Hartz will also have the opportunity to review and comment on all schematic plans pertaining to the projected pedestrian flows through these facilities.

5. Facility Operating Costs

- a. Arcorp/Hartz and the Port Authority agree that Arcorp/Hartz assumes all responsibilities associated with the operation and maintenance of permanent ferry terminal facilities as stated below, and Arcorp/Hartz shall fund the operation and maintenance of these facilities, as specified below. For the operation and maintenance tasks outlined in Section III.7, Arcorp/Hartz shall not seek any financial compensation or subsidy whatsoever from the Port Authority. As further detailed below, the Port Authority shall provide for and fund certain heavy maintenance and structural repairs.

- b. Arcorp/Hartz will undertake the performance of

maintenance dredging at the Hoboken site as required for all ferry operations within the area as generally shown on Exhibit 6 and fund such periodic maintenance dredging to the extent such costs do not exceed \$25,000 for mobilization for each instance of dredge and \$6 per cubic yard of disposed dredged material, escalated at 6% per year over the life of the contract.

- c. Arcorp/Hartz will collect all rental income attributable to the operation, leasing of terminal concession facilities and advertising and other ancillary terminal revenues.

6. Application of Revenues - Revenues shall be applied as follows:

- a. First, to the costs of Arcorp/Hartz's operating and maintenance obligations including those under Section 7 immediately below; all underruns in revenues being the responsibilities of Arcorp/Hartz.
- b. Secondly, if after the application set forth in (a) above, there remain any revenues, a portion of said revenue will be assigned as a management fee to Arcorp/Hartz, which shall be computed at eight (8%) percent of gross terminal revenues, but which shall be limited to the extent that there are remaining revenues after the application set forth in (a) above.

- c. Thirdly, if after the application set forth in (b) above there remains any revenues, said revenues shall be divided 2/3 for the Port Authority and 1/3 for Arcorp/Hartz.
- d. Payment to the Port Authority shall be made within 30 days following each year of terminal operation, accompanied by such records and calculations as may be reasonably required by the Port Authority.

7. Cleaning and Maintenance

1. Arcorp/Hartz shall be responsible for cleaning the interim docking and permanent facilities on a regular basis. Cleaning and maintenance tasks will, at a minimum, be sufficient to meet all health and sanitation codes, and shall conform to the standards as set forth below. These tasks shall include but shall not be limited to the following:

- * trash collection and removal
- * floor sweeping and mopping
- * floor cover cleaning
- * window cleaning
- * maintenance of signage and information kiosks
- * cleaning restrooms

- * graffiti removal
- * electrical systems
- * HVAC systems
- * plumbing systems
- * communication systems
- * all other operating systems as outlined in Exhibit 7.

2. MAINTENANCE STANDARDS

- a. Cleaning - Cleaning shall be performed so as to present at all times a terminal which is neat; orderly; litter- , oil- , and dust-free; and sanitary. Cleaning shall include but not be limited to the following:
- Sweeping and wet mopping the entire terminal, emptying all garbage cans, and clearing or cleaning all debris from seats, after each peak period.
 - Policing performed continuously during terminal operating periods. Policing is defined as removing all papers, coffee cups, etc., from floors and seats, cleaning any spills or accidents, and sweeping up any debris where necessary.
 - Provision of adequate cleaning and policing around the terminal areas where designated.

- Snow and ice removal in all areas in which Arcorp/Hartz is responsible.
 - Keeping terminals free from stored supplies or tools.
 - Washing of all windows on the inside of each terminal at least twice a week. On occasion, three washings may be required.
 - Maintenance of all electrical, mechanical, HVAC and plumbing systems such as to keep same in good working order.
- b. Routine and Preventive Maintenance - Maintenance shall be performed so as to present a terminal which is safe and operates in a reliable fashion. Arcorp/Hartz will provide a proposed schedule for routine maintenance for Port Authority approval. In addition:
- Terminal slips will not be removed from service for planned routine maintenance or major overhauls during peak period operations, unless posted headways can be maintained and/or Port Authority approval is received.
 - A proposed monthly schedule of inspections and routine maintenance shall be submitted on a six-month basis.

Changes thereto shall be submitted a week prior to the next calendar month.

- Copies of all weekly employee maintenance time sheets, indicating number of hours worked and the specific nature of that work, will be maintained on file by Arcorp/Hartz.
- Breakdown repairs including inoperative passenger amenity features shall take priority over routine inspection repair and overhaul programs, and the problem will be corrected with due diligence.
- Adequate spare parts inventory and proper tools to efficiently maintain terminals will be maintained by Arcorp/Hartz.
- All maintenance records must be provided and maintained by Arcorp/Hartz and available for Port Authority review.
- All garbage, liquid or solid refuse will be disposed of by Arcorp/Hartz according to environmental regulations and standards.
- In the event of spillage, breakage, damage or any condition which presents a hazard to persons or property Arcorp/Hartz will immediately take any and all precautions to safeguard the public, including but not limited to the

erection of barricades, the posting of signs and/or personnel, the securing of the area and/or other such actions to prevent injury to persons or property and will immediately advise the Authority of such conditions and the actions taken.

- The Port Authority may or may cause Arcorp/Hartz to promulgate reasonable rules and regulations for use of the premise and the conduct of the occupants. Any such promulgation of rules and regulation shall be upon consultation of the parties to this agreement.

- Arcorp/Hartz shall prepare and submit to the Authority for approval within 60 days prior to the initiation of service (and within 60 days prior to initiation of each permanent terminal's operation) a terminal operating plan and vessel operating plan, including emergency response procedures, communications, safety precautions and the like.

8. Port Authority Maintenance Obligations - The sole maintenance obligations of the Port Authority under this agreement, shall be as follows:

- a. Initial dredging for the permanent terminals including all permitting required;

- b. Structural maintenance and heavy repairs to the permanent terminal facilities, piers and subsurface structures, as outlined in Exhibit 8.
9. Changes to Permanent Terminals- Any structural or major changes to the permanent terminals shall not be effected by Arcorp/Hartz without the prior approval of the Authority.

L. Vessels

Arcorp/Hartz will bear all capital and operating costs associated with the design, construction, operation and maintenance of vessels. Arcorp/Hartz will initially provide four vessels as more fully detailed below, but will provide additional and or different vessels as and when required by Sec. 1.02 "Purpose of Agreement Adjustment to Service". As owner and operator of these vessels, Arcorp/Hartz will be responsible for meeting certification, inspection, maintenance and safety requirements.

Vessel Usage: Off-Peak Services

Arcorp/Hartz will have the right to operate vessels off-peak, including the right to operate charter or recreational ferry activities, so long as this activity does not interfere with the provision of commuter ferry service during the specified hours, does not significantly impact the PATH market, and does not violate provisions of the respective Battery Park City and New

Jersey Transit agreements.

A. Vessel Requirements

Arcorp/Hartz will provide vessels as more fully detailed below or Port Authority approved equals. The proposed vessel is a 350-passenger double deck, bow-loading, single-ended monohull. The main deck passenger capacity equals 200 passengers - 150 seated and 50 standees. The upper deck passenger capacity is 150, all seated. The passenger capacities mentioned on both decks are for fully enclosed areas, and will be heated but not air conditioned. Coast Guard certification will be required. The vessel is similar to the 350 passenger vessel now operated by Arcorp, with the exception of an enclosed second deck.

1. DESIGN AND CONSTRUCTION

- a. The Port Authority will have the right of final review, comment and approval.
- b. Arcorp/Hartz will be subject to the guidelines and procedures listed in the Port Authority's tenant construction review manual to the extent applicable.
- c. The Port Authority may wish to assign at its sole

cost and expense a construction inspector during part or all of the time during vessel construction.

- d. Arcorp/Hartz will follow all design and construction guidelines, instructions and inspections and by the United States Coast Guard and the American Bureau of Shipping.
- e. Arcorp/Hartz will fund the capital cost for all vessels through the term of the agreement, including replacement vessels.
- f. The construction schedule will be supplied by Arcorp/Hartz in advance of start of vessel construction.
- g. Initially, four (4) vessels will be built, three (3) for operations and one (1) to serve as a spare vessel.

2. MAINTENANCE STANDARDS

- a. Cleaning - Cleaning shall be performed so as to present at all times a vessel which is neat; orderly; litter- , oil- , and dust-free; and sanitary. Major cleaning shall include but not be limited to the following:

- Major cleaning performed by deckhands before the end of each eight-hour tour of duty for each vessel in operation. Major cleaning is defined as sweeping and wet-mopping the entire vessel, emptying all garbage cans, and cleaning all debris from seats.

 - Policing performed by deckhands on each return trip. Policing is defined as removing all papers, coffee cups, etc., from floors and seats, wiping up, and cleaning any spills or accidents.

 - Washing the outside of each vessel at least once a week. On occasion, two washings may be required.

 - Washing all windows on the inside of the vessel at least twice each week.
- b. Routine and Preventive Maintenance - Routine maintenance shall be performed so as to ensure a reliable and safe vessel at all times. Arcorp/Hartz will conform to specifications included in the manufacturer's most recent maintenance recommendations and manuals, after

submitting these for Port Authority approval, and will ensure that:

- Vessels will not be removed from service for planned routine maintenance or major overhauls during peak period operations, unless posted headways can be maintained and/or Port Authority approval is received.
- A proposed monthly schedule of inspections and routine maintenance shall be submitted to the Port Authority on a six-month basis. Changes thereto shall be submitted a week prior to the next calendar month.
- Copies of all weekly employee maintenance time sheets indicating number of hours worked and the specific nature of that work will be maintained on file.
- Adequate maintenance personnel will be available during all hours of operation.
- Breakdown repairs, including inoperative passenger amenity features, take priority over routine inspection and maintenance and overhaul programs, and the problem will be corrected with

due diligence.

- An adequate spare parts inventory and proper tools to efficiently maintain vessels will be maintained.
- Maintenance records will be provided and maintained, and available for Port Authority review.
- All garbage, liquid or solid refuse will be disposed of according to environmental and regulatory standards.
- In the event of spillage, breakage, damage or any condition which presents a hazard to persons or property, Arcorp/Hartz will immediately take any and all precautions to safeguard the public, including but not limited to the erection of barricades, the posting of signs and or personnel, the securing of the area and/or other such actions to prevent injury to persons or property and will immediately advise the Authority of such conditions and the actions taken.
- Fueling and heavy maintenance - only light and

cleaning maintenance shall be permitted at the Hoboken Terminal. No such activity shall be permitted in New York with the exception of emergency repairs. Heavy maintenance, fueling and other related tasks shall be performed at other than the terminal facilities.

Section IV - FARES

4.01 FARE POLICY

Subject to the provisions of this Agreement set forth in the clause "Purpose of Agreement-Adjustments to Service to be Provided" with regard to Arcorp/Hartz's obligation to provide a ferry service for the relief of PATH from passenger demand beyond its then passenger carrying capacity, fares will be determined by Arcorp/Hartz in its reasonable discretion taking into consideration market demand and operating cost (including capital costs), the mass transit nature of the service, quality of the service and general amenity level, the efficient utilization of the ferry system's peak hour, peak direction capacity and orderly pricing relative to fares charged on competing or complementary services, provided however that the one-way fare (whether or not computed from a joint ticketing arrangement, multi-ride arrangement, round-trip arrangement or other fare arrangement) shall at no time be less than the PATH Hoboken to World Trade Center one-way fare except for limited promotional fares at the

inception of the service or such other times as approved by the Authority. The minimum fare limitation shall not apply in the event that the demand on PATH on the Hoboken to WTC line exceeds its capacity in the peak hour, on average over a consecutive 3 month period. Arcorp/Hartz shall adopt the following initial fare schedule:

	Total Cost	Cost Per Trip
One-Way fare:	\$ 2.00	\$ 2.00
Ten-trip ticket:	16.00	1.60
Monthly pass:	56.00	1.33

Fares shall be published at the same time as the ferry schedules.

4.02 - Joint Ticketing

Arcorp/Hartz is interested in the prospect of entering into a joint ticketing arrangement with NJ TRANSIT and PATH. Both special monthly passes, designed to allow both rail or bus and ferry passage, and non-transferable ferry stickers (that could be affixed to existing rail or bus passes) will be considered by Arcorp/Hartz. Cost-sharing arrangements for joint ticketing would be negotiated with the appropriate agencies.

4.03 - Fare Collection

Arcorp/Hartz will initially employ three (3) ticket agents to sell tickets and collect fares for the ferry. Said agents will be deployed at Hoboken during the morning peak period and at the Manhattan terminal during the evening peak. In addition reverse commuters will be able to purchase tickets on board the vessels. Arcorp/Hartz will work with the Port Authority, PATH and New Jersey Transit to develop a coordinated and automated fare collection system. In the absence of such system Arcorp/Hartz shall continually upgrade its system so that it is efficient and does not impede the free flow of patrons or restrict achievable headways.

4.04 - Patron Counts

Arcorp/Hartz shall provide in their fare collection system an approved method for accurately reporting patron flows by vessel and time of day and shall provide quarterly reports to the Authority.

SECTION V - ADVERTISING AND MARKETING

5.01 Arcorp/Hartz, as operator of the service will be responsible for advertising and marketing of the service, consistent with any and all requirements imposed by agreement with the land owners. The Authority will make its facilities and staff services reasonably available in support of Arcorp/Hartz's business

planning activities. All such advertising shall be submitted to the Authority for comment.

Arcorp/Hartz will at its sole expense utilize a combination of signage throughout the Hoboken Terminal and BPC Terminal, advertisements visibly placed at Port Authority and NJ Transit facilities, newspaper, magazine, radio and video media advertising, and initial press announcements. Additional commuter services would rely upon site-based promotions, working with major tenants/employers. Special service promotions (e.g. Javits Center) will rely on a combination of handouts, print and radio advertisements, and promotional packaging and discounting. Arcorp/Hartz's consultants in advertising/media will work with the Port Authority and NJ Transit to maximize the input of these efforts.

- a) Terminal Signage: Proper signage indicating the ferry dock location will be strategically placed to direct commuters. Signage would also be located at key locations along city streets in the vicinity, to direct pedestrians and motorists to the boarding area. Arcorp/Hartz will work closely with officials from the Port Authority, New York City, Battery Park City Authority, NJ TRANSIT, Hudson County and the city of Hoboken to accomplish this.
- b) Location Advertisements: The Port Authority will make its transportation facilities available without charge for

signage, information and advertising including the PATH trains but excluding the PATH stations.

- c) Notwithstanding anything contained herein to the contrary, the Authority shall have the right to promote and advertise the service which promotion the Authority shall coordinate with Arcorp/Hartz.

Section VI - RISKS ASSUMED BY ARCORP/HARTZ

Arcorp/Hartz assumes the following distinct and several risks, whether they arise from acts or omissions (whether negligent or not) of Arcorp/Hartz, of the Authority, or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Arcorp/Hartz, excepting only risks which arise solely from affirmative acts done by the Authority subsequent to the execution of this Agreement with actual and willful intent to cause the loss, damage and injuries described in subparagraphs (a) through (c) below; provided, however, that such assumption of risk as to acts or omissions of the Authority or third persons shall be coextensive with the limits of the insurance provided for in Section VII and such other insurance as Arcorp/Hartz may elect to procure.

- a) The risks of loss or damage to all property, real and personal, whether provided by Arcorp/Hartz or the Authority, for the purpose of the performance by Arcorp/Hartz of the

services and obligations to be provided by them under this Agreement or otherwise in connection with the providing of ferry services contemplated under this Agreement including but not limited to vessels, interim terminals and landing sites and Arcorp/Hartz maintenance facilities; and Arcorp/Hartz shall forthwith repair, replace and make good any such loss or damage without cost to the Authority;

- b) The risk of claims, just or unjust, by third persons made against Arcorp/Hartz or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the services and obligations to be performed by Arcorp/Hartz under this Agreement (whether or not actually caused by or resulting from such performance) or out of or in connection with Arcorp/Hartz's operations or presence at or in the vicinity of the landing or other sites or premises, including claims against Arcorp/Hartz or the Authority for the payment of workers compensation, whenever such claims are made and whether such injuries, damage and loss are sustained both before or after the termination or expiration of this Agreement;

- c) The risk of loss or damage and of claims made against Arcorp/Hartz or the Authority for loss or damage to any property of subcontractors, materialmen, workmen or others

performing services or obligations on behalf of Arcorp/Hartz.

Arcorp/Hartz shall indemnify the Authority against all claims described in subparagraphs (b) and (c) above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys, except where indemnity is precluded by New York State General Obligations Law, Section 5-322.1. If so directed, Arcorp/Hartz shall defend against any claim described in subparagraphs (b) and (c) above, in which event it shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way involving jurisdiction of the tribunal over the Port Authority, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority. Unless a claim is one which Arcorp/Hartz is not required to indemnify the Authority against as described in the first sentence of this paragraph, such defense shall be at Arcorp/Hartz's cost.

The provisions of this numbered section shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this numbered clause if they were named at each place above at which the Authority is named, including a direct right of action against Arcorp/Hartz to enforce the foregoing indemnity, except, however, that the Authority by action of its Board of Commissioners may at any time in its sole discretion and without liability on its part cancel the

benefit conferred on any of them by this numbered clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Termination or expiration of the term of this Agreement shall not release Arcorp/Hartz from its obligations hereunder. Moreover, neither the enumeration in this numbered clause nor the enumeration elsewhere in this Agreement of particular risks assumed by Arcorp/Hartz or of particular claims for which it is responsible shall be deemed (a) to limit the effect of the provisions of this numbered clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that it assumes or is responsible for risks or claims only of the type enumerated in this numbered clause or in any other clause of this Agreement, or (c) to limit the risks which it would assume or the claims for which it would be responsible in the absence of such enumerations. This clause shall not expand the performance requirements of this agreement.

To the extent, the Authority has agreed to indemnify third persons against claims of the types described in subparagraph (b) above made against the said indemnities, Arcorp/Hartz's obligation under subparagraph (b) above shall include claims by New Jersey Transit, its subsidiaries and/or successors, Battery Park City Authority, its subsidiaries and/or successors, O&Y Development Company, L.P., Olympia & York Tower B Company, WFC Tower D Company, Merrill Lynch & Company, Inc., Merrill Lynch/WFC/L Inc., American Express Company, Shearson Lehman Hutton, Inc., American Express Travel Related Services Co., Inc.,

American Express Bank Ltd., Lehman Government Securities, Inc., Lehman Commercial Paper Incorporated, Olympia & York WFC Retail Company and any successors thereto which may be tenants of Battery Park City Authority in the World Financial Center or operators of the public plaza adjacent to the World Financial Center against the Authority for such indemnification, including those arising from acts or omissions (whether negligent or not) or said above-mentioned parties.

Nothing contained in this Agreement is intended for the benefit of third persons, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

SECTION VII - INSURANCE

7.01 - At all times during the construction ~~of the interim terminal in Battery Park City Arcorp/Hartz~~ shall take out and maintain at their own expense a policy or policies of comprehensive general liability insurance including, but not limited to, coverage for premises-operations and completed operations, with a contractual liability endorsement covering the obligations assumed pursuant to Section VI which insurance shall be in addition to all policies of insurance otherwise required by this Agreement or Arcorp/Hartz may provide such insurance by requiring each contractor engaged by it for the construction work to procure and maintain such

insurance in the contractor's name as insured and with the Port Authority and Arcorp/Hartz as additional insureds including such contractual liability endorsements, said insurance not to contain any care, custody or control exclusions, and not to contain any exclusion for bodily injury to or sickness, disease or death of any employee of Arcorp/Hartz or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the named insureds thereunder with respect to any claim or action against the named insured by a third person shall pertain and apply with like effect with respect to any claim or action against Arcorp/Hartz by the Port Authority but such endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority thereunder as an additional insured. In addition, said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the Port Authority by Arcorp/Hartz or its contractor(s) shall be the same as the protections afforded the named insured thereunder with respect to any claim or action against the named insured by a third person as if the Port Authority were the named insured thereunder. Said insurance shall be in not less than the following amounts

Minimum Limits

Comprehensive General Liability

Insurance:

Combined single limit per occurrence
for death, bodily injury and property
damage liability \$50,000,000

Any policy providing for the above required insurance shall name the Authority, Merrill Lynch, American Express, Battery Park City Authority, Olympia and York as additional named insureds, and any additional named insureds as required by agreement between the Authority and the property owners as their interests may appear, and shall contain a provision that the policy may not be canceled, terminated or modified without thirty days written advance notice thereof to the Manager, Risk Management Division of the Authority, One PATH Plaza, Jersey City, NJ 07306 (Attn: Construction Certificate Review). Such policy shall not contain any provisions for exclusions from liability other than provisions for exclusions from liability forming part of the standard, basic, unamended and unendorsed Comprehensive General Liability Policy and in addition shall not contain any exclusion for bodily injury to or sickness, disease or death

of any employee of any person which would conflict with or in any way impair coverage under the contractual liability endorsement of the liability assumed by Arcorp/Hartz under the clause hereof entitled "Risks Assumed by Arcorp/Hartz." Further, said policy shall be specifically endorsed to provide that each insured will have the same protection it would have had if each were insured by an individual policy except with respect to the coverage limits and to prohibit the insurance carrier from raising any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, without first obtaining express advance written permission from the General Counsel of the Authority.

Arcorp/Hartz and its contractors shall also take out and maintain Workers' Compensation Insurance in accordance with the requirements of law, amended to include coverage under the U.S. Longshoremen and Harbor Workers' Act and Coverage "B"-Maritime.

Prior to Arcorp/Hartz performing any activity at the Battery Park City ferry location site Arcorp/Hartz shall deliver to the Manager, Risk Management Division of the Authority (at the above address), a certificate from his insurer in duplicate evidencing policies of the above insurance, identifying this Agreement, and containing a separate express

statement of compliance with each of the requirements above set forth in this numbered clause. Upon request of the Manager, Risk Management Division, Arcorp/Hartz shall furnish the Authority with a certified copy of each policy itself, including the provisions establishing premiums.

The requirements of this numbered clause are for the greater assurance of the Authority that Arcorp/Hartz will be financially able to discharge its obligations under the clause hereof entitled "Risks Assumed by Arcorp/Hartz" and shall not in any way be construed as a limitation on the nature or extent of such obligations.

If at any time the above insurance should be canceled, terminated or modified without fault on the part of Arcorp/Hartz so that insurance is not in effect as above required, then, unless both parties agree, Arcorp/Hartz shall suspend performance of the service. The Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by Arcorp/Hartz to the Authority.

7.02 - At all times during the construction of the interim terminal in Hoboken, Arcorp/Hartz shall take out and maintain at their own expense a policy or policies of comprehensive general liability insurance including, but not limited to, coverage for premises-operations and completed operations,

with a contractual liability endorsement covering the obligations assumed pursuant to Agreement Section VI, which insurance shall be in addition to all policies of insurance otherwise required by this Agreement, or Arcorp/Hartz may provide such insurance by requiring each contractor engaged by it for the construction work to procure and maintain such insurance in the contractor's name as insured and with the Port Authority and Arcorp/Hartz as additional insureds including such contractual liability endorsements, said insurance not to contain any care, custody or control exclusions, and not to contain any exclusion for bodily injury to or sickness, disease or death of any employee of Arcorp/Hartz or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the named insured thereunder with respect to any claim or action against the named insured by a third person shall pertain and apply with like effect with respect to any claim or action against Arcorp/Hartz by the Port Authority but such endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority thereunder as an additional insured. In addition, said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder with respect to any claim or action against the

Port Authority by Arcorp/Hartz or its contractor(s) shall be the same as the protections afforded the named insured thereunder with respect to any claim or action against the named insured by a third person as if the Port Authority were the named insured thereunder. Said insurance shall be in not less than the following amounts:

Minimum Limits

Comprehensive General Liability

Insurance:

Combined single limit per occurrence for death, bodily injury and property damage liability	\$50,000,000
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Any policy providing for the above required insurance shall name New Jersey Transit and any additional named insureds as required by agreement between the Authority and the property owner as their interests may appear, and shall contain a provision that the policy may not be canceled, terminated or modified without thirty days written advance notice thereof to the Manager, Risk Management Division of the Authority, One PATH Plaza, Jersey City, NJ 07306 (Attn: Construction Certificate Review). Such policy shall not contain any provisions for exclusions from liability other than provisions for exclusions from liability forming part of the

standard, basic, unamended and unendorsed Comprehensive General Liability Policy and in addition shall not contain any exclusion for bodily injury to or sickness, disease or death of any employee of any person which would conflict with or in any way impair coverage under the contractual liability endorsement of the liability assumed by Arcorp/Hartz under the clause hereof entitled "Risks Assumed by Arcorp/Hartz." Further, said policy shall be specifically endorsed to provide that each insured will have the same protection it would have if each were insured by an individual policy except with respect to the coverage limits and to prohibit the insurance carrier from raising any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, without first obtaining express advance written permission from the General Counsel of the Authority.

Arcorp/Hartz and its contractors shall also take out and maintain Workers' Compensation Insurance in accordance with the requirements of law, amended to include coverage under the US Longshoremen and Harbor Workers' Act and Coverage "B" -- Maritime.

Prior to Arcorp/Hartz performing any activity at the location of the interim terminal site at Hoboken,

Arcorp/Hartz shall deliver to the Manager, Risk Management Division of the Authority (at the above address), a certificate from his insurer in duplicate evidencing policies of the above insurance, identifying this Agreement, and containing a separate express statement of compliance with each of the requirements set forth above in this numbered clause. Upon request of the Manager, Risk Management Division, Arcorp/Hartz shall furnish the Authority with a certified copy of each policy itself, including the provisions establishing premiums.

The requirements of this numbered clause are for the greater assurance of the Authority that Arcorp/Hartz will be financially able to discharge its obligations under the clause hereof entitled "Risks Assumed by Arcorp/Hartz" and shall not in any way be construed as a limitation on the nature or extent of such obligations.

If at any time the above insurance should be canceled, terminated or modified without fault on the part of Arcorp/Hartz so that insurance is not in effect as above required, then, unless both parties agree, Arcorp/Hartz shall suspend performance of the service. The Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by Arcorp/Hartz to the Authority.

7.03 - During the construction of the permanent terminals in Hoboken and in Battery Park City, if constructed by Port Authority contractors, the Authority will procure and will maintain in force and pay the premiums on:

1. A policy of primary public liability (premises-operations hazard, products-completed operations hazard and contractual) insurance on which the Contractor and the subcontractors will be insureds issued by National Union Fire Insurance Company of Pittsburgh, Pennsylvania, with coverage limits of \$1 million per occurrence each insured, subject to an aggregate limit of \$5 million per occurrence for all insureds combined.
2. Policies of excess public liability insurance from various insurers, which follow the form, scope and substance of the primary public liability insurance indicated in (1) above, with combined coverage limits of \$74 million per occurrence for all insureds combined, excess of the primary \$1 million insurance coverage.
3. A policy of workers' compensation and employer's liability insurance fulfilling the Contractor's and the subcontractor's obligations under the applicable State Workers' Compensation Law for those employees of the

Contractor and the subcontractors employed pursuant to this Contract in operations conducted at or from the site of the Work hereunder.

Policies described in (1) and (2) of this numbered clause are on file and available for examination in the office of the Manager, Risk Management, The Port Authority of New York and New Jersey, One PATH Plaza (4th Floor), Jersey City, New Jersey 07306.

Policies described in (1) and (2) will also name the Authority, Merrill Lynch, American Express, Battery Park City Authority, Olympia and York, and New Jersey Transit as additional named insureds, and any additional named insureds as required by agreement between the Authority and the property owners as their interest may appear.

The Authority shall have the right at any time and from time to time at its option to procure insurance substituting in whole or in part for that described above or to require that Arcorp/Hartz and the subcontractors themselves obtain insurance substituting in whole or part for that above referred to, provided always, however, that Arcorp/Hartz and the subcontractors shall be afforded coverage equivalent to that above described and that the Authority shall either pay the premiums on such substitute insurance or reimburse Arcorp/Hartz and the subcontractors therefor.

If construction is performed by Arcorp/Hartz contractors, the requirements of 7.01 and 7.02 shall apply and in addition Arcorp/Hartz shall furnish and keep in force at all times a policy of All Risk Builders Risk insured covering the full cost of the construction, in a form approved by the Authority.

7.04 - Arcorp/Hartz shall before initiating ferry operations under this Agreement in its own name as insured and including the Authority, Merrill Lynch, American Express, Battery Park City Authority and Olympia and York, and New Jersey Transit as additional insureds, and any others required by the agreements with the property owners, maintain and pay premiums on a policy or policies of comprehensive general liability insurance including, but not limited to, coverage for premises operations and completed operations with a contractual liability endorsement covering the obligations assumed by Arcorp/Hartz in Section VII and providing for coverage in the limits set forth below; and Protection and Indemnity insurance, including a towers collision coverage and, if available, an endorsement covering pollution liability, in connection with its operations in the limits set forth below:

Coverage

Minimum Limit

Comprehensive General Liability

Combined single limit per occurrence
for bodily injury and property damage
liability \$10,000,000

Protection and Indemnity Insurance
Combined single limit per occurrence
for bodily injury and property damage
liability \$50,000,000

Further, said policies shall be specifically endorsed to prevent the insurance carrier from raising any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, without first obtaining express advance written permission from the General Counsel of the Authority.

Arcorp/Hartz shall also keep the vessels and related equipment insured under a marine hull insurance policy for the full replacement cost of the vessels.

In addition, Arcorp/Hartz shall also take out and maintain Workers' Compensation insurance in accordance with the requirements of law, which has been amended to include coverage under the U.S. Longshoremen's and Harbor Worker's Compensation Act and Coverage "B" - Maritime in limits of not less than \$250,000 each occurrence.

7.05 - All insurance coverages and policies required under this Section may be reviewed by the Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the term of the letting hereunder. The Authority may, at any such time, require an increase in the minimum limits, or additions, deletions, amendments or modifications to the above insurance requirements, or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as the Authority may reasonably deem required and Arcorp/Hartz shall promptly comply therewith. Specifically, and without limitation, Arcorp/Hartz shall furnish such modified insurance as shall meet the requirements of the agreements between the Port Authority and the property owners of the sites furnished by the Port Authority for ferry landing and terminal sites to Arcorp/Hartz, throughout the term or extended term of this Agreement.

Prior to Arcorp/Hartz performing any activity at the location of a ferry location site Arcorp/Hartz shall deliver to the Manager, Risk Management Division of the Authority (at the above address), a certificate from his insurer in duplicate evidencing policies of the above insurance, identifying this Agreement, and containing a separate express statement of compliance with each of the requirements above set forth in this section. Upon request of the Manager, Risk Management

Division, Arcorp/Hartz shall furnish the Authority with a certified copy of each policy itself, including the provisions establishing premiums.

The requirements of this section are for the greater assurance of the Authority that Arcorp/Hartz will be financially able to discharge its obligations under the clause hereof entitled "Risk Assumed by Arcorp/Hartz" and shall not in any way be construed as a limitation on the nature or extent of such obligations.

If any time the above insurance should be canceled, terminated or modified without fault on the part of Arcorp/Hartz so that insurance is not in effect as above required, then, unless both parties agree, Arcorp/Hartz shall suspend performance of the service. The Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by Arcorp/Hartz to the Authority.

Section VIII - PERMITS

8.01 - Permits for Docking and Terminal Facilities

The Port Authority will be responsible for obtaining all permits and/or other rights required to a) construct all necessary docking

facilities beyond the pierhead line at the designated New York City terminal site; b) construct initial and permanent terminal facilities in Hoboken and lower Manhattan; and c) to the extent not already existing and to the extent required to gain pedestrian access through the public, common, and open areas of Battery Park City, Manhattan. There are adequate public easements which will be made available for ferry patron use.

8.02 - Operating Permits

Arcorp/Hartz shall be responsible for obtaining all legally required permits to ~~operate~~ ^{PASSENGER} ~~commuter~~ ferry service, ~~vessels as~~ provided herein; b) ~~operate commuter ferry service between New York City and Hoboken, New Jersey as provided herein.~~

Section IX - LAWS AND ORDINANCES

In order to effectuate the policy of the Authority, Arcorp/Hartz shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders which would affect the Agreement and the performance thereof and those engaged therein if said Agreement were being performed for a private corporation, except where stricter requirements are contained in this Agreement, in which event the later requirements shall apply. However, Arcorp/Hartz shall not apply for any permits, licenses or variances in the name of or on

behalf of the Authority, but shall do so in its own name where required by law or by the immediately preceding sentence, nor shall Arcorp/Hartz apply for any variance in its own name without first obtaining the approval of the Authority. The Port Authority will cooperate with Arcorp/Hartz and not obstruct the obtaining of such permits and variances.

Section X - LIQUIDATED DAMAGES

The Arcorp/Hartz obligations under this Agreement for the timely initiation of service, timely performance and performance to the quality standards provided in this agreement are of the essence of the Agreement. Arcorp/Hartz therefore represents and warrants that it will perform the services and other acts required of it under this Agreement within the times and to the quality standards set forth in this Agreement, Arcorp/Hartz recognizing that such representations and warranties form an essential inducement to the Authority to enter into this Agreement. Further, insomuch as the damage and loss to the Authority which will result from an Arcorp/Hartz delay in the performance of the services, failure to perform services or failure to perform services to the quality standards of this Agreement will include items of loss whose amounts will be incapable or very difficult of accurate estimation, damages to the Authority shall be liquidated as follows, subject to the provisions of this Agreement on force majeure:

1. For failure to initiate ~~interim~~ service by the date required by this Agreement, \$1,000.00 for each service day until interim service is initiated;

2. ~~For failure to provide a one-way trip during the peak periods as required by this Agreement, \$250 per omitted trip (provided, however, that no such penalty shall be imposed during the time prior to which the full fleet has been received and accepted by Arcorp/Hartz);~~

3. For failure, after notice in writing, to perform any maintenance, repair or cleaning activity set forth in the attached schedules, \$100 per incident.

Notwithstanding the above provisions for Liquidated Damages, the assessment of such damages shall not be considered as an exclusive election of remedies by the Authority, but the Authority shall retain the right to elect any other remedy available at law or in equity in the event of such default or continued defaults by Arcorp/Hartz as it would have in the absence of the said provisions for Liquidated Damages, including, but not limited to declaring Arcorp/Hartz in breach of contract in accordance with the provisions of Section XII. Further, the Authority may in its sole discretion, waive the imposition of any liquidated damage.

Section XI - RIGHTS AND REMEDIES OF ARCORN/HARTZ

Arcorp/Hartz expressly agrees that no default, act or omission of the Authority shall constitute a material breach of this contract, entitling it to cancel or rescind it or to suspend or abandon performance, prior to a final court order entitling it to such relief.

Section XII - RIGHTS AND REMEDIES OF AUTHORITY

Upon prior written notice and reasonable opportunity to cure, the Authority shall have the following rights in the event that Arcorp/Hartz continues in a breach of any material term of this Contract and is declared in breach of contract by the Authority:

- (a) The right to take over and perform all or any part of the services and other obligations to be performed by Arcorp/Hartz as agent for and at the expense of Arcorp/Hartz, either directly or through other contractors.
- (b) The right to cancel further performance of Arcorp/Hartz as to any or all of the services and obligations of Arcorp/Hartz yet to be performed. However, Arcorp/Hartz shall be entitled to full restoration upon final court order to such effect.
- (c) The right to specific performance, an injunction or any other appropriate equitable remedy.
- (d) The right to money damages.

For the purpose of this Agreement, breach shall include material breach but not be limited to the following, whether or not the time has yet arrived for performance of a material obligation under this Agreement: a statement by an authorized representative of Arcorp/Hartz to any representative of the Authority indicating that Arcorp/Hartz cannot or will not perform any one or more of its material obligations under this Contract; any act or omission of Arcorp/Hartz or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its material obligations under this Agreement; any suspension of or failure to proceed with any part of its services or material obligations by Arcorp/Hartz which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Agreement.

