

Torres-Rojas, Genara

From: wbierce@biercekenerson.com
Sent: Friday, August 07, 2015 12:40 PM
To: Olivencia, Mildred
Cc: Torres-Rojas, Genara; Van Duyne, Sheree; Ng, Danny
Subject: Freedom of Information Online Request Form

Information:

First Name: William
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Required copies of the records: Yes

List of specific record(s):

Contract, believed to be entered into on or about March 2002 and extended in November 2003, between the Port Authority and NY Waterway relating to ferry service between Hoboken and Lower Manhattan. This contract is described in Port Authority press release number 153-2003, dated November 20, 2003. I also request copies of all amendments, modifications, renewals and addenda to this contract.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

August 14, 2015

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

Re: Freedom of Information Reference No. 16226

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 a copy of a contract, believed to be entered into on or about March 2002 and extended in November 2003, between the Port Authority and NY Waterway relating to ferry service between Hoboken and Lower Manhattan. This contract is described in Port Authority press release number 153-2003, dated November 20, 2003. Copies of all amendments, modifications, renewals and addenda to this contract.

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/16226-C.pdf>. Paper copies of the available records are available upon request.

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

Very truly yours,



Danny Ng
FOI Administrator

Enclosure

*4 World Trade Center, 18th Floor
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
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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

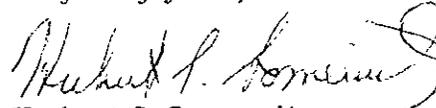
G.N. Schrager, Esq.
Dreyer & Traub
101 Park Avenue
New York, New York 10178

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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November 3, 1988

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

THE PORT AUTHORITY OF NY & NJ

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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

THE PORT AUTHORITY OF NY & NJ

Messrs. Imperatore and Heller

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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

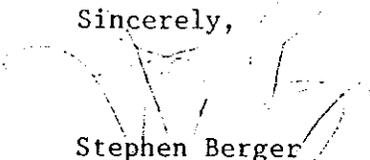
Messrs. Imperatore and Heller

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November 3, 1988

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
Arcorp/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 ~~a) operate~~ ^{PASSAGE} ~~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 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:

Charles J. Grassi

BY:

Stephen Berger
Stephen Berger
Title: Executive Director

DATE:

11/3/88

*OK from
Ch.*

(Corporate Seal)

A.P.A. TRANSPORT CORP

ATTEST:

[Signature]

BY:

Arthur Imperatore
Arthur Imperatore
Title: Chairman of the Board

DATE:

11/3/88

(Corporate Seal)

A.P.A. TRUCK LEASING CORP.

ATTEST:

[Signature]

BY:

Arthur Imperatore
Arthur Imperatore
Title: Chairman of the Board

DATE:

11/3/88

(Corporate Seal)

HARTZ MOUNTAIN INDUSTRIES, INC.

ATTEST:

[Signature]
J. W. Rabin Jr.
Assistant Secretary

BY:

[Signature]

Gene Heller
Title: President

(Corporate Seal)

DATE:

11/3/88

REMUS REALTY CORP.

ATTEST:

[Signature]

BY:

[Signature]

Arthur Imperatore
Title: President

(Corporate Seal)

DATE:

11/3/88

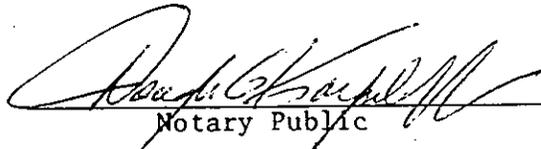
ACKNOWLEDGMENTS

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 800 5th Avenue, Apt. 30A, New York, NY 10021 that he is the Chairman of the Board of APA Truck Leasing 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

ACKNOWLEDGMENTS

DOUGLAS G. KARPILOFF
Notary Public, State of New York
No. 60 4740919
Qualified in Westchester County
Commission Expires ~~March 3, 1989~~
Oct 31

STATE OF *New York*)
COUNTY OF *New York*)

