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THIS AGREEMENT (the “Agreement”), dated as of February 12, 2016 is made between NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION (the “Corporation” or “NYCEDC”), a New York State Not-for-Profit Corporation, having an office at 110 William Street, New York, New York 10038, and HNY Ferry, LLC (the “Operator”), having an office at 353 West Street, New York, New York 10014.

WHEREAS, pursuant to the Amended and Restated Maritime Contract, dated as of June 30, 2015, as amended from time to time (the “Maritime Contract”) between The City of New York (the “City”) and the Corporation, the City has retained the Corporation to inter alia facilitate waterfront, maritime and other transportation development projects throughout the City; and

WHEREAS, in furtherance of those purposes, the Corporation and the City wish to promote the provision of city-wide ferry services that will increase access to waterfront communities that are currently underserved by public transportation, with the intention to not only serve residents and commuters, but tourists and leisure riders; it being contemplated that the connections made by the city-wide ferry service (“CFS”) operated pursuant to this Agreement will increase economic development, while providing the general public access to parks and recreation; and

WHEREAS, the Corporation heretofore released a publicly advertised Request for Proposals (“RFP”) for the implementation of CFS; and

WHEREAS, Operator submitted a proposal in response to the RFP, which included a request for “Compensation”, as defined in Article 3 herein, from the Corporation to undertake CFS; and
WHEREAS, the Corporation and Operator desire to set forth their agreement with respect to the establishment and operation of CFS;

NOW, THEREFORE, in consideration of the foregoing and the covenants of the parties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1

CONDITIONS PRECEDENT TO COMMENCEMENT OF TERM

Section 1.01 Conditions Precedent. This Agreement is effective as of the date hereof (the “Effective Date”), but its term shall not commence, and no rights and obligations set forth herein shall arise with respect to one or another of the parties, until all of the following conditions precedent (the “Conditions Precedent”) shall have been satisfied or waived by the Corporation:

(a) the City shall have within thirty (30) days of the Effective Date actually made available to the Corporation any necessary funds (the “Funding”) for the CFS;

(b) all the necessary corporate review and approvals of the Corporation (including, without limitation, approval by the Corporation’s Executive Committee) and all the necessary governmental review and approvals prerequisite for the Corporation executing this Agreement shall have been obtained, including, but not limited to, satisfactory VENDEX and/or Background Questionnaire review (i.e., no material derogatory information is revealed during the VENDEX and/or Background Questionnaire review such that the Corporation or the City would generally not do business with such entity);

(c) the Operator shall have submitted evidence of its ability to obtain insurance coverage, satisfactory to the Corporation, in its sole discretion, in accordance with the terms of Article 6 hereof;
(d) the Operator shall have provided a Staffing Plan approved by the Corporation, which such approval shall be granted in the Corporation’s reasonable discretion (to be attached hereto as Appendix M);

(e) the Operator shall have provided a Vessel Acquisition Plan approved by the Corporation, which such approval shall be granted in the Corporation’s sole discretion (to be attached hereto as Appendix G, Exhibit 1); and

(f) the Operator’s parent company shall have provided a corporate guaranty with respect to the Operator’s obligations to perform the Services hereunder, in form and substance satisfactory to the Corporation in its sole discretion (to be attached hereto as Appendix E); and

(g) the Operator shall have provided two itemized lists of proposed cost savings approved at the Corporation’s reasonable discretion, including without limitation, a reduction in the “Fuel Cap” (as hereinafter defined), in connection with potentially locating the “Homeport” (as hereinafter defined) at either Brooklyn Navy Yard (“BNY”) or Brooklyn Army Terminal (“BAT”) (BAT, BNY or any mutually agreed to Homeports directly provided by the Corporation, a “City Homeport”). Cost savings from homeporting at City Homeport shall be hereinafter referred to interchangeably as the “City Homeport Cost Savings”).

Section 1.02 Outside Conditions Date. In the event that any of the Conditions Precedent are not satisfied (except to the extent that such failure to satisfy a Condition Precedent is solely caused by the Corporation) or waived by the Corporation at its sole discretion within 6 months following the Effective Date (“Outside Conditions Date”), then the Corporation may serve the Operator with a thirty (30) day notice to cure and in the event Operator fails to cure (or such other cure period, if cure requires more than thirty (30) days, such period to be determined in the sole discretion of the Corporation), then the Corporation may terminate this Agreement upon thirty (30) days’ written
notice to the Operator, and the parties shall not have any rights, duties or obligations hereunder (unless otherwise mutually agreed to in writing). Notwithstanding the foregoing, in the event that the Corporation anticipates that the Conditions Precedent will not be fully satisfied or waived by the Outside Conditions Date, the Corporation may elect in writing to extend the time to perform up to 18 months beyond the Outside Conditions Date, provided that such written notice is given to the Operator not less than ten (10) days prior to the Outside Conditions Date. To the extent that the Corporation has authorized the Operator to execute contracts to acquire Vessels, the Corporation shall be obligated to comply with the provisions of 3.02(A) and 4.02. 

**ARTICLE 2**

**GENERAL TERMS AND CONDITIONS**

**Section 2.01 Services.**

A. The Corporation hereby retains and engages the Operator and the Operator agrees to provide ferry transportation services (the “Services”) in accordance with all of the provisions of this Agreement, including, without limitation, all Appendices hereto and the “Plans” to be attached hereto (as such term is hereinafter defined), which are hereby incorporated and made a part of this Agreement. The Operator agrees to provide the Services on the routes identified in Appendix A (all such ferry landing locations shall be collectively referred to herein as the “Landing Sites” and each as a “Landing Site”). The Operator shall be responsible for providing all staffing, Vessels, and associated equipment and services necessary to provide all Services, except the Landing Sites.

B. In performing the Services, the Operator and its contractors, employees and agents shall comply with all applicable federal, state and local laws, rules, regulations, orders, and written policies, including, without limitation, the applicable written policies of the Corporation and New
York City Department of Transportation ("DOT") and the provisions of the National Labor Relations Act ("NLRA"). The Services shall not interfere with the navigational operation of the Staten Island Ferry, the East River Ferry (the "ERF") (except to the extent that the Corporation directs the Operator to perform some or all of the ERF service pursuant the terms set forth herein) or with law enforcement operations of the United States Coast Guard or any other governmental agency with jurisdiction over the Services or the Operator. The Operator’s personnel shall cooperate with personnel of the Corporation and the City at the Landing Sites. Except where the captain or a port captain of Operator has determined that a condition exists that makes it unsafe or impossible to operate the Vessel and subject to any Force Majeure Events, the Operator shall not make any changes in the Services without prior approval in writing from the Corporation, which such approval shall be granted in the Corporation’s sole discretion.

C. The Operator acknowledges and agrees that it has reviewed all of the provisions of this Agreement including, without limitation, the provisions set forth in Appendices and Exhibits attached hereto, and the Operator represents and warrants that it fully agrees to the same.

D. The Operator acknowledges and agrees that this Agreement does not convey or transfer a real property interest in any property owned or operated by the City or the Corporation, nor does it provide any authorization to enter onto any of the Landing Sites or to perform the Services. Prior to performing the Services, Operator must obtain all required permits and authorizations from the applicable federal, state and/or local authorities, including, without limitation, any required permissions or authorizations to enter onto any of the Landing Sites (the "Site Access Agreements"), provided, however, that if all necessary Site Access Agreements cannot be obtained, the Services shall be modified accordingly at the reasonable discretion of the Corporation. The Corporation shall reasonably coordinate with the Operator in obtaining the Site
Access Agreements; provided, however, that the Operator, in a timely manner, shall apply for and fulfill all requirements for the issuance of all Site Access Agreements required for the performance of its obligations under the Operating Agreement. The Operator shall be responsible for the payment of any Landing Fees charged in connection with the Site Access Agreements, and such payments shall be reimbursed by the Corporation in addition to the Compensation. Any Landing Fees to be charged (and reimbursed by the Corporation) in connection with Site Access Agreements between the Operator and a non-City agency shall be subject to the Corporation’s prior approval of said Landing Fees.

E. The Operator has represented to the Corporation that it has access to a Homeport that can be used for the CFS at no additional cost to the Corporation beyond the Compensation identified in Appendix A – Exhibit 4, and the Corporation has materially relied upon such representation in entering this Agreement. The Corporation has ninety (90) days from the Commencement Date hereof to provide for and direct the Operator in writing to use an alternate Homeport located in the City (a City Homeport, as previously defined) for the CFS (“City Homeport Notice”). If the Corporation directs the Operator to use a City Homeport, (and such City Homeport is being provided at no capital expense to the Operator), then the Homeport Component Fee and the City Homeport Cost Savings (including, without limitation, a lowering of the Fuel Cap) shall be removed from the Compensation commencing the earlier of (a) fifteen (15) days after the first Vessel homeports at the designated City Homeport and (b) six (6) months after the date of the City Homeport Notice. It is contemplated that in the event that the Corporation provides the Operator with a City Homeport, the Operator’s access to the City Homeport shall be pursuant to a separate access license or other occupancy agreement to be mutually agreed upon by the parties. The Compensation shall be increased to cover any access fees attributed to the City
Homeport, if applicable. **Homeport** is defined as a marine support facility out of which a Vessel or Vessels are based (as such term “Vessel” is defined in Section 2.04(A)), which may include permanent berthing, fueling, maintenance, repair office and crew facilities other ancillary facilities).