Inasmuch as this Agreement is made in reliance upon Arcorp/Hartz's personal qualifications, the Authority shall also have the rights set forth above in the event that any constituent entity of the Arcorp/Hartz joint venture shall become insolvent or bankrupt or if its affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors, unless the Authority shall in its sole discretion determine that the remaining entities are sufficiently solvent to continue performance.

The enumeration in this numbered clause or elsewhere in this Agreement of specific rights and remedies of the Authority shall

not be deemed to limit any other rights or remedies which the Authority would have have in the absence of such enumeration and no exercise by the Authority of any right or remedy shall operate as a waiver of any of other of its rights or remedies not inconsistent therewith or to stop it from exercising such other rights or remedies.

Section XIII - PERFORMANCE OF WORK AS AGENT FOR ARCORP/HARTZ

In the exercise of its right to take over and complete the services to be performed and other obligations of Arcorp/Hartz as agent for Arcorp/Hartz, for which provision is made in the clause hereof entitled "Rights and Remedies of Authority", the Authority shall have the right to take possession of and use or permit the use of any and all plant, materials, equipment and other facilities provided by Arcorp/Hartz for the purpose of performing under this Agreement, and Arcorp/Hartz shall not remove any of the same without express permission. Unless expressly directed to discontinue the performance of all services and obligations, Arcorp/Hartz shall continue to perform the remainder thereof in such manner as in no way will hinder or interfere with the portions taken over by the Authority.

The Authority's right of possession and use of the vessels furnished for the ferry service by Arcorp/Hartz shall be limited in time to the period of two years from the time Arcorp/Hartz is declared in breach of contract by the Authority, provided,

however, not less than sixty (60) calendar days before the expiration of said two year-period, Arcorp/Hartz shall irrevocably elect in writing to:

- a) convey full right, title, interest and ownership of all said vessels to the Authority, free and clear of all claims of third persons, in which case the fair market value of the vessels at the time of election as determined by an independent appraiser chosen by the parties shall be credited to Arcorp/Hartz in mitigation of the Authority's damages due to the breach of contract, and any excess over damages paid over to Arcorp/Hartz, or
- b) re-take possession of all said vessels at the end of said two year period, provided in mitigation of the Authority's damages there shall be no credit to Arcorp/Hartz for the Authority's use for the two-year period of said vessels.

Notwithstanding the Authority's acting as agent of Arcorp/Hartz as set forth herein, Arcorp/Hartz shall remain liable to the Authority for all damages arising out of or in connection with Arcorp/Hartz's breach of contract and the exercise by the Authority of its right to take over the services and obligations of Arcorp/Hartz shall not release the Arcorp/Hartz (or its sureties) from any of its (or their) obligations or liabilities under this Agreement or any Performance and Payment Bond.

SECTION XIV - REPRESENTATIONS AND WARRANTIES OF ARCORP/HARTZ

Arcorp/Hartz represents and warrants:

- a) That it is financially solvent, that it is experienced in and competent to perform the type of services contemplated by this Agreement, and, that it is authorized to perform this Agreement.

- b) That it has carefully examined and analyzed the provisions and requirements of this Agreement and inspected the Ferry landing sites and other sites related to this Agreement and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Agreement, the general and local conditions and all other matters which in any way affect this Agreement or its performance, and that the time available for such examination, analysis, inspection and investigations was adequate;

- c) That subject to the Port Authority performing its obligations hereunder, including but not limited to, initial dredging, performance of Arcorp/Hartz' obligations under the Agreement is feasible of performance in accordance with all its provisions and requirements and that it can and will perform

it in strict accordance with such provisions and requirements;

- d) That no Commissioner, officer, agent or employee of the Authority is personally interested directly or indirectly in this Agreement; and

- e) That, except only for those representations, statements or promises expressly contained in this Agreement, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Authority, its Commissioners, officers, agents, employees or consultants had induced Arcorp/Hartz to enter into this Agreement or has been relied upon by Arcorp/Hartz including any reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Agreement; (2) the nature, existence or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at the sites; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Agreement; (4) the general or local conditions which may in any way affect this Agreement or its performance; (5) the compensations provided for in this Agreement; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) immediately above, affecting or having any connection with this Agreement, any discussions thereof, the

performance thereof or those employed therein or connected or concerned therewith.

Moreover, upon the Authority providing diver inspection, borings and soil samples, unless Arcorp/Hartz shall notify the Authority after opportunity to analyze, with the exceptions of hazardous substances, or environmental pollution, Arcorp/Hartz accepts the conditions at the sites as they may eventually be found to exist and warrants and represents that it can and will perform the Agreement under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, unless otherwise provided for in this Agreement.

Nothing in this Agreement is intended as or shall constitute a representation by the Authority as to the feasibility of performance of this Agreement or any part thereof. Moreover, the Authority does not warrant or represent by any provision of this Agreement as to times for performance or completion or otherwise that the Agreement may be performed or completed by the times or in the manner required herein or by any other times.

Arcorp/Hartz further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Authority to review thoroughly all documents forming this Agreement prior to execution thereof in order that it

might request inclusion in this Agreement of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents; that either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement without claiming reliance thereon or making any other claim on account of such omission.

Arcorp/Hartz further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Authority's consent to enter into this Agreement and that without such provisions, the Authority would not have entered into this Agreement.

SECTION XV - NO PERSONAL LIABILITY

Neither the Commissioners of the Authority nor the Directors of the constituent entities of Arcorp/Hartz nor any officer, agent, or employee of either, shall be charged personally with any liability or held liable under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach hereof.

SECTION XVI - ASSIGNMENTS AND SUBCONTRACTS

Any assignment or other transfer by either party of this Agreement or any part hereof or of any rights hereunder or of any moneys due or to become due hereunder and any delegation of any duties hereunder without the express consent in writing of the other party shall be void and of no effect, provided, however, that Arcorp/Hartz may subcontract portions of its performance to such persons as the Authority may, from time to time, expressly approve in writing and the Authority may subcontract its maintenance and construction obligations hereunder without the written consent of Arcorp/Hartz. All further subcontracting by any subcontractor of Arcorp/Hartz shall also be subject to such approval. Approval of a subcontractor may be conditioned on (among other things) the furnishing, without expense to the Authority, of a surety bond guaranteeing payment by the subcontractor of claims of materialmen, subcontractors, workmen and other third persons arising out of the subcontractor's performance and giving of the certifications as to No Indictment and Code of Ethics set forth in full hereinafter.

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve either party of any of his obligations; and since this Agreement is made in specific contemplation of an Assignment by Arcorp/Hartz to an operating entity to be established by them, Arcorp/Hartz and each of its constituent entities expressly guarantees the performance of said operating entity in accordance with all the terms and conditions of this Agreement and in all

respects Arcorp/Hartz and each of its constituent entities shall remain principally liable under this Agreement; no subcontract, no approval of any subcontractor and no act or omission of the Authority shall create any rights in favor of such subcontractor and against the Authority or Arcorp/Hartz; and as between the Authority and Arcorp/Hartz, all assignees, subcontractors, and other transferees of Arcorp/Hartz shall for all purposes be deemed to be agents of Arcorp/Hartz. Moreover, all subcontracts and all approvals of subcontractors shall be and, regardless of their form, shall be deemed to be conditioned upon performance by the subcontractor in accordance with this Agreement; and if any subcontractor of Arcorp/Hartz shall fail to perform the Agreement as required herein, the Authority shall have the absolute right to rescind its approval forthwith and to require the performance of the Agreement by Arcorp/Hartz personally or through other approved subcontractors.

SECTION XVII - DISPUTES

To resolve all disputes and to attempt to prevent litigation, the parties to this Agreement authorize the Executive Director of the Authority or his designee to initially decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to execution of this Agreement), provided, however, that his decision shall be advisory

and not conclusive, final and binding on the parties. His decision may be based on such assistance as he may find desirable. The effect of his decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Executive Director or others, which prior decision shall be deemed subject to review, or by any termination or cancellation of this Agreement.

All such questions shall be submitted in writing to the Executive Director for his decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action relating to any such question the parties must allege in the complaint the decision rendered by the Executive Director and prove such submission to the Executive Director, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Executive Director. Neither the requirements of this paragraph nor the time necessary for compliance therewith, however, shall effect the the time when the cause of action shall be deemed to have accrued for the purposes of any statute controlling actions and the time of such accrual shall be determined without reference to this paragraph.

SECTION XVIII - NO INDICTMENTS

18.01 Arcorp/Hartz and each of its constituent entities certifies that neither it or any entity on whose behalf it is executing this contract (a) has been indicted or convicted in any jurisdiction; (b) has been suspended or debarred or otherwise disqualified from entering into contracts with any governmental agency; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to indictment or conviction. This certification shall be deemed to include the officers, directors, and shareholders with an equity interest in excess of 10% and to have been authorized by the boards of directors of each constituent entity forming the Arcorp/Hartz joint venture.

SECTION XIX - NON-SOLICITATION

19.01 Arcorp/Hartz and each constituent entity hereby certifies that (a) it has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member either of which would constitute a breach of ethical standards under the Authority code of ethics effective April 26, 1980 nor has Arcorp/Hartz any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to Arcorp/Hartz which constitutes a breach of the ethical standards set forth in said codes; (b) no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by Arcorp/Hartz for the

purpose of securing business, has been employed or retained by it to solicit or secure this contract on the understanding that a commission percentage brokerage contingent or other fee will be payable to such person or selling agency; (c) the prices in the Arcorp/Hartz proposal were arrived at independently without collusion, consultation, communication or agreement, or the purpose of restricting competition, as to any matter relating to such persons with any other proposer or with any competitor; (d) the prices quoted in the Arcorp/Hartz Proposal were not knowingly disclosed directly or indirectly, by Arcorp/Hartz prior to the official opening of such proposal to any other proposer or any competitor; (e) no attempt has been made and none will be made by Arcorp/Hartz to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

~~SECTION XX - SOUTH AFRICA~~

~~20.01 Arcorp/Hartz represents and warrants, to its best knowledge, that no material, equipment or supplies or components of any of the foregoing to be furnished hereunder have been manufactured, produced or otherwise have originated in South Africa.~~

SECTION XXI - PERFORMANCE BOND REQUIREMENT

Hartz Mountain Industries, Inc., A.P.A. Truck Leasing

Corp., A.P.A. Transport Corp., and Remus Realty Corp. (in this paragraph called "the constituent entities") recognize and agree that the Port Authority has relied upon their present financial resources including their net worth in entering into this agreement and that in the absence of their agreement to be jointly and severally responsible under this agreement, the Port Authority would not have entered into this Agreement. In recognition of the financial responsibilities of Arcorp/Hartz and the length of the term of this agreement, each constituent entity agrees that it will not during the term or extended term of this agreement willfully substantially diminish or dilute its assets or resources. For the greater assurance of and inducement to the Port Authority, each constituent entity shall accordingly annually submit a comprehensive financial statement, certified by a Certified Public Accounting firm, such firm being one of the top eight accounting firms or such other nationally recognized accounting firm acceptable to the Port Authority, prepared in accordance with recognized accounting principles, which fully indicates the financial capacity of the constituent entities to carry out the remaining financial commitment of Arcorp/Hartz under this agreement. Such submittal shall include a statement by such CPA that in its opinion the constituent entities' financial position has not been substantially diluted or negatively changed and that the constituent entities' financial position is such as to permit them to carry out their obligations for the maximum remaining period of performance under the Agreement. However, the CPA shall be permitted to take into account fair market value of

the assets of the constituent entities in determining its opinion. In the absence of such an opinion being delivered to the Authority within 150 calendar days of the end of the fiscal year for the constituent entities, the Authority may, to reasonably ensure continued performance under the Agreement, require the constituent entities upon notice in writing, within 30 calendar days, to provide a Performance Bond in such amount, in such form and underwritten by such surety, as shall be required and approved by the Port Authority in its sole discretion, guaranteeing the continued performance by Arcorp/Hartz of the remainder of its contractual obligation under this agreement.

Notwithstanding the above, until the Port Authority has obtained the permanent property rights at Hoboken and Battery Park City or at a substitute site as provided for in this agreement, the Port Authority shall have no right to order the furnishing of a Performance Bond. Permanent property rights as used herein shall mean those property rights as described in Section 3.02 (j).

SECTION XXII - MISCELLANEOUS

22.01 Prior Agreements. All understandings and agreements heretofore had between the parties are merged in this Agreement along with any other written agreement(s) made concurrently herewith, which alone fully and completely express the agreement of the parties and which are entered into after full investigation. Neither party has relied upon any statement or

representation not embodied in this Agreement or in any other written agreement(s) made concurrently herewith.

22.02 Modifications. No agreement shall be effective to change, modify, waive, release, discharge, terminate or cancel this Agreement, in whole or in part, unless such agreement is in writing, refers expressly to this Agreement and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination or cancellation is sought.

22.03 Force Majeure. The time for the Authority or Arcorp/Hartz, as the case may be, to perform any of its respective obligations hereunder shall be extended if and to the extent that the performance thereof shall be prevented due to any strikes, lockouts, civil commotions, warlike operations, invasions, rebellions, hostilities, military or usurped power, governmental regulations or controls, inability to obtain labor or materials despite due diligence, acts of God, or other causes beyond the control of the party whose performance is required.

22.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

22.05 Partial Invalidity. If any provision of this Agreement shall, be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the extent permitted by law.

22.06 Interpretation. The table of contents, captions, headings and titles in this Agreement are solely for convenience of reference and shall not affect its interpretation. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

22.07 MBE/WBE and Regional Investment Goal. Arcorp/Hartz agree to utilize subcontractors who are Port Authority certified minority business enterprises ("MBE's") and women business enterprises ("WBE's") and to meet the agency's stated goals in these areas. For purposes of this agreement, these goals are MBE and WBE representation of 10% and 1% respectively of all annual operating and maintenance costs excluding debt service. The parties also agree that they will jointly endeavor to meet goals of 10% and 1% of all capital costs associated with the project.

In addition, Arcorp/Hartz will also use their good faith efforts to enlist the support of local businesses and local labor in implementing the ferry service provided in this Agreement.

22.08 Liens. Arcorp/Hartz shall promptly satisfy and/or secure the release of all liens filed against property furnished by Arcorp/Hartz for the ferry service, excepting those liens that are purchase money liens or institutional first liens made with the prior approval of the Port Authority (not to be unreasonably withheld or delayed), upon adequate advance notice in writing.

22.09 Labor Disputes. Arcorp/Hartz will take all reasonable steps to resolve all labor disputes and will take all necessary steps to seek to resolve or prevent secondary boycotts or other illegal actions which affect the ferry service hereunder, including but not limited to the seeking of injunctive relief.

22.10 Personnel. All personnel employed by Arcorp/Hartz shall be suitably trained, of sufficient qualification to perform their assigned duties and shall present at all times a neat and orderly appearance and a courteous demeanor to the public. The Authority shall have the right to request the removal of any personnel who do not meet the above standards.

22.11 Taxes. Arcorp/Hartz shall promptly pay all taxes imposed upon Arcorp/Hartz arising out of or in connection with this Agreement. Arcorp/Hartz retains the right to contest any

taxes imposed.

22.12 Equal Employment Opportunity. During the performance of this Contract, the Arcorp/Hartz agrees as follows:

- a) Arcorp/Hartz will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

- b) Arcorp/Hartz shall send to each labor union or representative or workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by State Agencies having jurisdiction, advising such labor union or representative of Arcorp/Hartz's agreement under clauses (a) through (d) (hereafter called "non-discrimination clauses"). If Arcorp/Hartz was directed to do so by the Authority as part of the bid or negotiation of this Contract, Arcorp/Hartz shall request such labor union

or representative to furnish it with a written statement that such labor union or representative will not discriminate because of race, creed, sex, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract, shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, Arcorp/Hartz shall promptly notify the applicable State Agency of such failure or refusal.

- c) Arcorp/Hartz shall post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

- d) Arcorp/Hartz shall state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded

equal employment opportunities without discrimination as such state agencies having jurisdiction.

22.13 Access to Records. The Authority shall have access during normal business hours and upon reasonable written notice to all records and documents of Arcorp/Hartz and each constituent entity relating to this Agreement. Arcorp/Hartz shall obtain for the Authority similar access to similar records and documents of subcontractors. Such access shall be given or obtained both before and within a period of three years after termination of this Agreement, provided, however, that if within the aforesaid three year period the Authority has notified Arcorp/Hartz in writing of a pending claim by the Authority under or in connection with this Agreement to which any of the aforesaid records and documents of Arcorp/Hartz and its constituent entities or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of 6 years from the date of termination with respect to the records and documents involved. No provision in this Agreement giving the Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Authority would have in the absence of such provision.

22.14 - Approvals. Any approvals provided for under this agreement shall not be unreasonably withheld.

22.15 - Non Waiver. No waiver of any breach of this Agreement by either party shall be deemed to be a waiver of any other or any subsequent breach.

22.16 - Joint and Several Liability. Each of the constituent entities of Arcorp/Hartz acknowledge that by executing this Agreement each and every entity shall be jointly and severally liable with respect to all obligations assumed or imposed by this Agreement.

IN WITNESS WHEREOF, the parties have thereto duly executed this Principles of Agreement as of the 3rd day of November 1988.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTEST:

Chas J. Grassi

BY:

Stephen Berger
Stephen Berger
Title: Executive Director

OK from
Bill
ay
etc
Ch.

(Corporate Seal)

DATE:

11/3/88

A.P.A. TRANSPORT CORP

ATTEST:

[Signature]

BY:

Arthur Imperatore
Arthur Imperatore
Title: Chairman of the Board

(Corporate Seal)

DATE:

11/3/88

A.P.A. TRUCK LEASING CORP.

ATTEST:

[Signature]

BY:

Arthur Imperatore
Arthur Imperatore
Title: Chairman of the Board

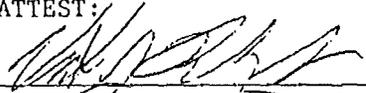
(Corporate Seal)

DATE:

11/3/88

HARTZ MOUNTAIN INDUSTRIES, INC.

ATTEST:



Vincent V. Rabino Jr.
Assistant Secretary

(Corporate Seal)

BY:



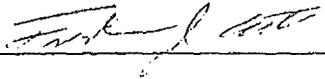
Gene Heller
Title: President

DATE:

11/3/88

REMUS REALTY CORP.

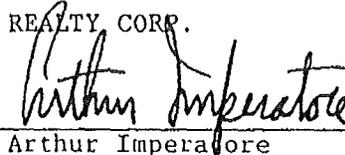
ATTEST:



Assistant Secretary

(Corporate Seal)

BY:



Arthur Imperatore
Title: President

DATE:

11/3/88

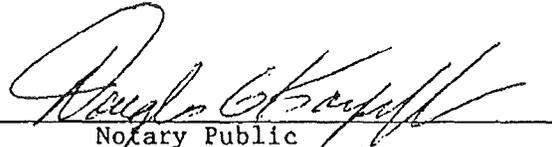
ACKNOWLEDGMENTS

STATE OF New York)
COUNTY OF New York) ; SS.:

On this 3rd day of November 1988, before me personally came and appeared Arthur Imperatore to me known, who, being by me duly sworn, did depose and say that he resides at

that he is the President of Remus Realty Corporation the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Seal)


Notary Public

DOUGLAS G. KAPPILOFF
Notary Public, State of New York
No. 60 4740919
Qualified in Westchester County
Commission Expires ~~March 31, 1989~~

Oct 31

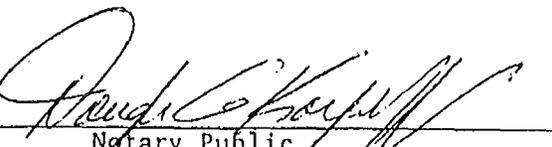
ACKNOWLEDGMENTS

STATE OF New York)
COUNTY OF New York) ; SS.:

On this 3rd day of November 1988, before me personally came and appeared Gene Heller to me known, who, being by me duly sworn, did depose and say that he resides at

that he is the President of Hartz Mountain Industries Incorporated the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Seal)


Notary Public

DOUGLAS G. KAPPILOFF
Notary Public, State of New York
No. 60 4740919
Qualified in Westchester County
Commission Expires ~~March 31, 1989~~

Oct 31

FARE COLLECTION SYSTEM DESCRIPTION

<u>STAFFING:</u>	<u>HOBOKEN</u>		<u>BPC</u>		<u>TOTAL</u>
	<u>AM</u>	<u>PM</u>	<u>AM</u>	<u>PM</u>	
ASSISTANT MANAGER	1	0	0	1	2
TERMINAL SUPERVISOR	1	1	1	1	4
TICKET AGENTS	3	1	1	1	6
RELIEF AGENTS	0	0	0	0	2 (VAC, SICK, ETC)
	<u>5</u>	<u>2</u>	<u>2</u>	<u>3</u>	<u>14</u>

PROCEDURES:

- TICKET AGENTS SELL SINGLE AND TEN TRIP TICKETS DAILY AT EACH TERMINAL ON ALL SHIFTS. MONTHLY TICKETS ARE ALSO SOLD BY TICKET AGENTS AT SPECIFIC PERIODS DURING THE MONTH.
- PASSENGERS PASS THROUGH PASSIMETERS (PASSENGER COUNTING TURNSTILES) PRIOR TO BOARDING VESSEL AT BOTH LOCATIONS.
- PASSIMETERS AT HOBOKEN WILL BE LOCATED AT THE ENTRANCE TO THE RAMP LEADING TO THE FLOATING BARGE. THE NUMBER OF PASSIMETERS WILL SUBSTANTIALLY EXTEND ACROSS THE RAMP'S WIDTH OR ENCLOSED AREA APPROACHING THE RAMP WITH A PROVISION FOR A HANDICAP GATE.
- PASSIMETERS AT BATTERY PARK CITY (BPC) WILL BE LOCATED AT THE ENTRANCE GANGWAY TO EACH FERRY. THE NUMBER OF PASSIMETERS WILL SUBSTANTIALLY EXTEND ACROSS THE GANGWAY'S WIDTH WITH A PROVISION FOR A HANDICAP GATE.
- PASSIMETERS WILL BE LINKED TOGETHER TO A SINGLE COUNTER AND PROVIDE AN AUDIBLE ALERT SIGNAL WHEN CERTIFIED FERRY CAPACITY IS APPROACHING.
- FERRY DECK HANDS WILL COLLECT TICKETS AND CHECK MONTHLY PASSES AND RECORD THE NUMBER OF SINGLE AND TEN TRIP TICKETS AND MONTHLY PASSES PER FERRY TRIP.
- TERMINAL SUPERVISORS WILL MONITOR AND SUPERVISE BOARDINGS AND RECORD PASSIMETER READINGS PER FERRY TRIP.
- ASSISTANT MANAGERS WILL BE RESPONSIBLE FOR CONSOLIDATING AND CROSS CHECKING ALL RECORDINGS.

- JOINT TICKETING WITH NEW JERSEY TRANSIT WILL BE NEGOTIATED PRIOR TO START OF SERVICE.

- NOTES:
- 1) Subject to change because of operating efficiencies with Port Authority approval.
 - 2) Ticket ordering and stocking, auditing and transfer of monies is Arcop/Hartz responsibility.
 - 3) Permanent Fare Collection System to be investigated during permanent terminal design.

EXHIBIT 3

INTERIM TERMINAL LANDSIDE IMPROVEMENTS AND AMENITIES

(Responsibility of Arcorp/Hartz)

HOBOKEN:

Fully enclosed walkway from the railroad canopy to the boarding ramp of the floating barge. The inside area will be well-lit, radiant, heated and ventilated and have appropriate signs and public address systems. If the Pullman/Immigrant Building is used Arcorp/Hartz must have Port Authority approval for design and construction plans.

BATTERY PARK CITY:

Fully enclosed walkway from the ramp leading to the ferry terminal to the cul-de-sac on North End Avenue. The inside area will be well-lit, radiant heated and ventilated and have appropriate signs and public address system.

EXHIBIT 4

INITIAL TERMINAL MAINTENANCE

Arcorp/Hartz shall furnish under this agreement all labor and materials required and/or a part of inspections, checking, cleaning, trouble-shooting, adjusting, lubricating, replacement and repair for the Trans-Hudson ferry service terminals. Maintenance also includes equipment and materials necessary to gain access to what is being maintained and barriers and signs necessary for safety precautions.

Arcorp/Hartz shall perform all routine and non-routine maintenance. Routine maintenance is work required to be done on a scheduled basis. No device (equipment or system) should have to be removed from service during operational periods for routine work. Routine work can be planned, to be performed daily, hourly, yearly, etc. Routine maintenance shall include such tasks as inspect, tune-up, overhaul, clean and check. Non-routine maintenance is maintenance or repair other than that required to be performed on a scheduled basis required to enable the system or device to be operated in a safe reliable manner. Non-routine maintenance also includes making or building something for service improvements. Non-routine work also includes repair, replacement, upgrade, identification

and correction of problems, and construction on a small scale.

Maintenance servicing as a minimum includes, inspect, check, clean, lubricate, repair or replace parts, and necessary adjustments to terminal systems including all structural, electrical, mechanical and hydraulic components.

The prime objective of the maintenance program is to keep all structures and systems of the ferry terminals operable, safe and in good repair. Uninterrupted operation of this equipment is required for proper functioning of a ferry service, and is the responsibility of Arcorp/Hartz.

Maintenance - A proposed monthly schedule of inspections and routine maintenance shall be submitted to the Authority a week prior to the next calendar month.

Copies of all weekly employee maintenance time sheets, indicating number of hours worked and the specific nature of that work, will be maintained on file by Arcorp/Hartz and subject to Port Authority inspection.

Breakdown repairs including inoperative passenger amenity features shall take priority over routine inspection, repair and overhaul tasks, and such breakdown problems shall be corrected with due diligence.

Adequate spare parts inventory and proper tools to

efficiently maintain terminals shall be maintained by Arcorp/Hartz.

All maintenance records must be provided and maintained by Arcorp/Hartz and available for Port Authority review.

All garbage including liquid or solid refuse, shall be disposed of by Arcorp/Hartz according to environmental regulations and standards.

In the event of spillage, breakage, damage or any condition which presents a hazard to persons or property Arcorp/Hartz shall immediately take any and all precautions to safeguard the public, including but not limited to the erection of barricades, the posting of signs and/or personnel, the securing of the area and/or other such actions to prevent injury to persons or property and will immediately advise the Authority of such conditions and the actions taken.

- The Port Authority may or may cause Arcorp/Hartz to promulgate reasonable rules and regulations for use of the premise and the conduct of the occupants. Any such promulgation of rules and regulation shall be upon consultation of the parties to this agreement.

Cleaning - cleaning shall be performed so as to present at all times a terminal which is neat; orderly; litter-, oil-, and dust-free; and sanitary. Cleaning shall include but not be limited to the following:

- Sweeping and wet mopping the entire terminal, emptying all garbage cans, and clearing or cleaning all debris from seats, after each peak period.
- Policing performed continuously during terminal operating periods. Policing is defined as promptly removing all papers, coffee cups, etc., from floors and seats, cleaning any spills or accidents, and sweeping up any debris where necessary.
- Provision of adequate cleaning and policing around the terminal areas where designated. Locations to be approved by the Port Authority.
- Snow and ice removal in all areas in which Arcorp/Hartz is responsible. Locations to be approved by the Port Authority.
- Keeping operating areas of terminals free from stored supplies or tools.
- Washing of all windows on the inside of each terminal at least twice a week. On occasion, three washings may be required.

EXHIBIT 4

TERMINAL OPERATING PLAN
(START-UP)

STAFFING

	<u>HOBOKEN</u>		<u>BPC</u>		<u>NON SHIFT</u>	<u>TOTAL</u>
	<u>AM</u>	<u>PM</u>	<u>AM</u>	<u>PM</u>		
Operations Manager					1	1
Terminal Manager (Asst. Mgr)	1			1		2
Terminal Supervisor	1	1	1	1		4
Ticket Agent	3			3	2	8
Dispatcher	1	1				2
Terminal Porter	1/2	1/2	1/2	1/2		2
Secretary					1	1
	<u>6 1/2</u>	<u>2 1/2</u>	<u>1 1/2</u>	<u>5 1/2</u>	<u>4</u>	<u>20</u>

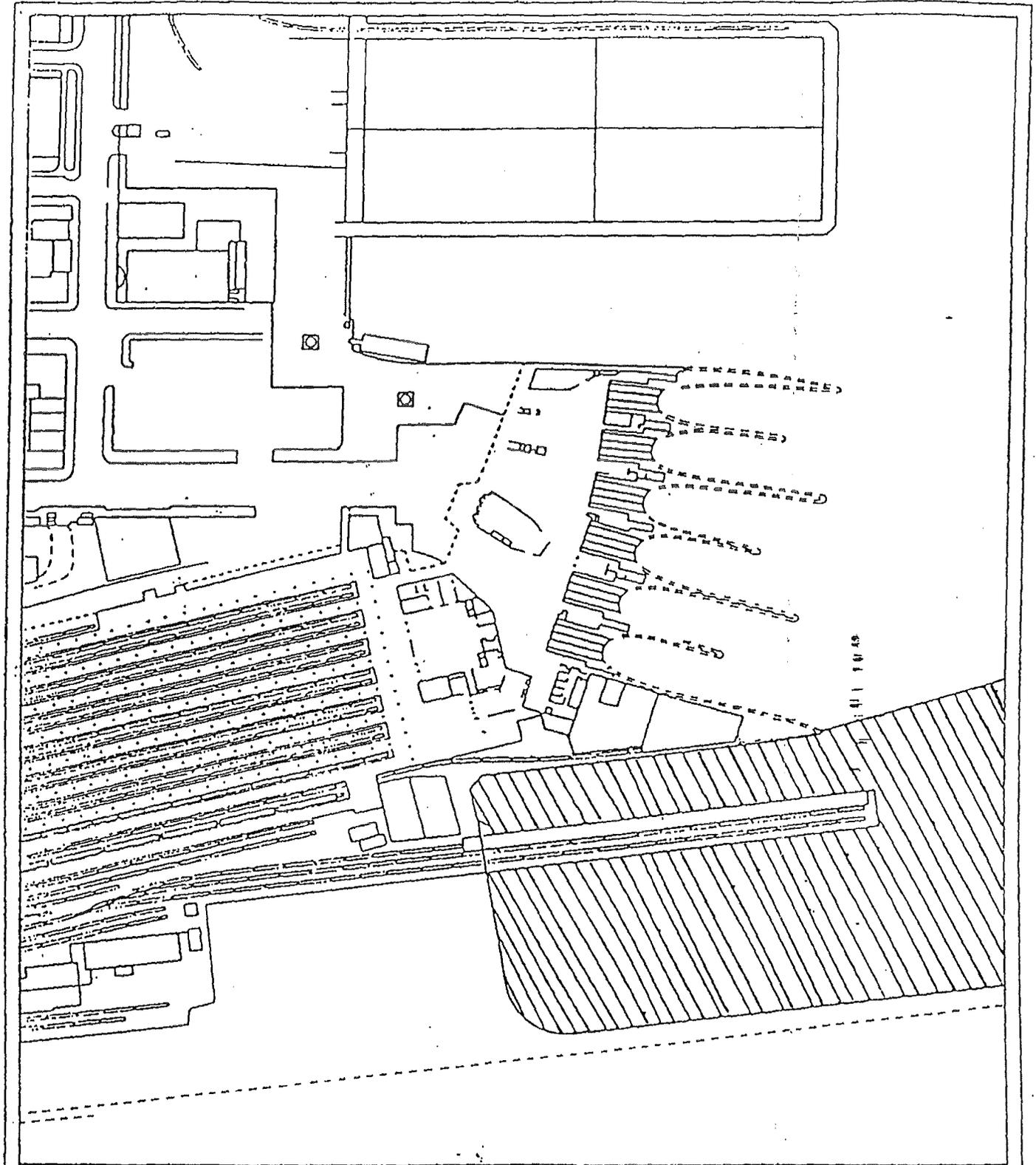
Responsibilities

Operations Manager	General Manager for entire Arcorp/Hartz (A/H) Ferry Operations (includes Weehawken and other A/H ferry operations)
Terminal Manager	Has overall control of all terminal facilities and operations
Terminal Supervisor	Regulates and directs pedestrian queues and assists in fare collection
Ticket Agent	Located in Hoboken for morning hours and New York during peak hours (initial service)
Dispatcher	Maintains constant two-way radio communication with all vessels Provides arrival/departure information via public address system Manipulates visual display to update arrival/departure information
Terminal Porter	Cleans terminals, washrooms and areas leading to terminal
Secretary	Works for Operations Manager Provides customer service Works for Weehawken Business Office
Security	Security requirements for terminals, vessels and the transfer of monies to the banks will be determined with the Port Authority and the property owners.

EXHIBIT 5

TERMINAL OPERATING PLAN

<u>Title</u>	<u>Duties</u>	<u>Terminal/Location</u>
Operations Manager	*General Manager for entire operation	Systemwide
Terminal Manager	*Has overall control of all terminal facilities and operations *Deploys terminal personnel *Maintains liaison with other governmental agencies (e.g. NJ Transit, Coast Guard)	Hoboken and New York
Dispatcher	*Maintains constant two-way radio communication with all vessels *Provides arrival/departure information via public address system *Manipulates visual display to update arrival/departure information	*One location (initial) *Hoboken and New York (permanent)
Terminal Supervisor	*Regulates and directs docking pedestrian queues	Permanent terminals only
Ticket Agents	*Located in Hoboken for morning hours and New York during peak hours (initial service) *Shall be completed/supplemented by automatic vendors as demand increases	
Terminal Porter	*Cleans terminals and washrooms	Permanent terminals only
Secretary	*Works for Operations Manager *Customer service	Business office (Weehawken)
Security	*Security requirements for terminals, vessels and the transfer of monies to the bank will be determined with the Port Authority and the property owners	Contract service



APPROXIMATE AREA FOR DREDGING

0 200



THE HUDSON RIVER FERRY SERVICE
HOBOKEN TERMINAL LOCATION
THE PORT AUTHORITY OF NY & NJ

EXHIBIT 7

TERMINAL MAINTENANCE

Arcorp/Hartz would furnish under this agreement all labor and materials required and/or a part of inspections, checking, cleaning, trouble-shooting, adjusting, lubricating, replacement and repair for the Trans-Hudson ferry service terminals. Excluded from the repair and replacement requirement unless damaged by the operator or agreed to by both partners would be the replacement of structural elements of the terminal, ramps, gangways and rack system. Included would be such terminal items as framing and wall panels, roof and walls (both interior and exterior), ramp and gangway assemblies and systems, stairs, ladders, ramps, doors, windows, and finishes such as floor covering, paint, glass, ceiling tiles and light fixtures.

As part of maintenance, the operator would furnish all labor, parts, lubricants, hydraulic fluids, equipment, tools, barricades and signs for safety precautions. Maintenance also includes equipment and materials necessary to gain access to what is being maintained.

The operator must perform all routine and non-routine maintenance. Routine maintenance is work required to be done on a scheduled basis. No device (equipment or system) should have to be removed from service during operational periods for routine work.