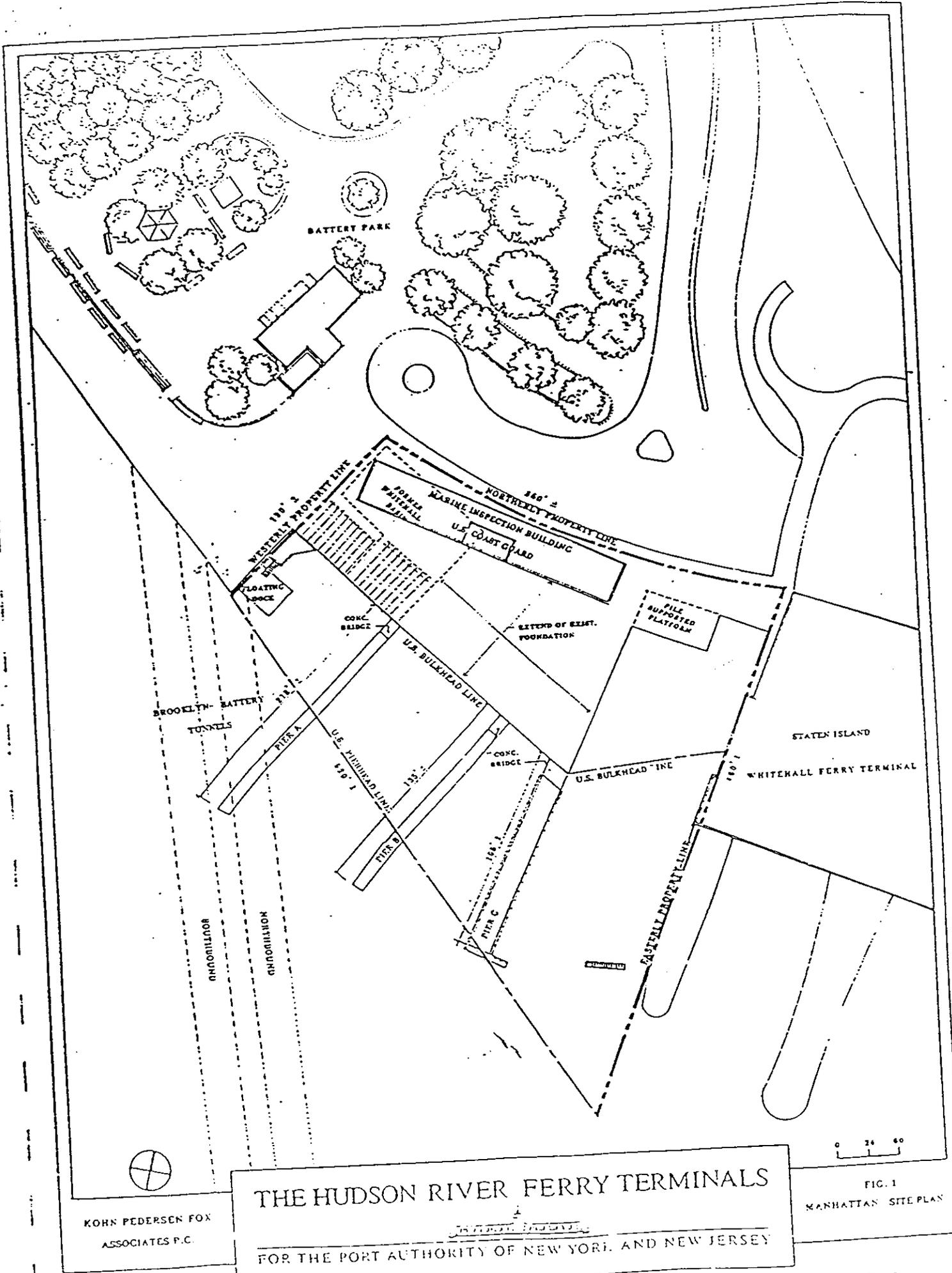
SS.:

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 800 5th Avenue, Apt. 30A, New York, NY 10021 that he is the Chairman of the Board of APA Transport 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. KARPILOFF
Notary Public, State of New York
No. 60 4740919
Qualified in Westchester County
Commission Expires ~~March 3, 1989~~
Oct 31



KOHN PEDERSEN FOX
ASSOCIATES P.C.