F. Within sixty (60) days of the Effective Date, the Operator shall provide a Standard Operating Procedures Plan (“SOP Plan”) for the “Ferry Route” (as defined in Appendix A) with the earliest “Route Start Date” ("Route Start Date" or “RSD” as defined in Appendix A), for the Corporation’s initial review and comment. The Corporation will provide comments thereto within fifteen (15) days upon receipt. The Operator shall have thirty (30) days following receipt of the Corporation’s comments to incorporate such comments and provide a final draft of the SOP Plan for the Corporation’s approval, such approval to be granted in the Corporation’s reasonable discretion (such plan to be later attached hereto as Appendix N);

Section 2.02 Term and Time for Performance of Services.

A. The Term of this Agreement shall commence upon the date that is five (5) days following satisfaction or waiver of all Conditions Precedent, the actual date of commencement hereinafter referred to as the (“Commencement Date”), and the initial term (“Initial Term”) of the Agreement shall be six (6) years from the earlier of (i) Route Start Date of the first Ferry Route (“Initial Expiration Date”), as such Ferry Routes are defined in Appendix A and (ii) July 1, 2017, subject to a day-for-day toll of the Outside Conditions Date or the Expiration Date of this Agreement, as the case may be (“Toll Period”), caused by litigation attacking the award of this Agreement, only to the extent that and for so long as the Corporation elects, at its sole option, not to provide funding as provided in this Agreement, but in the event that the Corporation elects not to provide such funding and such Toll Period extends beyond 180 days, the Corporation shall have
the right to terminate this Agreement in its sole discretion upon 30 prior days’ notice to the 
Operator. The Corporation shall provide written notice to the Operator of the Commencement 
Date, which notice shall be final and binding on the Operator provided such date is determined in 
accordance with this Agreement.

B. The Corporation, at its sole option ("Renewal Option"), may elect to renew this 
Agreement for one additional, five-year period ("Renewal Term") on the same terms and 
conditions as the Initial Term, except for the following: (1) Ticketing Fees, (2) Fuel Costs, and/or 
(3) Fuel Contracts, which such modified terms must be mutually agreed to between the Operator 
and the Corporation. The Corporation shall provide the Operator written notice of its exercise of 
the Renewal Option not less than 180 days prior to the Initial Expiration Date. The date of 
expiration or the earlier termination of this Agreement as hereinafter provided shall be referred to 
as the “Expiration Date”.

C. Each 12-month period falling within the Term measured initially from the 
Commencement Date shall be referred to as a “Service Year,” provided that if the 
Commencement Date occurs on a date other than January 1st, the first Service Year shall include 
the (partial) calendar month in which the Commencement Date occurs plus the immediately 
succeeding calendar months until December 31st. The tasks and responsibilities of the Operator 
(see Appendix A, Exhibit 1) are divided into four “Phases” throughout the Term of this Agreement 
as follows:

(1) _Implementation Phase._ Upon the Effective Date of this Agreement, the 
Operator will timely proceed to commence the planning and provisioning of major project 
elements.
(2) Route Pre-Launch Phase. Commencing sixty (60) calendar days prior to the agreed upon RSD for each Ferry Route, the Operator must give notice to the Corporation that the particular Ferry Route has entered the Pre-Launch Phase and immediately begin or continue diligently pursuing each of the items noted below. At the conclusion of the Pre-Launch Phase for each such Ferry Route, the Operator shall have:

a) Acquired and/or provisioned Vessels, Ticket Vending Machines ("TVM"), Digital Information Displays, and all other Operator-supplied equipment necessary to deliver the Services (collectively, the "Service Elements").

b) Fully installed, tested and validated all Service Elements.

c) Hired and trained all necessary staffing to fulfill its obligations under the Agreement.

d) Obtained the Corporation's approval of any outstanding SOP Plan pertaining to that Route.

(3) Operations Phase. Commencing on the RSD for any individual Ferry Route, such specific tasks and responsibilities of the Operator during the Operations Phase that are set forth in the Service Plan (see Appendix A) shall be performed by Operator. During the initial six months of the Operations Phase (the "Initiation Period") the Operator and the Corporation shall fine tune and finalize the schedules, headways and elements to assure the Operator's ability to satisfy the On-Time Service Standards (See Appendix C) for each Ferry Route taking into account actual performance in light of proven Vessel capability and navigational limitations, if any; seasonal impacts on punctuality and ridership, including the requirements of any collective bargaining
agreement(s); embarkation and disembarkation times and logistics; the final determination as to any modification to the schedules being at the Corporation’s reasonable discretion.

(4) **Transition Phase.** Upon the expiration or earlier termination of this Agreement (any such termination for cause shall be subject the applicable Cure Period, if any, as set forth in Article 4), the Operator will perform a series of activities to shut-down or transition the Service ("**Transition Actions**"). If the Transition Actions begin due to expiration, the Transition Actions shall occur over a 90-day period preceding the expiration date. Otherwise, the Transition Actions should occur over a 90-day period that begins as of the date all notice and cure periods have expired in connection with such Termination Notice. The Corporation has certain purchase rights and obligations as described herein, and the parties shall work together to effectuate a transfer of title to the Vessels to the Corporation, including to create any other necessary document(s), including without limitation, the USCG-1340 Vessel Bill of Sale ("**Bill of Sale**"), to effectuate and memorialize the transfers of assets in connection with such purchase rights. The substantial form of the Bill of Sale shall be attached hereto as part of the Vessel Acquisition Plan (see Appendix G – Exhibit 1). All of the Corporation’s intellectual property as used by the Operator in connection with the Services shall also be returned to the Corporation and/or other respective owner, or as otherwise directed by the Corporation in an orderly manner (including, without limitation, any social media accounts, URLs, and Sponsorship and Branding elements) in accordance with the further provisions of this Agreement.

**Section 2.03 Authority of the Corporation.**

The Operator’s performance under this Agreement shall conform to the Services requirements set forth herein and, where practicable, incorporate industry best practices of private
operators that provide the same or similar services. The Corporation shall have the right to review and approve the Operator’s compliance with the provisions of this Agreement, and such approval shall be a condition precedent to the right of the Operator to receive any Compensation. The Corporation and any other person or agent duly authorized to act for and on behalf of the Corporation shall not by virtue of approving the Operator’s compliance with the provisions of this Agreement as set forth in this Section 2.03, be liable in any manner to the Operator, except to the extent that there is gross negligence or willful misconduct. Unless otherwise provided herein, the Corporation shall act reasonably and without delay in exercising its authority and discretion under this Agreement.

Section 2.04 Equipment; Landing Sites.

A. All materials and equipment which are necessary for the Operator to provide the Services, unless otherwise specified herein (e.g., Landing Sites) shall be provided by the Operator, and such qualified expenses as described in Appendix A- Exhibit 4 and incurred therefore shall be reimbursed by the Corporation as limited by and subject to the terms of Compensation under this Agreement. All materials and equipment shall include, but not be limited to, the vessels to be employed in delivering the Services, as each vessel is described in the to be attached Appendix G, Exhibit 1: Vessel Acquisition Plan (all the vessels so described are defined as the “Vessels”). The term “Vessels” as defined herein shall include spare vessels listed in the Appendix G, Exhibit 1 as described in the previous sentence (“Spare Vessels”) but shall not include other substitute vessels, emergency-use vessels, standby vessels or temporary vessels that might be required and employed in delivering the Services from time to time (the “Interim Vessels”). Such Interim Vessels will not necessarily be exclusive to the Services and consequently will not necessarily bear the complete Branding and Sponsorship logos and/or wraps. In accordance with Appendix G, the
Operator’s use of such Interim Vessels shall be subject to the Corporation’s prior approval, and the Corporation and the Operator shall meet and confer on a case-by-case basis as to how to adjust the requirements of this Agreement given such use of Interim Vessels, any final decision to adjust the requirements to be made in the Corporation’s sole discretion. In the event that an Interim Vessel must be deployed on an emergency basis, the Operator shall promptly notify the Corporation and follow the procedure, post facto, to the extent feasible, set forth in the preceding sentence. Except as otherwise specifically provided in this Agreement, Vessels are exclusive to the Services, which means the Operator cannot use a Vessel or Vessels for any other purpose apart from the provision of the Services, except in the event of an emergency or with the written permission of the Corporation, in its sole discretion. Notwithstanding anything herein to the contrary, the Operator may use the Vessels in the event of an exigent circumstance, provided that such use is consistent with and does not interfere with Operator’s obligations under this Agreement. For the avoidance of doubt, Spare Vessels in the Operator’s fleet are exclusive to the CFS.