	<ul style="list-style-type: none"> Clean and relamp all lighting fixtures Check operation of navigational systems Remove and rebuild electric motors Check electrical distribution panel for damage and repair Repair all electrical systems as necessary
HVAC	<ul style="list-style-type: none"> Adjust difusers and dampers Replace filters Check and add freon Inspect system and make repairs Check and maintain heating system
Plumbing	<ul style="list-style-type: none"> Check and repair leaking valves and faucets Inspect pipes and repair as necessary Air pressure check and correct sprinkler system
Structure	<ul style="list-style-type: none"> Inspect and repair window leaks Replace broken glass Check door operating hardware and fix deficiencies Replace damaged or broken doors Maintain and repair turnstiles Maintain all hydraulic systems Inspect fendering system and repair as required Maintain fare collection system Exterminate for insects and rodents
Up Keep	<ul style="list-style-type: none"> Repair damage to building due to public use Repair damage due to operator accidents and vandalism Repair roof leaks Repair minor damage resulting from thermal expansion and weathering Paint interior and exterior of structure
Mechanical	<ul style="list-style-type: none"> Inspect and repair all hydraulic systems Clean and lubricate all moving systems on ramps and gangways Check and repair weather seals and flashing drain, clean and refill hydraulic systems

Routine work can be planned, it can be performed daily, hourly, yearly or even every third year. Routine maintenance may include such tasks as inspect, tune-up, overhaul, clean and check. Non-routine maintenance is maintenance or repair other than that required to be performed on a scheduled basis and usually required to enable the system or device to be operated in a safe reliable manner. Non-routine maintenance can also include making or building something with available staff and materials while improving service. Non-routine work may include repair, replace, upgrade, identify and correct problem, and build on a small scale.

Maintenance servicing as a minimum includes, inspect, check, clean, lubricate, repair or replace all parts, and make necessary adjustments to terminal systems including all structural, electrical, mechanical and hydraulic components.

The prime objective of the maintenance program is to keep all material structures of the ferry terminals safe and in good repair. This includes mechanical equipment, HVAC, hydraulic ramps and gangways, rack system, door and windows, all finishes, and the roof. Uninterrupted operation of this equipment is extremely important for proper functioning of a ferry service. The following (although not meant to be all inclusive) is the minimum required maintenance to achieve this objective:

DESCRIPTION OF MAINTENANCE WORK

Electrical

Replace lamps, switches and fuses
Periodically check electrical systems

EXHIBIT 8

TERMINAL MAINTENANCE

The Port Authority would furnish under this agreement all labor and materials required for structural maintenance and heavy repair to the permanent terminal facilities, piers and subsurface structures. Included would be such items as roof resurfacing, complete fender and pier system replacement, ramp and gangway replacement. Not included would be normal repairs resulting from mass transit use of a facility.

THE PORT AUTHORITY OF NY & NJ

ECONOMIC DEVELOPMENT DEPARTMENT
NEWARK LEGAL CENTER
ONE RIVERFRONT PLAZA, 9TH FLOOR
NEWARK, NEW JERSEY 07102

March 16, 2005

(201) 595-4510 NEW JERSEY
(212) 435-7000 NEW YORK

Billybey Ferry Company, LLC
D/B/A NY Waterway South
110 East 59th Street
New York, NY 10022
Attn: Mr. William Wachtel (“Assignee”)

Port Imperial Ferry Corp.
Pershing Road
Weehawken, NJ 07087
Attn: Mr. Arthur Imperatore Sr. (“Assignor”)

Re: Assignment of Ferry Transportation Agreement between the Port Authority of NY & NJ and Port Imperial Ferry Corporation as Successor to Arcorp/Hartz dated November 3, 1988 and Agreement dated November 4, 2003 for Pier 11 Service between the Port Authority of NY & NJ and Port Imperial Ferry Corporation.

Dear Mr. Wachtel,

In order to continue an important alternative transportation mode for New Jersey and New York commuters, this agreement will serve to set forth the agreed upon terms between the Port Authority of New York & New Jersey (“Port Authority”) and Billybey Ferry Company, LLC, a Delaware limited liability corporation (“BBFC”) and Port Imperial Ferry Corporation d/b/a NY Waterway for the complete assignment of the above referenced agreements for the operation of ferry services between the property procured by the Port Authority at New Jersey Transit’s Hoboken Terminal, Hoboken, New Jersey (“Hoboken”) and the property procured by the Port Authority at Battery Park City (“BPC”) and between said Hoboken Terminal and Pier 11 in Manhattan. The Port Authority acknowledges that BBFC is not assuming any liabilities or obligations of Port Imperial Ferry Corporation under the existing agreements.

The assignment is being made in recognition of the

1. Succession of Port Imperial Ferry Corporation d/b/a NY Waterway to the rights of Arcorp/Hartz under the 1988 Agreement
2. The December 20, 2004 Asset Purchase Agreement between Port Imperial Ferry Corporation and BBFC (formerly known as MPWBP, LLC) and Arthur E. Imperatore and,
3. The February xx, 2005 Vessel Management Agreement between Port Imperial Ferry Corporation and BBFC;
4. and the February xx, 2005 Management Personnel Agreement between Port Imperial Ferry Corporation and BBFC; and those fully executed Agreements under 2 and 3 shall be deemed part of this Agreement.

The Ferry Transportation Agreement between the Port Authority of NY & NJ and Arcorp/Hartz dated November 3, 1988, and the Hoboken – Pier 11 Ferry Transportation Agreement between the Port Authority of New York and New Jersey and Port Imperial

Ferry Corporation dated November 19, 2003 are hereby assigned to NY Waterway South. The assigned agreements are hereby restated as follows:

Grant of Right to Operate Ferry Services

1.01 The Port Authority hereby grants BBFC the exclusive rights, to the extent permitted by Law:

- a) to operate passenger ferry service between Hoboken, BPC and Pier A, and between Hoboken and Pier 11;
- b) the provision of the services shall be subject to all the provisions of the Agreements between the property owners (NJ Transit at Hoboken and Hugh F. Carey Battery Park City Authority and New York State at Battery Park City) and The Port Authority. The executed Battery Park City Authority Agreement dated November 9, 2004 shall be deemed part of this Agreement and, upon execution a copy of the NJ Transit Agreement shall be annexed to this Agreement and said Agreement shall be deemed part of this Agreement.

1.02 The "current" Space at Hoboken is depicted in Exhibit A and the "current" Space at Battery Park City is depicted in Exhibit B. "Space" as used herein shall mean the two areas as so depicted.

1.03 The parties acknowledge that the Space designated in Exhibits A and B constitutes non-residential real property. The Port Authority understands that as a requisite to this Agreement, an agreement has been entered into between Port Imperial Ferry Corporation and BBFC. The Port Authority shall have no obligation under this Agreement for finishing work or preparation of either Space for BBFC's use, all of which shall be BBFC's obligation.

1.04 The Port Authority makes no representations as to the condition of waterways nor of each Space nor of the means of ingress thereto and egress there from and does not agree to keep the same unobstructed or fit for use. Any required maintenance dredging during the term of the contract is the obligation of BBFC. No closing by the Port Authority of said waterways or portions thereof, or whether temporary or permanent, whether or not such closings involve waterways or means of ingress or egress previously used by BBFC hereunder, and no such closing by any governmental authority, whether of the waterways or other areas within or outside each Space, and whether or not at the request or with the consent of the Port Authority, shall constitute or be deemed diminution of the terms of this agreement, or relieve BBFC of any of its obligations hereunder, provided that BBFC shall be under no obligation to continue ferry service during any period in which the waterways are not navigable, except where maintenance dredging is required, or during any period in which the Port Authority or other government entity has closed such waterways or means of ingress or egress.

1.05 BBFC shall arrange to staff all operating positions as required herein and shall manage and oversee the operations and maintenance of the ferry service system. The Port Authority shall not be required to provide any staff or to oversee any of the day to day operations but shall have at all times the right to inspect, observe and comment upon all operations of BBFC.

1.06 Notwithstanding any other right of termination set forth herein, upon prior written notice of any material breach or deficiencies in operations and/or maintenance, and a 30-day opportunity to cure by BBFC, or to initiate a cure within a reasonable period and to achieve such cure within a reasonable period, if cure cannot be reasonably effected in 30 days in the opinion of the Port Authority, the Port Authority shall have the right in its sole discretion to terminate or suspend this agreement immediately if deficiencies in operations are not corrected. Any costs or lost revenues resulting from any termination or suspension will be the sole responsibility of BBFC. Any inspection, observations, or comments by the Port Authority shall not release BBFC of any obligation under this Agreement or by reason of Law.

For purposes of this agreement, breach shall include any material breach, not to be limited to the following, whether or not the time has arrived for the performance of a material obligation under this agreement; a statement by an authorized BBFC representative to any representative of the Port Authority indicating that BBFC cannot or will not perform any one or more of its material obligations under this contract; any act or omission of BBFC or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its material obligations under this contract; any suspension or failure to proceed with any part of its services or material obligations by BBFC which makes it improbable at the time that it will be able to perform any one or more of its material obligations under this contract.

The Port Authority shall also have the rights as set forth above in the event BBFC shall become insolvent or bankrupt or if its affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors, unless the Port Authority shall in its sole discretion determine that the BBFC is sufficiently solvent to continue performance.

1.07 BBFC shall have no right hereunder to carry on or conduct any business operation or service at either Space other than as specifically set forth herein. BBFC agrees it shall not solicit business in the public areas of each Space without the written permission of the Port Authority. This Agreement shall in no way limit BBFC's ability to market this service in other locations. The use, at anytime, of hand or standard megaphones, loudspeakers or any electric, electronic or amplifying devices is hereby expressly prohibited for the purposes of solicitation. BBFC will have the right to use loud speakers or electronic amplification devices in the ordinary course of business for announcements, departures/arrivals and/or emergencies.

1.08 It should be noted that the Port Authority has established a policy that proactive, responsive and respectful and helpful customer service to all customers is of the utmost importance. This policy also extends to all Port Authority employees and contractors, and includes companies whose staffs interact with customers while providing services.

1.09 BBFC shall not be entitled to any financial compensation or subsidy or payment whatsoever from the Port Authority. BBFC shall bear all costs of the operation including any utility costs.

Term of Agreement

2.01 Subject to 2.02 below this agreement shall become effective upon the execution and commencement of the March 11, 2005 Vessel Management and the March 11, 2005 Management Agreements between Port Imperial Ferry Corporation and BBFC, the consummation of the December 20, 2004 Asset Purchase Agreement which must include schedule 3.1(b) the allocation of MARAD debt, and upon receiving written notification of commencement of this agreement from the Port Authority, and shall remain in effect until the existing contract term of October 11, 2009.

2.02 Conditioned on BBFC successful demonstration to the Port Authority of the continued operation of ferry routes originating in Pavonia/Newport, Harborside, Liberty Harbor and Port Liberte, New Jersey to lower and midtown Manhattan (including to BPC), similar to those run by NY Waterway at the inception of this Agreement (provided that BBFC may alter schedules, change routes or suspend service so long as it (or its successors) maintains substantially the same system as the southern routes run by NY Waterway at the inception of this Agreement), BBFC shall have the option to continue this agreement for five additional years. This option must be exercised in writing within 18 months prior to the contract termination of October 11, 2009. Upon exercise of the option, continuance of the substantially the same routes shall become a requirement of this contract.

2.03 The parties acknowledge that the obtaining of authorization by the Port Authority Board of Commissioners of this agreement (which becomes final upon the New York and New Jersey Governors' approval) constitutes a condition precedent to its continuance.

Description of Ferry Service

3.01 Service Requirements - BBFC agrees to provide initial weekday (Monday – Friday) ferry service between Hoboken and BPC and Hoboken and Pier 11 as outlined in the schedule provided as Attachment “A – Schedule of Services”.

3.02 Reduction in Service - Any decrease in frequency of service, or weekend service, will require prior written notification to the Port Authority; however, BBFC must remain in accordance with the minimum service requirements set forth in Section 3.04.

3.03 Additional Ferry Services - For services from Hoboken to locations other than Pier 11, BPC and Pier A, BBFC must request in writing and receive written consent from the Port Authority in advance of initiating service.

3.04 Peak Period Service Capacity - The ferry system provided by BBFC under this Assignment Agreement, other than that described in 2.02, will at a minimum consist of (I) for the Hoboken to BPC service, three vessels capable of maintaining hourly capacity sufficient to effectively handle the actual volume of passengers and a minimum of approximately 800 per peak hour(8 am - 9 am), and (ii) for the Hoboken to Pier 11

service, four vessels capable of maintaining hourly capacity sufficient to effectively handle the actual volume of passengers and a minimum of 1125 per peak hour (8 am - 9 am). Upon Port Authority approval, BBFC will adjust the schedule and headway to accommodate any changes in volume. BBFC resources will be re-allocated as needed to handle all volumes of passenger traffic.

3.05 Spare Vessels - BBFC will have readily available, at minimum two comparable spare vessels capable of being promptly put into service as an immediate replacement for any vessel unable to perform as required.

3.06 Schedules – As appropriate to the success of the ferry service operation, BBFC will publish, distribute and post Port Authority approved schedules twice a year, more frequently upon mutual consent. BBFC shall have the right to undertake minor changes in the posted schedule due to daily operational considerations.

3.07 Fueling and Waste Disposal - Fueling of vessels and garbage disposal (including liquid and solid waste) is not allowed at either Space (Hoboken or BPC).

3.08 Midday and Overnight Storage – Overnight and midday storage of vessels at Hoboken is permitted. Storage is not permitted at BPC other than in emergency situations.

3.09 Vessel Maintenance - Routine light cleaning and light maintenance is permitted at Hoboken but not at BPC, other than in emergency situations.

3.10 Hoboken and BPC Ferry Landing Facilities - Prior to the termination date of this agreement, BBFC may be required by the Port Authority under the terms and conditions of this assignment, to relocate the ferry service and its operations to new, permanent ferry facilities located in the historic Hoboken Erie Lackawanna Ferry Terminal, and/or Permanent Battery Park City Ferry Terminal, all at BBFC's cost. A minimum of 30-days notice will be provided.

a. Facility Operation/Maintenance

BBFC will be solely responsible for the acquisition and/or ongoing lease of the requisite barges currently utilized at the temporary Hoboken and Battery Park City facilities.

BBFC will be responsible for the operation and maintenance of the temporary and when certified for occupancy, the permanent terminals and landing facilities at Hoboken and BPC at no cost to the Port Authority, provided that the Port Authority shall be responsible for structural maintenance and heavy repairs to the permanent facilities, piers and subsurface structures. Except with the prior written consent of the Port Authority (via the Tenant Alteration Application procedure), BBFC shall not erect any structures, make any improvements or modifications, or do any other construction on the premises.

BBFC accepts the NY Waterway previously commented upon designs of all docking facilities for the permanent landing facilities at BPC and Hoboken, in accordance with the plans and specifications heretofore

delivered to BBFC by the Port Authority. BBFC will have further opportunity to comment on the Hoboken plans before they are finalized.

BBFC will be responsible for ensuring that all operations of the temporary and any new terminal and landing facilities at Hoboken and BPC are in compliance with the Port Authority Rules and Regulations for each facility which are subject to change (see Attachments "C" and "D").

Cleaning and maintenance tasks will, at a minimum, be sufficient to meet all health and sanitation codes and to present a facility that is clean, safe and operates in a reliable and environmentally sound fashion while adhering to all applicable Port Authority standards.

b. Additional Usage of each Space

BBFC shall not utilize either Space for any purpose other than the services outlined in this agreement without the Port Authority's prior written approval, which may require a sharing of revenues.

BBFC shall collect all rental income attributed to the leasing of terminal concession facilities and advertising at Battery Park City. The Port Authority shall receive 25% of gross receipts of said revenues beginning the earlier of the opening of the new Battery Park City Terminal or January 1, 2007. Receipts received or receivable by BBFC for said revenues will be remitted to the Port Authority for each quarter year of BBFC's operation. The Port Authority audit rights hereunder shall extend to all such transactions. Similar arrangements shall apply to any concession or advertising opportunities at the new Hoboken terminal. BBFC may retain 100% of any concession or advertising revenues at the existing Hoboken terminal.

c. Additional Operators

At the request of the Port Authority and, subject to the grant of exclusivity in this agreement, BBFC will allow other ferry service providers to land at each Space as long as they do not interfere with the operation of ferry services covered by this agreement as determined by the Port Authority. BBFC agrees to work in harmony with any other ferry service provider operating at either Space. Additionally, BBFC shall not allow any other operator use of either Space without prior express written approval from the Port Authority. In consideration of the administrative oversight of the landings, which includes collection of fees, landing slot assignments, enforcement of Port Authority Rules and Regulations (as provided in Attachment C and D - Hoboken and BPC Ferry Terminal Rules and Regulations), insurance certificate reviews and other related activities, BBFC shall set reasonable and non-discriminatory landing fees for accommodating such services, which fees shall be subject to Port Authority approval. The Port Authority hereby approves the form of Landing Slot Authorization annexed hereto as Attachment F and the initial fee schedule set forth therein. BBFC may increase the rates contemplated by such initial fee schedule at the time the new terminal at Battery Park City is operational, subject to the prior consent of the Port Authority

BBFC will be entitled to 75 percent (75%) of any landing fees collected. Receipts received or receivable by BBFC from other operators for the use of either space will be remitted to the Port Authority for each quarter year of BBFC's operation on such 25%/75% basis. If BBFC incurs any extraordinary expenses in the operation or maintenance of the terminal facilities (existing or new), such extraordinary expenses may be deducted with the Port Authority's approval, which will not be unreasonably withheld, from the gross landing fees before determining the portion thereof to be remitted to the Port Authority. The Port Authority audit rights hereunder shall extend to all such transactions.

d. Improvements

Any improvements, structures, or modifications for the enhanced operation of a ferry service contemplated by BBFC from either Space, in addition to those required herein, will be at the sole expense of BBFC and require Port Authority's prior written consent. All agreed upon modifications must adhere to Port Authority Tenant Construction or Alternation Application procedure (Exhibit F) as well as follow the guidelines set forth in the Tenant Construction Review Manual (Exhibit G).

Upon expiration or earlier termination of the assignment, BBFC shall have the option to remove its trade fixtures and improvements and the BBFC shall repair, at the BBFC's sole cost, any damage to either Space caused by such trade fixtures, improvements, or their removal.

3.11 Vessels

- a. Vessels utilized under this agreement shall be of the same class and standard as BBFC's monohull vessels "Empire State", "Garden State", and/or "Henry Hudson"; or double deck 149 passenger catamarans "Christopher Columbus, Fiorella LaGuardia, Frank Lautenberg, Frank Sinatra, and/or Hoboken; or receive Port Authority written approval for its use. All of BBFC's performance hereunder shall be in compliance with all applicable legal requirements.
- b. The Port Authority may establish a "certification" program to ensure that all vessels using either Space are continuously in compliance with all federal and state air and noise quality guidelines and standards applicable to ferry operators. Any operator utilizing the premises will be required to participate.
- c. The Vessel Security Plan relating to operations under this agreement shall conform to all rules and regulations set forth by any applicable regulatory body. Proof of compliance with any such rules and regulations will be supplied to the Port Authority annually or at any time requested by the Port Authority.

- d. The Port Authority, in its sole discretion, may establish a monitoring plan for vessels utilizing either Space. BBFC will be required to cooperate without unreasonable expense or interference with operations as determined by the Port Authority.
- e. During adverse weather conditions such as ice, if ferry service is suspended, BBFC will provide customer service information advising passengers to utilize other forms of transportation.
- f. The Port Authority shall maintain the right to inspect BBFC's vessels assigned to operations under this agreement from any embarkation/debarkation site, as well as to monitor BBFC's adherence to the established service schedule by periodically assigning personnel to travel on route trips.

4.01 Fares

- a. The following fare schedule shall be in effect for Pier 11 service:

One-Way	\$4.00
10 trip	\$36.00
Monthly	\$123.00

- b. The following schedule shall be in effect for BPC service:

One-Way	\$3.50
10 trip	\$32.75
Monthly	\$107.00

- c. BBFC shall establish a fare schedule for Pier a service, which shall be no greater than the Schedule for Pier 11 service.
- d. Stated fares for both the Pier 11 and BPC services shall remain unchanged for the immediate six-month period following the effective date of this assignment.
- e. BBFC may increase average ticket fares by no more than \$.50 per year during each year of this agreement (including the option period) except during 2006, provided that fares may be increased above such limits in the event of demonstrated extraordinary increase in fuel or insurance costs, such increase to be submitted to the Port Authority for approval as to reasonableness prior to implementation. BBFC shall furnish the Authority with all relevant documentation, certified as to its accuracy by BBFC's Chief Financial Officer, with each request for a fare change. Concurrence will not be unreasonably withheld. Monthly or 10 trip tickets may be proportionately increased. BBFC may, following the effective date of this agreement, eliminate monthly or 10 trip tickets or may change to a 20 or 40 trip ticket, with similar discounts to those currently applicable to monthly tickets. Deferred increases may be implemented at any subsequent point.

- f. Fares shall be published at the same time as the ferry schedule and simultaneously distributed and posted.
- g. All passenger fare increases require 45 days written notification to the Port Authority.
- h. Any discounts, special promotions or fare reductions will require the Port Authority's prior written consent. Such approval shall not be unreasonably withheld and will be deemed given if there is no response after three business days.

Advertising

5.01 Marketing Program

- a. All marketing materials and press releases are to be reviewed and approved by the Port Authority prior to release. Such approval shall not be unreasonably withheld and will be deemed given if there is no response after three business days.
- b. **Signage**
Any supplemental signage deemed necessary to support the ferry service operations distributed herein shall be at BBFC's sole expense and must be approved in writing by the Port Authority.
- c. The Port Authority will make its transportation facilities available without charge for signage, information and advertising including PATH trains but excluding the PATH stations.

Insurance

6.01 During the term of this agreement, BBFC shall obtain and maintain, at its own expense, the policy or policies of insurance set forth on the attached Exhibit C. Copies of all applicable policies will be submitted within 30-days of the execution of this agreement, and subsequently on an annual basis.

Permits

7.01 BBFC shall be responsible for obtaining all governmental permits, licenses and agreements required for the utilization of the landing sites at Pier 11 and Pier A, and the operation of commuter ferry services as described herein thereat. In all of its performance under this agreement NYW shall comply with all applicable legal requirements.

Performance of Work

8.01 In the event of a BBFC default, the Port Authority shall have the right to take possession of and use or permit the use of any and all plant, materials, equipment and

other facilities provided by BBFC for the purpose of performing under this Agreement, and BBFC shall not remove any of the same without express permission. Unless expressly directed to discontinue the performance of all services and obligations, BBFC shall continue to perform the remainder thereof in such manner as in no way will hinder or interfere with the portions taken over by the Authority.

Representations and Warranties

9.01 BBFC represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the type of services contemplated by this Agreement, and, that or its agents is authorized to perform this Agreement.
- b. That it has carefully examined and analyzed the provisions and requirements of this Agreement and inspected the ferry landing sites and other sites related to this Agreement and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Agreement, the general and local conditions and all other matters which in any way affect this Agreement or its performance, and that the time available for such examination, analysis, inspection and investigation was adequate:

Indemnifications

10.01

BBFC hereby covenants and agrees that it will defend, indemnify and save harmless the Port Authority, its Commissioners, officers, agents, representatives and employees against, any and all claims demands, penalties, fines, settlements, damages, injuries, losses, expenses and judgments of whatever kind or nature to the extent arising out of the negligent or wrongful acts or omissions of BBFC or of any of its Directors, officers, agents, subcontractors, representatives and employees, provided, that BBFC shall have no obligation with respect to damages to the extent caused by the negligence and/or intentional tortuous acts of the Port Authority, its Commissioners, officers, agents, representatives and employees. In such defense, BBFC shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority. Unless a claim is one BBFC is not required to indemnify the Authority against as described in this paragraph, such defense shall be at BBFC's cost.

No Commissioner, officer, agent or employee of the Authority shall be charged personally by NYW with any liability or held liable to it under any term or provision of this agreement, or because of its execution or attempted execution or because of any breach hereof.

This provision shall supercede the section entitled "Indemnification and Risks Assumed by the Contractor" in the attached "Standard Terms and Conditions" (Attachment E).

No Indictments

11.01 BBFC and each of its constituent entities and affiliates certifies that neither it or any entity on whose behalf it is executing this agreement (a) has been indicted or convicted for any felony in any jurisdiction; (b) has been suspended or debarred or otherwise disqualified from entering into contracts with any governmental agency for breach of contract or for any cause related directly or indirectly to indictment or conviction. This certification shall be deemed to include officers, directors, and shareholders with an equity interest in excess of 10% and to have been authorized by the boards of directors of BBFC.

11.02 Additionally, if any director, officer or employee of BBFC is indicted for a felony prior to or during the term of this Agreement, they must be immediately terminated from employment.

Revenue Obligation

12.01

- a. A \$0.10 per passenger Hoboken departure fee calculated and paid to the Port Authority quarterly commencing upon the effective date of this assignment is applicable to all services agreed upon in this assignment except those described in 2.02. Such per passenger Hoboken departure fee shall be increased to \$0.15 per passenger during the renewal term.

Passenger Fee Payments and other fees as outlined in section 3.10b and 3.10c of this Agreement shall be made to the Port Authority within 45 days following the end of each quarter year of the BBFC's operation hereunder. For each month of operation, the BBFC agrees to provide the Port Authority with an activity report for the daily operation of all Hoboken services within 15 days of the subsequent month including the mix of ticket types (i.e. single trip, ten trip and monthly). The activity report format shall be subject to Port Authority approval and shall show daily passenger trips in each direction by am and pm periods. BBFC shall propose an auditable method of keeping passenger counts within 30 days of execution of this agreement for Port Authority Audit Department approval. Included in such proposal shall also be an auditable method of accounting for landing fees collected and advertising and concessionaire revenues. BBFC shall keep records of all financial and operations transactions (including passenger counts) and documents relating to this operation and agreement. The Port Authority shall have access to all such records and documents of BBFC during normal business hours up until three years past the expiration or termination of this Agreement. If within the aforesaid three year period the Authority has notified BBFC in writing of a pending claim by the Authority under or in connection with this Agreement to which any of the aforesaid records and documents of BBFC relate either directly or indirectly, then the period of such right of access

shall be extended to the expiration of 6 years from the date of termination with respect to the records and documents involved.

All BBFC subcontractors shall be subject to written prior approval of the Port Authority. Subcontractors shall have the same document retention and audit obligations as BBFC.

- b. Late Charges - If BBFC shall fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation, any payment of percentage or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (herein below described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen (13)) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefore by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Nothing in this Section is intended, or shall be deemed, to, affect, alter, modify or diminish in any way: (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in the Section of this Agreement entitled "Termination"; or (ii) any obligations of BBFC under this Agreement. If the precise amount of any payment required to be made by BBFC under this Agreement cannot be known to BBFC, such payment shall not be deemed due to the Port Authority until ten (10) days after the Port Authority notifies BBFC of the amount of such payment. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.
- d. All payments under this agreement should be sent to the Port Authority as follows:

The Port Authority of New York & New Jersey
P.O. Box 95000-1517
Philadelphia, PA 19195-1517

Or via wire transfer to:

Name of Bank – Commerce Bank
Bank ABA Number – 026013673
Account Number -

- e. As security deposit BBFC shall have a \$30,000 Letter of Credit (Exhibit E) to the Port Authority upon commencement of services.
- f. In the event that BBFC or any affiliate executes an agreement with the National Parks Services for the provision of excursions to the Statue of Liberty, BBFC agrees to provide the Port Authority with a \$1 million payment. Full payment to the Port Authority shall be made in full within a one-year period following the commencement of said service.

Security and Emergency Response

13.01 BBFC will be responsible for providing appropriate security on a 24-hour basis for each Space. BBFC shall perform background investigations of all persons employed by it in the ferry operations. Security and emergency response plans will be submitted to the Port Authority within 60-days of this agreement and then annually. Security and emergency response plans must meet local, state, federal, and the Port Authority requirements and additionally meet the provisions of the Agreements between the Authority and the property owners (NJ Transit at Hoboken and Hugh F. Carey Battery Park City Authority and New York State at Battery Park City) and shall be subject to Port Authority approval.

13.02 Security/Contractor Identity and Background Checks under this agreement shall conform with a mutually agreeable plan to be supplied by the BBFC within 30 days of commencement of services. All employees stationed at each Space must adhere to specific security requirements and should carry and display an appropriate ID badge.

13.03 During emergency situations, BBFC agrees to use its best efforts to comply with requests by the Port Authority, within a reasonable time from any such emergency, to direct vessels assigned to this service as needed, unless otherwise directed by any government official or agency. It is understood that the Captain of any particular vessel has final approval of a vessel's ability to conduct any service. BBFC and the Port Authority agree that any such direction by the Port Authority will be subject to reasonable fees.

Miscellaneous

14.01 M/WBE Participation

The Port Authority of NY & NJ has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBE's) and Women owned Businesses (WBE's) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. BBFC will use every good faith effort to provide for meaningful participation by Port Authority certified M/WBE's as defined in

this document, in all purchasing, subcontracting and ancillary service opportunities associated with this contract, including purchase of equipment, supplies and labor services. Good faith efforts include 1) dividing the services and materials to be procured into small portions where feasible, 2) giving reasonable advance notice of specific subcontracting and purchasing opportunities to such firms as may be appropriate, 3) soliciting services and materials from M/WBE's, which may be certified by the Port Authority and 4) insuring that provision is made for timely progress payments to the M/WBE's.

The Port Authority has a list of certified M/WBE firms, which are available to BBFC at their request. The Port Authority makes no representation as to the qualifications and ability of these firms to perform under this contract. BBFC may use firms, which are not on the list but will be required to submit, to the Port Authority's Business and Job Opportunity (BJO) for certification, the names of M/WBE firms it proposes to use. Only Port Authority certified M/WBE firms may be considered to meet the goals. For inquiries and assistance, please contact BJO at (973) 565-5533.

14.02 BBFC shall promptly supply the Port Authority with any data required for any local, state, federal or agency reporting requirements. Additionally, copies of any survey data collected by BBFC will be promptly supplied to the Port Authority.

14.03 Operations of Others - During the time that BBFC is performing under the agreement, other persons will be engaged in other operations on or about either Space including working on other Port Authority contracts, and pedestrian and vehicular traffic all of which shall remain uninterrupted.

BBFC shall so plan and conduct his operations as to work in harmony with others engaged at each Space and not to delay, endanger or interfere with the operations of others (whether or not specifically mentioned above), all to the best interest of the Authority and the public and as may be directed by the Port Authority

14.04 BBFC agrees that it will not contract with any third party if they are unable to perform its obligations under this contract or for the routes so assigned hereunder without the prior written approval of the Port Authority.

14.05 Notwithstanding the assignment of contract provisions of this Agreement, this Agreement serves to continue and not extinguish Port Imperial Ferry Corporation's obligation under the Hoboken to Battery Park City Agreement to remove the interim docking facilities referred to in subparagraph K of Section 3.02 of said Agreement, and under the Hoboken to Pier 11 Agreement for the payment of all rent and passenger fee obligations due up to the effective date of this assignment.

14.06 This Agreement contains the entire agreement of the parties. It may be amended only by a writing signed by all parties. This agreement shall be governed by and construed in accordance with the Law of the State of New York excluding conflicts of Law provisions. Any approvals provided for in this agreement shall not be unreasonably withheld. To the extent that this Agreement and Attachment E (Standard Contract Terms and Conditions) are inconsistent, this Agreement shall govern. Without limiting the generality of the foregoing, the default provisions of this Agreement shall supersede any default provisions in such Attachment E.

Agreement Contacts

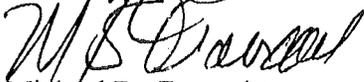
Port Authority of NY & NJ - Ferry Transportation
General Manager
Port Authority of New York & New Jersey
233 Park Avenue South, 4th Floor
New York, New York 10003

Port Authority of NY & NJ – Legal Department
Herbert S. Somerwitz
Chief, Contracts Division
The Port Authority of New York and New Jersey
225 Park Avenue South, 14th floor
New York, NY 10003

Billybey Ferry Company, LLC
c/o Wachtel & Masyr, LLP
110 East 59th Street
New York, New York 10022
Attention: William B. Wachtel

We look forward to working with BBFC in promoting the use of ferries as a convenient, reliable and affordable alternative transportation for Hoboken to lower Manhattan commuters.

Sincerely,

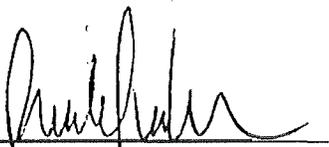


Michael B. Francois
Chief, Real Estate & Economic Development

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noted

Concurred:

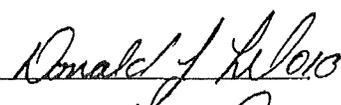
Billybey Ferry Company, LLC (Assignee)

By: 

Title: C. E. D.

Date: 3/17/05

Port Imperial Ferry Corporation
(Assignor)

By: 
Title: Ex Vice President

Date: 3-17-05

Exhibits & Attachments

Exhibits

Exhibit A – Demised Property for Hoboken Ferry Terminal (“Space”)

Exhibit B – Demised Property for Battery Park City Ferry Terminal (“Space”)

Exhibit C – Insurance Requirements

Exhibit D – NOT USED

Exhibit E – Letter of Credit Sample

Exhibit F – Tenant Construction or Alternation Application

Exhibit G – Tenant Construction Review Manual – March 2003

Attachments

Attachment A – Schedule of Service

Attachment B – Not Used

Attachment C – Hoboken Ferry Terminal Rules & Regulations -- to be developed

Attachment D – Battery Park City Ferry Terminal Rules & Regulations / Landing Slot Authorization

Attachment E – “Standard Contract Terms and Conditions – Section D”

EXHIBITS

Exhibit B (Demised Premises)

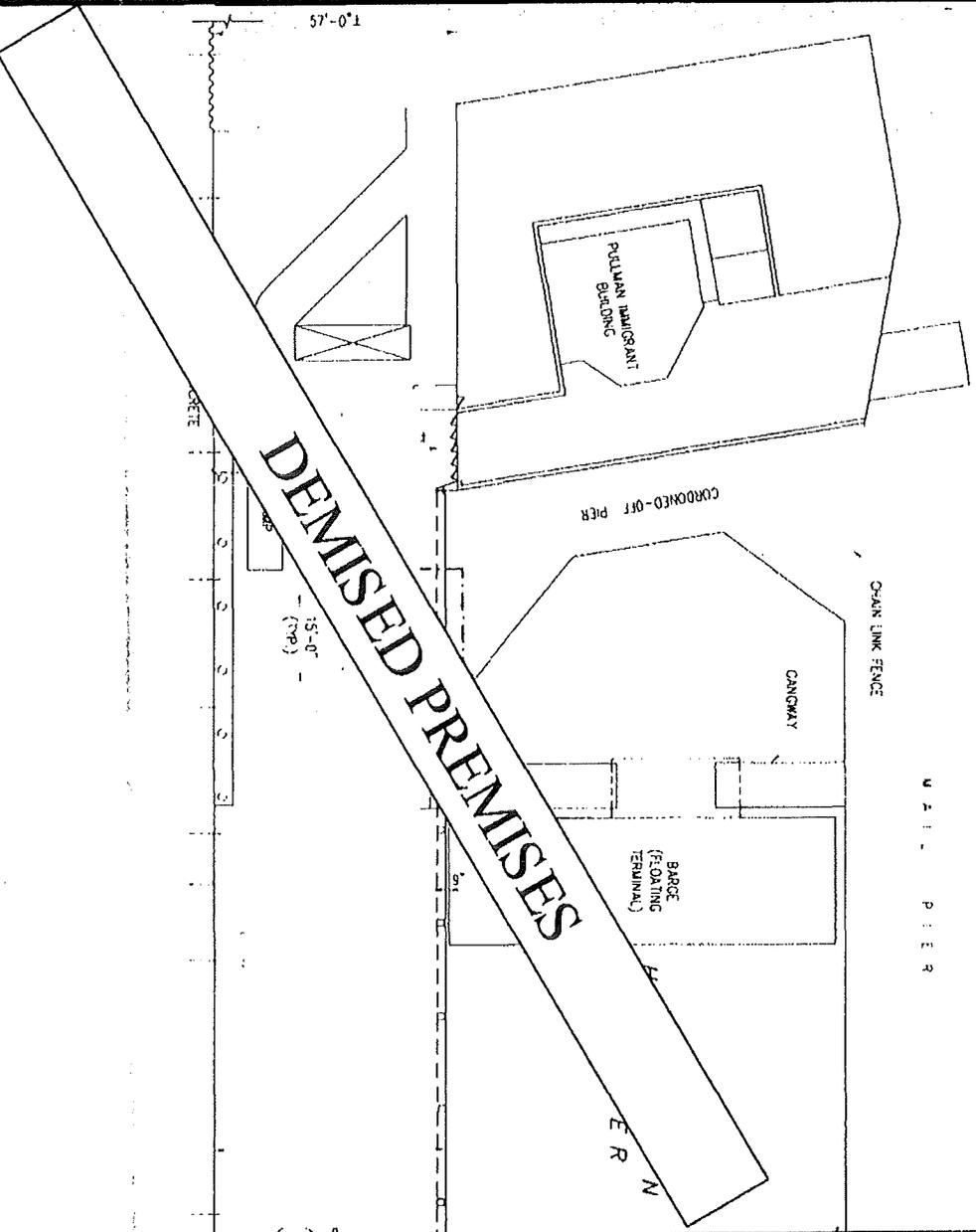


Exhibit C – Insurance Requirements

The Operator in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedules set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Operator under this agreement, and shall be effective throughout the term of the agreement.