THE HUDSON RIVER FERRY TERMINALS
FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

FIG. 1
MANHATTAN SITE PLAN

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	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	2
TERMINAL SUPERVISOR	1	1	1	1	4
TICKET AGENTS	3	1	1	1	6
RELIEF AGENTS	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u> (VAC, SICK, ETC)
	5	2	2	3	14

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</u>	<u>TOTAL</u>
	<u>AM</u>	<u>PM</u>	<u>AM</u>	<u>PM</u>	<u>SHIFT</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>

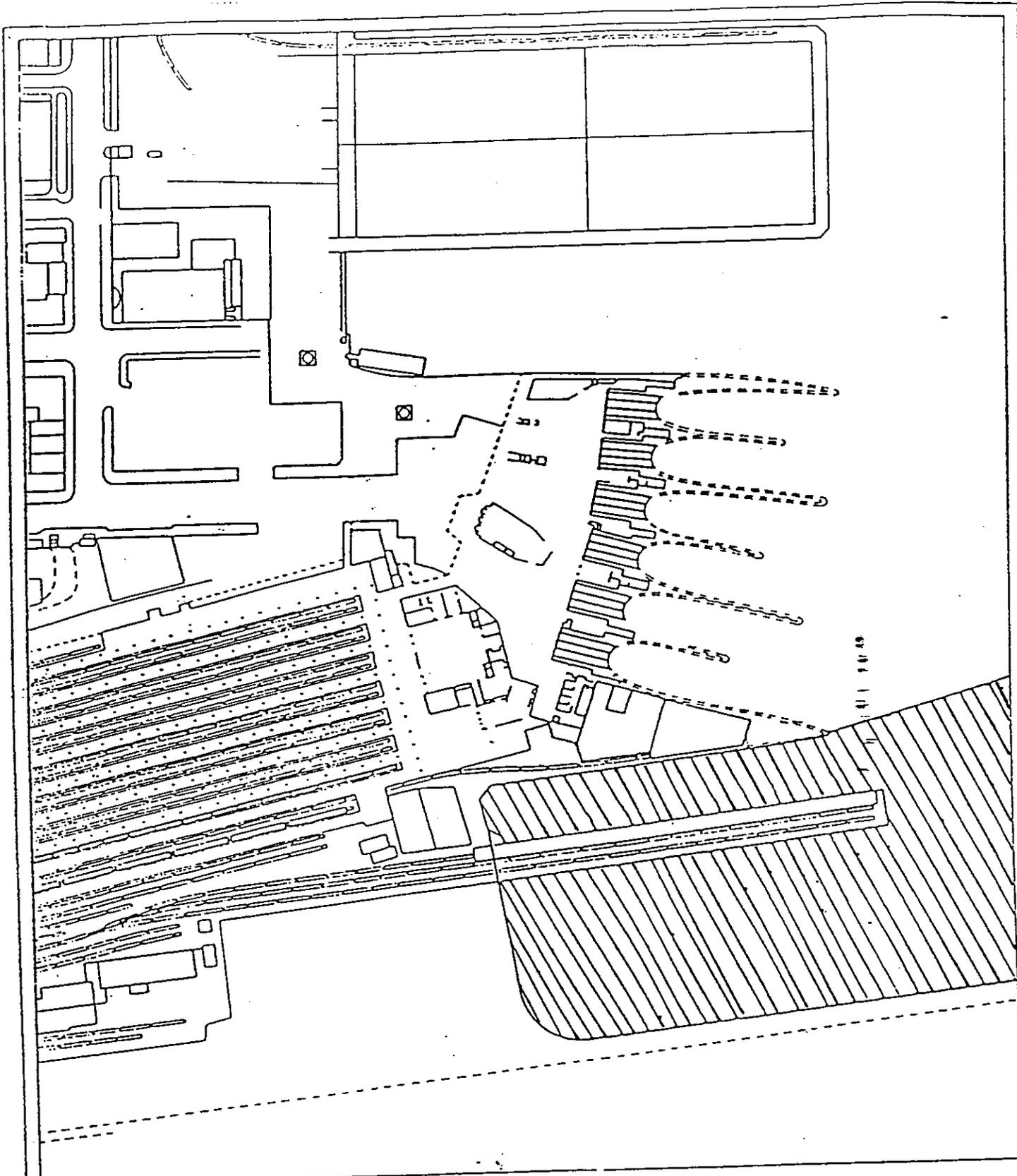
Responsibilities

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



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.

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

Adjust difusers and dampers
Replace filters
Check and add freon
Inspect system and make repairs
Check and maintain heating system

Plumbing

Check and repair leaking valves and
faucets
Inspect pipes and repair as necessary
Air pressure check and correct sprinkler
system

Structure

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

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

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.

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. Canino*
Titled: *Director*

New York Waterway

By: *AG*
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
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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
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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
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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