B. The Operator shall not be responsible for construction of the Landing Sites. If a Landing Site is unavailable as of the effective Route Start Date, the Corporation may elect, in its reasonable discretion to either (1) designate an alternative Landing Site or (2) otherwise modify the Services to exclude the unavailable Landing Sites, with no alternative Landing Site – each option (1) or (2) may be on a temporary or permanent basis.

Section 2.05 Services Subject to Maritime Contract.

This Agreement is subject to the terms and conditions of the Maritime Contract between the Corporation and the City, as it may be amended from time to time, provided that if any such amendment materially, adversely affects the Operator’s ability to provide the Services in a manner substantially consistent with the provisions of this Agreement, the Parties may mutually
agree to modify the Agreement to preserve the purposes of this Agreement or either party may terminate this Agreement upon ninety (90) days’ prior notice to the other party. The Operator acknowledges that it has reviewed said contract and agrees to comply with said contract with respect to the Services, and agrees not to take any action or fail to take any action that could cause the Corporation to breach said contract. In addition to any other indemnification obligations of the Operator as set forth in this Agreement, the Operator shall have the obligation to defend, indemnify and hold the Corporation and the City harmless from any claim, liability or judgment to which the Corporation may be subject because of any such action or failure to act which fails to comply with the Maritime Contract. Provided that the Operator shall not, as a result of any action by the City, incur any increased or greater liability than the Operator has to the Corporation pursuant to the terms of this Agreement, the City shall be a third party beneficiary to this Agreement and shall have a direct cause of action against the Operator in the event that any claim be made or any cause of action be brought against the Corporation or the City or if the Operator breaches this Agreement.

Section 2.06 Meetings.

The Operator shall be available to meet with the Corporation as often as reasonably necessary to effectively perform the Services. The Corporation shall be available to meet with the Operator as often as reasonably necessary to enable the Operator to effectively perform the Services.

Section 2.07 Intentionally Omitted.

Section 2.08 Definition of “business days”.

For purposes hereof, “business days” shall mean Mondays through Fridays that are not Federal Holidays or the Friday after Thanksgiving Day; “Federal Holidays” means federal
holidays observed during weekdays as established from time to time under Federal law (Title 5 U.S.C. 6103, as it may be amended), including New Year’s Day, Birthday of Martin Luther King, Jr., Birthday of George Washington (i.e., President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

ARTICLE 3
COMPENSATION

Section 3.01  Compensation.

A.  The Corporation shall pay to the Operator, and the Operator agrees to accept, in full consideration for performance of the Services, the compensation (the “Compensation”), payable as set forth below and in Appendix A, Exhibit 4 attached hereto (subject to certain adjustments as set forth in this Agreement). Except to the extent that the Corporation may impose certain obligations that add to the Operator’s “Cost of Operations” as explicitly set forth in the following sections of this Agreement: (i) Section 3.01 (C) (removal of Component Fees), (ii) 3.02 (A) (wind down costs), (iii) Section 3.05 (changes to Vessel Contracts), (iv) Section 4.02 (wind down costs) (v) Section 6.02 (modification of Services by Corporation), (vi) Section 11.02 (Discretionary Action Costs) (vii) 13.03 (Audit Costs), and for which the parties have agreed in writing that the Corporation will be obligated, such costs will be shared as provided in this Agreement, and the Operator is responsible for all costs and financial risks and liabilities beyond the Compensation.

B.  Commencing on the first day of the Implementation Phase and ending on the RSD of the last Ferry Route to be launched, certain start-up costs (the “Start-Up Costs”) associated with the Implementation Phase and Route Pre-Launch Phase shall be paid to Operator in monthly installments and/or reimbursements (“Start-Up Cost Payments”) as set forth in the schedule attached hereto as Appendix A, Exhibit 4 and Appendix B. Notwithstanding the foregoing,
Start-Up Cost Payments, whether installment-based or reimbursement-based, shall only be paid in full for meeting the relevant milestone ("Milestone") deadlines for delivery of the Services, as set forth in Appendix B. In the event that the Operator fails to meet a Milestone deadline for reasons other than the Corporation’s breach of its obligations hereunder, Start-Up Cost Payments contemplated in this subsection shall be reduced by the amounts indicated in Appendix B.

C. During the Operations Phase, the Operator shall be paid the annual Cost of Operations applicable to that "Calendar Year" (defined as January 1 - December 31) as set forth in Appendix A, Exhibit 4 on a monthly basis in twelve installments (to be pro-rated day-for-day for that portion of the Services (i.e. the number of Ferry Routes) in the Operations Phase in the event of a delay in a Ferry Route Start Date(s), as set forth in Section 3.06 below). Cost of Operations includes all cost categories except for Start-Up Costs, Fuel Costs and the Management Fee. The Corporation may choose, upon 90 days’ written notice to the Operator, to remove any of the following individual cost components (each a “Fee” as described in the table below, collectively the “Component Fees”) from the Cost of Operations and, at the Corporation’s sole option: i) directly provide (in-house or through a third-party provider) the corresponding Service element to the Operator and/or (ii) remove the corresponding Service element from this Agreement (and the obligation of the Operator) -- in each of the aforementioned case(s) the Cost of Operations payable to the Operator shall be reduced accordingly, and to the extent that the Operator incurs costs or expenses in connection with the Corporation’s removal of any of the Component Fees, the Corporation shall be responsible for (a) the costs that the Operator is obligated to pay pursuant to the terms of any approved subcontracts that the Operator has entered into in connection with any of the Component Fees and (b) any reasonable costs or expenses
associated with the termination of employees or winding down of Services associated with the
Component Fees up to a maximum of $50,000.

<table>
<thead>
<tr>
<th>Component Fees</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Homeport Fee</strong></td>
<td>Cost of Homeport for all Vessels in CFS</td>
</tr>
<tr>
<td><strong>Fare Policy Fee</strong></td>
<td>Cost of implementing the Fare Policy discounts detailed in Appendix A Exhibit 6 (V): Fare Policy</td>
</tr>
<tr>
<td><strong>Shuttle Bus Fee</strong></td>
<td>Cost of each “Shuttle Bus Route” (as defined in Appendix A – Exhibit 3)</td>
</tr>
<tr>
<td><strong>Ticketing Fee</strong></td>
<td>Annual cost of providing ticketing support services (exclusive of capital costs for ticketing system)</td>
</tr>
<tr>
<td><strong>Vessel Usage Fee</strong></td>
<td>In the event of a Vessel Purchase Call or Vessel Purchase Put the Cost of Operations shall be reduced by the amount of the Vessel Usage Fee as set forth in Appendix A – Exhibit 4. No payment of employee termination or wind-down costs shall be made in connection with the removal of the Vessel Usage Component Fee.</td>
</tr>
</tbody>
</table>

D. Subject to the pro-rata adjustments in the event of a delayed Route Start Date as set forth in Section 3.06, the Management Fee shall be that certain annual amount, as set forth on Appendix A, Exhibit 4, to be paid to the Operator for managing the Services in accordance with the provisions of this Agreement.

1. Twenty percent (20%) of the then applicable annual Management Fee, less any Assessments incurred as described in Appendix C, shall be paid within thirty (30) days following the close of each “Calendar Quarter” (defined as the three (3) months following each of January 1, April 1, July 1, and October 1) of each Calendar Year.

2. The final 20% shall be retained by the Corporation until the end of each Service Year, when an evaluation of on-time performance and Completed Trips as set forth below in Sections 3.01(D)(3), 3.01(D)(4), 3.01(D)(5) and 3.01(D)(6) will be calculated. In
the event that the Operator falls short of or exceeds its obligations as set forth herein, the amount of the Management Incentive will be adjusted based on Sections 3.01(D)(4) and 3.01(D)(5). This final 20%, after adjustments, is called the “Management Incentive”. The Management Incentive will be paid within 60 days following each Service Year in accordance with Appendix A – Exhibit 4.

3. Provided that the Operator has satisfied all of the following conditions over any Service Year: (i) attained “Service Standards” (as such term is defined in Appendix C) of 90% On-Time for the Initiation Period and thereafter 94% On-Time (the “On-Time Standard”) and (ii) achieved 96% Completed Trips for the first year following each RSD and thereafter 97% Completed Trip (the “Completed Trip Standard”) (as such terms “On-Time” and “Completed Trip” are defined in Appendix C), 100% of the Management Incentive shall be paid.

4. If the Operator achieves Service Standards that correlate to at least 100% of the Management Incentive being paid, then the Management Incentive shall be additionally increased to include the amount of any prior reductions in the Management Fee as described in Section 3.01(D) above (and further described in Appendix C) during the Calendar Year.