Public Liability Insurance Requirement *:

Commercial General Liability Insurance with minimum limits of \$10 million per occurrence for bodily injury and property damage liability including:

- The inclusion of The Port Authority of NY & NJ / PATH, Hugh L. Carey Battery Park City Authority, Battery Park City Parks Conservancy Corporation and NJ Transit as Additional Insured, including but not limited to premise-operations and completed operations.
- The Port Authority Immunity Clause.
- Cross-liability Clause.

Other coverage: \$ 50 million Protection & Indemnity Insurance.

Other Insurance: U.S. Longshoremen & Harbor Worker's Compensation Act Coverage Endorsement,

Other Insurance: Automobile Liability Insurance – \$2 million combined single limit per accident for bodily injury and property damage liability.

* The Commercial General Liability insurance policy minimum limits for the Operator's parking operations shall be \$10,000,000.

*Additional insurance requirements may be contained in either the provisions of the Agreements between the property owners (NJ Transit at Hoboken and Hugh F. Carey Battery Park City Authority and New York State at Battery Park City) and The Port Authority and shall be the deemed the responsibility of the Operator.

EXHIBIT E – LETTER OF CREDIT FORMAT

The Port Authority of New York & New Jersey
225 Park Avenue South, 12th Floor
New York, NY 10003

Date _____

Attn: CREDIT MANAGER

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO.

_____ (C) _____

At the request of _____ (A) _____, we _____ (B) _____ hereby open this
CLEAN IRREVOCABLE LETTER OF CREDIT NO. _____ (C) _____ in your favor up to an
aggregate of _____ (D) _____ U.S. Dollars, available by your draft(s) on us at sight.

We warrant to you that all your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL
BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us
at

_____ (E) _____
_____ on or before the expiration date set forth below or future expiration date as indicated below. Our
obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon
reimbursement thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under _____ (B) _____ Letter of Credit No.
_____ (C) _____
dated _____". Partial drawings under this Letter of Credit are permitted.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on
_____ (F) _____

This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended
without amendment for additional periods of one (1) year from the present or each future
expiration date unless we have notified you in writing not less than sixty (60) days before
such date that we elect not to extend the Letter of Credit for such additional period, such
notice to be sent by registered or certified mail to you at the address herein. Upon receipt
by you of such notice you may draw on us at sight for the balance remaining in this Letter
of Credit within the then applicable expiration date, no statement required.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS
SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993
REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

BANK OFFICER/REPRESENTATIVE

LEGEND:

- A – INSERT APPLICANT NAME, I.E. TENANT OR LESSEE NAME
- B – INSERT NAME OF ISSUING BANK
- C – INSERT L/C IDENTIFICATION NUMBER
- D – INSERT DOLLAR VALUE OF INSTRUMENT
- E – INSERT EXACT ADDRESS OF LOCAL BANK BRANCH
- F – INSERT EXPIRATION DATE OF LEASE PLUS 180 DAYS

*** Please instruct your Bank to have the Letter of Credit issued in the above format
in "Draft" form and fax to Michael Mayurnik, Credit Manger, at (212) 435-5846
for approval PRIOR to issuance in "Original" form. Otherwise, the Letter of

Credit can be rejected. If you are in need of further assistance, Mr. Mayurnik can be reached at (212) 435-5838. ****

ATTACHMENTS

ATTACHMENT A - HOBOKEN TO PIER 11 SCHEDULE

Departs Hob. So.	Departs Pier 11
A.M.	A.M.
6:00	8:15
6:20	8:35
6:30	8:45
6:40	8:55
6:50	7:05
7:00	7:15
7:06	7:21
7:12	7:27
7:18	7:27
7:24	7:33
7:30	7:39
7:36	7:45
7:42	7:51
7:48	7:57
7:54	8:03
8:00	8:09
8:06	8:15
8:12	8:21
8:18	8:27
8:24	8:33
8:30	8:39
8:36	8:45
8:42	8:51
8:48	8:57
8:54	9:03
9:00	9:09
9:10	9:15
9:20	9:25
9:30	9:35
10:00	9:45

Departs Hob. So.	Departs WFC	Departs Pier 11	Departs WFC
A.M.	A.M.	A.M.	A.M.
10:00	10:07	10:15	10:22
10:30	10:37	10:45	10:52
11:00	11:07	11:15	11:22
11:30	11:37	11:45	11:52
P.M.	P.M.	P.M.	P.M.
12:00	12:07	12:15	12:22
12:30	12:37	12:45	12:52
1:00	1:07	1:15	1:22
1:30	1:37	1:45	1:52

Departs Hob. So.	Departs Pier 11
P.M.	P.M.
2:00	2:15
2:30	2:45
3:00	3:15
3:15	3:30
3:25	3:40
3:35	3:50
3:45	4:00
3:53	4:08
4:01	4:16
4:09	4:24
4:17	4:32
4:25	4:40
4:33	4:48
4:41	4:56
4:49	5:04
4:57	5:12
5:05	5:20
5:13	5:28
5:21	5:36
5:29	5:44
5:37	5:52
5:45	6:00
5:55	6:10
6:05	6:20
6:15	6:30
6:25	6:40
6:35	6:50
6:45	7:00
6:55	7:10
7:05	7:20
7:15	7:30

Departs Hob. So.	Departs WFC	Departs Pier 11	Departs WFC
P.M.	P.M.	P.M.	P.M.
7:30	7:37	7:45	7:52
8:00	8:07	8:15	8:22
8:30	8:37	8:45	8:52
9:00	9:07	9:20	XX
Departs Pier 11	Departs WFC	Departs Colgate	Departs Hob. So.
P.M.	P.M.	P.M.	P.M.
9:20	9:30	9:38*	9:50*

*Drop Off Only

Departs	Departs
Hob. South	WFC
A.M.	A.M.
6:00	6:10
6:20	6:30
6:30	6:40
6:40	6:50
6:50	7:00
7:00	7:10
7:08	7:18
7:18	7:28
7:24	7:34
7:32	7:42
7:40	7:50
7:48	7:58
7:56	8:06
8:04	8:14
8:12	8:22
8:20	8:30
8:28	8:38
8:36	8:46
8:44	8:54
8:52	9:02
9:00	9:10
9:10	9:20
9:20	9:30
9:30	9:40
9:40	9:50
9:50	10:00

Departs	Departs	Departs	Departs
Hob. South	WFC	Pier 11	WFC
A.M.	A.M.	A.M.	A.M.
10:00	10:07	10:15	10:22
10:30	10:37	10:45	10:52
11:00	11:07	11:15	11:22
11:30	11:37	11:45	11:52
P.M.	P.M.	P.M.	P.M.
12:00	12:07	12:15	12:22
12:30	12:37	12:45	12:52
1:00	1:07	1:15	1:22
1:30	1:37	1:45	1:52

*Drop Off Only

Departs	Departs
Hob. South	WFC
P.M.	P.M.
XX	1:40
1:50	2:00
2:00	2:10
2:10	2:20
2:20	2:30
2:30	2:40
2:40	2:50
2:50	3:00
3:00	3:10
3:10	3:20
3:20	3:30
3:30	3:40
3:40	3:50
3:50	4:00
3:54	4:08
4:02	4:16
4:10	4:24
4:18	4:32
4:26	4:40
4:34	4:48
4:42	4:58
4:50	5:04
4:58	5:12
5:06	5:20
5:14	5:28
5:22	5:36
5:30	5:44
5:38	5:52
5:46	6:00
5:56	6:10
6:10	6:20
6:20	6:30
6:30	6:40
6:40	6:50
6:50	7:00
7:00	7:10
7:10	7:20

Departs	Departs	Departs	Departs
Hob. South	WFC	Pier 11	WFC
P.M.	P.M.	P.M.	P.M.
7:30	7:37	7:45	7:52
8:00	8:07	8:15	8:22
8:30	8:37	8:45	8:52
9:00	9:07	9:20	XX
Departs	Departs	Departs	Departs
Pier 11	WFC	Colgate	Hob. South
P.M.	P.M.	P.M.	P.M.
9:20	9:30	9:38*	9:50*

ATTACHMENT D

**BATTERY PARK CITY FERRY TERMINAL
LANDING SLOT AUTHORIZATION AND RULES AND REGULATIONS**

This Authorization (the "*Authorization*"), made as of the ____ day of _____, 2005, is by and between **BILLYBEY FERRY COMPANY, LLC** ("*BBFC*"), having an address at c/o Wachtel & Masyr, LLP, 110 East 59th Street, New York, New York 10022, and _____, having a principal place of business at _____ ("*Ferry Operator*").

WITNESSETH

WHEREAS, BBFC is under contract to the Port Authority of NY & NJ (the "*Port Authority*") as the duly appointed operator of the ferry terminal at Battery Park City (the "*Facility*"); and

WHEREAS, BBFC is contracted to authorize ferry operators to land passenger ferries solely for the purposes of passenger embarkation and debarkation at the Facility, with the concurrence of the Port Authority, in accordance with the rules and regulations established in this Authorization; and

WHEREAS, BBFC is permitted to issue this authorization in consideration of the terms and conditions hereinafter set forth; and

WHEREAS, the Port Authority will act as the sole arbitrator for any disagreements between BBFC and Ferry Operator, and its decision is binding.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties hereto agree as follows:

1. **Authorization:** BBFC hereby grants to the Ferry Operator the right to use the landing slot(s) which are set forth on Exhibit A annexed hereto (the "*Landing Slots*"), to land the passenger ferries set forth on Exhibit E annexed hereto (the "*Vessels*") solely for the purpose of passenger embarkation and debarkation at the Facility during the days, and intervals, as set forth on Exhibit B annexed hereto and subject to the Additional Operating Rules as set forth on Exhibit D annexed hereto, which may be changed, modified, or added to, at any time by the Port Authority. The Ferry Operator shall notify BBFC in writing five (5) business days prior to a proposed change in the Vessels used for the Landing Slot(s). The use of the landing slot(s) by Ferry Operator shall at all times be subject to the limitation that such use does not interfere with the ferry services of BBFC.

2. **Term:** Subject to the provisions of this Authorization, authorization to use the Facility shall become effective as of February ____, 2005 (the "*Start Date*") and shall continue, unless revoked or earlier terminated pursuant to the terms of this Authorization, for a period of 12 months (the "*Term*").

3. **Charges:** Landing Slot fees are set by BBFC and approved by the Port Authority. The Ferry Operator shall pay fees for this Authorization (the "*Charges*") at the rate and in the manner set forth on Exhibit C. BBFC reserves the right to change the Charges and to amend the rate table as set forth on Exhibit C after giving a minimum of 90 days notice in writing to reflect any changes made to the Charges. If the Charges are increased by BBFC, the Ferry Operator may terminate this Authorization as of the effective date of the rate increase and receive a full refund of its Deposit (as defined below) within 30 days thereafter; provided, however, that the Deposit shall only be refunded to the Ferry Operator if a determination is made by BBFC and the Port Authority that the Ferry Operator has fully and faithfully

complied with all of the terms and conditions of this Authorization and that all Charges and other amounts which may become due hereunder have been paid by the Ferry Operator to BBFC or the Port Authority, as the case may be.

4. **Express Conditions:** This Authorization is expressly conditioned upon the Ferry Operator possessing, prior to the Start Date, and thereafter maintaining, all valid authorizations, franchises and other applicable approvals or consents from any and all governmental agencies (federal, state and/or local) (collectively referred to herein as the "***Approvals***") regarding the use and operation of the Vessels in general and to and from the Facility. The Ferry Operator shall provide BBFC with copies of written documentation of the Approvals prior to the Start Date. If any such Approvals are revoked or terminated at any time thereafter, this Authorization shall terminate if such Approvals are not reinstated or reissued within 30 days after such revocation or termination.

5. **Test Run:** As a condition to BBFC entering into this Authorization, at a time convenient for BBFC and the Port Authority, the Ferry Operator shall perform to the satisfaction of the Port Authority and BBFC one or more test runs at the Facility, including landing and tying up the Vessels and using ramps and gangways.

6. **Abatement:** If Ferry Operator is denied access to any Landing Slots for a period longer than seven (7) consecutive days due to any cause beyond the control of the Ferry Operator, and a comparable alternative site or interval cannot be provided, the Charges set forth on Exhibit B shall be subject to a pro rata abatement.

7. **Requirements of Law:** The Authorization granted hereby requires the Ferry Operator to comply with any and all applicable provisions of federal, state, and local laws, rules and regulations, as well as any rules or regulations promulgated by the Port Authority or the Battery Park City Authority.

8. **Indemnification:** The Ferry Operator hereby agrees to defend, indemnify and hold harmless the Port Authority, the Battery Park City Authority and BBFC and their respective members, directors, officers, officials, agents, employees, consultants, contractors, representatives, successors and assigns (collectively, the "***Indemnitees***"), from and against any and all losses, liabilities, claims, suits, actions, fines, damages, penalties, costs, charges, judgments and expenses, including without limitation reasonable attorney's fees, suffered or incurred by any of the Indemnitees arising from injury during the Term hereof to any person or persons, including death or damage to or loss of property of any nature, arising wholly or in part by any act or omission of the Ferry Operator, or of the contractors, subcontractors, passengers, employees, guests or agents of the Ferry Operator, and also for any matter, act, omission or use arising out of or in connection with the Ferry Operator's acts or omissions under this Authorization occurring on or in proximity to the Facility, including, but not limited to, the Facility, docks, piers, landing barges, quays, gangways, ramps, platforms, bulkheads, buildings or other structures, lands under water, marginal streets, wharves and places.

9. **Sunken or Disabled Craft:** In the event a Vessel operated by or for the Ferry Operator is disabled or is in danger of sinking, or shall sink while located at the Facility, the approaches thereto, or while coming or going from said Facility, or while turning, whether such disaster be partial or total, regardless of the cause thereof, the Ferry Operator will immediately and at its own expense remove the disabled Vessel and leave the Facility and approaches thereto by land and by water free from any wreckage. If the Ferry Operator fails to remove any such obstruction promptly, BBFC may remove it or cause it to be removed at the sole risk and expense of the Ferry Operator.

10. **No Gambling or Illegal Activities:** At no time shall gambling, legal or otherwise, or any illegal activities be permitted on any Vessel operating pursuant to this Authorization.

11. **Queuing and No Obstructions:** The Ferry Operator shall not permit queuing or placement of barriers at the Facility except in such areas and in such a manner as directed by BBFC.

12. **Two-Way Communication System:**

(a) Vessels operated by the Ferry Operator to and from the Facility shall have a two way shore communication system ("**Radio**") capable of communicating with the Facility and other vessels located in the harbor.

(b) In those instances where personnel are stationed at the Facility, the Ferry Operator shall notify said personnel by Radio if any Vessel may be delayed in landing by more than five (5) minutes.

13. **No Waste Material:**

(a) No discharge of any kind, including, but not limited to, garbage, oil, sludge, refuse matter, sewage or waste material shall be thrown, deposited or permitted to fall into the water surrounding the Facility or upon the Facility or approaches to the Facility, site, landing, docks, piers, landing barges, quays, gangways, ramps, platforms, bulkheads, upland area and wharves where Vessels may operate or land or where passengers queue, embark or disembark under the terms of this Authorization.

(b) Storage of any ramps, gear or equipment at the Facility without the prior written consent of BBFC is prohibited.

14. **No Vessel Repairs and No Fueling at Facility:** There shall be no repairing or fueling of Vessels while at the Facility except for emergencies.

15. **Cooperation:**

(a) Cooperation of the Ferry Operator is required with other authorized operators to use the Landing Slots at the Facility and approaches thereto, and the Ferry Operator shall not unreasonably interfere with operations of other authorized operators.

(b) Strict adherence must be maintained to the time limitation schedule provided in Exhibit B for each of the Landing Slots.

16. **Advertising:** The Ferry Operator shall not place any advertisement, notice or sign on any part of the Facility, pier, bulkhead, buildings or other structures and approaches thereto, unless the Ferry Operator shall have received the prior written approval of the Port Authority and BBFC.

17. **Sufficient Personnel:** The Ferry Operator shall have sufficient personnel to immediately and efficiently secure its Vessels to the landing slips, to control its passengers and crowds, to provide for safe embarkation and debarkation to and from the Facility, to direct passengers to and from a safe upland area, to ensure that there is no smoking, no drinking of alcoholic beverages, no eating and no littering or

litter within the vicinity of the Facility, to properly secure and remove gangways and ramps, to open and close gates, and to lock and unlock gates at or near the landing slips.

18. As Is: The Ferry Operator fully understands and agrees that BBFC does not warrant the Facility, landing slips, landing, docks, piers, landing barges, quays, gangways, ramps, platforms, bulkheads, buildings or other structures, upland area, or wharves to be safe for landing or tying up of Vessels or for accepting and discharging passengers, for queuing or for ingress and egress, and BBFC assumes no responsibility for such use of the Facility by the Ferry Operator.

19. Accidents: Notification shall be made to BBFC and the Port Authority, immediately verbally and in writing within twenty-four (24) hours of any accident that occurs on or in proximity to the Facility, which may involve any passenger, crewmember, Facility personnel, Vessel, or any part of the Facility. The Ferry Operator shall exercise diligence in monitoring the area on or in proximity to the Facility to ensure the prevention of any accident.

20. Damage to Facility or Approaches to Facility:

(a) The Ferry Operator shall be responsible for the cost of repair of any damages it causes to the Facility or approaches thereto and shall notify BBFC and the Port Authority immediately verbally and in writing within twenty four (24) hours of the occurrence of such damage.

(b) BBFC may repair or cause to be repaired any such damage at the sole cost and expense of the Ferry Operator, and the Ferry Operator shall pay such costs within thirty (30) days of notice thereof.

21. Closing of Gates and Gangways/Ramps:

(a) At the conclusion of each Landing Slot, all gates, gangways and ramps shall be closed in order to restrict public access thereto.

(b) In the event the Ferry Operator is scheduled for the final Landing Slot of the day, or as otherwise directed by BBFC, the Ferry Operator shall be responsible for closing and securing all gates, gangways and ramps.

(c) The Ferry Operator shall also be responsible for unlocking gates and gangways and ramps as directed by BBFC.

22. Revocation:

(a) BBFC shall have the right to revoke this Authorization for breach by the Ferry Operator of an express provision of this Authorization, provided written notice of such breach is given by BBFC and the Ferry Operator has ten (10) business days from its receipt of such notice to cure the alleged breach before the revocation becomes effective. In the event of a revocation of this Authorization, the Ferry Operator shall be entitled to a pro rata refund of the Charges paid by the Ferry Operator for the month in which the revocation occurs, based on the number of Landing Slots revoked, less any damages to BBFC or the Port Authority as a result of the Ferry Operator's breach of this Authorization.

(b) Consistent with the provisions of Section 6 of this Authorization, specific Landing Slots granted hereunder may be suspended in the event of an emergency as determined by BBFC.

23. No Discrimination:

(a) The Ferry Operator covenants and agrees not to discriminate on the basis of race, creed, color, religion, disability, sex, national origin, age, marital status or sexual orientation in all employment decisions, including, but not limited to, recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay off and termination, and all other terms and conditions of employment.

(b) The Ferry Operator further covenants and agrees to state in all solicitations or advertisements for employment placed by or on behalf of the Ferry Operator that all qualified applicants will be afforded equal employment opportunities and receive consideration for employment without regard to race, creed, color, religion, disability, sex, national origin, age, marital status or sexual orientation.

24. Investigation Clause: The parties to this Authorization agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Port Authority, or any other governmental agency or authority, relating to or in connection with this Authorization.

25. Survival: Any and all obligations and/or liabilities of the Ferry Operator under this Authorization shall survive the expiration, termination or revocation of this Authorization.

26. Changes; Discontinuance of Landing Slot:

(a) Changes: The Ferry Operator shall give BBFC five (5) days written notification preceding the date upon which Ferry Operator intends to modify (but not discontinue) use of an assigned Landing Slot or add a Landing Slot. Any and all modifications to the Landing Slots and additions of Landing Slots shall be subject to the written approval of BBFC and shall be effectuated by written amendments to Exhibit B.

(b) Discontinuance: Written notice shall be given to BBFC no later than the fifteenth (15th) day of the month preceding the month in which the Ferry Operator intends to discontinue use of an assigned Landing Slot.

(i) Notice received by BBFC subsequent to the fifteenth (15th) day shall not be deemed received until the fifteenth (15th) day of the following month, and the Landing Slot Charges shall not be adjusted until the first (1st) day of the month after such notice is deemed received.

(ii) In the event that the Ferry Operator discontinues use of an assigned Landing Slot, BBFC shall amend Exhibits A, B, and/or C hereto as applicable.

(iii) It is acknowledged that in the event the Ferry Operator discontinues use of an assigned Landing Slot(s), BBFC shall have no obligation to assign it another Landing Slot(s), if one is not available.

(c) Failure to Comply: BBFC may deny the Ferry Operator the right to use Landing Slots if the Ferry Operator fails to comply with its obligations under this Agreement.

27. Deposit:

(a) On or before the execution of this Authorization, the Ferry Operator shall deposit with BBFC the sum of _____ (\$_____) Dollars, by certified check made payable to BBFC (the "**Deposit**"), to be held by BBFC as a security deposit for losses or damages incurred by it or the Port Authority resulting from the Ferry Operator's acts or omissions hereunder, including, without limitation, for the payment of any Charges not paid by the Ferry Operator when due.

(i) BBFC shall hold the Deposit without liability for interest thereon.

(ii) The Deposit shall be returned within thirty (30) days after the termination or revocation of this Authorization, provided that a determination is made by BBFC that the Ferry Operator has fully and faithfully complied with all of the terms and conditions of this Authorization and that all Charges and other amounts which may become due hereunder have been paid by the Ferry Operator to BBFC or the Port Authority, as the case may be.

(b) In the event ferry service does not commence subsequent to the Start Date through no fault of BBFC, BBFC shall retain the sum of One Thousand (\$1,000.00) Dollars to cover all administrative expenses in issuing this Authorization and shall return the balance of the Deposit to the Ferry Operator.

(c) If any Charges or sums payable to BBFC shall be overdue and unpaid or should BBFC make payments on behalf of the Ferry Operator, or should the Ferry Operator fail to perform any of the terms and conditions set forth in this Authorization, then BBFC may, at its option, apply the Deposit or as much thereof as may be necessary to compensate BBFC for the payment of Charges or other sums due for any loss, damage or expense incurred by BBFC on behalf of the Ferry Operator or as a result of the Ferry Operator's actions hereunder.

(d) In the event this Authorization has not been revoked and has not expired, and the sum of the Deposit is depleted, the Ferry Operator shall restore the original sum of the Deposit within thirty (30) days after receipt of written demand therefor.

28. Abandonment or Failure to Use Landing Slots:

(a) Subject to the force majeure provisions of Section 39 hereof, if the Ferry Operator abandons or fails to use any of its Landing Slots for a period of seven (7) consecutive days, forfeiture of its right to each Landing Slot it abandons or fails to use may occur in the sole discretion of BBFC, unless prior written consent is given by BBFC for such temporary non-use.

(b) Failure to use a Landing Slot more than forty nine percent (49%) of the scheduled time within any two (2) consecutive weeks may result in forfeiture by the Ferry Operator of the right to such Landing Slot in the sole discretion of BBFC, unless prior written consent is given by BBFC for such temporary non-use.

29. Ticketing: The Ferry Operator may not locate any ticketing or other personnel in the Facility without the prior written approval of BBFC. The location of such personnel in the Facility may require a separate fee to be paid by the Ferry Operator.

30. **Layover:** The Ferry Operator may not store or otherwise dock Vessels at the Facility except in emergencies. A Vessel that is disabled but may be towed from the Facility shall not constitute an emergency for the purposes of this Authorization.

31. **Ferry Vessels:** Ferry Operator shall bear all capital, operating and other costs associated with the financing, operation, repair and maintenance of the Vessels and shall be solely responsible for meeting all certification, inspection, maintenance and safety requirements applicable to its Vessels. Without limiting the generality of the foregoing, each of the Vessels shall be (a) approved by the United States Coast Guard ("**USCG**") and manned and operated in accordance with a USCG Certificate of Inspection, (b) permitted and/or licensed by applicable permitting or licensing authorities having or claiming jurisdiction to regulate the Ferry Operator's provision of ferry service, and (c) equipped with radar. The Ferry Operator shall at all times employ or require any third party who operates the Vessels on behalf of the Ferry Operator to employ personnel to operate the Vessels who have all licenses and/or documents required by the USCG.

32. **National Transit Database:** The Ferry Operator, if requested by the Port Authority, shall prepare reports as required by the National Transit Database, formerly Section 15 of the Urban Mass Transportation Act of 1964, as amended, in a form acceptable to the Federal Transit Administration.

33. **Books and Records:**

(a) Retention of books and records related to this Authorization must be maintained and kept available by the Ferry Operator for a period of six (6) years after the end of the Term and the Ferry Operator shall permit appropriate representatives of BBFC and/or the Port Authority, at all reasonable times, during regular business hours, upon not less than two (2) days prior written notice and at the Port Authority's sole cost and expense, to examine and audit such books and records.

(b) On the first business day of each month during the Term, the Ferry Operator shall provide BBFC and the Port Authority with a written statement detailing the daily passenger totals to and from the Facility and a daily log of actual arrival and departure times at the Facility for the preceding month. More frequent and detailed information on passenger totals and Vessel movements must be provided upon request.

(c) The Port Authority shall have the right, at its cost and expense, to inspect, copy, examine and take notes from the logs maintained by the Ferry Operator regarding the operations of the Vessels in connection with the ferry service provided hereunder.

34. **Contingency Back-Up Plan:** The Ferry Operator shall have in place a contingency back-up plan to provide for continuity of ferry service (the "**Plan**") in instances when the Ferry Operator is not able to operate ferry service to the Facility. A written copy of the Plan must be provided to at least ten (10) days prior to the Start Date and at any time thereafter that material modifications are made to the Plan.

35. **Insurance:** From the time of its first activities at the Facility and during the Term of this Authorization, the Ferry Operator, at its sole cost and expense, shall carry, or cause to be carried, the policies of insurance referenced in Exhibit D, evidence of which must be provided upon request to BBFC or the Port Authority. Certificates of Insurance must be provided and approved prior to commencement of ferry service to the Facility by BBFC under this Authorization.

36. Security: The Ferry Operator must comply with all federal, state, city and other governmental agencies' security plans, including without limitation, the requirements of the Maritime Transportation Act of 2002. To the extent permitted by law, copies of all written security compliance plans, if any, will be given to BBFC and the Port Authority upon request. In addition, the names and telephone numbers of at least two (2) security personnel retained by the Ferry Operator must be given to the Port Authority and BBFC, who shall be available twenty four (24) hours per day. None of the aforementioned requirements shall relieve the Ferry Operator of its responsibility for taking appropriate steps to insure the security and safety of its Vessels, passengers, and crew.

37. Force Majeure: Performance hereunder shall be excused and neither party shall be responsible to the other in the event of delays beyond the reasonable control of either party that have the effect of delaying such party's performance of its obligations under this Authorization and that are due to strikes, lockouts, acts of God, terrorist acts, riots and other civil commotions, severe inclement weather conditions, fire and unavoidable casualties or similar causes and provided that such party has notified other party of same not later than ten (10) days after such party knows or has reason to know of such an event.

38. Notices: All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by guaranteed overnight delivery service, or mailed (prepaid certified mail with return receipt requested) as follows:

If to BBFC: Billybey Ferry Company, LLC
c/o Wachtel & Masyr, LLP
110 East 59th Street
New York, New York 10022
Attn: William Wachtel

and to: The Port Authority of NY & NJ
One Riverfront Plaza, 9th Floor
Newark, New Jersey 07102
Attn: Patrick Flinn

If to the Ferry Operator:

39. Applicable Law: This Authorization shall be deemed to be executed in the City of New York, State of New York and shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of law provisions.

40. Binding Effect; Benefit: This Authorization shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

41. Section Headings: The section headings contained in this Authorization are inserted for reference purposes only and shall not affect the meaning and interpretation of this Authorization.

42. Counterparts; Facsimile: This Authorization may be executed in counterparts, each of which shall be deemed to be a duplicate original, and all of which together shall be deemed to be one and

the same instrument. Facsimile signatures of the undersigned parties will have the same force and effect as original signatures.

43. Assignment: This Authorization shall be assignable by BBFC with Port Authority approval, and shall be transferable by assignment or operation of law to BBFC successors. This Authorization shall not be assignable and shall not be assigned by the Ferry Operator without prior written consent of the Port Authority and BBFC, and shall not be transferable by assignment or operation of law to the Ferry Operator successors.

44. Severability: If any part of this Authorization is found invalid or unenforceable, that part will be enforced to the maximum extent permitted by law and the remainder of this Authorization will remain in full force and effect.

45. Not a Lease: This agreement is intended to be an authorization to operate passenger ferry service to and from the Facility and not a lease for any purpose. No ownership, leasehold or other property interest shall vest in this agreement.

46. Waiver Of Jury Trial: Both BBFC and the Ferry Operator hereby mutually waive any and all right that either party may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction arising out of or in connection to this Authorization.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Battery Park City Ferry Terminal Landing Slot Authorization and Rules and Regulations on the date first above written.

BILLYBEY FERRY COMPANY, LLC

Date: _____

By: _____

Name:
Title:

Date: _____

By: _____

Name:
Title:

EXHIBIT A
LANDING SLOTS

EXHIBIT B
LANDING SLOT SCHEDULE

Route:

The Ferry Operator:

Service:

Date:

Charges for:

DAYS	SCHEDULED ARRIVAL/ DEPARTURE	DAILY CHARGE	DAYS MONTH	PER	MONTHLY CHARGE

Total: \$

EXHIBIT C

RATE TABLE

Commuter Ferry Operators:

Peak Hours (6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 8:00 p.m.)
 \$25.00 per hour per vessel
Off-Peak Hours
 \$10.00 per hour per vessel

Excursion and Tour Operators and Private Charters:

\$5.00 per foot (length of vessel)

Deposit Requirements (for Commuter, Excursion and Tour Operators)

Three months

Late Charges - If Ferry Operator shall fail to pay any amount required under this Agreement when due to BBFC, BBFC may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (herein below described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (.8%) of such unpaid amount for each late charge period. There shall be twenty-four (24) late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (15) (but not less than thirteen (13)) calendar days. Each late charge shall be payable immediately upon demand made at any time therefore by BBFC. No acceptance by BBFC of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of BBFC to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Nothing in this Section is intended, or shall be deemed, to, affect, alter, modify or diminish in any way: (i) any rights of BBFC under this Agreement, or (ii) any obligations of Ferry Operator under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

All payments under this agreement should be sent to BBFC as follows:

Billybey Ferry Company, LLC
c/o Wachtel & Masyr, LLP
110 East 59th Street
New York, New York 10022

Or via wire transfer to:

Name of Bank -- JP Morgan Chase Bank
Bank ABA Number -- 021000021
Account Number -

EXHIBIT D

Additional Operating Rules for the Battery Park City Ferry Terminal

1. **No Solicitation:** Operators and/or their agents are expressly forbidden to use any voice or power operated devices in solicitation of business or for entertainment purposes at the Battery Park City Ferry Terminal ("Terminal") or in its immediate vicinity.

2. **Ferry Vessel Emission Compliance:** The Port Authority may establish a "certification" program to ensure that all ferries using the Terminal are continuously in compliance with federal and New York State air quality guidelines and standards, which shall become a Terminal use requirement.

3. **Terminal Route Restrictions:**
 - (a) Operators shall ensure that vessels using the Terminal will maintain inbound and outbound routes that are at least 1,000 feet from the pier head line until south of the Battery Park City's northern end.

 - (b) Operators shall not deviate from the stated Terminal route restrictions unless required by navigational rules, approaching or passing vessels or special Coast Guard regulations, during specifically announced periods, or abnormal or emergency conditions in the harbor.

 - (c) Operators with consistent violations of the stated Terminal route restrictions may be subject to fines, increased landing fees and/or termination of landing privileges. To ensure operator compliance with the Terminal route restrictions, the Port Authority may establish an ongoing monitoring program. Operators will be required to participate.

4. **Insurance Requirements:**
 - (a) Commercial General Liability Insurance with minimum limits of \$10 million per occurrence for bodily injury and property damage liability including:
 - (1) The inclusion of The Port Authority of NY & NJ / PATH, Battery Park City, Battery Park City Parks Conservancy Corporation and Billybey Ferry Company as Additional Insured, including but not limited to premise-operations and completed operations.
 - (2) The Port Authority Immunity Clause.
 - (3) Cross-Liability Clause.

 - (b) \$50 million Protection and Indemnity Insurance.

 - (c) U.S. Longshoremen & Harbor Worker's Compensation Act Coverage Endorsement.

 - (d) All insurance coverage and policies required may be reviewed for adequacy of terms, conditions and limits of coverage at any time and from time to time.

(e) Any certification required shall stipulate that the policies may not be canceled, terminated or modified without thirty (30) day's advance written notice to each of the Additional Insureds.

5. **INDEMNIFICATION:** Operator agrees by using Terminal to defend, indemnify and hold harmless the Port Authority, Battery Park City Authority and BBFC against all loss, claims, suits and damages arising out of or in connection with its use of the Terminal facility, including reasonable counsel costs and fees.

EXHIBIT E

VESSELS

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

Bidders are advised that the Authority has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

4. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract. As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In addition, during the term of this contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

5. Conflict of Interest

During the term of this contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has

any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Contractor of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Contractor's services not be performed by the Contractor, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract which results, directly or indirectly, from the services provided by the Contractor hereunder.

6. Definitions

As used in this section, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles

known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder;

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean executing this Contract.

ATTACHMENT G

SECTION D: STANDARD CONTRACT TERMS AND CONDITIONS

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean the "STANDARD INFORMATION FOR BIDDERS" AND "SIGNATURE SHEETS," "CONTRACT SPECIFIC INFORMATION FOR BIDDERS," "CONTRACT DESCRIPTION, SPECIFICATIONS, AND PRICING SHEETS," "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Purchasing Services Division.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month - unless otherwise specified, shall mean a calendar month.