5. To the extent that the Operator attains an (i) On-Time Percentage and a (ii) Completed Trip Percentage found in the schedules below, the Management Incentive shall be adjusted to be the lesser of the pay-out percentages as set forth in the following applicable schedules calculated using a straight-line interpolation to a 1/10th of a percent. The On-Time schedule is applicable beginning at the RSD; the Completed Trip Schedule is
divided into a period of one year following the RSD for each route; and a second period beginning two years after the RSD for each Ferry Route.

<table>
<thead>
<tr>
<th>On-Time Percentage (at all times)</th>
<th>Percentage of Management Incentive Fee Paid Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 94%</td>
<td></td>
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<tr>
<td>Default below 85%</td>
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<tr>
<td>100%</td>
<td>105%</td>
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e.g., (1) If the Operator achieves an On-Time percentage of 94% and has 96% Trips Completed in the second year of a route, the Operator shall receive 95% of its Management Incentive and no additional adjustment shall be made. e.g., (2) If the Operator achieves an On-Time percentage of 92.5%, and has 99% Trips Completed in the second year of a route, the Operator shall receive 96.5% of its scheduled Management Incentive. e.g., (3) If the Operator achieves an On-Time Percentage of 90%, and has 93% Completed Trips in the first year of a route, the Operator shall receive 80% of its Management Incentive. All adjustments to the Management Incentive shall be applied as detailed in this Section 3.01(D)(5).

6. If the Operator, during any quarter, achieves Service Standards of less than 85% On-Time or (ii) achieved less than 90% Completed Trips, no Management Incentive shall be paid, such failure shall be deemed a default under this Agreement, and the Operator shall not be entitled to any Cure Period (as such Cure Period is defined in Section 4.01(A)). The Service Standards will be measured following each quarter and will reflect the previous quarter’s performance.
E. The Corporation shall reimburse monthly “Fuel Costs” based on the actual amount of fuel consumption by Vessels providing the Services during the previous month as measured by a certified flow meter (or its equivalent, as determined at the reasonable discretion of the Corporation), and additionally certified by an officer of the Operator, such certification to include receipts for fuel purchased each month in connection with the Services, up to the annual gallons of fuel consumption cap amount (“Fuel Cap”) set forth in Appendix A, Exhibit 4. For the avoidance of doubt, any savings with respect to the annual Fuel Cap may not be “rolled-over” to the following years.

1. “Fuel Costs” shall include costs associated with the fuel purchase (including tax) as well as distribution and delivery. For avoidance of doubt, the Corporation will not reimburse Fuel Costs other than those associated with fuel consumed by the Vessels in providing the Services, and in no instance will fuel reimbursement include reimbursement for other than the Vessels and the Interim Vessels, in accordance with subsection (5) below.

2. The Operator will enter into contracts for: (a) Fuel distribution; and (b) Fuel purchase and delivery, (collectively, the “Fuel Contracts”, the substantial forms of which are to be attached hereto as Appendix D). The Fuel Contracts shall set maximum prices to be paid for fuel distribution and delivery (“Fuel Delivery Costs”). The maximum price to be reimbursed by the Corporation for Fuel Delivery Costs, as limited by the Fuel Cap, is shown in Exhibit D. The Fuel Contracts shall cover the Initial Term of this Agreement (and the Renewal Period, if applicable), and are subject to the review and approval of the Corporation, such approval to be granted in its sole discretion.
3. The Operator shall establish specifications for fuel quality standards, delivery method, schedule, fueling location and other details of the Vessel fueling program, which shall be subject to the Corporation’s reasonable approval thereof. Any proposed material modification to the Fuel Contracts attached hereto as Appendix D or change in fuel supplier shall be mutually agreed to in writing between the Corporation and the Operator and attached to this Agreement as an Addendum.

4. All Fuel Costs in excess of required reimbursements to the Operator for gallons of fuel actually consumed up to the Fuel Cap, are the sole responsibility of the Operator, without any adjustment to the Compensation (and no “roll over” of savings is permitted). It is contemplated that the parties shall mutually agree to adjust the Fuel Cap, temporarily or permanently, as the case may be, in connection with any material change to the Services as directed by the Corporation.

5. Notwithstanding the foregoing paragraph Section 3.01(E)(1) above, reimbursement requests for Fuel Costs in connection with Interim Vessels shall be determined on a case-by-case basis, at the reasonable discretion of the Corporation and subject the requirements set forth in Section 8.02(G). No reimbursements for fuel used by Interim Vessels used in connection with the CFS shall be made without the Corporation’s receipt of an invoice that includes a calibration for the fuel flow meter associated with such Interim Vessel.

F. The Corporation shall have sole discretion in making any adjustment in the Base Fare, which is $2.75 as of the Effective Date. The Operator shall not be entitled to any increase in the Compensation in connection with an increase to the Base Fare, if the Corporation increases the Base Fare (a) to reflect (up to) the then current Metropolitan Transportation Authority (“MTA”)...
“Single Ride Ticket” fare (as such fare is established by the MTA; See www.mta.info for Single Ride Ticket fare listing) or (b) to reflect the lesser of (i) (up to) the cumulative, compounded percentage increase in the Consumer Price Index – Urban Wage Earners and Clerical Workers – NY Metro – Transportation Index, as such cumulative percentage increase is measured for the period from the Effective Date to the date of the Corporation’s then current election to increase the Base Fare and (ii) (up to) a 2.5% annual compounded increase to the Base Fare measured for the period from the Effective Date to the date of the Corporation’s then current election to increase the Base Fare. If the Corporation elects to increase the Base Fare above the amounts specified in (a) or (b) above and, as a result of such Base Fare increase, ferry ridership is decreased consistently by more than ten percent (10%) over a 120-day period, as adjusted for seasonal ridership fluctuations, the Operator may request in writing, within thirty (30) business days of the close of such 120-day period, that the Corporation pay the Operator for the economic losses due to lost revenue of the Operator. The Corporation shall not be required to consider any late requests for additional payment or honor late notifications with respect to this paragraph. Notwithstanding the foregoing, if the Corporation elects to increase the Base Fare, as provided herein, the Corporation will retain all revenue associated with the increase, which may be done pursuant to Section 3.07 Corporation’s Right to Offset, below.

G. Notwithstanding anything to the contrary herein, once all Ferry Routes, as described in Appendix A, are in Operation phase, and provided the optional East River Route has been activated as contemplated herein, if all fare-box revenue received directly by the Operator falls below $8,250,000 (“Fare-Box Revenue Threshold”) in any given Service Year that includes all Ferry Routes described in Appendix A in Operation Phase (as certified in writing by an officer of the Operator and confirmed by an independent audit as provided for in Article 8, Financial
Reporting), the Corporation shall increase the Compensation to the Operator by the amount of the
difference between the Fare-Box Revenue Threshold and the total amount of fare-box ticket
revenues received directly by the Operator. If the East River Route has not been activated, the
Fare-Box Revenue Threshold shall be $4,400,000. There shall be no applicable Fare-Box
Revenue Threshold until at least five Ferry Routes are in Operation phase for no less than twelve
months.

H. The Operator hereby acknowledges that any request for reimbursement or other
invoice for payment to the Corporation will take no longer than sixty (60) days to process and
provide for payment to the Operator (provided that the Operator has submitted full and complete
paperwork in connection with such payment request and no requested amount is in dispute).
Payment to the Operator by the Corporation within such sixty (60)-day time period shall be
considered timely or an “on-time” payment with respect to this Agreement provided that such
payment is not delayed beyond sixty (60) days. Notwithstanding anything to the contrary herein,
the Corporation will take no longer than forty-five (45) days from receipt of reimbursement
requests with respect to making payments for Fuel Costs, provided that the Operator has submitted
full and complete paperwork in connection with such payment request and no requested amount is
in dispute.

Section 3.02 Availability of Funding; Limitation on the Corporation’s Obligation to Pay
Operator for Services.

A. Notwithstanding and in addition to any other provision of this Agreement, if there
shall be a reduction of the Funding, for any reason whatsoever, then, the Corporation, in its sole
discretion, may terminate this Agreement upon ninety (90) days’ prior written notice to the
Operator, and, upon such termination, the Corporation shall (i) discharge its obligation to pay the
Operator such Compensation due and payable to the Operator hereunder as of the date of such termination with such Funding as has actually been released and made available to the Corporation by the City for payment hereunder and (ii) reimburse the Operator for (a) the costs that the Operator is obligated to pay pursuant to the terms of any approved subcontracts (including collective bargaining agreements) that the Operator has entered into in connection with any of the Services, and (b) any reasonable costs or expenses associated with the termination of employees or winding down of Services up to a maximum of $50,000. All payments to the Operator are subject to the other terms, covenants and conditions of this Agreement.

B. The Operator understands and agrees that neither the Corporation nor the City represents or warrants that the Compensation will be sufficient to cover the costs of undertaking the Services in accordance with this Agreement. The Operator agrees that it will be solely responsible for any costs and expenses in excess of the Compensation that may be incurred in undertaking the Services in accordance with this Agreement. Notwithstanding the foregoing, the Operator may request in writing to the Corporation payment for certain “New Regulatory Costs”, which such costs may include the material costs associated with Operator’s compliance with any “Change in Law” (as such term is defined in 4.01 (E)), but excluding any overhead, “non-direct” costs associated with such compliance. The Corporation, in its sole discretion, may elect to either make such requested additional payment or terminate this Agreement upon ninety (90) days’ prior notice to the Operator. Upon receipt of the Corporation’s notice of termination, the Operator may rescind its request for said additional payment in writing to the Corporation within (10) business days of receipt thereof, and the Corporation’s right to terminate this Agreement with respect to the Operator’s additional payment request shall be deemed waived in that particular instance. The Corporation shall not be required to consider any late requests for additional payment or honor late
notifications with respect to this paragraph. Notwithstanding anything to the contrary in this
Section 3.02(B), the Operator shall be responsible on a pari passu basis for fifty percent (50%) of
such New Regulatory Costs, up to an annual maximum expenditure by Operator of $125,000.
Section 3.03  Corporate Guaranty.

The Operator’s parent company shall provide a corporate guaranty with respect to
the Operator’s obligations to perform the Services hereunder, in form and substance satisfactory to
the Corporation in its sole discretion (to be attached hereto as Appendix E).

Section 3.04  Revenue Distribution.

The Operator may retain all control and revenues associated with advertising sales,
including, but not limited to, sampling, electronic, telecommunications, merchandise sales and
other media inventory, and concession sales, including but not limited to: sundries, alcoholic
beverage, ATM fees, photography and multi-media products, souvenirs, broadband access, etc.,
(the “Operator’s Sales and Media Agreements”) subject and subordinate to that certain
Branding and Sponsorship Agreement and any corresponding Branding and Sponsorship License
Agreement(s) as contemplated in this Agreement (See Article 9 hereof).

Fare-box revenues shall be allocated based on annual ridership numbers as follows:

a.  EDC Fare-box Participation between 3 million to 4.6 million
full-fare riders: 0% of fare-box revenue each Calendar Quarter;

b.  EDC Fare-box Participation above 4.6 million full-fare riders to 5.5
million full-fare riders: 0% of fare-box revenue each Calendar Quarter;

c.  EDC Fare-box Participation above 5.5 million riders to 6.5 million
riders (irrespective of whether such riders pay full, discounted or no fare): 50% of
fare-box revenue from such riders each Calendar Quarter;
d. EDC Fare-box Participation above 6.5 million riders (irrespective of whether such riders pay full, discounted or no fare): 25% of fare-box revenue from such riders each Calendar Quarter.

To the extent that the Corporation is entitled to fare-box revenue, it shall be paid to the Corporation on a Calendar Quarter(ly) basis within 30 days of the close of each Calendar Quarter. EDC Fare-box Participation will be calculated on an aggregate annual basis each quarter, but will not be pro-rated. Participation payments shall only occur once the aggregate amounts indicated in (a), (b), (c), and (d) above are exceeded. For avoidance of doubt, if in the third quarter of any given Service Year, ridership is below 5.5 million at the beginning of the quarter and at 6.0 million by the end of the quarter, then participation payments shall be calculated and paid after the close of the third quarter for 500,000 passengers and no participation shall have been made in the first or second quarter of the year.

Section 3.05 Vessel Purchase by Corporation.

A. Vessel Purchase Call

The Corporation shall have the right, on 180 days’ prior written notice to purchase all (but not less than all) the Vessels (the “Vessel Purchase Call”) then providing Services, at any time after June 1, 2018, up to and including the date that is one year prior to the expiration of the Initial Term (for the avoidance of doubt, with respect to the Initial Term, said prior notice of the Corporation’s exercise of the Vessel Purchase Call may be given at any time on and after December 1, 2017), and during the period commencing upon the first day of the Renewal Term, if any, up to and including the date that is one year prior to the expiration of the Renewal Term (for the avoidance of doubt, with respect to the Renewal Term, said prior notice of the Corporation’s exercise of the Vessel Purchase Call may be given at any time on and after the date which is 180
days prior to the commencement of the Renewal Term), as set forth in this Section 3.05. The Corporation’s notice of the Corporation’s exercise of the Vessel Purchase Call shall be referred to as the “Vessel Purchase Call Notice”.

Upon the issuance of the Vessel Purchase Call Notice, the Operator (or its designated affiliate vessel holding company) shall, within 30 days’ of the date of such Vessel Purchase Call Notice, deliver to the Corporation a Bill of Sale for the Vessels for final review and approval (the substantial form of which is attached hereto as Appendix G- Exhibit 3) by the Corporation. Upon the purchase date (180 days following the date of the Vessel Purchase Call Notice), the Corporation shall make payment for the Vessels and the Bill of Sale shall be executed by the parties and subsequently timely filed with the appropriate governmental entities. Upon the exercise of the Vessel Purchase Call, the Operator shall cooperate with the Corporation to assure that the Services shall continue without interruption. For the avoidance of doubt, no employee termination or wind-down costs shall be paid in connection with the Vessel Purchase Call. As of the date of the Vessel Purchase Call Notice, the Cost of Operations shall be reduced by the amount of the Vessel Usage Fee as set forth in Appendix A – Exhibit 4.

B. Vessel Purchase Put

The Operator shall have the right, on one year’s prior written notice, to obligate the Corporation to purchase all (but not less than all) of the Vessels (the “Vessel Purchase Put”) then providing Services, at any time after the following dates have occurred: (i) the date of commencement of the Initial Term and (ii) the date that all the Vessels are in use providing the Services; but in no event earlier than twenty-four months after the Commencement Date of this Agreement (for the avoidance of doubt, the Operator shall not issue said one-year’s prior written notice to the Corporation prior to the occurrence of the dates (i) and (ii) as set forth above), up to
and including the date that is one year prior to the expiration of the Initial Term and during the period commencing upon the first day of the Renewal Term, if any, up to and including the date that is one year prior to the expiration of the Renewal Term. The Operator’s notice of the Operator’s exercise of the Vessel Purchase Put shall be referred to as the “Vessel Purchase Put Notice”.

In order for the Operator to exercise the Vessel Purchase Put, the Operator must satisfy all of the following conditions on the date of the transfer of title: (i) any/each of the Vessels subject to the Vessel Purchase Put must be in use providing the Services on the date of the Vessel Purchase Put; and (ii) the Operator must have a current and valid Coast Guard Certificate of Inspection, as set forth in 46 U.S. Code § 3309 (a “COI”) for each Vessel; and (iii) each Vessel must meet all Service Standards and Vessel Requirements as described herein (Appendix G, Exhibit 2 Vessel Requirements (i) Particulars) unless such requirements were waived by the Corporation previously in writing. Notwithstanding the foregoing, the Corporation shall not be required to make full payment of the Vessel Purchase Price (as defined below) for such Vessels (as set forth in Section 3.05(E) below) and shall be entitled to apply a discount to the Vessel Purchase Price equal to the sum of (a) the Management Fees paid as of the date of transfer of title to the Vessel Purchase Price payment and (+) (b) 10% of the Vessel Purchase Price in the event that (i) the Operator is in default with respect to a material obligation of this Agreement; (ii) such default remains uncured after the applicable Cure Period; and (iii) in the event that the Operator disputes such default, a court of competent jurisdiction determines that such material default is valid.

Upon the issuance of the Vessel Purchase Put Notice, the Operator (or its designated affiliate vessel holding company) shall within 30 days’ of the date of such Vessel Purchase Put Notice deliver to the Corporation a Bill of Sale for the Vessels for final review and approval (the
substantial form of which is attached hereto as Appendix G- Exhibit 3) by the Corporation. Upon the purchase date (1 year following the date of the Vessel Purchase Put Notice), the Corporation shall make payment for the Vessels, and the Bill of Sale shall be executed by the parties and subsequently timely filed with the appropriate governmental entities. Upon the exercise of the Vessel Purchase Put, the Operator shall cooperate with the Corporation to ensure that the Services shall continue without interruption. As of the Corporation’s purchase (date due to the Vessel Purchase Put), the Cost of Operations shall be reduced by the amount of the Vessel Usage Fee as set forth in Appendix A – Exhibit 4.

For the avoidance of doubt, in the event that the Operator continues to provide the Services hereunder with the Corporation-owned Vessels following a Vessel Purchase Call/Put pursuant to this Agreement, the Operator shall continue to be responsible for all Vessel maintenance, overhauls, damage (apart from ordinary wear and tear), and USCG inspections, as set forth herein.