Director - shall mean the Director of the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean the Manager of the Facility for the time being or his successor in duties for the purpose of this Contract, acting personally or through his duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Authority's Manager, Purchasing Services Division. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Minority Group" means any of the following racial or ethnic groups:

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;
- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "SubContractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of The Port Authority

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
- b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

2. Contractor Not An Agent

This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with its Proposal are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;

- c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the Site of the Work as they may eventually be found to exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by the Port Authority as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority to review thoroughly all documents forming this Contract prior to opening of Proposals on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted

statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Port Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

4. Personal Non-Liability

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination

- a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.
- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of the Port Authority

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Port Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to stop it from exercising such other rights or remedies.

7. Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Port Authority, the Contractor expressly agrees that no default, act or omission of the Port Authority shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

9. Harmony

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

- b. During the time that the Contractor is performing the contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct his operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action."

12. Provisions of Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

a. If one or more of the following events shall occur:

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or

4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or
2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the

Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this contract as aforesaid.

- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.
- i. If The Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or

expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.

- j. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- k. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Sales to the Port Authority are currently exempt from New York and New Jersey State and local sales and compensating use taxes and generally from federal taxation. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

The Port Authority shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and the Port Authority shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach

hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The contractor shall set up, keep and maintain in effect in accordance with accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including records of original entry and daily forms) recording all transactions of the Contractor, at, through or in any way connected with or related to the operations of the Contractor hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

The Contractor shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the Contractor shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.

- b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.
- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon, or
 2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon, or
 3. in the opinion of the Port Authority will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract, or
 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors or
 5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility, or
 6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.
- e. If by reason of the Contractor's failure to comply with the provisions of this Section and provided the Port Authority has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay the Port Authority that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by the Port Authority which shall have been charged because of such violations by the Contractor.
- f. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of the Port Authority and shall conduct operations hereunder in a courteous, efficient and safe manner.
- g. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

19. Subcontracting

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. Indemnification and Risks Assumed By The Contractor

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Contractor, of the Port Authority, of third persons, or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.
- b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.
- c. The risk of claim, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
- d. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property arising out of its operations.

21. Approval of Methods

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property arising out of its operations.

22. Safety and Cleanliness

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by the Port Authority for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of the Port Authority which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as the Port Authority may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of the Port Authority.

24. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition,

approved by the Facility Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of the Port Authority. No equipment or facilities of the Port Authority shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees must be turned in to the Port Authority and a receipt will be issued therefor.

26. Property of the Contractor

- a. All property of the Contractor at the Facility by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.
- b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract the Port Authority may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to the Port Authority; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by the Port Authority as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to the Port Authority upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

28. Invalid Clauses

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

29. Approval of Materials, Supplies and Equipment

Only Port Authority approved materials, supplies, and equipment are to be used by the Contractor in performing its services hereunder. Inclusion of materials or supplies on the Port Authority Approved Products List constitutes approval. The list may be revised from time to time and at any time by the Port Authority and it shall be incumbent upon the Contractor to obtain the most current list from the Engineering Services Division of the Engineering Department of the Port Authority.

At anytime during the bid, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List, which product(s) shall be subject to review and approval by the Port Authority. Any alternate product so approved by the Port Authority may be used by the Contractor in performing its services hereunder. Until such approval is given, only products on the Approved Products List may be used.

30. Intellectual Property

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks and copyrights, collectively hereinafter referred to as the "Intellectual Property Rights" in the performance of the work shall be obtained by the Contractor without separate or additional compensation. The Contractor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Port Authority's use, in accordance with the immediately preceding statement, of any protected Intellectual Property Rights. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Port Authority be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Port Authority with said injunction, to the satisfaction of the Port Authority.

31A. High Security Areas

- a. Services under the Contract may be required in high security areas, as the same may be designated by the Manager from time to time. The Port Authority shall require the observance of certain security procedures with respect to the high security areas, which may include the escort to, at, and/or from said high security areas by

security personnel designated by the Contractor or any subcontractor's personnel required to work therein.

- b. Twenty-four hours prior to the proposed performance of any work in a high security area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to high security areas and the escorting of personnel hereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the high security areas which will be in effect on the commencement date. The description of high security areas may be changed from time to time and at any time by the Manager during the term of the Contract.

31B. Notification of Security Requirements

The Port Authority operates facilities and systems, at which terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the performance of the Contract work, including on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, as determined by the Authority. The Contractor shall and shall instruct its subcontractors to cooperate with Authority staff in adopting security requirements. These security requirements may include but may not be limited to the following:

- i. Identity Checks and Background Screening

Contractor/subcontractor identity checks and background screening shall include but shall not be limited to: (1) inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; (2) screening of federal, state, and/or local criminal justice agency information databases and files; (3) screening of any terrorist identification files; (4) multi-year check of personal, employment and /or credit history; (5) access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Contractor may be required to have its staff, and any subcontractor's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. If the Authority directs the Contractor to have identity checks and background screening performed by a particular firm designated by the Authority, the Authority will compensate the Contractor for the cost of such screening pursuant to the Extra Work provisions of the Contract.

- ii. Issuance of Photo Identification cards:

Rev. 3/22/2004 PA

If the Authority requires facility-specific identification cards for the Contractor's and subcontractors' staff, the Authority will supply such identification cards at no cost to the Contractor.

iii. Access control, inspection, and monitoring by security guards:

The Authority will provide for facility access control, inspection and monitoring by Authority retained security guards. Should the Authority require the Contractor to hire security guards for the purpose of facility access control and inspection in lieu of or in addition to the Authority retained facility security guards, the Contractor will be reimbursed for the cost of such security guards pursuant to the Extra Work provisions of the Contract. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work at the facility at its own expense.

The Authority may impose, increase, and/or upgrade security requirements for the Contractor, subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

32. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this proposed Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

33. Permit-Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from the Port Authority a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Manager to obtain an Authority Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish the Port Authority with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

34. Signs

Except with the prior written approval of the Port Authority, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

35. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other Port Authority property, any vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by the Port Authority for such purpose.

36. Non-Publication

The Contractor shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

PART III CONTRACTOR'S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;

- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certifications shall be deemed to be made by the Bidder as follows:

- * if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;
- * if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

MANAGEMENT SERVICES AGREEMENT

BETWEEN

BILLYBEY FERRY COMPANY, LLC

AND

PORT IMPERIAL FERRY CORP.

This Management Services Agreement (this "Agreement") is made as of March 11, 2005 between Billybey Ferry Company, LLC ("BBFC"), a limited liability company organized and existing under the laws of the State of Delaware, and Port Imperial Ferry Corp. ("PIFC"), a corporation organized and existing under the laws of the State of New Jersey. BBFC and PIFC are parties to an Asset Purchase Agreement dated as of December 20, 2004 (the "Purchase Agreement") pursuant to which BBFC is acquiring from PIFC certain commuter ferry routes between New Jersey and New York and 16 ferry vessels used in the operation of such routes (the "Ferry Business"). BBFC desires to engage PIFC to provide certain management services in connection with the Ferry Business, and PIFC is willing to provide such services, all in accordance with the terms and conditions of this Agreement.

1. AGREEMENT TO PROVIDE SERVICES

BBFC hereby engages PIFC, such engagement to become effective on the Closing Date (as defined in the Purchase Agreement), on the terms and conditions herein set forth as an independent contractor to provide the Supervisory, Accounting, Human Resource, Customer Relations, MIS and Marketing Services herein described. PIFC hereby accepts such engagement and undertakes to perform its duties hereunder in accordance with sound business practices and in compliance with the laws and regulations of any government or competent authority applicable to the operation of the Ferry Business.

2. DUTIES OF PIFC

Without limiting the generality of the provisions of Section 1, and except as otherwise provided in this Agreement, PIFC shall, as an independent contractor of BBFC, undertake the following duties:

Supervisory Services

PIFC will provide the services of its senior management personnel to supervise and oversee the performance by PIFC of its responsibilities under this Agreement and under the Vessel Management Agreement of even date herewith (as the same may be amended, the "Vessel Management Agreement") and to report to BBFC on a regular basis. PIFC will provide to BBFC such management reports as are currently prepared by PIFC in the regular course of business and will provide such other reports as BBFC may reasonably request.

Accounting Services

PIFC will provide the services of its senior financial management personnel and of its payroll, accounts payable, purchasing, MIS and other accounting department personnel as may be necessary for PIFC to perform its duties under this Agreement and under the Vessel Management Agreement. PIFC will provide to BBFC such financial reports as are currently prepared by PIFC in the regular course of business and will provide such other reports as BBFC may reasonably request.

Human Resource Services

The services of the human resource department of PIFC are provided to BBFC indirectly through the functions that such department performs in respect of employees of PIFC who render services for BBFC or the cost of whom is shared by BBFC under this Agreement or the Vessel Management Agreement. Accordingly, BBFC will share in the cost of the human resource department of PIFC in accordance with the Schedule of Expenses annexed hereto.

Customer Relations Services

PIFC will provide the services of its customer relations department to assist BBFC in its normal communications with customers, including dissemination of schedules and customer service advisories.

MIS Services

PIFC will provide the services of its MIS personnel to assist BBFC with its computer and other technological needs in the same manner that such personnel currently provide such services to PIFC.

Marketing Services

PIFC will provide the services of its marketing department to assist BBFC with its marketing and advertising plans in the same manner that such personnel currently provide such services to PIFC.

3. DUTIES OF PIFC REQUIRING PRIOR APPROVAL OF BBFC

(a) PIFC shall notify BBFC and obtain BBFC's approval prior to undertaking expenditures not contemplated by the Schedule of Expenses. PIFC shall not be liable for any delays or added expense incurred while obtaining any requested approvals from BBFC.

(b) PIFC shall not sub-contract any of its obligations under this Agreement without the express written consent of BBFC. In the event of any such sub-contract, PIFC shall remain fully liable to BBFC for the due performance of PIFC's obligations under this Agreement.

(c) PIFC shall not, without the prior written consent of BBFC to (i) incur any obligation on behalf of BBFC, (ii) sell, lease, trade, exchange or otherwise dispose of any assets of BBFC; or (iii) enter into any contract on behalf of BBFC. In those instances where this Agreement expressly requires prior consent of BBFC, PIFC is not obligated to act until PIFC has received such consent.

(d) Except where this Agreement expressly requires prior consent of BBFC, PIFC is granted management discretion in performing all services under this Agreement.

(e) PIFC may require BBFC, on reasonable notice, to give PIFC directions or instructions with respect to particular actions PIFC intends to take. In the absence of such instructions or directions, PIFC shall have no obligation to take action, but may act in PIFC's discretion in accordance with sound management practice, as a prudent business owner would, and in compliance with all applicable laws and regulations of any government or competent authority.

4. EXPENSE REIMBURSEMENT

It is the intent of BBFC and PIFC that this Agreement shall provide for the reimbursement by BBFC to PIFC of the costs and expenses incurred by PIFC in providing the services provided for herein. BBFC shall reimburse PIFC or place PIFC in sufficient funds for PIFC's payment of all such costs, expenses, disbursements, claims and charges, paid or made and obligations incurred by PIFC in performing its services pursuant to this Agreement in accordance with a Schedule of Expenses from time to time established by PIFC and BBFC. The initial Schedule of Expenses is annexed hereto as Schedule A. PIFC shall maintain sufficient books and records to enable BBFC to review the calculations of expenses contemplated by the Schedule of Expenses.

5. TERM OF AGREEMENT AND TERMINATION OF AGREEMENT

(a) This Agreement shall become effective on the Closing Date and shall expire and terminate upon the earliest of (i) termination of this Agreement by PIFC upon 10 days prior written notice for nonpayment of expenses by BBFC if such nonpayment is not cured within such 10 day period; (ii) upon termination of this Agreement by BBFC as provided in 5(c) hereof; or (iii) upon termination of this Agreement by BBFC or PIFC as provided in Section 5(b) or Section 5(d) hereof.

(b) BBFC or PIFC may terminate this Agreement at will by giving PIFC not less than 90 days prior written notice thereof, provided that PIFC may not give such notice sooner than six months after the Closing Date and PIFC may not give such notice if at such time PIFC continues to operate the northern routes of the NY Waterway system.

(c) If PIFC fails to materially meet its obligations under this Agreement for any reason within the control of PIFC, BBFC may give notice to PIFC of the material default and require PIFC to remedy such default as soon as practically possible. In the event that PIFC fails to remedy the default within a reasonable time to the

satisfaction of BBFC, BBFC shall be entitled to terminate this Agreement with immediate effect by notice in writing.

(d) Either party shall have the option to terminate this Agreement with immediate effect by notice in writing in the event of an order having been made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party or if a receiver is appointed, or if it commences proceedings under any bankruptcy or insolvency laws to seek protection from its creditors.

(e) Upon termination of this Agreement, PIFC shall perform all services necessary to wind up all matters relating to its performance hereunder.

(f) Following termination and expiration of this Agreement, a final accounting shall be prepared by PIFC for BBFC of PIFC's management from the date of the last account rendered to the date of termination (plus post-termination expenses, if any, incurred for the benefit of BBFC), and PIFC shall promptly repay (i) any amounts advanced to it by BBFC which have not been earned, expended, or committed in accordance with the provisions of this Agreement, and (ii) all other amounts payable to BBFC; and BBFC shall promptly pay to PIFC any amounts earned, expended or committed by PIFC in accordance with the provisions of this Agreement which have not been paid.

(g) Upon receipt of notice of termination of this Agreement, PIFC shall fully cooperate with BBFC and any newly appointed manager designated by BBFC to assure an efficient and smooth transfer of the management functions to the new manager.

(h) Termination of this Agreement shall be without prejudice to all rights accrued between the parties prior to the date of termination and shall not relieve BBFC or PIFC of any obligations or liabilities accrued during the period prior to such termination.

6. DISCONTINUANCE OF CERTAIN SERVICES

BBFC may, on 30 days written notice to PIFC, discontinue the utilization of PIFC's services for one or more of the Accounting, Customer Relations, MIS or Marketing Services, in which event the Schedule of Expenses shall be appropriately adjusted to reflect such discontinued services.

7. RIGHT OF INSPECTION

BBFC and any person designated by BBFC shall have the right at any time, upon reasonable notice to PIFC, during the period of this Agreement to inspect or the books and records of PIFC relating to the Ferry Business, the services herein provided and the calculation of the expenses contemplated by the Schedule of Expenses. PIFC shall preserve and keep such records for a period of six years after the termination of this Agreement and shall make such records available to BBFC and its authorized representatives as reasonably required by BBFC.

8. **LIABILITY**

PIFC shall act prudently and with reasonable care and professionalism, but shall be under no liability whatsoever to BBFC for any loss, damage, delay, or expense of whatsoever nature, whether direct or indirect and howsoever arising in the course of performance of this Agreement, unless caused by the gross negligence or willful misconduct of PIFC, its employees, or agents or subcontractors employed by them.

9. **Intentionally Omitted**

10. **COLLECTIVE BARGAINING AGREEMENTS AND RELATED MULTI-EMPLOYER PLANS**

By entering into and performing this Agreement, BBFC is not undertaking any obligation, either directly as an employer, or indirectly, with respect to any collective bargaining agreements, arbitration awards, or under any employment law, with respect to any related pension, welfare, or fringe benefit plans, including severance payments and withdrawal liabilities, if any.

11. **MISCELLANEOUS**

(a) **Amendments.** This Agreement shall not be amended or modified except by written instrument executed by duly authorized officers of BBFC and PIFC.

(b) **Waiver.** No failure to enforce or insist upon performance of any provision of this Agreement and no waiver by any party of any one or more defaults by the other party in the performance of any provision of this Agreement shall operate or be construed as a waiver of such provision or of any future default or defaults, whether of like or of a different character, nor require or imply a similar indulgence on any other occasion.

(c) **Agreement Binding upon Successors, and Assigns; Assignment of Agreement.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, subject to the terms of this Agreement, each party, its successors or assigns. This Agreement may be assigned by BBFC upon written notice to PIFC in conjunction with the financing of the Vessel, whether or not such financing involves a change in ownership; provided, however, that BBFC agrees to use its best efforts to cause the parties to the financing to agree to the modification of this Agreement at PIFC's request to the extent reasonably deemed necessary by PIFC to protect fully PIFC's rights hereunder. BBFC may not otherwise assign this Agreement to any person without the prior written consent of PIFC. PIFC shall not assign this Agreement to any person without the prior written consent of BBFC, except that PIFC may assign its rights under this Agreement as collateral for its lenders. Any request, notice, direction, consent, waiver or other action taken by a party in connection with this Agreement or related transactions shall bind the successors and assigns of such party.

(d) **No Waiver as Against Third Parties.** No provision of this Agreement shall be construed to be a waiver on the part of BBFC or PIFC of the benefit of any

limitation of, or exemption from, liability accorded BBFC or PIFC by any statute or rule of law; provided, however, that this sub-section shall not in any way affect the obligations of PIFC and BBFC to each other hereunder.

(e) Notices. Unless otherwise provided herein all notices and other communications provided for in this Agreement shall be in writing (by letter or telecopy) or by telephone if subsequently confirmed within three days by letter, mailed first class certified mail, postage prepaid. Any such notice or communication shall be sent to:

If to PIFC:

Pershing Road
Weehawken, New Jersey 07086
Attention:

If to BBFC:

c/o Wachtel & Masyr, LLP
110 East 59th Street
New York, New York 10022
Attention: William B. Wachtel

Each party may at any time designate different or further addresses to which notices and other communications are henceforth to be sent, such designation to be made by written notice to the other party. Notices in writing shall be effective when received, and notice by telephone shall constitute written notice when the call is received by the party to whom such notice is sent, if subsequently confirmed as provided in this Section.

(g) Severability. If any term or provision of this Agreement shall be rendered invalid, illegal or unenforceable, the remaining terms and provisions shall be unaffected thereby and shall continue in full force and effect.

(h) Counterparts. This Agreement may be executed in separate counterparts, each of which when delivered shall be an original, but all of which shall constitute one and the same instrument.

(i) Headings Only for Reference. The headings of the various Sections of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(j) Intentionally Omitted.

(k) Entire Agreement. This Agreement embodies the entire agreement and understanding between BBFC and PIFC relating to the subject matter hereof and supersedes all prior agreements and understandings related to such subject matter.

(l) Arbitration. Should there be any dispute between the parties arising out of, or related to, this Agreement, the matter in dispute shall be referred to three

persons in Hudson County, New Jersey one to be appointed by BBFC, one to be appointed by PIFC, and the third to be appointed by the two so chosen. In the event that either BBFC or PIFC shall send notice to the other party stating a dispute and designating an arbitrator in writing, the other party shall have thirty (30) days to designate its arbitrator, failing which, the arbitrator selected by the first party shall appoint a second arbitrator, who shall be a disinterested person, with the same force and effect as though the second arbitrator was appointed by the second party. The decision of any two of the three arbitrators shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The arbitrators shall be commercial persons conversant with maritime shipping matters. In the event the two appointed arbitrators cannot agree upon a third arbitrator, either party may move on an expedited basis in the United States District Court for New Jersey for the appointment of a third arbitrator. Any arbitral award may be enforced in the Federal or state courts in the State of New Jersey or in any other courts having jurisdiction. Each party hereby submits itself to the non-exclusive jurisdiction of the United States District Court for New Jersey and the courts of the State of New Jersey located in the County of Hudson for such purpose.

(m) Governing Law. This Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of New Jersey, including all matters of construction, validity and performance, but without regard to any choice of law principles that might permit or require the application of the law of a different jurisdiction; and, where applicable, the laws (including the general maritime law) of the United States.

(n) Additional Actions. Subject only to the conditions specified herein, each party shall execute all documents and take all actions reasonably required to effectuate the purposes of this Agreement, including compliance with all applicable laws and regulations.

(o) Force Majeure. Neither BBFC nor PIFC shall be liable in respect to any losses, damages or delays resulting from a failure or delay in exercising of any of the obligations under this Agreement, if that failure or delay is due to wars, revolutions or civil commotions, embargoes, blockades, legal restrictions, riots, fires, floods, strikes, government actions, or other cause beyond the control of the parties to this Agreement.

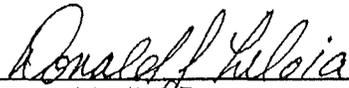
(p) Contracting. When entering into and performing contracts on behalf of BBFC, PIFC shall use all reasonable efforts to negotiate the best cost consistent with quality and services for the benefit of BBFC. BBFC shall, whenever it is lawful, have the benefit of any existing or future contracts of PIFC for the purchase of materials, equipment or services, etc. In the event PIFC shall obtain any repairs, stores, provisions, materials, supplies or equipment from any affiliate of PIFC, the cost incurred by PIFC in respect thereof shall be deemed to be the actual cost thereof to such affiliate plus any actual transportation, insurance or related costs incurred, but without any mark-up or other allowance for profit, commissions or the like. The obligations of PIFC under this Section are subject to the more specific provisions of the Schedule of Expenses to the extent such Schedule specifies the manner in which certain expenses are to be determined and to the provisions of Section 3 hereof regarding prior approvals required from BBFC.

(q) Applicable law, etc. Nothing contained in this Agreement is intended to, or shall be deemed to, (i) increase, enlarge, alter, amend, modify, change, vary or otherwise affect in any way the liabilities, obligations, or responsibilities (if any) of BBFC or any entity affiliated therewith under applicable law, documentation, and court orders, or (ii) alter, amend, modify, change, vary, prejudice, waive or otherwise affect in any way the rights, remedies, entitlements, benefits, protections, defenses, privileges, and immunities of or relating to BBFC or any entity affiliated therewith under applicable law, documentation, and court orders.

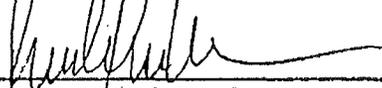
(r) No Third Party Beneficiary. No provision of this Agreement shall, or shall be deemed to, create any third-party beneficiary rights in any person, plan, trust or other entity (including, without limitation, any union or multiemployer plan) in respect of the payment of any amount due or owing from or to PIFC or otherwise, for any period, for any reason, or of any nature or kind whatsoever.

IN WITNESS WHEREOF, BBFC and PIFC have caused this Agreement to be executed on the date first written above by their respective authorized officers.

PORT IMPERIAL FERRY CORP.

By: 
Name: Donald Lilija
Title: Executive Vice President
Date: March 11, 2005

BILLYBEY FERRY COMPANY, LLC

By: 
Name: Paul Goodman
Title: Chief Executive Officer
Date: March 11, 2005

SCHEDULE A

INITIAL SCHEDULE OF EXPENSES

Funding: Prior to the effective date of this Agreement, PIFC and BBFC will establish a budget for costs contemplated by this Agreement for 2005. The budget will be based on a fiscal year consisting of 13 four week periods (each, a "Period"). BBFC will fund the budget in advance on a biweekly basis to the extent the expenses identified therein are to be paid by PIFC on behalf of BBFC. Within 15 days after the end of each Period, PIFC and BBFC will reconcile the actual costs to be borne by BBFC for the prior Period against the amount advanced therefor by BBFC. To the extent that the budget differs from the most recent reconciliation in the manner in which allocation formulas are determined, the budget will be revised so that future advances by BBFC will be in accordance with the allocations included in the then most recent reconciliation. To the extent of any inconsistency between the budget and this Agreement, this Agreement shall govern. BBFC will not be responsible for any expense of PIFC not identified in this Schedule A. PIFC may from time to time submit a requisition for any cost to be borne by BBFC under this Agreement that is not set forth in the budget. If BBFC elects to change its service operations or discontinue services pursuant to Section 6 hereof, the parties will in good faith revise the budget to reflect such changes.

Personnel: Hiring and firing decisions are in the discretion of PIFC but PIFC shall consult with BBFC. Salary levels are in the discretion of PIFC but shall be consistent with past practices. PIFC will consult with BBFC prior to implementing any change in salary levels. PIFC may not, however, allocate to BBFC the cost of any Supervisory Personnel not approved in advance by BBFC and may not, without the consent of BBFC, expand the number of employees that are currently employed for particular functions where the cost of such function is allocated in part to BBFC.

The chart below sets forth the method of calculating expenses to be paid by BBFC to PIFC under this Agreement. Certain terms used in the chart have the following definitions.

Head Count Allocation: BBFC will bear these costs in the proportion to which BBFC Allocated Employees bears to Total Employees. BBFC Allocated Employees shall mean the sum of (i) the number of employees the cost of whom is borne entirely by BBFC under this Agreement or the Vessel Management Agreement, (ii) a number of Captains, Deckhands and boat mechanics (whose services are allocated under the Vessel Management Agreement) determined by multiplying the total number of such Captains, Deckhands and boat mechanics by the Total Service Hours Allocation percentage (as determined under the Vessel Management Agreement) and (iii) the number of headquarters employees whose salaries are allocated under this Agreement multiplied by the Total Service Hours Allocation percentage. Total Employees means the total number of employees of PIFC and its affiliated companies, including without limitation those employed in its bus operations and restaurant operations.

Pass-Through of Actual Cost: Actual cost thereof, without any mark-up, overhead allocation (unless otherwise specified) or other allowance for profit, commissions or the like. All contractual third-party costs will be paid on this basis (landing armored car service, license and permit fees, and the like).

Revenue Allocation: BBFC will bear these costs in the proportion to which BBFC revenue for a Period bears to the total revenue of BBFC and PIFC and PIFC's affiliated companies for such Period ("Aggregate Revenue") (except that where allocated employees are dedicated to ferry service only, the revenue of PIFC and its affiliates will be limited to revenue of PIFC in its ferry operations). Where indicated, Aggregate Revenue shall include the revenue of NY Waterway Tours, LLC (the "Touring Company").

Payroll: Payroll is comprised of actual salary, payroll taxes and benefits. PIFC will provide appropriate supporting documentation for the calculation of such amounts.

Service	Cost Method	Personnel Covered
Human Resources	Head Count Allocation	Three employees
Accounting Services	The costs payable by BBFC under this section shall not commence until six months after the Closing Date.	
Supervisory	BBFC will bear 37.5% of the payroll costs	Fred Martinez
Payroll (including ADP fees)	Head Count Allocation	One and one-half employees
Accounts Payable	Revenue Allocation	Two and one-half employees
MIS	Revenue Allocation, including revenue of the Tour Company	Two employees
Purchasing	Revenue Allocation	One employee dedicated to ferry service only
General Ledger	Pass-Through of Actual Cost	One employee dedicated to BBFC. BBFC may elect to employ this person directly.
Third Party Software	By number of companies serviced	Great Plains Accounting Software
Marketing	Revenue Allocation, including revenue of the Tour Company	For internal marketing staff (currently comprised of two people). Third party agency and advertising buys requires prior approval of both PIFC and BBFC. Either

Service	Cost Method	Personnel Covered
		PIFC or BBFC can elect to incur its own advertising expenditures but shall coordinate the content of any ads or marketing materials. Advertising expenditures that benefit both the BBFC Routes and the PIFC Routes will be allocated based on Revenue Allocation. The Tour Company will bear its own advertising expenses under a separate agreement.
Supervisory	BBFC will bear 37.5% of the payroll costs	Donald Liloia, Robert Reichenberg and Auggie Pagnozzi
Third Party Web Site Costs	Revenue Allocation, including revenue of the Tour Company	Prior approval of both PIFC and BBFC required for any changes to current design and hosting arrangements
Customer Service	Revenue Allocation, including revenue of the Tour Company	Six agents, one supervisor (Carol Bullock) and her assistant
Office Equipment Leases	One-half of current office equipment leases will be borne by PIFC; the balance will be allocated between PIFC and BBFC based on a Revenue Allocation. No new equipment leases will be charged to BBFC without its prior written approval.	
Office Supplies	Revenue Allocation	Items constituting capital expenditures, leasehold improvements and other items required to be capitalized under generally accepted accounting principles will not be charged to BBFC.
Professional Fees	BBFC and PIFC will pay their own legal, audit and other professional	

Service	Cost Method	Personnel Covered
	fees. The fees of the union negotiator utilized by PIFC, to the extent applicable to ferry operations only, will be allocated based on Revenue Allocation.	

Port Authority Permit No. QW-010, dated June 23, 2005
Supplement No. 1

Port Authority Facility – Queens West Waterfront
Development Facility at Hunters Point, Queens

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
225 Park Avenue South
New York, New York 10003

SUPPLEMENT TO PERMIT

THIS AGREEMENT, made by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter referred to as the "Port Authority") and the undersigned Permittee (hereinafter referred to as the "Permittee"),

WITNESSETH, that the Port Authority and the Permittee hereby agree to amend, effective as of May 25, 2006, that certain Permit (identified above by Port Authority Permit Number and by date and covering Space at the above-mentioned Port Authority Facility) issued by the Port Authority to the Permittee, as the same may have been previously supplemented and amended, as follows:

1. (a) The effective period of the permission granted by the Permit is hereby extended for the period commencing on May 25, 2006 (sometimes hereinafter "the Effective Date") and continuing through October 15, 2008, both dates inclusive unless sooner revoked as provided in the Permit.

(b) Notwithstanding the foregoing, the Permittee shall only be permitted to use the Space hereunder and conduct operations thereon on the following dates: May 25, 2006 through October 9, 2006, both dates inclusive; May 15, 2007 through October 15, 2007, both dates inclusive; and May 15, 2008 through October 15, 2008, both dates inclusive.

2. (a) Effective from and after May 25, 2006 the Space under the Permit as herein amended shall be increased by the area shown in diagonal-hatching on the sketch attached hereto, hereby made a part of the Permit as herein amended and marked "Exhibit B" (hereinafter referred to as "the Additional Space"). The parties acknowledge that the Additional Space constitutes non-residential real property.

(b) The Permittee shall use the Additional Space solely for the purposes set forth in Special Endorsement No. 1 of the Permit in connection with the Permittee's operation on the Space and for no other purpose or purposes whatsoever.

3. The Port Authority shall deliver the Additional Space to the Permittee in its presently existing "as is" condition. The Permittee acknowledges that prior to the execution of this Agreement, it has thoroughly examined and inspected the Additional Space and has found it in good order and repair and has determined it to be suitable for the Permittee's operations under the Permit as herein amended. The Permittee agrees to and shall take the Additional Space in its "as is" condition and the Port Authority shall have no obligation under this Permit for finishing work or preparation of any portion of the Additional Space for the Permittee's use. The Port Authority makes no representations or warranties as to location, size, adequacy or suitability of the Additional Space for the Permittee's operations therein. The Permittee acknowledges that it has not relied upon any statement of the Port Authority or its Commissioners, officers, employees or agents as to the suitability of the Additional Space for the operations permitted thereon by the Permit as herein amended and extended. Without limiting any obligation of the Permittee to commence operations in the Additional Space at the time and in the manner stated elsewhere in this Agreement, the Permittee agrees that no portion of the Additional Space will be used initially or at any time during the effective period of the permission granted under the Permit as herein amended which is in a condition unsafe or improper for the conduct of the Permittee's operations therein under the Permit as herein amended so that there is a possibility of injury or damage to life or property and the Permittee further agrees that before any use of the Additional Space it will immediately correct any such unsafe condition.

4. Effective from and after May 25, 2006 and continuing through the balance of the Permit as herein extended, the Permittee shall pay to the Port Authority in lieu of the fees heretofore payable under the Permit, a monthly basic fee as follows:

(a) Effective for the period from May 25, 2006 and continuing through October 9, 2006, both dates inclusive, the Permittee shall pay to the Port Authority a monthly fee equivalent to Three Thousand Three Hundred and Thirty Three Dollars and No Cents (\$3,333.00) payable in advance on May 25, 2006 and thereafter on the first day of June 2006, and on the first day of each and every calendar month thereafter occurring during such period.

(b) Effective from and after May 15, 2007 and continuing through October 15 2007, both dates inclusive, the Permittee shall pay to the Port Authority a monthly fee equivalent to Four Thousand Three Hundred and Thirty Three Dollars and No Cents (\$4,333.00) payable in advance on May 15, 2007 and thereafter on the first day June 2007, and on the first day of each and every calendar month thereafter occurring during such period.

(c) Effective from and after May 15, 2008 and continuing through October 15, 2008, both dates inclusive, the Permittee shall pay to the Port Authority a monthly fee equivalent to Four Thousand Three Hundred and Thirty Three Dollars and No Cents (\$4,333.00) payable in advance on May 15, 2008 and thereafter on the first day of

June 2008, and on the first day of each and every calendar month thereafter occurring during such period.

(d) If the permission granted hereunder becomes effective on a date which is other than the first day of a calendar month or expires or is revoked or terminated on a date other than the last day of a calendar month, the fee payable for the part of the month during which the permission is in effect shall be computed by prorating the monthly fee on a daily basis, using the exact number of days in the month involved.

5. (a) Effective on May 25, 2006 and continuing though the balance of the Permit, as herein extended, in addition to the payment of a monthly fee, the Permittee shall pay to the Port Authority a percentage fee equivalent to Two Percent (2%) of all gross receipts of the Permittee arising during each Summer Period, as hereinafter defined, which are in excess of the Exemption Amount established for such period.

(b) As used herein, during each Summer Period hereunder, Exemption Amount shall be equivalent to Three Hundred Thousand Dollars and No Cents (\$300,000.00).

(c) As used herein, "Summer Period" shall mean, respectively, the period commencing on May 26, 2006 through October 9, 2006, both dates inclusive; the period commencing on May 15, 2007 through October 15, 2007, both dates inclusive; and the period commencing on May 15, 2008 and continuing through October 15, 2008, both dates inclusive.

(d) The payment of the percentage fee shall be made in accordance with the following: On the fifteenth (15th) day of the first month following the end of each Summer Period, as hereinabove defined, the Permittee shall render to the Port Authority a statement, certified by a responsible officer of the Permittee, showing all gross receipts arising from the Permittee's operations hereunder in the preceding Summer Period. Whenever any such statement shall show that the cumulative amount of gross receipts for such period is in excess of the Exemption Amount, the Permittee shall pay to the Port Authority at the time of rendering the statement an amount equal to the Percentage Fee applied to all of the gross receipts of the Permittee which are in excess of the Exemption Amount. At any time that the Annual Exemption Amount is decreased by proration hereunder so that there is an excess of gross receipts as to which the Percentage Fee has not been paid, the same shall be payable to the Port Authority on demand.

(e) Upon any termination or revocation of the permission granted hereunder (even if stated to have the same effect as expiration), gross receipts shall be reported and the Percentage Fee shall be paid on the fifteenth (15th) day of the first month following the month in which the effective date of such termination or revocation occurs, as follows: first, if the monthly installment of basic fee due on the first day of month in which the termination or revocation occurs has not been paid, the Permittee shall pay the prorated part of the amount of that installment; if the monthly installment has been paid, then the excess thereof shall be credited to the Permittee's other obligations; second, the Permittee shall within

fifteen (15) days after the effective date of termination or revocation render to the Port Authority a statement, certified by a responsible officer of the Permittee, of all gross receipts for the Summer Period in which the effective date of termination or revocation falls showing the total amount of gross receipts and the percentage applicable thereto; and third, the payment then due on account of the Percentage Fee for the Summer Period in which the effective date of termination or revocation falls shall be the Percentage Fee applied to all of the gross receipts of the Permittee in excess over the prorated Exemption Amount.

(f) "Gross receipts" shall mean and include all monies paid or payable to the Permittee for sales made and services rendered at or from the Facility regardless of when or where the order therefor is received and outside the Facility if the order is received at the Facility and any other revenues of any type arising out of or in connection with the Permittee's operations at the Facility provided, however, that there shall be excluded from gross receipts any taxes imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by the Permittee and any receipts of the Permittee which arise from the Permittee's operations under any other agreement with the Port Authority at the Facility and which are subject to a percentage fee or rental under that agreement.