C. Vessel Purchase Obligation Upon Termination

In the event of the termination of this Agreement for any reason, then, at the request of Operator (such request shall be referred to as the “VPOUT Notice”), the Corporation shall be obligated to purchase all (and not less than all) of the Vessels that are providing Services as of the date of such termination (the “Vessel Purchase Obligation Upon Termination”) under the same provisions set forth in the preceding paragraph regarding the Vessel Purchase Put set forth in Section 3.05(B).

Notwithstanding the foregoing, the Corporation shall not be required to make full payment of the Vessel Purchase Price (as defined below) for such Vessels (as set forth in Section 3.05(E) below) and shall be entitled to apply a discount to the Vessel Purchase Price equal to the sum of (a) the Management Fees paid as of the date of transfer of title and (+) (b) 10% of the Vessel Purchase
Price in the event that: (i) the Operator is in default with respect to a material obligation of this Agreement; (ii) such default remains uncured after the applicable Cure Period; and (iii) in the event that the Operator disputes such default, a court of competent jurisdiction determines that such material default is valid. No employee termination or wind-down costs shall be paid in connection with the Vessel Purchase Obligation Upon Termination.

Upon the issuance of the VPOUT Notice, the Operator (or its designated affiliate vessel holding company) shall, within 30 days’ of the date of such VPOUT Notice, deliver to the Corporation a Bill of Sale for the Vessels for final review and approval (the substantial form of which is attached hereto as Appendix G- Exhibit 3) by the Corporation. Upon the purchase date (1 year following the date of the VPOUT Notice), the Corporation shall make payment for the Vessels, and the Bill of Sale shall be executed by the parties and subsequently timely filed with the appropriate governmental entities. Upon the exercise of the Vessel Purchase Obligation Upon Termination, Operator shall cooperate with the Corporation to assure that the Services shall continue without interruption.

D. The Corporation’s obligation to purchase the Vessels is conditioned upon the following: (i) Operator guarantees that the Vessels, at the time of delivery, are free from all encumbrances and maritime liens or any debts whatsoever; (ii) should any claims, which have been incurred prior to the time of delivery of the Vessels to the Corporation be made against the Vessel(s) after delivery, Operator shall indemnify the Corporation and hold the Corporation harmless against all consequences of such claims, (iii) the Operator shall provide an assignment of applicable warranties in connection with the Vessels and any third-party component parts installed in the Vessels (such warranties to be agreed upon during the Corporation’s review of the
Operator’s shipyard/shipbuilding contracts), and (iv) the Operator certifies that each Vessel being purchased by the Corporation has a current and valid COI.

E. Security Agreement

In the event that the Operator enters into any agreement to provide a security interest in the Vessels to a third party (a “Security Agreement”), such Security Agreement shall provide for simultaneous courtesy notice to the Corporation with respect to any missed payment and/or uncured defaults with respect to the Operator’s payment obligations under the Security Agreement. The Security Agreement shall recognize the Corporation’s purchase option and the Operator’s put rights. Operator will include provisions in any Security Agreement to provide the Corporation with the right to cure any default for a period of a minimum of 60 days, unless such requirement is otherwise waived or approved in writing by the Corporation. Notwithstanding the foregoing the Operator shall use good faith efforts to provide the Corporation with the right to cure any default for a period of a 180 days.

F. Review of Vessel Contracts

The Operator shall submit the most current drafts of the “Vessel Contracts” (as defined hereafter) to the Corporation and its Qualified Representative (as defined below) for review and comment no later than 24 hours following the Effective Date of this Agreement, and the Corporation shall have fourteen (14) business days from the receipt thereof to provide initial comments and/or revisions to the Vessel Contracts (for the avoidance of doubt, such review and approval process period shall include the Qualified Representative’s review of the same as described in the following paragraph). For the avoidance of doubt, if drafts of the Vessel Contracts are provided prior to the Effective Date of this Agreement, the Operator shall provide new, then-current drafts of the Vessel Contracts within 24 hours following the Effective Date. In
addition, the Operator must submit all near-final, but not executed, Vessel Contracts for review and approval by the Corporation, such approval to be granted in the Corporation’s sole discretion, no later than twenty-five (25) days prior to the Operator’s intended execution and/or acceptance date of the Vessel Contract(s), as applicable for (each of) the Vessel Contracts (for the avoidance of doubt, such review and approval process period shall include the Qualified Representative’s review as described in the following paragraph). The Corporation will have twenty (20) days from the receipt of the near final Vessel Contracts to review and approve the near final Vessel Contracts (for the avoidance of doubt, such review and approval process period shall include the Qualified Representative’s review of same as described in the following paragraph), such approval to be granted in the Corporation’s reasonable discretion pursuant to the terms set forth herein. Any subsequent material modifications to the Vessel Contracts prior to the execution thereof shall require the Corporation’s written approval, such approval to be granted in the Corporation’s reasonable discretion.

The Corporation’s review of the Vessel Contracts contemplated herein shall be referred to as the “Contemplated Review.” In the event that the Corporation fails to complete the Contemplated Review pursuant to the review periods set forth in this subsection F, such delay shall be referred to herein as a “Review Delay.” In the event that there is a Review Delay, the RSD for the Rockaway Route shall toll on a day-for-day basis equivalent to the number of days of the Review Delay.

The Operator agrees to work diligently and in good faith to address the Corporation’s comments/revisions to the Vessel Contracts in a manner that is mutually agreeable to Operator and Corporation, and to the extent that such comments/revisions are reasonable and do not add costs, the Operator will incorporate such comments/revisions in the final Vessel Contracts. To the extent
that the recommendations add costs, the Corporation will have the option to pay additional Compensation to the Operator in which case the Operator will incorporate the comments/revisions in the final Vessel Contracts.

The Corporation reserves the right to have a “qualified” third party owner’s representative (a “Qualified Representative”) advise the Corporation with respect to the (i)Vessel Contracts, including without limitation, Vessel plans and specifications, (ii) shipyards, and (iii) Vessels throughout the construction process. For purposes of this paragraph, a “qualified” third party owner’s representative shall mean an individual with at least 5 years of experience in/with the commercial maritime industry and an understanding of shipbuilding, as such qualifications are determined in the Corporation’s sole discretion. The Operator agrees to work diligently and in good faith to address the Qualified Representative’s recommendations in a manner that is mutually agreeable to Operator and Corporation, and to the extent that such recommendations are reasonable and do not add costs, will incorporate such recommendations in the final Vessel Contracts. To the extent that the recommendations add costs, the Corporation will have the option to pay additional Compensation to the Operator in which case the Operator will incorporate the recommendations in the final Vessel Contracts. After the Vessel Contracts have been executed, any material change order or change of terms and conditions in connection with the Vessel Contracts shall be subject to the Corporation’s prior review and approval, such approval to be granted in the Corporation’s sole discretion. In the event that the Operator: (i) fails to comply with any material provision of the aforementioned review and approval procedures in connection with the Vessel Contracts (a “Material Procedure”); (ii) fails to incorporate a specification in the Vessel Contract that is required by the Qualified Representative or the Corporation with respect to a material element of a Vessel set forth in Appendix G – Exhibit 4 (a “Material Element”); or (iii)
obligates the Corporation to purchase the Vessels pursuant to Section 3.05(B) or 3.05(C) having failed to deliver Vessels that incorporate the Material Element(s) (subject to any applicable notice and cure periods (described below) and provided that the Corporation has authorized any applicable payments for any increased costs as provided herein (whether the result of the Operator’s or the Corporation’s recommendation)), then the Operator’s rights as set forth in the Vessel Purchase Put and the Vessel Purchase Obligation Upon Termination above shall both be fully forfeited and extinguished provided that either (i) the Corporation has not waived its right with respect to such Material Element or Material Procedure, as the case may be, in writing to the Operator or (ii) the Corporation has provided notice and opportunity to the Operator to cure such failure to comply with such Material Element or Material Procedure, as the case may be, and within ten (10) days of receipt of said notice, the Operator shall have failed to cure such default. Notwithstanding the foregoing, the Operator shall be entitled to request that the Corporation review the Operator’s reasons as to why the Operator believes the comments and/or revisions by the Corporation and/or Qualified Representative with respect to any Material Element are not reasonable, and the Corporation shall determine, in its reasonable judgment, whether the Operator must include such Material Element (the “Operator’s Appeal”). Under no circumstances shall the Corporation be entitled to find that the Operator is not in compliance with the obligations hereunder in the event that (i) the Operator has gone through the Operator’s Appeal and the Corporation or the Qualified Representative, as the case may be, has required the Operator to include such Material Element with which the Operator disagreed and (ii) such non-compliance with the Agreement is the result of the Operator’s compliance with the requirements of this Section 3.05(F).
The Operator shall be given three (3) days’ notice to cure (the “Notice to Cure”) with respect to: (i) a request by the Operator for final approval of Vessel Contracts if the Corporation or its Qualified Representative conclude that the Operator did not comply with the Material Procedures; (ii) a request by the Operator for final approval of Vessel Contracts if the Corporation or its Qualified Representative conclude that the Operator did not incorporate a Material Element into a Vessel Contract; and (iii) a request by the Operator for final approval of a Vessel after delivery of such Vessel if the Corporation or its Qualified Representative conclude that the Operator did not incorporate a Material Element into such Vessel.

For purposes of this Agreement, “Vessel Contracts” shall mean the following: Vessel construction schedule, Vessel plans and specifications, shipyard contract/vessel construction contract, contracts with third parties for components to be incorporated into the Vessels (e.g. engines) and Security Agreement -- all of which are to be incorporated as part of Appendix G hereto upon finalization thereof.

G. Vessel Exercise Price and Vessel Purchase Price

The “Vessel Purchase Price” shall be calculated as follows:

1. The Vessel Exercise Price shall be the actual cost (such actual cost to be described in the Vessel Acquisition Plan) of the Vessels that comply with Section 3.05, in the aggregate not greater than 115% of $55,551,836.00 for 16 Vessels at 149 passenger capacity (or 115% of $65,943,628.00 for 19 Vessels at 149 passenger capacity).

2. The Vessel Exercise Price shall be individually calculated as of the date of the Vessel Purchase Call Notice, the Vessel Purchase Put Notice, or the VPOUT Notice, as applicable, for each Vessel based on the Book Value using a twenty-five (25) year useful life and a fifty percent (50%) salvage value. Each Vessel eligible for purchase will have a
then-current Exercise Price and the sum total of such Exercise Prices is referred to as the "**Vessel Purchase Price**". Under no circumstance shall the Vessel Purchase Price exceed the Vessel Exercise Price indicated in paragraph 3.05(G)(1), which is the maximum price to be paid under any circumstance by the Corporation. If either of the Vessel Purchase Put, Vessel Purchase Call or Vessel Purchase Obligation Upon Termination is exercised, the Cost of Operations Payments due to Operator shall be further reduced as of the date of the Vessel Purchase Call Notice, the Vessel Purchase Put Notice, or the VPOUT Notice, as applicable, by the following amounts provided in Appendix A, Exhibit 4 (Vessel Usage Discounts). In Appendix A, Exhibit 4, Vessel Usage Discounts are calculated for Vessels with and without the Add Alternate Route. For the avoidance of doubt, if only some Vessels are purchased as described herein, the amounts in Appendix A, Exhibit 4 will be pro-rated accordingly. See Appendix A, Exhibit 4 for a schedule of the Vessel Purchase Price.

Section 3.06  **Failure to Timely Commence Ferry Routes.**

A.  In the event that the Operator fails to commence any one of the Ferry Routes upon the designated Route Start Dates, for reasons other than the Corporation’s failure to perform its obligations hereunder, as set forth in the Service Plan subject to a day-for-day toll of the Route Start Date, and, correspondingly, the Outside Conditions Date and/or the Expiration Date of this Agreement, as the case may be, caused by litigation attacking the award of this Agreement, in each case, only to the extent that and for so long as the Corporation elects, at its sole option, not to provide funding as provided in this Agreement, but in the event that such Toll period extends beyond 180 days, the Corporation shall have the right to terminate this Agreement in its sole discretion upon 30 prior days' notice to the Operator (Route Start Dates are listed in Appendix A),
then the following amounts shall be paid to the Corporation, not as a penalty, but as liquidated damages, within ten (10) days’ of notice of such failure to timely launch the Services. (For the avoidance of doubt, there shall be no notice and cure period in connection with the Operator’s failure to commence a Ferry Route within 26 days as of the respective RSD):

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<th>Failure to Timely Commence -- 2017 Route Start Date Liquidated Damages Schedule</th>
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<th>Failure to timely Commence -- 2018 Route Start Date Liquidated Damages Schedule</th>
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Notwithstanding the foregoing, provided that the Operator commences the Services on a RSD as specified herein, the Operator shall, for the first six (6) months of any RSD, and with the Corporation’s reasonable approval, be entitled to use Interim Vessels, provided that they are capable of operating safely and accommodating the contemplated passenger loads.

B. During the Operations Phase, the Operator shall be paid the annual Cost of Operations as part of the Compensation and the Management Fee applicable to the relevant Calendar Year as set forth in Appendix A, Exhibit 4; provided, however, that in the event that the Operator fails to commence any one of the Ferry Routes upon the designated Route Start Dates as set forth in the Service Plan (such Route Start Dates being subject to the Toll Period described in paragraph A above) for reasons other than the Corporation’s failure to perform its obligations hereunder, payment for said Cost of Operations Amounts and Management Fee shall be pro-rated for each day of delay based on that portion of the Services (i.e. number of Ferry Routes) actually in the Operations Phase.

C. In the event of a termination for cause in connection with the Operator’s failure to timely commence a Ferry Route, no employee termination or wind-down costs shall be paid.

Section 3.07 Right to Offset.

The Corporation shall have the right to offset any amounts owed to the Corporation by the Operator against any payments owed to the Operator pursuant to this Agreement. The Operator shall have the right to offset any undisputed amounts owed to the Operator (as evidence by a final adjudication by a court of competent jurisdiction that such amount is owed to Operator or written acknowledgement by the Corporation that such amount is undisputed) by the Corporation against any payment owed to the Corporation pursuant to this Agreement.
Section 3.08 **Survival.**

The provisions of this Article 3 shall survive the expiration or earlier termination of the Term.

**ARTICLE 4**

**SUSPENSION, TERMINATION: ASSESSMENTS**

Section 4.01 **Termination Due to Acts of Operator.**

A. Except as otherwise provided in this Agreement (e.g., where the Agreement provides for a specific remedy for the Corporation in the event of a breach such as Assessments set forth in Appendix C), if the Operator fails to perform any element of the Services in accordance with the provisions of this Agreement, or breaches any of the terms, covenants or provisions of this Agreement or of the Site Access Agreements, or if any material representation or warranty made by the Operator in this Agreement shall prove to be untrue, or be otherwise breached, and such failure shall continue for a period of thirty (30) business days ("Cure Period") after written notice thereof specifying such failure (except that failure to perform certain obligations in connection with the Operator’s Life Safety obligations in connection with the Services shall have a shorter Cure Period as set forth subparagraph (B) below) after written notice thereof specifying such failure, subject to Section 3.01(D)(6) and Section 3.06, the Corporation shall thereupon have the right to terminate this Agreement by giving notice in writing of the fact and the date of such termination to the Operator, and this Agreement shall terminate on the date set forth in said notice (if such failure by the Operator requires acts to be done or conditions to be removed which cannot by their nature reasonably be done or removed within such thirty-day period, in which case the Operator shall provide a plan, to the satisfaction of the Corporation, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time the
Corporation may terminate this Agreement for default pursuant to the provisions of this paragraph). Notwithstanding the foregoing, if the termination is due to the Operator’s failure to meet the requirements set forth in Article 3.01(D)(6) or Article 3.06 there shall be no Cure Period. Subject to the provisions of Article 2 and Article 3 hereof, the Operator shall receive equitable compensation for such Services as shall, in the reasonable judgment of the Corporation, have been satisfactorily performed by the Operator up to the date of the termination of this Agreement, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein.

B. Notwithstanding paragraph (A) above, the Operator shall immediately cure any and all breaches of the Operator’s Life Safety obligations (as such term is defined in Appendix A, Exhibit 2). In addition, the Corporation reserves the right, without prior notice to the Operator, to cure the Operator’s breach of any Life Safety obligations and deduct any costs incurred by the Corporation in connection therewith from the Compensation.

C. Certain failure(s) to perform the Services shall, in addition to the rights and remedies set forth herein, be subject to the Assessments set forth in Appendix C, not as a penalty, but as liquidated damages.

D. The Corporation need not wait until the completion of the Services to seek the enforcement of its rights against the Operator if there has been a termination for cause, and no monies shall be due or payable to the Operator as of the date of a notice of termination for cause until the Transition Actions in connection with the Services are completed.