Notwithstanding that the percentage fee hereunder is measured by a percentage of gross receipts, no partnership relationship between the parties hereto or joint venture is created by this Permit.

6. Effective from and after the date hereof, Standard Endorsement No's. 2.3 and 2.8, attached hereto and hereby made a part hereof shall be and become a part of the Permit as herein amended.

7. Effective as of the date hereof and continuing throughout the balance of the period of the permission, as herein amended and extended, in the event the Port Authority exercises its right to revoke or terminate this Permit for any reason other than "without cause", the Permittee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses reasonably incurred by the Port Authority in connection with such revocation or termination, including without limitation any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the restoration of any space which may be used and occupied under this Permit (on failure of the Permittee to have it restored), preparing such space for use by a succeeding permittee, the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), repairing and altering the space and putting the space in order (such as but not limited to cleaning and decorating the same).

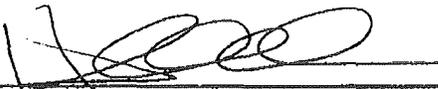
8. As hereby amended, all the provisions of the Permit shall be and remain in full force and effect.

9. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Permittee with any liability, or held liable to the Permittee, under any term or provision of this Supplement, or because of its execution or attempted execution, or because of any breach thereof.

IN WITNESS WHEREOF, the Port Authority and the Permittee have caused these presents to be executed.

Dated: May 25, 2006

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By: 
(Title) Director, Regional Economic Development

NEW YORK TRANS HARBOR L.L.C.
Permittee

By: 
(Title) PRESIDENT + CEO **President**
(Print and sign name legibly)

The basic fee, or the part thereof which may be prorated as hereinafter provided, shall be due and payable in advance on the effective date hereof and on the first day of each and every calendar month thereafter. The percentage fee, or the portion thereof prorated as hereinafter provided, shall be due and payable on the twentieth day of the month following the calendar month in which the effective date hereof falls, and on the twentieth day of each month thereafter, provided, however, that if the permission granted hereby shall expire or be revoked or terminated effective on a date other than the last day of a month, the prorated part of the percentage fee shall be due and payable within twenty (20) days after such date. If the permission granted by this Permit commences on a date other than the first day of a calendar month, or if the said permission expires or is revoked or terminated effective on a date other than the last day of a calendar month, the fees due for the period of time during which the said permission shall have been in effect shall be the fees specified on the first page of this Permit, prorated, however, in the same proportion that the number of days the permission is in effect bears to thirty (30) days, as follows: the portion of the basic fee due shall be computed by prorating the monthly basic fee on the above basis; the amount of the percentage fee shall be equivalent to the excess of the percentage set forth on the first page of this Permit applied to the gross receipts arising in such portion of the month over the prorated basic fee. The computation of fees for each month, or for a portion of a month as provided above, shall be individual to such month or such portion of a month, and without relation to any other month or any other portion of a month.

Payments made hereunder shall be sent to the following address:

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
P.O. BOX 95000-1517
PHILADELPHIA, PENNSYLVANIA 19195-1517

or via the following wire transfer instructions (for basic fees):

Bank: Commerce Bank
Bank ABA Number: 026013673
Account Number:

or via the following wire transfer instructions (for percentage fees):

Bank: Commerce Bank
Bank ABA Number: 026013673
Account Number:

or to such other address as may hereafter be substituted therefor by the Port Authority from time to time, by notice to the Permittee.

STANDARD ENDORSEMENT NO. 2.3

FEES - BASIC & PERCENTAGE

All Facilities

10/30/85

rev 6/1/04

1. In connection with the exercise of the privilege granted hereunder, the Permittee shall:

(a) Use its best efforts in every proper manner to develop and increase the business conducted by it hereunder;

(b) Not divert or cause or allow to be diverted, any business from the Airport;

(c) Maintain, in accordance with accepted accounting practice, during the effective period of this Permit, for one (1) year after the expiration or earlier revocation or termination thereof, and for a further period extending until the Permittee shall receive written permission from the Port Authority to do otherwise, records and books of account recording all transactions of the Permittee at, through, or in anywise connected with the Airport (which records and books of account are hereinafter be called the "Permittee's Records"). The Permittee's Records shall be kept at all times within the Port of New York District.

(d) Permit in ordinary business hours during the effective period of the Permit, for one year thereafter, and during such further period as is mentioned in the preceding subdivision (c), the examination and audit by the officers, employees and representatives of the Port Authority of (i) the records and books of account of the Permittee and (ii) also any records and books of account of any company which is owned or controlled by the Permittee, or which owns or controls the Permittee, if said company performs services, similar to those performed by the Permittee, anywhere in the Port of New York District. The Permittee shall make available to the Port Authority within the Port of New York District for examination and audit by the Port Authority pursuant to this paragraph (d) those records and books of account described in (i) which are not required by paragraph (c) above to be kept at all times in the Port of New York District and those records and books of account described in (ii) above (all of the foregoing being hereinafter called the "Other Relevant Records" and the Permittee's Records and the Other Relevant Records being hereinafter collectively referred to as the "Records").

(e) Permit the inspection by the officers, employees and representatives of the Port Authority of any equipment used by the Permittee, including but not limited to cash registers;

(f) Furnish on or before the twentieth day of each month following the effective date of this Permit a sworn statement of gross receipts arising out of operations of the Permittee hereunder for the preceding month;

(g) Furnish on or before the twentieth day of April of each calendar year following the effective date of this Permit a statement of all gross receipts arising out of operations of the Permittee hereunder for the preceding calendar year certified, at the Permittee's expense, by a certified public accountant;

STANDARD ENDORSEMENT NO. 2.8
BUSINESS DEVELOPMENT AND RECORDS
AIRPORTS

4/9/79; rev. 10/2/90; rev. 7/1/97, rev 11/05 (page 1 of 3 pages)

(h) Install and use such cash registers, sales slips, invoicing machines and any other equipment or devices for recording orders taken, or services rendered, as may be appropriate to the Permittee's business and necessary or desirable to keep accurate records of gross receipts.

2. Without implying any limitation on the right of the Port Authority to revoke the Permit for cause for the breach of any term or condition thereof, including but not limited to paragraph 1 above, the Permittee understands that compliance by the Permittee with the provisions of paragraphs (c) and (d) above are of the utmost importance to the Port Authority in having entered into the percentage fee arrangement under the Permit and in the event of the failure of the Permittee to maintain, keep within the Port District or make available for examination and audit the Permittee's Records in the manner and at the times or location as provided in this Standard Endorsement then, in addition to all and without limiting any other rights and remedies of the Port Authority, the Port Authority may:

(1) Estimate the gross receipts of the Permittee on any basis that the Port Authority, in its sole discretion, shall deem appropriate, such estimation to be final and binding on the Permittee and the Permittee's fees based thereon to be payable to the Port Authority when billed; or

(2) If any such Records have been maintained outside of the Port District, but within the Continental United States then the Port Authority in its sole discretion may (i) require such Records to be produced within the Port District or (ii) examine such Records at the location at which they have been maintained and in such event the Permittee shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit, or

(3) If any such Records have been maintained outside the continental United States then, in addition to the costs specified in paragraph (2)(ii) above, the Permittee shall pay to the Port Authority when billed all other costs of the examination and audit of such Records including without limitation salaries, benefits, travel costs and related expenses, overhead costs and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination.

3. The foregoing auditing costs, expenses and amounts set forth in subparagraphs (2) and (3) of paragraph 2 above shall be deemed fees and charges under the Permit payable to the Port Authority with the same force and effect as all other fees and charges thereunder.

4. Effective from and after October 13, 2005, and continuing during the effective period of permission granted under this Permit, in the event that upon conducting an examination

and audit as described in this Standard Endorsement the Port Authority determines that unpaid amounts are due to the Port Authority by the Permittee, the Permittee shall be obligated, and hereby agrees, to pay to the Port Authority a service charge in the amount of five percent (5%) of each amount determined by the Port Authority audit findings to be unpaid. Each such service charge shall be payable immediately upon demand (by notice, bill or otherwise) made at any time therefor by the Port Authority. Such service charge (s) shall be exclusive of, and in addition to, any and all other moneys or amounts due to the Port Authority by the Permittee under this Permit or otherwise. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of the Port Authority of payment of any late charge(s) or other service charge(s) payable under the provisions of this Standard Endorsement with respect to such unpaid amount. Each such service charge shall be and become fees, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the fees to be paid. Nothing in this Standard Endorsement is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Permit, including, without limitation, the Port Authority's rights to revoke this Permit or (ii) any obligations of the Permittee under this Permit.

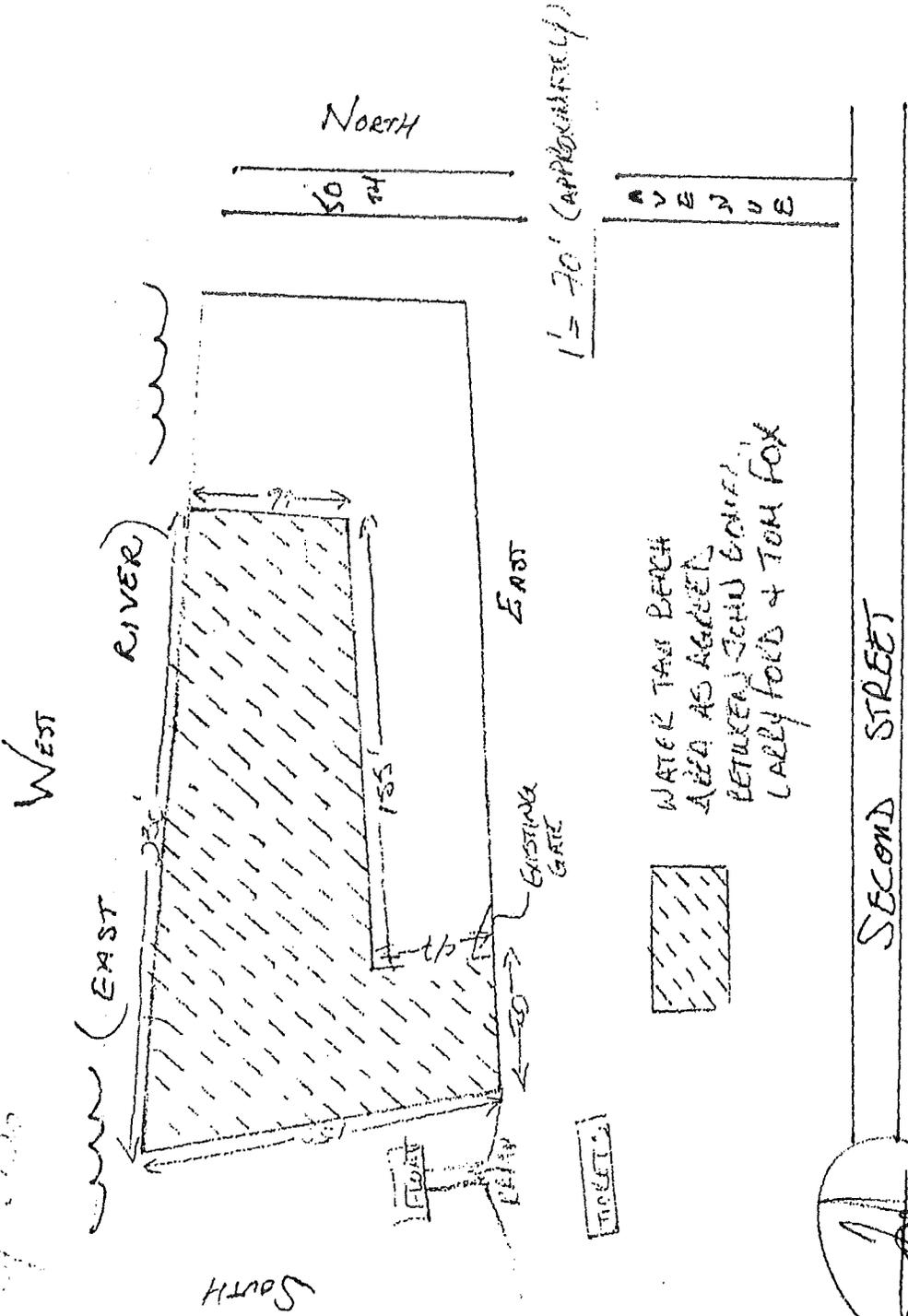
STANDARD ENDORSEMENT NO. 2.8

BUSINESS DEVELOPMENT AND RECORDS

AIRPORTS

4/9/79; rev. 10/2/90; rev. 7/1/97, rev 11/05 (page 3 of 3 pages)

NEW YORK WATER TAXI
 WATER TAXI BEACH
 155' (EAST)
 75' (SOUTH)



J. J. J.
 INITIAL - PORT AUTHORITY

EXHIBIT - B

J. J. J.
 INITIAL - N.Y. WATER TAXI

May 22, 2002

(973) 961-6600

New York Waterways

**RE: Supplemental Agreement to 1988 Ferry Transportation Agreement between
the Arcorp/Hartz joint venture and the Port Authority**

Gentlemen:

1. This is a deemed Supplemental Agreement to the above referenced agreement.
2. As a result of the September 11, 2001 terrorist attack on the World Trade Center, which crippled the lower Manhattan transportation system, including the PATH train station and initially restricted use of the World Financial Center ferry terminal, the States of New York and New Jersey, The Port Authority of NY & NJ and the City of New York have become increasingly concerned with the need to provide alternate methods of commuter service. The Port Authority of NY & NJ, with the assistance of NY Waterway, focused on the utilization of existing ferry service to immediately provide enhance commuter transportation for the period of time until the PATH service to lower Manhattan is restored.

Initially the Port Authority of NY & NJ constructed a new ferry terminal at Pier A, on the west side of lower Manhattan, which currently serves NY Waterway ferry services from Hoboken and several locations in Jersey City. These services, along with other ferry routes by NY Waterway have provided critical alternative transportation to thousands of commuters who prior to September 11, used PATH.

The Port Authority of NY & NJ, working jointly with the City of New York, has applied for a Federal Emergency Management Agency grant to fund an additional ferry service between Hoboken and Pier 11 and a ferry "circulator" between Pier 11 and the World Financial Center and enhancement of the Hoboken to Battery Park City service and the continuation of the Hoboken to Pier A service, and the Port Authority has obtained a guaranty of funding from the City of New York, copy annexed.

In an effort to continue our close operating relationship developed via the Hoboken Operating Agreement, as well as the spirit of that agreement, NY Waterway was requested to provide these services. The Port Authority of NY & NJ will act as "Sponsoring Agency" for NY Waterway's operation of these services. The Port Authority of NY & NJ is obligated to reimburse NY Waterway within 45 days of receipt of NY Waterway's monthly invoice for the services contracted for under this Supplemental Agreement.

3. The descriptions of the services required (Attachment I – “Description of Weekday Services”) and the costs to be incurred (Attachment II – “Eligible Fees for Billing”) in connection therewith by NY Waterway, including termination costs and NY Waterways right to terminate for non-payment, and the payments to be received By NY Waterway (Attachment III – “Termination Costs”), are annexed hereto.
4. The Port Authority will timely process payment applications submitted by NY Waterway and submit them to SEMO for payment, and promptly remit payments received from FEMA to NY Waterway. In the event FEMA/SEMO payment are delayed or suspended, the Port Authority will apply to the City of New York for such funding and promptly remit funds received from the City to NY Waterway.
5. The terms and conditions of the 1988 Ferry Transportation Agreement are incorporated herein as if set forth herein in full to the extent applicable. Specifically, the insurance and indemnity provisions therein shall be deemed modified to add as additional insureds and additional indemnities, FEMA, the City of New York and New York’s SEMO.
6. The Port Authority may terminate this agreement as to any services upon thirty (30) days written notice to NY Waterway. Except for NY Waterways right to terminate in the event of non-payment, NY Waterway may not terminate this agreement except for material breach of contract.
7. The effective date of this agreement is March 25, 2002. The term of this agreement extends for six months after PATH service is reestablished at the World Trade Center station.
8. This letter and its attachments contains the full agreement of the parties and may be modified or amended only by a writing signed by the parties.

If you are in agreement, please countersign this letter below.

Very truly yours,

The Port Authority of New York and New Jersey

By: *George A. Casner*
Titled: *Director*

New York Waterway

By: *Patricia M. ...*
Title: *PRESIDENT*
Date: *5/23/02*

Attachment I

Description of Weekday Services

- Hoboken – World Financial Center
 - i. Peak Periods: 6am to 10am and 2pm to 7pm - 10 minute headway
 - ii. Off-Peak: 10am to 2pm and 7pm to 12am – 15 minute headway

- Hoboken – Pier A
 - i. Peak Periods: 6am to 10am and 2:45pm to 6:45pm - 6 minute headway
 - ii. Off-Peak: 10am to 2:45pm and 6:45pm to 12:15am – 15 minute headway

- Hoboken – Pier 11
 - i. Peak Periods: 7am to 10am and 2:40pm to 6:45pm - 6 minute headway
 - ii. Off-Peak: 10am to 2:45pm and 6:45pm to 9:45pm – 10 minute headway
9:45pm to 12:15am – 15 minute headway

- Pier 11 – World Financial Center
 - i. Peak Periods: 6:22am to 10:30am and 3pm to 7pm – 15 minute headway
 - ii. Off-Peak: 10:30am to 3pm and 7pm to 12am – 20 minute headway

Note: The “Description of Weekday Services” above represents the contracted services. The Port Authority of NY & NJ must approve any additions, changes or modifications by NY Waterway, excluding changes resulting from routine maintenance or emergencies. The Port Authority of NY & NJ, notwithstanding Article 6 of this supplemental agreement, may make any additions, changes or modifications to the above “Description of Weekday Services”.

Attachment II

Eligible Fees for Billing

NY Waterway may bill for additional operating hours, up to 160 hours, associated with providing the services listed in Attachment I over the base weekday services provided by NY Waterway from Hoboken, prior to March 25, 2002.

Listed below, are the base weekday service provided by NY Waterway from Hoboken prior to March 25, 2002:

- Hoboken – World Financial Center
 - i. 6am to 8pm - 30 minute headway
- Hoboken – Pier A
 - i. Peak Periods: 7am to 9am and 4:15pm to 6pm - 5 minute headway
 - ii. Off-Peak: 6am to 7am - 15 minute headway
9am to 10am; 3pm to 4:15pm and 6pm to 7:30pm – 10 minute headway
- Hoboken to Pier A via World Financial Center
 - i. Off-Peak: 7:30pm to 10:30am - 30 minute headway

Eligible Monthly Billing Costs:

1. Additional Hourly Operating Cost per Boat - \$ 459.00 plus a 20% profit = \$ 551.50 per hour
2. Daily Boat Charter Cost up to 10 Boats
3. Less any weekday revenue collected above the computed average weekday monthly revenue for the base services. (Estimated - \$ 1,080,787)

Attachment III

Termination Costs

Ferry	Date of Charter	Termination Date	Charter Days 3/25 – 9/25	Daily Charter Rate
Royal Ms. Belmar	3/25/02	9/25/02	133	\$3,800.00
Athena	3/25/02	5/8/02	N/A	\$4,300.00
Eugina Louise	3/25/02	9/25/02	133	\$1,500.00
Royal Sunshine	3/25/02	9/25/02	133	\$3,500.00
Miss Belmar Princess	3/25/02	9/25/02	133	\$3,500.00
Elsie K Princess	3/25/02	3/29/02	N/A	\$2,500.00
Sea Queen IV	3/27/02	9/25/02	133	\$2,000.00
Seastreak Brooklyn	3/25/02	9/25/02	133	\$4,000.00
American Eagle	3/25/02	9/25/02	133	\$2,000.00
Adventurer	3/29/02	9/25/02	129	\$1,363.44
Night Hawk	4/16/02	9/25/02	117	\$2,440.00
Sea Devil	3/25/02	3/29/02	N/A	\$2,500.00
Arcadia Clipper	5/8/02	9/25/02	102	\$2,000.00

Note: Termination Costs will not be assessed if NY Waterway finds other uses for these ferries. Any additions, changes or modification to the above list must be approved by the Port Authority of NY & NJ.

Attachment III

Termination Costs

Ferry	Date of Charter	Termination Date	Charter Days 3/25 – 9/25	Daily Charter Rate
Royal Ms. Belmar	3/25/02	9/25/02	133	\$3,800.00
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Eugenia Louise	3/25/02	9/25/02	133	\$1,500.00
Royal Sunshine	3/25/02	9/25/02	133	\$3,500.00
Miss Belmar Princess	3/25/02	9/25/02	133	\$3,500.00
Elsie K Princess	3/25/02	3/29/02	N/A	\$2,500.00
Sea Queen IV	3/27/02	9/25/02	133	\$2,000.00
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Sea Devil	3/25/02	3/29/02	N/A	\$2,500.00
Arcadia Clipper	5/8/02	9/25/02	102	\$2,000.00
Portuguese Princess	3/25/02	9/25/02	133	\$2,200.00
Friendship V	3/25/02	5/08/02	N/A	\$4,200.00
Skipper	5/28/02	9/25/02	102	\$2,440.00

Note: Termination Costs will not be assessed if NY Waterway finds other uses for these ferries. Any additions, changes or modification to the above list must be approved by the Port Authority of NY & NJ.

THE PORT AUTHORITY OF NY & NJ

GARY

ECONOMIC DEVELOPMENT DEPARTMENT
NEWARK LEGAL CENTER
ONE RIVERFRONT PLAZA, 9TH FLOOR
NEWARK, NEW JERSEY 07102

(201) 595-4510 NEW JERSEY
(212) 435-7000 NEW YORK

May 22, 2002

Mr. Arthur Imperatore, Jr.
President
NY Waterway
Pershing Road
Weehawken, NJ 07087

Dear Arthur:

As a result of a collaborative effort of the Port Authority, the City of New York and the Federal Emergency Management Agency (FEMA), a series of ferry enhancements designed to improve access to lower Manhattan were developed and implemented on March 25, 2002. With regard to the proposed *Supplemental Agreement to the 1988 Ferry Transportation Agreement between the Arcorp/Hartz joint venture and the Port Authority*, I wish to clarify the extent of the Port Authority's financial obligation for NY Waterway's (NYW) compensation for service improvements.

Included within the enhancements were a new service between Hoboken and Pier 11, a new circulator ferry between the World Financial Center at Battery Park City and Pier 11, and increased frequency of service between Hoboken and Battery Park City. FEMA has agreed in concept to fund those operating improvements deemed necessary to effectuate these enhancements. Beyond the FEMA commitment, the City of New York has guaranteed the use of City funds to address any eligible NYW expenses not so reimbursed by FEMA.

The Port Authority has agreed to serve as project sponsor for the operating services for which FEMA reimbursement is to be sought. In that role, our responsibility shall be limited to the timely processing of NY Waterway (NYW) invoices to the New York State Emergency Management Office (SEMO) and the prompt remittance of payments received from (SEMO) to NYW. In the event a FEMA/SEMO payment is unreasonably delayed or denied, the Port Authority will apply to the City of New York under its guarantee for such payment and promptly remit funds received from the City to NYW.

Notwithstanding any other written or oral agreement or statement to the contrary, between NY Waterway and the Port Authority the Port Authority shall have no financial obligation to NYW for any Waterway operating expenses or other compensation with regard to the operating improvements.



Please indicate your agreement by executing the enclosed copy of this letter below and returning to the undersigned.

Sincerely,

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By George L. Cancro
George L. Cancro
Director
Ferry Transportation

Agreed:

NY WATERWAY

By [Signature]
Title PRESIDENT
Date 5/22/02

May 22, 2002

(973) 961-6600

New York Waterways

RE: Supplemental Agreement to 1988 Ferry Transportation Agreement between the Arcorp/Hartz joint venture and the Port Authority

Gentlemen:

1. This is a deemed Supplemental Agreement to the above referenced agreement.
2. As a result of the September 11, 2001 terrorist attack on the World Trade Center, which crippled the lower Manhattan transportation system, including the PATH train station and initially restricted use of the World Financial Center ferry terminal, the States of New York and New Jersey, The Port Authority of NY & NJ and the City of New York have become increasingly concerned with the need to provide alternate methods of commuter service. The Port Authority of NY & NJ, with the assistance of NY Waterway, focused on the utilization of existing ferry service to immediately provide enhance commuter transportation for the period of time until the PATH service to lower Manhattan is restored.

Initially the Port Authority of NY & NJ constructed a new ferry terminal at Pier A, on the west side of lower Manhattan, which currently serves NY Waterway ferry services from Hoboken and several locations in Jersey City. These services, along with other ferry routes by NY Waterway have provided critical alternative transportation to thousands of commuters who prior to September 11, used PATH.

The Port Authority of NY & NJ, working jointly with the City of New York, has applied for a Federal Emergency Management Agency grant to fund an additional ferry service between Hoboken and Pier 11 and a ferry "circulator" between Pier 11 and the World Financial Center and enhancement of the Hoboken to Battery Park City service and the continuation of the Hoboken to Pier A service, and the Port Authority has obtained a guaranty of funding from the City of New York, copy annexed.

In an effort to continue our close operating relationship developed via the Hoboken Operating Agreement, as well as the spirit of that agreement, NY Waterway was requested to provide these services. The Port Authority of NY & NJ will act as "Sponsoring Agency" for NY Waterway's operation of these services. The Port Authority of NY & NJ is obligated to reimburse NY Waterway within 45 days of receipt of NY Waterway's monthly invoice for the services contracted for under this Supplemental Agreement.



3. The descriptions of the services required (Attachment I – “Description of Weekday Services”) and the costs to be incurred (Attachment II – “Eligible Fees for Billing”) in connection therewith by NY Waterway, including termination costs and NY Waterways right to terminate for non-payment, and the payments to be received By NY Waterway (Attachment III – “Termination Costs”), are annexed hereto.
4. The Port Authority will timely process payment applications submitted by NY Waterway and submit them to SEMO for payment, and promptly remit payments received from FEMA to NY Waterway. In the event FEMA/SEMO payment are delayed or suspended, the Port Authority will apply to the City of New York for such funding and promptly remit funds received from the City to NY Waterway.
5. The terms and conditions of the 1988 Ferry Transportation Agreement are incorporated herein as if set forth herein in full to the extent applicable. Specifically, the insurance and indemnity provisions therein shall be deemed modified to add as additional insureds and additional indemnities, FEMA, the City of New York and New York’s SEMO.
6. The Port Authority may terminate this agreement as to any services upon thirty (30) days written notice to NY Waterway. Except for NY Waterways right to terminate in the event of non-payment, NY Waterway may not terminate this agreement except for material breach of contract.
7. The effective date of this agreement is March 25, 2002. The term of this agreement extends for six months after PATH service is reestablished at the World Trade Center station.
8. This letter and its attachments contains the full agreement of the parties and may be modified or amended only by a writing signed by the parties.

If you are in agreement, please countersign this letter below.

Very truly yours,

The Port Authority of New York and New Jersey

By: *George A. Cannas*
Titled: *Director*

New York Waterway

By: *PA [Signature]*
Title: *PRESIDENT*
Date: *5/23/02*

Attachment I

Description of Weekday Services

- Hoboken – World Financial Center
 - i. Peak Periods: 6am to 10am and 2pm to 7pm - 10 minute headway
 - ii. Off-Peak: 10am to 2pm and 7pm to 12am – 15 minute headway

- Hoboken – Pier A
 - i. Peak Periods: 6am to 10am and 2:45pm to 6:45pm - 6 minute headway
 - ii. Off-Peak: 10am to 2:45pm and 6:45pm to 12:15am – 15 minute headway

- Hoboken – Pier 11
 - i. Peak Periods: 7am to 10am and 2:40pm to 6:45pm - 6 minute headway
 - ii. Off-Peak: 10am to 2:45pm and 6:45pm to 9:45pm – 10 minute headway
9:45pm to 12:15am – 15 minute headway

- Pier 11 – World Financial Center
 - i. Peak Periods: 6:22am to 10:30am and 3pm to 7pm – 15 minute headway
 - ii. Off-Peak: 10:30am to 3pm and 7pm to 12am – 20 minute headway

Note: The “Description of Weekday Services” above represents the contracted services. The Port Authority of NY & NJ must approve any additions, changes or modifications by NY Waterway, excluding changes resulting from routine maintenance or emergencies. The Port Authority of NY & NJ, notwithstanding Article 6 of this supplemental agreement, may make any additions, changes or modifications to the above “Description of Weekday Services”.

Attachment II

Eligible Fees for Billing

NY Waterway may bill for additional operating hours, up to 160 hours, associated with providing the services listed in Attachment I over the base weekday services provided by NY Waterway from Hoboken, prior to March 25, 2002.

Listed below, are the base weekday service provided by NY Waterway from Hoboken prior to March 25, 2002:

- Hoboken – World Financial Center
 - i. 6am to 8pm - 30 minute headway
- Hoboken – Pier A
 - i. Peak Periods: 7am to 9am and 4:15pm to 6pm - 5 minute headway
 - ii. Off-Peak: 6am to 7am - 15 minute headway
9am to 10am; 3pm to 4:15pm and 6pm to 7:30pm – 10 minute headway
- Hoboken to Pier A via World Financial Center
 - i. Off-Peak: 7:30pm to 10:30am - 30 minute headway

Eligible Monthly Billing Costs:

1. Additional Hourly Operating Cost per Boat - \$ 459.00 plus a 20% profit = \$ 551.50 per hour
2. Daily Boat Charter Cost up to 10 Boats
3. Less any weekday revenue collected above the computed average weekday monthly revenue for the base services. (Estimated - \$ 1,080,787)

Attachment III

Termination Costs

Ferry	Date of Charter	Termination Date	Charter Days 3/25 – 9/25	Daily Charter Rate
Royal Ms. Belmar	3/25/02	9/25/02	133	\$3,800.00
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Adventurer	3/29/02	9/25/02	129	\$1,363.44
Night Hawk	4/16/02	9/25/02	117	\$2,440.00
Sea Devil	3/25/02	3/29/02	N/A	\$2,500.00
Arcadia Clipper	5/8/02	9/25/02	102	\$2,000.00

Note: Termination Costs will not be assessed if NY Waterway finds other uses for these ferries. Any additions, changes or modification to the above list must be approved by the Port Authority of NY & NJ.

Attachment III

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Note: Termination Costs will not be assessed if NY Waterway finds other uses for these ferries. Any additions, changes or modification to the above list must be approved by the Port Authority of NY & NJ.

THE PORT AUTHORITY OF NY & NJ

GARY

ECONOMIC DEVELOPMENT DEPARTMENT
NEWARK LEGAL CENTER
ONE RIVERFRONT PLAZA, 9TH FLOOR
NEWARK, NEW JERSEY 07102

(201) 595-4510 NEW JERSEY
(212) 435-7000 NEW YORK

May 22, 2002

Mr. Arthur Imperatore, Jr.
President
NY Waterway
Pershing Road
Weehawken, NJ 07087

Dear Arthur:

As a result of a collaborative effort of the Port Authority, the City of New York and the Federal Emergency Management Agency (FEMA), a series of ferry enhancements designed to improve access to lower Manhattan were developed and implemented on March 25, 2002. With regard to the proposed *Supplemental Agreement to the 1988 Ferry Transportation Agreement between the Arcorp/Hartz joint venture and the Port Authority*, I wish to clarify the extent of the Port Authority's financial obligation for NY Waterway's (NYW) compensation for service improvements.

Included within the enhancements were a new service between Hoboken and Pier 11, a new circulator ferry between the World Financial Center at Battery Park City and Pier 11, and increased frequency of service between Hoboken and Battery Park City. FEMA has agreed in concept to fund those operating improvements deemed necessary to effectuate these enhancements. Beyond the FEMA commitment, the City of New York has guaranteed the use of City funds to address any eligible NYW expenses not so reimbursed by FEMA.

The Port Authority has agreed to serve as project sponsor for the operating services for which FEMA reimbursement is to be sought. In that role, our responsibility shall be limited to the timely processing of NY Waterway (NYW) invoices to the New York State Emergency Management Office (SEMO) and the prompt remittance of payments received from (SEMO) to NYW. In the event a FEMA/SEMO payment is unreasonably delayed or denied, the Port Authority will apply to the City of New York under its guarantee for such payment and promptly remit funds received from the City to NYW.

Notwithstanding any other written or oral agreement or statement to the contrary, between NY Waterway and the Port Authority the Port Authority shall have no financial obligation to NYW for any Waterway operating expenses or other compensation with regard to the operating improvements.

Please indicate your agreement by executing the enclosed copy of this letter below and returning to the undersigned.

Sincerely,

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By 
George L. Cancro
Director
Ferry Transportation

Agreed:

NY WATERWAY

By 
Title PRESIDENT
Date 5/22/02

THE PORT AUTHORITY OF NY & NJ

*Andrew S. Lynn
Director
Planning and Regional Development Department*

March 21, 2011

Paul Goodman
Chief Executive Officer
Billybey Ferry Company
Pier 79 Ferry Terminal
451 12th Avenue
New York, New York 10018

Dear Mr. Goodman:

Part I – Nature of This Agreement:

This is an Addendum to the Assignment Agreement dated March 16, 2005 (“Assignment Agreement”) between:

1. the Port Authority of NY & NJ (“Authority”), and
2. Port Imperial Ferry Corporation (“PIFC”), as Assignor, and
3. Billybey Ferry Company, LLC (“BBFC”), as Assignee,

with respect to:

1. the Agreement dated November 3, 1988 between the Authority and PIFC for Ferry Transportation, and
2. the Agreement dated November 4, 2003 between the Authority and PIFC for Pier 11 Service, and
3. the Agreement dated March 21, 2005 between PIFC and BBFC for Vessel Management.

The Authority and BBFC may be referred to collectively herein as the “Parties.”

Part II – Existing Circumstances. The Parties hereby agree and acknowledge that:

1. BBFC, pursuant to authority granted to it in the Assignment Agreement, currently operates trans-Hudson ferry service at New Jersey Transit’s (“NJT”) Hoboken Terminal (“Hoboken”).
2. the terms of the PIFC/BBFC Vessel Management Agreement require BBFC to berth its vessels at property leased by PIFC in Weehawken, NJ.
3. PIFC has indicated that residential development will soon make it impossible for BBFC to berth its vessels at Weehawken, NJ.
4. BBFC therefore contemplates entering into a lease for a term of approximately ten years (“Lease”) with NJT for the construction and operation of a berthing and light maintenance facility (“Facility”) at Hoboken.
5. the Authority has reviewed and approved as to form the BBFC/NJT Lease.

*233 Park Avenue South, 11th Floor
New York, NY 10003
T: 212 435 4437
alynn@panynj.gov*

THE PORT AUTHORITY OF NY & NJ

Mr. Paul Goodman

- 2 -

March 21, 2011

Part III – Parties' Motivation and Common Understandings.

1. It is the Parties' common understanding that NJT wishes to see trans-Hudson ferry service continue but that NJT has concerns about PIFC's financial viability.
2. The Authority also wishes to see trans-Hudson ferry service continue and also has concerns about PIFC's financial viability.
3. The Authority and NJT therefore desire that that BBFC shall stand ready to provide trans-Hudson ferry service between Weehawken Terminal and Pier 79 and between Edgewater and Pier 79 (and possibly from other locations in New Jersey from which PIFC now operates ferry service) in the event PIFC becomes unable to provide service from these locations.
4. The Facility, once constructed, will serve as necessary infrastructure for BBFC in order for BBFC to be able to conduct its operations independently of PIFC, should financial (or any other) issues prevent PIFC from fulfilling its obligations under the Vessel Management Agreement and other agreements between PIFC and BBFC.
5. Construction and operation of the Facility is essential for BBFC if BBFC is to continue its ferry operations.
6. The terms of the Lease require that BBFC and any affiliates:
 - a. make a substantial financial investment in the construction of the Facility, and
 - b. undertake financial obligations (currently undertaken by PIFC) for the ongoing operation of the Facility, and
 - c. commit to providing trans-Hudson ferry service to and from Hoboken for the duration of the Lease term.
7. It is the Parties' common understanding that NJT also seeks an Extension of the term of the Assignment Agreement.
8. The Authority declines to extend the term of the Assignment Agreement until and unless BBFC agrees to:
 - a. upgrade its fleet for maximum fuel efficiency and noise reduction, and
 - b. stand ready to provide trans-Hudson ferry service between Weehawken Terminal and Pier 79 and between Edgewater and Pier 79 and other NJ locations currently served by PIFC.

Part IV – Provisions of This Agreement: In light of the Existing Circumstances and the Parties' Motivation and Common Understandings, the Parties hereby agree that:

1. the term of the Assignment Agreement is hereby extended to October 11, 2019.

THE PORT AUTHORITY OF NY & NJ

Mr. Paul Goodman

- 3 -

March 21, 2011

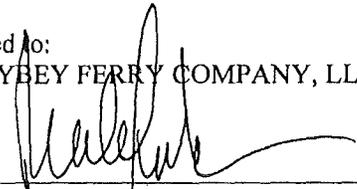
2. should PIFC during the term of the Assignment Agreement as extended fail to provide trans-Hudson ferry service between Weehawken Terminal and Pier 79 and between Edgewater and Pier 79 (and from other locations in New Jersey from which PIFC now operates ferry service), BBFC will use its best efforts (subject to agreement between BBFC and the Authority and NJT and other governmental entities with jurisdiction over such services on such matters as route configurations and frequency of service) to provide such ferry services, and
3. no existing provision of the Assignment Agreement shall change, except that, as noted above:
 - a. the term of the Assignment Agreement is extended to October 11, 2019, and
 - b. BBFC shall, on a schedule to be decided by BBFC and the Authority, use commercially reasonable efforts to continue to upgrade its fleet to improve fuel efficiency and noise reduction, and
 - c. should BBFC (following PIFC's failure to provide trans-Hudson ferry service between Weehawken Terminal and Pier 79 and between Edgewater and Pier 79 (and from other locations in New Jersey from which PIFC now operates ferry service)) fail to use its best efforts to provide trans-Hudson ferry service to those locations the PA may revoke this extension of the Assignment Agreement.
4. determination of whether PIFC is failing to provide trans-Hudson ferry service shall rest with the Authority.
5. any capitalized term used herein without definition shall have the meaning provided therefor in the Assignment Agreement.

If the foregoing correctly sets forth our understandings and agreement, please sign where indicated below.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

F.F.  By: 
Andrew S. Lynn, Director
Planning & Regional Development Department

Agreed to:
BILLYBEY FERRY COMPANY, LLC

By: 
Paul Goodman
Chief Executive Officer

Supplemental Agreement to 1988 Ferry Transportation Agreement between the
Arcorp/Hartz Joint Venture and the Port Authority

I. IDENTIFICATION OF PARTIES:

- A. Port Authority of New York and New Jersey ("Authority" or "PATH")
225 Park Avenue South
New York, NY 10003

- B. BillyBey Ferry Company, LLC ("BillyBey" or "New York Waterway")
4800 Avenue at Port Imperial
Weehawken, NJ 07086

II. PURPOSE OF THIS AGREEMENT:

To provide for the establishment and maintenance of weekend commuter ferry service from Exchange Place/Paulus Hook, New Jersey ("Paulus Hook") to the World Trade Center/World Financial Center/Battery Park City, Manhattan ("BPC") during weekend interruptions of PATH cross-Hudson commuter rail service.

III. THE PARTIES AGREE TO THE FOLLOWING:

- A. Physical Facts: PATH cross-Hudson commuter rail service will be interrupted by construction during up to approximately 80 weekends during 2014 and 2015.

- B. Legal Facts:
 - 1. Extrinsic documents incorporated into this Supplemental Agreement are:
 - a. a 1988 Ferry Transportation Agreement now in effect between the Arcorp/Hartz Joint Venture and the Port Authority of New York and New Jersey, assigned to BillyBey Ferry Company, LLC on March 15, 2005 and that, with extension, expires October 11, 2019.
 - b. a February 2013 Agreement now in effect and to expire in 2016 (with six 3-year renewal options) between BillyBey Ferry Company LLC and Goldman Sachs.
 - 2. The effective date of this agreement shall be the date on which it has been executed by both parties
 - 3. The term of this agreement is two years from the date of execution.

IV. DURING THE TERM OF THIS AGREEMENT:

- a. BillyBey:
 - 1. shall perform the services described on Attachment A "Description of Weekend Services"
 - 2. shall bill the Authority according to Attachment B "Eligible Fees for Billing"
 - 3. shall continue to perform under the "Supplemental Agreement to 1988 Ferry Transportation Agreement between the Arcorp/Hartz Joint Venture and the Port Authority," assigned to BillyBey Ferry Company LLC on March 15, 2005.
 - 4. shall continue to perform under the 2013 BillyBey-Goldman Sachs Agreement.
 - 5. shall obtain any permission from Goldman Sachs that may be required for BillyBey to perform its obligations under this agreement.

- 6. shall collect fares on the Port Authority's behalf, shall deduct all monies received from its invoices to the Authority (as provided in Attachment B) and shall forward any surplus to the Authority.
- b. The Authority:
 - 1. will timely process payment applications submitted by BillyBey
 - 2. will promptly remit payments to BillyBey
 - 3. shall continue to perform under the "Supplemental Agreement to 1988 Ferry Transportation Agreement between the Arcorp/Hartz Joint Venture and the Port Authority," assigned to BillyBey Ferry Company LLC on March 15, 2005.
- c. Invoices for payment shall be sent monthly to:

The Port Authority of New York and New Jersey
 233 Park Avenue South – 11th floor
 New York, New York 10003
 Attn: Janet D. Cox, General Manager, Ferry Transportation Program

V. FUTURE CONTINGENT PERFORMANCE BY THE PARTIES:

- a. BillyBey:
 - 1) in the event of non-payment by the Authority may terminate this Agreement.
 - 2) may not for any other reason terminate this Agreement.
- b. The Authority may for any reason and upon thirty (30) days written notice to BillyBey terminate this agreement, provided that during first 30 days of this agreement the Authority may terminate this agreement upon 10 days' notice.
- c. Both parties together may modify this Agreement provided that the modification is in writing.

VI. EXECUTION:

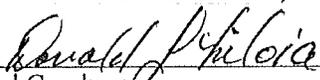
If the foregoing correctly sets forth our understandings and agreement, please sign where indicated below.

"OK As to Form"
 F.F. 3/26/14

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By:  Date: 3-26-14
 Stephen Kingsberry, Director
 Port Authority Trans-Hudson (PATH)

Agreed to:
 BILLYBEY FERRY COMPANY, LLC

By:  Date: 3-26-14
 Paul Goodman
 Chief Executive Officer
 DONALD J. LILOIA
 SENIOR VICE PRESIDENT

Attachment A

Description of Weekend Services

Ferry service between Paulus Hook Ferry Terminal, Jersey City New Jersey and World Financial Ferry Terminal, Battery Park City, New York.

Service Schedule: Saturday (8 am – 10 pm) and Sunday (8 am – 10 pm)

Weekends of Service: The following is a proposed schedule of weekend service. BillyBey agrees that the schedule may be changed upon 10 days' notice from the Authority, provided the aggregate number of service days does not exceed 80 weekends.

2014	October 4-5 October 11-12 October 18-19 October 25-26
March 29-30	
April 5-6 April 12-13 April 26-27	November 1-2 November 8-9 November 15-16 November 22-23
May 3-4 May 10-11 May 17-18	December 6-7 December 13-14
May 31-June 1 June 7-8 June 14-15 June 21-22 June 28-29	2015
July 12-13 July 19-20 July 26-27	January 3-4 January 10-11 January 17-18 January 24-25
August 2-3 August 9-10 August 16-17 August 23-24	January 31 - February 1 February 7-8 February 14-15 February 21-22
September 6-7 September 13-14 September 20-21 September 27-28	February 28 – March 1 March 7-8 March 14-15 March 21-22 March 28-29

Vessel: Either a 299 passenger vessel operating on a 15 minute frequency (with an hourly throughput in each direction of 1,200) or a 149 passenger vessel operating on a 12 minute frequency (with an hourly throughput in each direction of 745), such determination to be made by BillyBey in consultation with the Authority based on assessment of demand and on fleet availability.

Frequency of Service: Every 12 or 15 minutes, depending on the type of vessel in service.

Attachment B

Eligible Fees for Billing

Vessel Hourly/Operating Cost:	\$1050
Two Weekend Ticket Agents	\$20/hour for total of 30 hours each
Ticket Creation Cost	\$7,000/one time
Ticket Processing Fee	\$.05/ticket
Credit Card Transactions	Intermediary inter-charge rate plus 1% or \$.06, whichever is greater
Paulus Hook Ferry Terminal Usage (Reimbursable to Goldman Sachs) (The foregoing is an estimated amount; the actual billing for use of the Paulus Hook Ferry Terminal will be a pass-through of amounts actually charged to BillyBey by Goldman Sachs under the Ferry Service Pier Landing Request Agreement, a copy of which is annexed hereto)	\$818.70/Weekend

BillyBey shall collect fares on the Port Authority's behalf, shall deduct all monies received from its invoices and shall forward all monies to the Authority monthly, as follows:

1. Fare of \$2.50 (full fare) per passenger per one-way trip.
2. Children five years of age and under ride free.
3. Additional charge of \$1.00 per bicycle per one-way trip.
4. BillyBey monthly passes are not valid for this special weekend service.

ADDENDUM

December 17, 2008

This is an Addendum to the Assignment Agreement dated March 16, 2005 (the "Original Agreement") between the Port Authority of NY & NJ ("Authority"), Port Imperial Ferry Corporation ("PIFC"), as Assignor, and Billybey Ferry Company, LLC ("BBFC"), as Assignee, with respect to (i) the Ferry Transportation Agreement dated November 3, 1988 between the Authority and PIFC and (ii) the Agreement dated November 4, 2003 for Pier 11 Service between the Authority and PIFC. The purpose of this Addendum is to clarify BBFC and Authority responsibilities for an operation, maintenance and repair program ("Terminal Maintenance Program") for the Authority's new Battery Park Ferry Terminal (the "New Terminal") as provided for in § 3.10(a) of the Original Agreement.

Except as provided under "Operations" BBFC's performance under this Addendum shall begin on the date for commencement of ferry operations at the New Terminal ("Commencement Date") and shall continue so long as the Original Agreement remains in effect. Commencement Date will be designated by the Authority.

The parties agree to construe this Addendum as a clarification of and not an addition to the Original Agreement, so that BBFC's performance under this Addendum will not, except as specifically noted herein, entitle BBFC to compensation beyond that provided for in the Original Agreement.

Facility Operation/Maintenance

The parties agree that details of the Terminal Maintenance Program and the parties' responsibilities under it (including details of the inspections, repairs and other tasks to be performed or coordinated by BBFC) have been memorialized in writing in a document dated November 7, 2008 and called the "Maintenance Manual" (Exhibit ##). BBFC shall at all times carry out the provisions and requirements of the Maintenance Manual and shall omit no act required thereunder. BBFC further agrees to perform its work completely and efficiently regardless of how the Maintenance Manual and this Addendum may be written and organized. The Port Authority and BBFC may, from time to time after the New Terminal becomes operational, supplement or amend the Maintenance Manual to reflect unanticipated circumstances or new or changed conditions that arise during such operations. BBFC shall not unreasonably withhold its consent to any supplement or amendment proposed by the Authority. The responsibility for the cost of any such inspections, repairs and other tasks is governed by this Addendum.

The parties agree to cooperate to achieve the Terminal Maintenance Program's several goals which include (1) to operate, maintain and preserve all material structures of the New Terminal safe and in good repair, condition and working order, (2) to from time to time and as necessary or prudent to perform such repairs and overhauls (interior and exterior) to non-structural building elements (including operating and mechanical systems, communications, security, plumbing, electrical systems, heating/ventilation/air conditioning systems and docking systems) as may be necessary to maintain them in good repair, condition and working order, (3) to maintain all areas within the New Terminal clean and in an orderly condition and appearance, together with all fixtures, improvements, furnishings, equipment and personal property located in or on the New Terminal and (4) to achieve uninterrupted operation of the New Terminal, all in accordance with the Maintenance Manual and this Addendum.

BBFC shall at all times comply with the requirements of all Federal, State and local laws, rules, codes and regulations that would apply if the Authority were a private corporation and with the requirements of any contractor's or manufacturer's warranties applicable to the New Terminal. The Authority will make available to BBFC copies of any insurance policies covering any part of the New Terminal and BBFC shall comply with their requirements.

BBFC shall allow the Authority at any time, without prior notice and at the Authority's sole expense, to perform inspections, including structural inspections, of the New Terminal.

Unless otherwise instructed by the Authority, BBFC shall coordinate all work under this agreement with and shall perform under the direction of a "Ferry Transportation General Manager" ("Manager") or his successor or designee. The Authority will designate the Manager. BBFC shall comply with the Manager's instructions and decisions related to the operations or maintenance of this facility. The Manager will be the judge on behalf of the Authority (1) of BBFC's compliance with the requirements of this Addendum and of the Maintenance Manual and (2) of the success of the Terminal Maintenance Program.

BBFC shall perform inspections and shall complete Maintenance Manual Inspection Checklists as they may be scheduled to be performed weekly, monthly, quarterly, semi-annually and annually as set forth in the Maintenance Manual. In addition:

- BBFC shall not remove terminal slips from service for planned routine maintenance or major overhauls during peak period operations, unless posted headways can be maintained and/or Authority approval is received in writing.
- BBFC shall maintain copies of all weekly employee maintenance time sheets (indicating hours worked) and of all maintenance records and shall upon request make them available to the Authority.
- BBFC shall use its best efforts and shall practice due diligence to quickly complete breakdown repairs (including repairs to inoperative passenger amenity features) and shall give breakdown repairs priority over routine inspection, repair and overhaul programs.

- BBFC shall propose for the Authority's review and approval an adequate inventory of spare parts and tools for use to efficiently maintain the New Terminal. BBFC shall situate and continuously maintain this inventory within the Port District (as defined in § 6403, McKinney's Consolidated Laws of New York, Book 65, Page 13) at no cost to the Authority and shall also promptly replace lost or damaged parts or tools at no cost to the Authority.
- BBFC shall in accordance with applicable environmental rules, regulations and standards dispose of all garbage, including liquid or solid refuse.
- In the event of spillage, breakage, damage or any condition which presents a hazard to persons or property, BBFC shall immediately take any and all precautions to safeguard the public, including but not limited to the erection of barricades, the posting of signs and/or personnel, the securing of the New Terminal and/or the performance of other actions to prevent injury to persons or property and shall immediately advise the Authority of such conditions and the actions taken.
- BBFC shall upon the Authority's request and with the Authority's concurrence promulgate and enforce reasonable rules and regulations (consistent with the Original Agreement and this Addendum) for use of the New Terminal and the conduct of its occupants and users.

Costs

BBFC shall bear all costs and expenses of the inspections, cleanings and routine repairs contemplated by the Maintenance Manual and of the supplies (for example, fluids and lubricants) required in connection therewith, except for any such items as are covered by warranties or other undertakings by one or more of the contractors who constructed the New Terminal for the Authority. The Authority will cooperate with BBFC in obtaining performance by and pursuing remedies against such contractors pursuant to such warranties and other undertakings. Annexed hereto as Schedule A is a list and description of all such warranties. BBFC acknowledges that the Authority has delivered to BBFC copies of the warranties and contractors' undertakings.

BBFC shall at its own cost and expense maintain and repair individual ferry floats, ramps and fenders. Subject to the Authority's prior approval, BBFC shall arrange for and perform any required replacement of such individual ferry floats, ramps and fenders but the cost thereof will be borne by the Authority.

Except in cases of BBFC's negligence, the Authority will bear without limitation the cost and expense for all labor and materials required for structural repairs, replacement and non-routine repairs and all for tasks the costs of which are not specifically assumed by BBFC in this Addendum. Instances of work of this nature will be designated "Extra Work Items." Extra Work Items shall include, for example:

1. Barge and structural inspection, maintenance, repair and replacement
2. Inspection and non-routine repair or replacement of marine and subsurface structures, fender systems, racks, pier systems, ramps and gangways
3. Repair or replacement of damaged glass except to the extent such damage is the result of the negligence of BBFC
4. Inspection, repair and replacement of roof and membrane canopy
5. Underwater work or work requiring the utilization of a crane

The Authority will at its discretion (1) perform an Extra Work Item itself, (2) retain a third party to perform an Extra Work Item or (3) invite BBFC to submit a proposal to perform part or all of an Extra Work Item. In the case of (1) or (2) BBFC will at no additional cost to the Authority coordinate and cooperate with the Authority or with the third party. In the case of (3) the parties agree to negotiate in good faith to establish fair compensation for BBFC.

Nothing herein shall preclude BBFC from identifying what it believes are necessary structural repairs and replacements and non-routine repairs and from proposing to classify them as Extra Work Items of type (3); but classification as Extra Work Items shall be and remain the Authority's prerogative.

Cleaning and General Maintenance

BBFC shall, at its sole cost and expense, regularly perform cleaning and maintenance of the New Terminal in accordance with the schedules set forth in the Maintenance Manual. Notwithstanding the provisions of the Maintenance Manual, BBFC shall perform cleaning and maintenance so as to meet the requirements of all health and sanitation codes and shall conform to the standards set forth below. Cleaning and maintenance shall include but shall not be limited to:

- Trash collection and removal
- Floor sweeping and mopping
- Floor cover cleaning
- Window cleaning
- Maintenance of signage and information kiosks
- Cleaning restrooms
- Graffiti removal

Maintenance Standards

Cleaning – BBFC shall perform cleaning and maintenance so as to maintain the New Terminal neat, orderly, sanitary and free of litter, oil and dust. Cleaning shall include but not be limited to:

- Sweeping and wet-mopping the entire terminal, emptying all garbage cans and clearing or cleaning all debris from seats in accordance with the schedules set forth in the Maintenance Manual.

- Continuous cleaning and policing during terminal operating periods. Policing is defined as removing all papers, coffee cups, etc. from floors and seats, cleaning any spills or accidents and sweeping up debris.
- Snow and ice removal in all areas for which BBFC is responsible, including the New Terminal and passenger gangways/walkways leading to and from the Battery Park City esplanade.
- Keeping terminals free from stored supplies and tools in publicly accessible areas.
- Washing of all windows on the inside and outside of the New Terminal by an outside professional service on at least a semi-annual basis and cleaning of accessible portions of the windows by BBFC's regular porter service on a regular basis.

All work performed by BBFC shall be at least equal in quality and class to the original work on the New Terminal.

Operations

The Authority will notify BBFC at least 30 days prior to Commencement Date (but not before the Authority obtains a temporary certificate of occupancy for the New Terminal) to prepare to begin performance under this Addendum. Following receipt of such notice, the Authority and BBFC will jointly develop a punchlist of construction and operational issues and will use their best efforts to promptly address the punchlist items so that unperformed punchlist items will interfere with BBFC's operations as little as possible (BBFC has submitted a preliminary punchlist of even date herewith which specifies the manner in which the items listed therein will be addressed). The Authority will thereafter pursue with reasonable diligence and at its sole cost and expense the issuance of a permanent certificate of occupancy for the New Terminal. The New Terminal will include concession space for BBFC (or its designee) which the Authority will deliver to BBFC in accordance with the plans therefor which will require BBFC to arrange and pay for final fit out only. The installation, equipping and fit out and use of the concession space will require the Authority's approval.

BBFC shall not permit any third party ferry operator to utilize the New Terminal unless such operator has entered into the form of Landing Agreement required under the Original Agreement and remains in compliance with the terms thereof. BBFC will comply with all provisions in the Original Agreement regarding the establishment of new landing fees at the time the New Terminal is operational.

Documentation/Plans

The parties acknowledge that BBFC has prepared and submitted to the United State Coast Guard for approval a security plan for the New Terminal, that Coast Guard approval of the security plan was received on August 26, 2008 and that the security plan has also been approved by the Authority. In the event that the New Terminal must be repaired or modified in order to recover or maintain Coast Guard approval the parties agree to treat such repairs or modifications as Extra Work Items.

The Authority hereby represents and warrants to BBFC that the New Terminal, when delivered to BBFC for operations, will be in compliance with all Federal, State and local laws, rules, codes

and regulations that would apply if the Authority were a private corporation, including without limitation all building and construction codes and all requirements of law pertaining to accommodations for persons with disabilities, except to the extent such loss is due to the failure of BBFC or its vendors to perform their responsibilities hereunder.

The Authority further agrees to respond to communications relating to and agrees to assume responsibility for any and all of the following:

- a. penalties, fines, settlements
- b. claims for damages, injuries and losses and
- c. demands, expenses and judgments

("losses") arising from (i) any Extra Work Items proposed by BBFC but rejected by the Authority, (ii) the original design or construction of the New Terminal and (iii) non-compliance with all Federal, State and local laws, rules, codes and regulations that would apply if the Authority were a private corporation, including without limitation all building and construction codes and all requirements of law pertaining to accommodations for persons with disabilities, except to the extent such loss is due to the failure of BBFC or its vendors to perform their responsibilities hereunder.

In the event that the New Terminal must be repaired or modified in order to recover or maintain code compliance the parties agree to treat such repairs or modifications as Extra Work Items, except that when repairs or modifications are made necessary by the failure of BBFC or its vendors to perform their responsibilities hereunder, BBFC shall perform the repairs or modifications at no cost to the Authority.

Emergency Procedures/Security

BBFC shall notify the Manager as immediately as possible (but in no case more than twenty-four hours) after the occurrence of any emergency and shall act immediately (through the erection of barricades, the posting of signs, the assignment of personnel, the securing of the area and/or other such actions) to prevent injury to persons and property. BBFC shall promptly notify the Authority of its actions taken in response to such emergency.

The Authority has installed an Access Control and CCTV System for the New Terminal in accordance with plans therefor (Contract Drawings ES004 and ES006 pursuant to Contract FR-975.002) which the Authority will cause to be operational prior to Commencement Date. BBFC shall, at its own cost and expense, engage a monitoring service for such System. BBFC shall periodically inspect such System in accordance with the Maintenance Manual.

Miscellaneous

Any inconsistency between the terms of this Addendum and the Original Agreement with respect to the subject matter hereof will be governed by this Addendum. In case of any inconsistency between the terms of this Addendum and the Maintenance Manual the more stringent requirement shall govern.



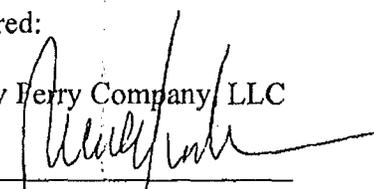
Francis A. DiMola
Director, Real Estate Department



O.K. AS TO FORM FF.

Concurred:

Billybey Ferry Company LLC

By: 

Title C.F.O.

Date 12/19/08

SCHEDULE B
SPARE PARTS/TOOLS INVENTORY

New York Trans Harbor LLC, d/b/a New York Water Taxi
499 Van Brunt Street
Section 8B
Brooklyn, NY 11231

Attention: Mr. Tom Fox, CEO

Re: Ferry Transportation Agreement between the Port Authority of NY & NJ and New York Trans Harbor LLC, d/b/a New York Water Taxi for ferry service from The City of Yonkers to Battery Park City and Pier 11 with Service Extension to Include the Village of Haverstraw.

Gentlemen:

The Port Authority of New York and New Jersey ("the Port Authority" or "the Authority") accepts the offer dated March 9, 2006 submitted by New York Trans Harbor LLC, d/b/a New York Water Taxi ("the Contractor") and hereby enters into an agreement as hereinafter set forth ("the Agreement") with the Contractor" for the above referenced services.

This letter will serve to set forth the agreed upon terms between the Port Authority of New York & New Jersey ("Port Authority") and New York Trans Harbor LLC, d/b/a New York Water Taxi for the operation of ferry services between the property procured by the City of Yonkers in Yonkers, NY and the property procured by the Port Authority at Battery Park City ("BPC") and Pier 11 in Manhattan, with a service extension to the existing ferry landing (and future Public Pier) in the Village of Haverstraw.

This agreement is subject to the agreement between the Port Authority and the Lower Manhattan Development Corporation (LMDC) for the use of the United States Department of Housing and Urban Development (HUD) grant funds, and contingent upon the execution of the agreement between the Port Authority and the County of Rockland for funding for the Haverstraw component of the ferry service. **The Port Authority is *not* using its own funds to subsidize the operations of this service.**

The following constitutes the contract between the parties:

Grant of Right to Operate Ferry Services

1.01 The Port Authority hereby grants New York Water Taxi the exclusive rights, to the extent permitted by Law, to operate passenger ferry service between the City of Yonkers and Battery Park City and between Battery Park City and Pier 11, with service extension to the Village of Haverstraw, New York. New York Water Taxi has acquired



landing rights to Battery Park City and Pier 11 and will seek landing permits for Yonkers and Haverstraw upon execution of this Agreement. To the extent landing rights necessary for the service to be provided hereunder are within the control of the Port Authority, the Port Authority shall continue to grant such rights for the term of this agreement subject to the terms and conditions of the documents, if any, which provided for such landing rights.

1.02 The landing site for the "Yonkers City Pier" in the City of Yonkers is located approximately 500 feet west of the intersection of Main Street and Buena Vista Avenue; the landing site at Battery Park City is the "Port Authority of NY & NJ Battery Park City Ferry Terminal"; the landing site at the Village of Haverstraw is located on Dr. Girling Drive; and Pier 11 is located at the foot of Wall Street on the East River and is operated by the New York City Department of Transportation. The ferry operation, during the term of this contract or subsequent contracts, may need to relocate from the existing Haverstraw site to a future public pier in or near Emeline Park in the Village of Haverstraw, and any expense is to be funded by parties other than NYWT. The landing sites are sometimes referred to herein as "Spaces".

1.03 The parties acknowledge that the landing sites referenced in Section 1.02 are designated at the City of Yonkers, Battery Park City, Pier 11, and at the Village of Haverstraw. The Port Authority shall have no obligation under this Agreement for finishing work or preparation of either the City of Yonkers or Village of Haverstraw's piers for New York Water Taxi's use, all of which shall be the responsibility of the City of Yonkers and the County of Rockland, respectively.

1.04 The Port Authority makes no representations as to the condition of waterways nor of each Space nor of the means of ingress thereto and egress there from and does not agree to keep the same unobstructed or fit for use. The Port Authority is not responsible for any maintenance dredging. Any required maintenance dredging during the term of the contract is not the obligation of the Port Authority or New York Water Taxi. No closing by the Port Authority of said waterways or portions thereof for reasonable purposes, or whether temporary or permanent, whether or not such closings involve waterways or means of ingress or egress previously used by New York Water Taxi hereunder, and no such closing by any governmental authority, whether of the waterways or other areas within or outside each Space, and whether or not at the request or with the consent of the Port Authority, shall constitute or be deemed a diminution of the terms of this agreement, or relieve New York Water Taxi of any of its obligations hereunder, provided that New York Water Taxi shall be under no obligation to continue ferry service during any period in which the waterways are not navigable or during any period in which the Port Authority or other government entity has closed such waterways or means of ingress or egress.

1.05 New York Water Taxi shall arrange to staff all operating positions as required herein and shall manage and oversee the operations and maintenance of the ferry service system. The Port Authority shall not be required to provide any staff or to oversee any



of the day to day operations but shall have at all times the right to inspect, observe and comment upon all operations of New York Water Taxi.

1.06 Notwithstanding any other right of termination set forth herein, upon prior written notice of any material breach or material deficiencies in operations and/or maintenance, and a thirty (30) day opportunity to cure by New York Water Taxi, or to initiate a cure within a reasonable period and to achieve such cure within a reasonable period, if cure cannot be reasonably effected in thirty (30) days in the opinion of the Port Authority, the Port Authority shall have the right in its sole discretion to terminate or suspend this agreement immediately if deficiencies in operations are not corrected. Any costs or lost revenues resulting from any termination or suspension will be the sole responsibility of New York Water Taxi. Any inspection, observations, or comments (other than a written waiver or release) by the Port Authority shall not release New York Water Taxi of any obligation under this Agreement or by reason of Law.

For purposes of this agreement, breach shall include any material breach, not to be limited to the following; a statement by an authorized New York Water Taxi representative to any representative of the Port Authority indicating that New York Water Taxi cannot or will not perform any one or more of its material obligations under this contract; any act or omission of New York Water Taxi or any other occurrence which makes it impossible that it will be able to perform any one or more of its material obligations under this contract; any suspension or failure to proceed with any part of its services or material obligations by New York Water Taxi which makes it impossible that it will be able to perform any one or more of its material obligations under this contract.

The Port Authority shall also have the rights as set forth above in the event New York Water Taxi shall become insolvent or bankrupt or if its affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors, unless the Port Authority shall in its sole discretion determine that New York Water Taxi is sufficiently solvent to continue performance. Either party shall have the right to terminate this agreement upon thirty (30) days written notice without liability to the terminating party if funding from LMDC or the County of Rockland (for the Haverstraw service) shall permanently not be available. Also, either party shall have the right to terminate this agreement if the City of Yonkers or the County of Rockland fails, despite New York Water Taxi's good faith efforts to execute the agreements or perform their obligations necessary for New York Water Taxi to provide the services required by this Agreement or if any landing rights necessary for New York Water Taxi to perform its obligations under this Agreement are terminated.

1.07 New York Water Taxi shall have no right hereunder to carry on or conduct any business operation or service at any of the Spaces other than as specifically set forth herein, without the prior express written approval of the Port Authority and/or the involved local municipality, or property owner/leasee, as applicable, such approval not to be unreasonably withheld, delayed or conditioned.



1.08 It should be noted that the Port Authority has established a policy that proactive, responsive and respectful, and helpful customer service to all customers is of the utmost importance. This policy also extends to all Port Authority employees and contractors, and includes companies whose staffs interact with customers while providing services.

Term of Agreement

2.01 This agreement shall become effective on or about May 1, 2007 for a two (2)-year term, plus the period of time from the execution of the agreement to the actual start-up of Yonkers ferry service. Subject to weather and water conditions and other conditions beyond New York Water Taxi's reasonable control, Yonkers ferry service inception shall take place within sixty (60) calendar days from May 1, 2007. Subject to weather, water conditions, and other conditions beyond New York Water Taxi's reasonable control, liquidated damages for inception of service after such sixty (60) days shall be \$1,000. per calendar day.

2.02 Conditioned on New York Water Taxi's successful demonstration to the Port Authority of the operation of the route, the Port Authority shall have two (2) consecutive options to extend service for an additional one (1)-year term. These options must be exercised in writing no later than ninety (90) days prior to the initial contract termination date (on or about May 1, 2009) and the possible subsequent contract termination date (on or about May 1, 2010), respectively.

2.03 Failure to initiate service from Yonkers by August 1, 2007 will permit the Port Authority to terminate this agreement immediately upon written notice.

Description of Ferry Service

3.01 **Service Requirements** – New York Water Taxi agrees to provide initial weekday (Monday – Friday) ferry service to operate passenger ferry service between the City of Yonkers, Battery Park City and Pier 11, with service extension from the Village of Haverstraw to Battery Park City and Pier 11, as set forth in the schedule provided as Exhibit A – Schedule of Services.

3.02 **Reduction in Service** - Any decrease in frequency of service will require prior written approval from the Port Authority, not to be unreasonably withheld, delayed or conditioned.

3.03 **Additional Ferry Services** – For services from Yonkers and/or Haverstraw to locations other than Battery Park City and Pier 11, New York Water Taxi must request in writing and receive written consent from the Port Authority in advance of initiating service, not to be unreasonably withheld, delayed or conditioned.

3.04 **Peak Period Service Capacity** – The ferry system provided by New York Water



Taxi under this Agreement, will at a minimum consist of the following:

Yonkers, Battery Park City and Pier 11 - The ferry system initially provided by New York Water Taxi will at a minimum consist of two vessels capable of maintaining hourly capacity sufficient to effectively handle the volume of passengers from Yonkers, currently estimated at approximately 298 per peak hour (0750 hours until 0850 hours) dedicated to this service. Service to and from Yonkers shall be a one-seat ride service to and from Battery Park City and Pier 11, requiring no transfers. The Port Authority agrees that the Schedule set forth on Exhibit A satisfies this minimum requirement.

Haverstraw to Yonkers and Battery Park City - (Subject to the finalization of any necessary agreements with appropriate funding in place.) New York Water Taxi shall initiate service between the Village of Haverstraw and Yonkers, Battery Park City and Pier 11. Subject to weather, water conditions, and other conditions beyond New York Water Taxi's reasonable control and the finalization and execution of any agreements necessary to commence or fund such service, inception from Haverstraw shall take place on or before August 1, 2007. Subject to weather, water conditions, and other conditions beyond New York Water Taxi's reasonable control, liquidated damages for late inception of service shall be \$1,000. per calendar day after sixty (60) days. For service from the Village of Haverstraw, New York Water Taxi will provide at a minimum one vessel capable of maintaining hourly capacity sufficient to effectively handle the volume of passengers from Haverstraw, currently estimated at approximately 149 per peak hour (0545 hours until 0830 hours) dedicated to this service. This vessel will operate in conjunction with the two existing vessels already in service for the Yonkers component for a total of three vessels. Service to and from the Village of Haverstraw shall be a one-seat ride service to and from Battery Park City and Pier 11, requiring no transfers. The Port Authority agrees that the Schedule set forth on Exhibit A satisfies this minimum requirement.

Upon Port Authority approval, New York Water Taxi will adjust the schedule and headway to accommodate any changes in volume. New York Water Taxi's resources will be re-allocated as needed and reasonably feasible, to handle all volumes of passenger traffic.

3.05 Spare Vessels - New York Water Taxi will provide two vessels for use in the initial ferry service from Yonkers, and will provide a third vessel when the Haverstraw component of the service is initiated. New York Water Taxi will have readily available, at minimum, a spare vessel capable of being promptly put into service as an immediate replacement for any vessel unable to perform as required.

3.06 Schedules - As appropriate to the success of the ferry service operation,



New York Water Taxi will publish, distribute and post Port Authority-approved schedules on the New York Water Taxi website, the piers at Yonkers and Haverstraw twice a year, and more frequently upon mutual consent. New York Water Taxi shall have the right to undertake minor changes in the posted schedule due to daily operational considerations.

3.07 Inclement Weather and Emergency Conditions - The Port Authority, in consultation with New York Water Taxi, reserves the right to suspend service, without reimbursement of expenses for a maximum of 25 days (in addition to closures described in §1.04) per contract term year due to inclement weather and icing conditions. During adverse weather conditions, if ferry service is suspended, New York Water Taxi will provide customer service information advising passengers to utilize other forms of transportation.

3.08 Vessel Operation/Maintenance - Cleaning and maintenance of vessels will, at a minimum, be sufficient to meet all health and sanitation codes and to present an environment that is clean, safe and a service which operates in a reliable and environmentally sound fashion. The vessel's platform and seating area shall be clear of debris and all garbage shall be contained in trash receptacles. All vessels in use must have a clean and presentable exterior.

3.09 Permits - Adherence to Legal Requirements

New York Water Taxi shall be responsible for obtaining all governmental permits, licenses and agreements required for the utilization of the landing sites at the Battery Park City Terminal, Pier 11, the City of Yonkers and the Village of Haverstraw, and the operation of commuter ferry services as described herein thereat, and its obligations hereunder shall be subject to receipt of the same. Following Rockland County's agreement for the use of the landing site, New York Water Taxi shall work with Metro-North Railroad (leasee), Ginsburg Development Corporation (property owner) and/or NY Waterway (existing ferry operator) to arrange for the shared use of the existing ferry landing at Haverstraw with the existing ferry operation. The County of Rockland and/or the NY State Department of Transportation may assist with this coordination. Within the contract term or one of the possible subsequent contract renewal terms, New York Water Taxi may be directed to move to the future Public Ferry Pier in or near Emeline Park, and any expense is to be funded by parties other than New York Water Taxi. When/if this occurs, New York Water Taxi shall use commercially reasonable efforts to obtain any necessary landing approvals from the Village of Haverstraw. New York Water Taxi shall coordinate the movement of the operation, and will coordinate with the involved parties the shared use of the new site and parking facility with the Haverstraw-Ossining ferry operation. In all of its performances under this agreement, New York Water Taxi shall comply with all applicable legal requirements.

3.10 Vessels



- a) Each vessel utilized under this agreement including the spare vessel shall be of the same class and standard as New York Water Taxi's catamarans the "Seymour Durst" and "Sam Holmes" (Durst Class). If another vessel type is to be used, New York Water Taxi must receive Port Authority written approval for its use, such approval not to be unreasonably withheld, delayed or conditioned. Each vessel used for this service, including a spare, shall be able to perform according to the service schedules set forth on Exhibit A and shall provide comparable passenger comfort and amenities. All of New York Water Taxi's performance hereunder shall be in compliance with all applicable legal requirements.
- b) The vessels shall be Durst Class aluminum catamarans, ADA compliant, and meet EPA Tier 1 standards. New York Water Taxi's provisions for the vessels include NextBus (or similar) technology allowing a customer to locate the position of a vessel on the Internet. New York Water Taxi provides additional amenities including wireless Internet access (should the appropriate shoreside infrastructure be developed), closed caption televisions and a café/bar for ferry passengers.
- c) The Port Authority may establish a "certification" program to ensure that all vessels utilized in the program are in continuous compliance with all federal and state air and noise quality guidelines and other environmental standards applicable to ferry operators.
- d) The Vessel Security Plan relating to operations under this agreement shall conform to all rules and regulations set forth by all applicable regulatory bodies. Proof of compliance with such rules and regulations will be supplied to the Port Authority annually or at any time requested by the Port Authority.
- e) The Port Authority shall maintain the right to inspect New York Water Taxi's vessels assigned to operations under this agreement from any embarkation/debarkation site, as well as to monitor New York Water Taxi's adherence to the established service schedule by periodically assigning personnel to travel on route trips.
- f) During adverse weather conditions such as ice, if ferry service is suspended, New York Water Taxi will provide customer service information in the same manner as set forth in § 3.05, advising passengers to utilize other forms of transportation.

3.11 New York Water Taxi shall use good faith efforts to meet the target performance standards as set forth in clause I.C in the Subrecipient Agreement between the Lower Manhattan Development Corporation and the Port Authority, a copy of which is attached hereto (the "Subrecipient Agreement").

4.01 Fares

- a. The following fare schedule shall be in effect for the following routes:

Yonkers to Battery Park City/Pier 11:

One Way Ticket	\$12
10-Trip Ticket	\$110
40-Trip Ticket	\$400

Haverstraw to Yonkers: TO BE DETERMINED

Haverstraw to Battery Park City/Pier 11: TO BE DETERMINED

- b. **Ticketing and Revenue Arrangements** - New York Water Taxi will use Sinex (or similar) ticketing systems, which prints tickets and provides tracking information. Each handheld device must be downloaded into a central database daily, which New York Water Taxi is required to maintain. All ticket sales may be audited at any time.
- c. Discounts, special promotions or fare reductions will require the Port Authority's prior written consent, not to be unreasonably withheld, delayed or conditioned.

5.01 Advertising

Marketing Program

- a. All marketing materials and press releases as detailed in Exhibit B – Marketing and Communication Plan, are to be reviewed and approved by the Port Authority prior to release. Such approval shall not be unreasonably withheld and will be deemed given if there is no response after three business days.
- b. **Signage**
Any supplemental signage deemed necessary to support the ferry service operations described herein shall be at New York Water Taxi's sole expense and must be approved in writing by the Port Authority and the entity granting landing rights to New York Water Taxi, such approval not to be unreasonably withheld, delayed or conditioned.

6.01 Insurance

During the term of this agreement, New York Water Taxi shall obtain and maintain, at its own expense, the policy or policies of insurance set forth on the attached Exhibit D. Certificate(s) of Insurance of all applicable policies will be submitted within 30-days of the execution of this agreement, and subsequently on an annual basis. If at any time any



of the certificate(s) or policy(ies) shall become unsatisfactory to the Port Authority in its reasonable discretion, the Contractor shall promptly obtain a new and satisfactory certificate(s) and policy(ies).

7.01 Permits

New York Water Taxi shall be responsible for obtaining all governmental permits, licenses and agreements required for the utilization of the landing sites at Pier 11, Battery Park City, Yonkers, and Haverstraw in addition to the operation of commuter ferry services as described herein thereat. Following Rockland County's agreement for the use of the landing site, New York Water Taxi shall work with Metro-North Railroad (leasee), Ginsburg Development Corporation (property owner) and/or NY Waterway (existing ferry operator) to arrange for the shared use of the existing ferry landing at Haverstraw with the Haverstraw-Ossining ferry operation. Within the contract term or one of the possible subsequent contract renewal terms, New York Water Taxi may be directed to move to the future Public Ferry Pier in or near Emeline Park and any expense is to be funded by parties other than New York Water Taxi. When/if this occurs, New York Water Taxi shall use commercially reasonable efforts to obtain any necessary landing approvals from the Village of Haverstraw. New York Water Taxi shall coordinate the movement of the operation, and will coordinate with the involved parties the shared use of the new site and parking facility with the Haverstraw-Ossining ferry operation. In all of its performance under this agreement, New York Water Taxi shall comply with all applicable legal requirements.

8.01 Representations and Warranties

New York Water Taxi represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the type of services contemplated by this Agreement and that it or its agents is authorized to perform this Agreement.
- b. That it has carefully examined and analyzed the provisions and requirements of this Agreement and inspected the ferry landing sites and other sites related to this Agreement and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Agreement, the general and local conditions and all other matters which in any way affect this Agreement or its performance, and that the time available for such examination, analysis, inspection and investigation was adequate:



Indemnifications

9.01 New York Water Taxi hereby covenants and agrees that it will defend, indemnify and save harmless the Port Authority, its Commissioners, officers, agents, representatives and employees, the Lower Manhattan Development Corporation, the City of Yonkers, the County of Rockland, the Village of Haverstraw, NY State Department of Transportation, Metro-North Railroad, Ginsburg Development Corporation against, any and all claims demands, penalties, fines, settlements, damages, injuries, losses, expenses and judgments of whatever kind or nature to the extent arising out of the negligent or wrongful acts or omissions of New York Water Taxi or of any of its Directors, officers, agents, subcontractors, representatives and employees, provided, that New York Water Taxi shall have no obligation with respect to damages to the extent caused by the negligence and/or intentional tortuous acts of the Port Authority, its Commissioners, officers, agents, representatives and employees, the Lower Manhattan Development Corporation, the City of Yonkers, the County of Rockland, the Village of Haverstraw, NY State Department of Transportation, Metro-North Railroad or Ginsburg Development Corporation. In such defense, New York Water Taxi shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving any way jurisdiction of the tribunal, immunity of the Port Authority, governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Authority. Unless a claim is one New York Water Taxi is not required to indemnify the Port Authority against as described in this paragraph, such defense shall be at New York Water Taxi's cost.

New York Water Taxi shall indemnify and hold harmless the Lower Manhattan Development Corporation as set forth in clause VII.C in the Subrecipient Agreement between the Lower Manhattan Development Corporation and the Port Authority with respect to claims, actions, suits, charges and judgments arising out of the performance or non-performance of New York Water Taxi's obligations under this Agreement.

No Commissioner, officer, agent or employee of the Port Authority shall be charged personally by New York Water Taxi with any liability or held liable to it under any term or provision of this agreement, or because of its execution or attempted execution or because of any breach hereof.

9.02 New York Water Taxi shall abide by the standards stated in the Port Authority Integrity Requirement as set forth in Exhibit E.

No Indictments

10.01 New York Water Taxi and each of its constituent entities and affiliates certifies that neither it or any entity on whose behalf it is executing this agreement (a) has been indicted or convicted for any felony in any jurisdiction; (b) has been suspended or debarred or otherwise disqualified from entering into contracts with any governmental agency for breach of contract or for any cause related directly or indirectly to indictment

or conviction. This certification shall be deemed to include officers, directors, and shareholders with an equity interest in excess of 10% and to have been authorized by the boards of directors of New York Water Taxi.

10.02 Additionally, if any director, officer or employee of New York Water Taxi is indicted for a felony prior to or during the term of this Agreement, they must be immediately terminated from employment.

Payment Schedule

11.01 This agreement is contingent on funds being available under the HUD federal grant provided by the Lower Manhattan Development Corporation (LMDC) and the County of Rockland for the Haverstraw component of the ferry program including the provision of funds in the amounts described below to New York Water Taxi that will be used to offset the costs associated with initiating the new service.

Payment Schedule to New York Water Taxi - The following is New York Water Taxi's estimated total operational hours and operating expense. Payment will be based on actual hours of operation and mobilization not to reasonably exceed the dollar amount noted below. Reimbursement for additional hours in excess must be approved by the Port Authority. Expenditures are based on vessels berthing in the City of Yonkers, and 21 commuter days per month with the New York Stock Exchange holidays excluded.

a) **Yonkers to Battery Park City Terminal/Pier 11**

Day Rate

Operating Hours: 10.5 at \$750/hour
 Mobilization Hours: 2.0 at \$700/hour

Total Day Rate: \$9,275.
Estimated Monthly Rate (at 21 days): \$194,775.

Total -- (Yearly Operating Expense): \$2,337,300.

b) **Haverstraw to Yonkers, Battery Park City Terminal/Pier 11**

(To be amended per the executed agreement between the County of Rockland and New York Water Taxi and enacted once Haverstraw Service is initiated. Dollar amounts are subject to change pursuant to Agreement between the County of Rockland and New York Water Taxi.)

Day Rate

Operating Hours: (Yonkers) 9.0 at \$750/hour
 Mobilization Hours: (Yonkers) 2.0 at \$700/hour

Yonkers Day Rate: \$8,150.



THE PORT AUTHORITY OF NY & NJ

Operating Hours: (Haverstraw) 3.0 at \$700/hour
Mobilization Hours: (Haverstraw) 3.0 at \$190/hour

Haverstraw Day Rate: \$2,670.

***Total Day Rate:* \$10,820.**

Estimated Monthly Rate (at 21 days) Yonkers: \$171,150. (LMDC Payment)

Haverstraw: \$ 56,070.

(Rockland to begin with initiation of Haverstraw component)

***Total Monthly Rate for payment:* \$227,220.**

Estimated Monthly Rate for leasing of vessels: \$42,340.

(Rockland Payment – to begin with initiation of Haverstraw component)

Total – (Yearly Operating Expense): \$3,234,720.

- c) The County of Rockland will contribute funds to the Port Authority to ensure the Haverstraw component is fully funded and included in the service program as referenced in Exhibit C - Funding Arrangement for the Haverstraw component and Yonkers to Lower Manhattan.

Payments shall be based on the hourly rates set forth above except that such rates with regard to Yonkers service (and, if agreed by the County of Rockland, Haverstraw service) shall be adjusted if (i) the Port Authority or LMDC requires New York Water Taxi to carry insurance different from or in addition to the insurance expressly required by this Agreement and New York Water Taxi's insurance costs increase as a result thereof, and/or (ii) New York Water Taxi's fuel costs increase to more than \$2.40 per gallon or decrease to less than \$1.80 per gallon of diesel fuel, which per gallon price range was part of New York Water Taxi's assumption in establishing its estimated hourly operating costs as set forth in Section 11.01(a) and (b), and/or (iii) if New York Water Taxi incurs other significant unforeseen and unbudgeted operating expenses (such increases in (i), (ii) and (iii), collectively, "Unanticipated Expense Changes"). The adjustment as described above shall be calculated bi-annually by dividing (A) the total dollar amount of Unanticipated Expense Changes allocable to the Yonkers (and, if permitted by the County of Rockland, Haverstraw) service provided pursuant to this Agreement within a six (6) month period by (B) the total actual number of Operating Hours and Mobilization Hours for such months for Yonkers (and, if permitted by the County of Rockland, Haverstraw) service, and increasing (if the aggregate Unanticipated Expense Changes for such months are positive) or decreasing (if the aggregate Unanticipated Expense Changes for such months are negative) each hourly rate set forth in this Section 11.01 for Yonkers (and, if permitted by the County of Rockland, Haverstraw) service by the quotient of (A) divided by (B). If the Total Yearly Operating Expense set forth above is depleted, and the Port Authority does not continue to fund New York Water Taxi in



accordance with this provision, New York Water Taxi may charge a fare supplement in a per-trip amount equal to the quotient of (x) the total positive amount of Unanticipated Expense Changes allocable to the service provided pursuant to this Agreement for any period after such depletion that the Port Authority does not continue to fund divided by (y) the total number of paid one-way trips taken on the service provided pursuant to this Agreement during such period. Such supplement may be during the period in which Unanticipated Expense Changes are incurred.

- d) The farebox revenues shall remain the property of New York Water Taxi and shall be credited against (deducted from) the LMDC and Rockland County subsidy payments to New York Water Taxi set forth above ("Base Subsidy") to determine the actual subsidy ("Actual Subsidy") payments to be made to New York Water Taxi, subject to the following. In addition to the stated payment/reimbursement rates to be paid from the LMDC and County of Rockland subsidies outlined in Section 12.01(b), the Port Authority shall provide a financial incentive derived from the farebox revenues to New York Water Taxi for the increase of ridership ("Ridership Incentive"). For Yonkers service, the Port Authority shall pay New York Water Taxi a Ridership Incentive amount equal to 10% of the fares paid from 1 to 150 passengers per day, and 25% of fares paid by each passenger above 150 per day. For Haverstraw service, New York Water Taxi shall be paid an amount equal to 10% of fares paid for 1 to 75 passengers and 25% of fares paid by each passenger above 75 per day.

The method of calculation of the Actual Subsidy amounts to be paid to New York Water Taxi shall be further subject to the following: in determining the Actual Subsidy to be paid to New York Water Taxi, the farebox revenue for each service shall be deducted from the amount used to calculate the Base Subsidy in each case. Since New York Water Taxi keeps all farebox revenue, by deducting the incentive amount from the farebox revenues kept by New York Water Taxi and deducting the reduced amount from the daily operating expense (subsidy amounts), the subsidy amount to be actually paid would be increased. As applicable, the Base Subsidy will then be increased by the "Ridership Incentive" achieved for each of the services to compute the Actual Subsidy. The formula for calculating the Actual Subsidy is shown on Exhibit F hereto. Fares that are paid but are lost due to theft or other revenue control problems will not be considered for the purpose of this incentive calculation. All passenger counts shall be based on Coast Guard required passenger counts.

- e) All concession opportunities on the vessels are to the benefit of New York Water Taxi.
- f) For each month of operation, New York Water Taxi agrees to provide the Port Authority with an Invoice and Monthly Activity Report (Exhibit F) for the daily operation of all Yonkers and Haverstraw services by the 15th day of the



subsequent month including the mix of ticket types (single trip, 10-trip, and 40-trip tickets). The activity report shall be subject to Port Authority's reasonable verification, and shall show daily passenger trips for each pickup and drop-off stop along the route. New York Water Taxi shall also submit all forms required in the LMDC Reporting Requirements Matrix (Exhibit G). New York Water Taxi shall propose an auditable method of keeping passenger counts within 30 days of execution of this agreement for Port Authority Audit Department approval.

- g) The Port Authority shall remit monthly payments to New York Water Taxi for ferry operating expenses as set forth in (a), (b) and (d) above (based on actual hours, not to exceed the agreed upon maximum operating and mobilization hours and actual passenger counts). Anything above the agreed upon hours must be approved by the Port Authority, LMDC, and the County of Rockland (for the Haverstraw component of the service) within thirty (30) days following the submission of the information described in the next sentence, upon receipt of funds disbursed by the Lower Manhattan Development Corporation and the County of Rockland. On a monthly basis, New York Water Taxi shall submit to the Port Authority a monthly invoice and activity report as noted above in Section (f), as well as all reports and information required by the Lower Manhattan Development Corporation grant as referenced in the Agreement. The Port Authority will use diligent efforts to obtain the required funds in a timely matter from the Lower Manhattan Development Corporation and the County of Rockland. If any payment is not received by New York Water Taxi within thirty (30) days after submission of all required invoices, reports and information, New York Water Taxi may suspend service hereunder until such payment is made (plus the reasonable time necessary for mobilization), and, if payment is late more than three times, New York Water Taxi may terminate this Agreement without liability by giving notice to the Port Authority.
- h) Any amendment to this agreement must be approved in writing by both the Port Authority and the Lower Manhattan Development Corporation or its successor.
- i) The approval of any Port Authority invoice is subject to LMDC and the County of Rockland's (for the Haverstraw component of the ferry program) final approval. Any payments made that were not accepted by LMDC and the County of Rockland will be deducted from a future subsequent payment. New York Water Taxi has the right to appeal the disapproval in whole or in part of any Port Authority invoice.
- j) New York Water Taxi shall maintain all records of all financial and operations transactions (including passenger counts) and documents relating to this operation and agreement including compensation to New York Water Taxi in connection therewith for a period of four (4) years after the completion or termination of all activities funded under this agreement. The Port Authority shall have access to all such records and documents including access to records in electronic format similar to MS Excel, MS Work, MS Access, or ASCII delimited text file of New



York Water Taxi during normal business hours. If within the aforesaid four-year period the Port Authority has notified New York Water Taxi in writing of a pending litigation, claim, audit, negotiation, or other action that involves any of the records cited of New York Water Taxi relate either directly or indirectly, and that has started before the expiration of the four-year period, such records must be retained until completion of the action and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

- k) New York Water Taxi agrees that it will not contract with any third party if it is unable to perform its obligations under this contract or for the routes so assigned hereunder. Any subcontracting by New York Water Taxi requires the written approval from the Port Authority.

Access to Records

12.01 The activity report format shall be subject to Port Authority's reasonable approval and shall show daily passenger trips in each direction by am and pm periods. New York Water Taxi shall propose an auditable method of keeping passenger counts within 30 days of execution of this agreement for Port Authority Audit Department reasonable approval.

12.02 New York Water Taxi hereby agrees to allow the Port Authority to conduct an annual Single Audit of said financial and operational transaction records (including passenger counts) and documents relating to this operation and agreement.

13.01 Security and Emergency Response

Security/Employee Identity and Background Checks under this agreement shall conform with a mutually agreeable plan to be supplied by New York Water Taxi within 30 days of commencement of services. All employees stationed at each Space must adhere to specific security requirements and should carry and display an appropriate ID badge.

Miscellaneous

14.01 This agreement shall be governed by and construed in accordance with the Laws of the State of New York excluding conflict of law provisions.

14.02 This agreement may not be assigned by either party without the written approval of the other.

14.03 This agreement and its attachments contain the full agreement of the parties, and this agreement may be modified or amended only by a writing signed by the parties as set forth in clause VII.G as stated in the Subrecipient Agreement between the Port

Authority and Lower Manhattan Development Corporation, and the County of Rockland.

- 14.04 New York Water Taxi shall promptly supply the Port Authority with any data required for any local, state, federal or agency reporting requirements. Additionally, copies of any survey data collected by New York Water Taxi will be promptly supplied to the Port Authority.
- 14.05 Regardless of the receipt of any authorizations, approvals or permits, the Port Authority maintains the right to terminate this agreement with written notice if the service described herein is not initiated prior to August 1, 2007 for Yonkers service due to New York Water Taxi's acts or omissions.
- 14.06 In addition to the obligations to the parties set forth herein, New York Water Taxi agrees to perform all of the obligations of the Subrecipient under the attached LMDC/Port Authority Subrecipient Agreement and listed on Exhibit G which, by their nature, cannot solely be performed by the Port Authority, to the extent they relate to New York Water Taxi's activities under this Agreement. The Port Authority agrees to comply with its obligations under the Subrecipient Agreement to the extent not made the responsibility of New York Water Taxi under this agreement.



Agreement Contacts

The Port Authority of NY & NJ - Ferry Transportation
Janet Cox, General Manager
233 Park Avenue South, 4th Floor
New York, NY 10003

The Port Authority of NY & NJ - Legal Department
Herbert S. Somerwitz
Chief, Contracts Division
225 Park Avenue South, 14th floor
New York, NY 10003

New York Trans Harbor, LLC
d.b.a. New York Water Taxi
Tom Fox, President and CEO
499 Van Brunt Street, Section 8B
Brooklyn, NY 11231

We look forward to working with New York Water Taxi in promoting the use of ferries as a convenient, reliable and affordable alternative transportation for Yonkers to lower Manhattan commuters.

Sincerely,

The Port Authority of New York and New Jersey

*OK Jan
MKT
OK
Cox*

Signature: *Andrea Roitman*
Name (Print): Andrea Roitman
Title: Director of Procurement
Date: 4/22/07

I concur: New York Trans Harbor LLC, d.b.a. New York Water Taxi

Signature: *Tom Fox*
Name (Print): PRESIDENT + CEO
Title: TOM FOX
Date: 4/24/07

Exhibits & Attachments

Exhibit A – Schedule of Services

Exhibit B – Marketing and Communication Plan

Exhibit C – Funding Arrangement for Haverstraw Component of Service

Exhibit D – Insurance Requirements

Exhibit E – Contractor’s Integrity Provisions

Exhibit F – Invoice and Monthly Activity Report (Attachment)

Exhibit G – LMDC Reporting Requirement Matrix and Forms (Attachment)

Attachment –
Subrecipient Agreement between Lower Manhattan Development
Corporation and The Port Authority of NY & NJ for the Lower Manhattan
Ferry Program

Exhibit A – Schedule of Services

Operating, Landing, and/or Construction Permits Operating Plan

New York Water Taxi will be responsible for obtaining all legally required permits to operate the passenger ferry service and the vessels included in this agreement.

Operating Plan

a. Hours of Operation

New York Water Taxi will operate the service at a minimum of five days a week (except New York Stock Exchange holidays) throughout the year during the morning and evening rush hours to accommodate the needs of the commuters. If the demand increases, New York Water Taxi will explore the possibility of expanding the operation to meet the demand.

b. Frequency/Speed of Service

The following are service schedules for the two different elements of the service the New York Water Taxi proposes to provide: (All times are approximate and subject to weather and water conditions and other conditions beyond New York Water Taxi's reasonable control).

Frequency and Speed of Service Between Yonkers, BPC, and Pier 11

Equipment: New York Water Taxi will operate two 149-passenger vessels on this route at a service speed of 24-knots.

	Leave Yonkers	Arrive at BPC	Arrive at Pier 11
Boat #1	5:45 am	6:30 am	6:42 am
Boat #2	6:30 am	7:15 am	7:27 am
Boat #1	7:50 am	8:35 am	8:47 am
Boat #2	8:30 am	9:15am	9:27 am
	Depart Pier 11	Arrive at BPC	Arrive at Yonkers
Boat #1	4:30 pm	4:42 pm	5:27 pm
Boat #2	5:30 pm	5:42 pm	6:27 pm
Boat #1	6:30 pm	6:42 pm	7:27 pm
Boat #2	7:30 pm	7:42 pm	8:27 pm

Frequency and Speed of Service Between Haverstraw, Yonkers, BPC, and Pier 11

Equipment: New York Water Taxi will operate three 149-passenger vessels on this route at a service speed of 24-knots.

	Leave Haverstraw	Leave Yonkers	Arrive at BPC	Arrive at Pier 11
Boat #1		5:45 am	6:30 am	6:42 am
Boat #2	5:45 am	6:30 am	7:15 am	7:27 am
Boat #3	7:05 am	7:50 am	8:35 am	8:47 am
Boat #1		8:30 am	9:15 am	9:27 am

	Depart Pier 11	Arrive at BPC	Arrive at Yonkers	Arrive at Haverstraw
Boat #1	4:30 pm	4:42 pm	5:27 pm	
Boat #2	5:30 pm	5:42 pm	6:27 pm	7:12 pm
Boat #3	6:30 pm	6:42 pm	7:27 pm	8:12 pm
Boat #1	7:30 pm	7:42 pm	8:27 pm	

- c. Both the Yonkers and the Haverstraw components shall provide one seat ride service to and from Battery Park City and Pier 11. No transfer shall be required for morning or evening service from either Yonkers or Haverstraw.

Exhibit B - Marketing and Communication Plan

Marketing

New York Water Taxi will prepare a marketing plan for the route using a team of professionals led by Travis Noyes, its Vice President of Marketing and Sales. The team includes accomplished professionals in the areas of advertising, tourism and travel, hotels and packaged tours, international travel, marketing, public relations, and charter planning and sales.

It is expected that the plan will include cooperative marketing and sales agreements with local residential developments, cultural attractions, hotels, restaurants, marinas, educational institutions and parks. The plan will focus on attracting new customers through direct contact, marketing, local publicity, sales presentations to residents in the target draw area and to employers in the target destination area, and cooperative advertising with new real estate developments. The plan may also include direct advertising of the service.

New York Water Taxi will work with its private partners to encourage the lower Manhattan business community to provide target mailing lists of employees traveling from the area surrounding the Yonkers and Haverstraw ferry facilities to work. Additionally, New York Water Taxi will encourage members of business communities to promote the service to their internal newsletter and employee mailings.

The Port Authority will collaborate with the Lower Manhattan Development Corporation, New York Water Taxi, local municipalities, and regional transportation providers to promote the Yonkers/Haverstraw ferry program. All schedules and marketing materials will indicate the role of the Lower Manhattan Development Corporation and HUD in providing services through the Subrecipient Agreement. Refer to Exhibit A-3 in the LMDC/PA Subrecipient Agreement for general guidance in recognizing HUD as the Grantor.

The Port Authority shall insure recognition of the role of HUD and of LMDC in providing services through this Agreement. All activities, facilities, and items utilized pursuant to the Subrecipient Agreement shall be prominently labeled, where practicable, as to the role of HUD and of the LMDC. In addition, the Port Authority will include a reference to the support provided herein in all publications made possible with funds made available under the Subrecipient Agreement.

Communication by New York Water Taxi will include:

Telephone information systems, E-Mail bulletins, Website service notices, On-Board service notices, NextBus (or similar) on-board tracking system via Internet.

Exhibit C - Funding Arrangement for the Haverstraw component of the Haverstraw/Yonkers-Lower Manhattan Ferry Service

The following is agreed upon between the County of Rockland and New York Water Taxi as 1/22/07 (Formal contract agreement pending between the County of Rockland and New York Water Taxi, and the County of Rockland and the Port Authority. Dollar amounts are subject to change pursuant to Agreement between the County of Rockland and New York Water Taxi.):

Assuming the operating and mobilizing rates outlined in NYWT's final proposal, the rates for service from Haverstraw and Yonkers (berthing at Yonkers) are as follows:

9 Yonkers operating hours @\$750/hr. = \$6,750/day - \$141,750/month - \$1,701,000/year
 3 Haverstraw operating hours @\$900/hr. = \$2,700/day - \$56,700/month - \$680,400/year
 2 Yonkers mobilizing hours @\$700/hr. = \$1,400/day - \$29,400/month - \$352,800/year
 3 Haverstraw mobilizing hours @\$800/hr. = \$2,400/day - \$50,400/month - \$604,800/year

Yonkers daily cost = \$8,150	Haverstraw daily cost = \$5,100
Yonkers monthly cost = \$171,150	Haverstraw monthly cost = \$107,100
Yonkers yearly cost = \$2,053,800	Haverstraw yearly cost = \$1,285,200

Operating funds currently available for the service include the following:

LMDC operating funds:	\$4,200,000
Rockland's federal operating funds:	<u>\$1,200,000</u>
<u>Total available operating funds:</u>	<u>\$5,400,000</u>

To reduce the cost of operating, in exchange for reducing the hourly mobilizing/operating rates for the Haverstraw component of the service, Rockland County will pay NYWT a monthly lease cost for the ferry boats. The following payment schedule will apply:

Yonkers Boat (#1): \$13,000 per month
 Yonkers Boat (#2): \$13,000 per month
 Haverstraw Boat (#3): \$16,340 per month

Total monthly lease payment: \$42,340 (final lease agreement between Rockland and NYWT pending)

Lease payments shall begin with the initiation of the Haverstraw component of the service.



Additionally, Rockland County will dedicate its \$1.2 million in federal transportation operating funds to the Haverstraw component of the service by administering those funds to Port Authority, who will, in turn, dedicate those funds toward the revised mobilizing/operating costs of the Haverstraw component (formal contract agreement pending). **The \$1.2 million in federal operating funds shall be dedicated to the Haverstraw component only, in combination with the remaining \$92,400 of the LMDC funds (after the Yonkers component is funded).**

Rockland County will also contribute up to \$50,000 in marketing funds through its Travel Demand Management Program toward the marketing of the Haverstraw component of the service.

Depending on the start date of the Haverstraw component, Rockland County will contribute up to \$60,540 in additional Rockland funds, if necessary, to cover any operating funds shortfall for the Haverstraw component of the service. NYWT has also agreed to contribute up to \$60,540 toward the Haverstraw component of the service, if necessary.

This funding arrangement will be in exchange for the following revised operating/mobilizing rates for the Haverstraw component of the service:

3 Haverstraw operating hours @\$700/hr. = \$2,100

3 Haverstraw mobilizing hours@\$190/hr. = \$ 570

Total revised daily cost for Haverstraw:	\$ 2,670
Total revised monthly cost for Haverstraw:	\$56,070
Total revised yearly cost for Haverstraw:	\$672,840

This arrangement enables the available operating funds to cover the operating expenses for both components of the service, while ensuring that NYWT receives reasonable payment for its costs.

Submitted by: County of Rockland Department of Planning

Exhibit D – Insurance Requirements

The Operator in its own name as assured shall secure and pay the premium or premiums for such of the following policies of insurance affording those coverages as to which minimum limits are fixed in the schedules set forth below. Each such policy shall be maintained in at least the limit fixed with respect thereto, shall cover the operations of the Operator under this agreement, and shall be effective throughout the term of the agreement.

Public Liability Insurance Requirement:

1. Commercial General Liability Insurance with minimum limits of \$10 million per occurrence for bodily injury and property damage liability.
 2. Protection & Indemnity Insurance with minimum limits of \$ 25 million per occurrence.
 3. If parking operations is involved, then an Excess/Umbrella Liability Insurance policy, including but not limited to parking operations, shall be in minimum limits of \$10,000,000. per occurrence (a minimum total of \$20 million per occurrence in commercial general liability coverage).
 4. Automobile Liability Insurance, if applicable, – \$2 million combined single limit per accident for bodily injury and property damage liability covering “ANY” autos.
- The inclusion of The Port Authority of NY & NJ, Port Authority Trans Hudson Corp. (PATH), Lower Manhattan Development Corporation, the City of New York, the City of Yonkers, the Village of Haverstraw, the County of Rockland, the New York State Department of Transportation, Metro-North Railroad, Ginsburg Development Corporation, Hugh L. Carey Battery Park City Authority, and Battery Park City Parks Conservancy Corporation as Additional Insureds, including but not limited to premise-operations and completed operations in all liability policies.
 - The Port Authority Immunity Clause. The certificate of insurance and liability policy(ies) must contain the following endorsement:

“The insurance carrier(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.”



- Cross-liability/ Severability of Interest Clause
- All policies shall include coverage for domestic and foreign terrorism. Coverage must be identical to terms, amounts, and conditions applicable to losses incurred from events other than acts of terrorism.

5. Workers' Compensation Insurance, including coverage for employers' liability and disability benefits along with coverage for U.S. Longshore & Harbor Worker's Compensation Act and Coverage B – Maritime Endorsement in limits of not less than \$250,000. each occurrence.

Additional Requirements:

Each insurance policy(ies) shall contain a provision that the policy may not be cancelled, terminated, or modified without thirty (30) days' prior written notice to the Port Authority of NY & NJ and the additional insureds.

All insurance coverages and policies may be reviewed for adequacy of terms, conditions and limits of coverage at any time and from time to time during the term of this Agreement. Upon request by the Port Authority, the Operator shall furnish and deliver to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

The requirements for insurance procured by the Operator shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Operator under this contract. The insurance requirements are not a representation by the Authority or any additional insureds as to the adequacy of the insurance to protect the Operator against the obligations imposed on them by law or by this or any other Contract.

Additional insurance requirements and conditions may be contained in either the provisions of the Agreements between the property owners (Hugh F. Carey Battery Park City Authority, New York State at Battery Park City, the City of Yonkers, Ginsburg Development Corporation and/or Metro-North Railroad and/or the Village of Haverstraw), and the Port Authority, and shall be the deemed the responsibility of the Operator. Any insurance or self insurance maintained by the additional insureds shall not contribute to any loss or claim.

Exhibit E – Contractor’s Integrity Provisions

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;



- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certifications shall be deemed to be made by the Bidder as follows:

- * if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;
- * if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement, which sets forth in detail the reasons therefore. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefore provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

Bidders are advised that the Authority has adopted a policy to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a Bidder is not eligible to bid on or be awarded public contracts because the Bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

4. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

5. Conflict of Interest

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract which results, directly or indirectly, from the Services provided by the Contractor hereunder.

6. Definitions

As used in this section, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.

Exhibit F – Monthly Activity Report and Invoice

(Excel Spreadsheet Attachment)

The Port Authority of New York and New Jersey - Ferry Transportation

Commuter Ferry Program - City of Yonkers to Lower Manhattan

INVOICE

Pursuant to the Ferry Transportation Agreement between PANYNJ and New York Trans Harbor LLC, d/b/a New York Water Taxi for ferry service operation between Yonkers/Haverstraw and Lower Manhattan, the following invoice references the activity and operation summary for payment to New York Water Taxi according to the terms of agreement referenced in the Payment Schedule - Section 11.01.

Date: 00/00/2007

Invoice Activity from 00/00/2007 until 00/00/2007

Monthly Operating/Mobilization Rate Accruals

Yonkers to Battery Park City Terminal and Pier 11

Operating Hours:	0	at \$750 / hour =	\$0.00
Mobilization Hours:	0	at \$700 / hour =	\$0.00

Fare Box

Yonkers to Battery Park City Terminal

	One-Way	10-Trip	40-Trip
Fare (Per Trip):	\$12.00	\$11.00	\$10.00
Total Tickets Collected:	0	0	0
Total Dollar Value:	\$0.00	\$0.00	\$0.00

Yonkers to Pier 11

	One-Way	10-Trip	40-Trip
Fare (Per Trip):	\$12.00	\$11.00	\$10.00
Total Tickets Collected:	0	0	0
Total Dollar Value:	\$0.00	\$0.00	\$0.00

Monthly Ridership Total: 0

Monthly Farebox Revenue Total: \$0.00

Total of monthly Operating/Mobilization Expense: \$0.00

Total of monthly Ridership Incentive (in dollars): \$0.00

Minus monthly Farebox Revenue: \$0.00

Total Invoice: \$0.00

I agree that the information submitted above is correct and the dollar amounts are reflective of actual operation of service.
The information referenced above is subject to audit by PANYNJ and/or LMDC.

Signature

Title

Date

Remit payment to: New York Trans Harbor LLC, d.b.a. New York Water Taxi, 499 Van Brunt Street, Section 8B, Brooklyn NY 11231