E. Notwithstanding the foregoing, the Operator shall not be responsible for the performance of the Services to the extent that such performance is excused in the case of a “Force Majeure Event”. A “Force Majeure Event” shall include any act, condition or event that (despite the Operator’s reasonable efforts to mitigate or minimize the impact of such act, condition
or event) to the extent such act, condition or event is entirely beyond the reasonable control of the Operator, including: (1) any reasonable action taken by the Vessel or Interim Vessel captain or a port captain of the Operator to avoid unsafe conditions or danger where the Vessel or Interim Vessel captain or a port captain of the Operator has reasonably determined that a condition exists that makes it unsafe or impossible to operate the Vessel or Interim Vessel in accordance with the provisions of this Agreement and/or (2) any naturally occurring events such as landslides, underground movement, earthquakes, lightning, tornadoes, hurricanes, floods, epidemics, and other acts of God, weather conditions (except weather conditions as seasonal for the areas in which the Services are to be performed), river closures, or obstructions, and/or (3) restrictions by the Coast Guard or DOT, or (4) labor strikes not specific to the Services, and/or (5) lockouts or disputes not specific to the Services, and/or (6) enemy or hostile government action, and/or (7) civil commotion, and/or (8) terrorism or terrorist act, and/or (9) explosion, and/or (10) act of a declared public enemy, and/or (11) war, and/or (12) blockade or insurrection, and/or (13) riot or civil disturbance or revolution, and/or (14) sabotage, and/or (16) fire, and/or (17) and/or casualty, and/or (18) “Change in Law,” (as defined hereafter) only to the extent that any or all of the acts, events or condition 2-18 above prohibit the timely performance of the Services or make the performance of the Services impossible, but not including the Operator’s insolvency or financial condition, and only to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement, and provided that Operator has notified the Corporation in writing within 48 hours of such Force Majeure Event. Notwithstanding the foregoing, any acts or omissions of the Operator’s subcontractors or suppliers shall not be considered beyond the reasonable control of
the Operator (and therefore not eligible for relief under this Section 4.01 (E)), unless such acts or omissions are a result of the enumerated Force Majeure Events set forth in (2) – (17) above.

For purposes of this Agreement, “Change in Law” means, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any federal, state or local law, or admiralty or maritime law, or any code or regulation (“Applicable Law”), after the Effective Date, unless such Applicable Law was on or prior to the Effective Date duly adopted, amended, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any federal, state, multi-state, regional, maritime or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction (a “Governmental Body”); or (b) the order or judgment of any Governmental Body issued on or after the Effective Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Effective Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Operator; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence. It is specifically understood, however, that a Change in Law shall not include: (a) the issuance or non-issuance of orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained (i) with respect to the Operator, in order to perform the Services required under the Agreement; and (ii) with respect to the Corporation, in order to construct the
Landing Sites; (b) adverse judgments or orders of any court or other Governmental Body resulting from litigation involving the Operator (unless the subject matter of such litigation is itself a Change in Law); or (c) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Effective Date other than restrictions on Landing Sites and Vessels issued by the United States Coast Guard that suspend or limit navigation and operation because of security threats and corresponding maritime security ("MARSEC") conditions.

Operator shall use its reasonable efforts to limit the delay or suspension of performance of the Services to that required by the Force Majeure Event, and shall take all reasonable steps to minimize delays or suspension of performance, while maintaining safe operating conditions. In the event of a Force Majeure Event, the Corporation shall not reimburse the Operator for any expenditures that either (i) the Operator could have reasonably avoided or (ii) the Operator did not actually incur during such Force Majeure Event. For example, if the Operator is excused from providing Services by reason of a Force Majeure Event and the Operator would reasonably be able to reduce labor costs, then the Corporation shall not be obligated to reimburse the Operator for such unnecessary labor costs. In addition, the Corporation shall not be obligated to reimburse the Operator for any costs that are reimbursed by insurance. The Term shall be subject to a Toll Period for every day that that the Services cannot be substantially performed as contemplated herein due to a Force Majeure Event, for a maximum of 90 days in any single instance or a maximum of 180 days in total (i.e., the sum total of all respective Toll Periods in connection with any and all Force Majeure Events shall not exceed 180 days). Upon the expiration of such maximum Toll Period, the Corporation may elect, in its sole discretion, to either further toll the Term or terminate this Agreement. If a Force Majeure Event results in a certain Landing
Site being unfit for the intended purposes herein, the Corporation may elect, in its sole discretion to
either (1) designate an alternative Landing Site or (2) otherwise modify the Services to exclude the
unavailable Landing Site, with no alternative Landing Site – each option (1) or (2) may be on a
temporary or permanent basis (for the avoidance of doubt, upon the Corporation’s reconfiguration
of the affected Ferry Route(s) the Term shall cease to toll).

Notwithstanding the foregoing and subject to the Corporation’s termination rights
in Section 3.02(B) hereof, a Change in Law that results in New Regulatory Costs, but does not
strictly prohibit the performance of the Services or make the performance of the Services
impossible, shall not be considered a Force Majeure Event, if (i) the Corporation elects, in its sole
discretion, to pay such New Regulatory Costs, which such payment by the Corporation, the parties
hereby acknowledge and agree, would allow for the Operator’s full compliance with the Change in
Law, or (ii) the Operator elects in a writing to the Corporation to fully comply with the Change in
Law and self-pay the New Regulatory Costs without further adjustment to the Compensation by
the Corporation. Notwithstanding anything to the contrary in this Section 4.01(E), the Operator
shall be responsible on a pari passu basis for fifty percent (50%) of such New Regulatory Costs, up
to an annual maximum expenditure by Operator of $150,000 and such expenditure by the Operator
shall not be considered a Force Majeure Event.

Section 4.02 Termination/Suspension Related to Funding.

In addition to any other right of suspension or termination set forth in this
Agreement, if there shall be a suspension, termination or reduction of the Funding and if the
Corporation decides to terminate or suspend the Services, the Corporation shall so notify the
Operator within 90 days of such suspension, termination or reduction of Funding and the Operator
shall, and agrees to, cease to perform the Services as of the date set forth in such notice, which shall
not be sooner than two days after the delivery of such notice. Any such notice shall be a notice of termination of this Agreement only. If this Agreement is so terminated, the Operator shall not enter into any further binding obligations in connection with any Services to be rendered following the date specified in the notice. Notwithstanding the foregoing, in the event of such termination, the Operator shall receive equitable compensation for such Services as shall, in the reasonable judgment of the Corporation, have been satisfactorily performed by the Operator up to the date of termination of this Agreement, subject to the provisions of Article 2 and the payment provisions of Article 3 and Appendix A, Exhibit 4 of this Agreement, and to any rights of audit and setoff that may be available to the Corporation. Subject to the limitations on the Corporation’s obligation to pay wind-down costs as set forth in Sections 3.01(C) and 3.02(A) and any offsets that the Corporation may have pursuant to Section 3.07, such equitable compensation shall include (a) the costs that the Operator is obligated to pay pursuant to the terms of any approved subcontracts that the Operator has entered into in connection with any of the Services, and (b) any reasonable costs or expenses associated with the termination of employees or winding down of Services up to a maximum of $50,000.

Section 4.03 Effect of Notice of Termination.

On the Expiration Date set forth in any notice of termination (either from the Operator or from the Corporation) pursuant to this Article 4, the Operator shall cease operations under this Agreement and shall not be entitled to any additional Compensation for Services beyond the stated Expiration Date.

Section 4.04 No Release.

Termination of this Agreement, whether by expiration of its Term or otherwise, shall not release the Operator from any liability to the Corporation or from the Operator’s
indemnification and other obligations under this Agreement that have not been specifically terminated pursuant to this Agreement.

Section 4.05 Survival; No limitation on Corporation’s Rights.

Any and all obligations and/or liabilities of Operator and the Corporation accruing prior to the Expiration Date of this Agreement and then outstanding shall survive the termination of this Agreement. The provisions of this Article 4 shall be in addition to any other rights the Corporation may have under this Agreement, any applicable statute, any applicable agreement, or otherwise, in law or in equity.

Section 4.06 Termination by the Operator.

If the Corporation fails to pay the Operator its Compensation due and owing as agreed upon herein (and the Operator is not otherwise in default of this Agreement nor are any such Compensation amounts contested by the Corporation by reason of audit findings or otherwise or subject to offset by the Corporation pursuant to the terms of this Agreement), and such failure shall continue for a period of thirty (30) business days after written notice thereof specifying such failure (unless such failure to pay said Compensation amount requires acts to be done or conditions to be removed which cannot, by their nature, reasonably be done or removed within such 30-day period, in which case no such failure shall be deemed to exist as long as the Corporation shall commence the requisite performance or observance within such 30-day period and shall diligently and continuously prosecute the same to completion within a reasonable period), the Operator shall thereupon have the right to terminate this Agreement by giving notice in writing of the fact and the date of such termination to the Corporation, and this Agreement shall terminate on the date set forth in said notice. Notwithstanding the foregoing, in the event of such termination, the Operator shall receive equitable compensation for such Services as shall, in the reasonable judgment of the
Corporation, have been satisfactorily performed by the Operator up to the date of termination of this Agreement, subject to the provisions of Article 2 and the payment provisions of Article 3 and Appendix A, Exhibit 4 of this Agreement, and to any rights of audit and setoff that may be available to the Corporation.

ARTICLE 5
PERSONNEL AND SUBCONTRACTORS

Section 5.01 Personnel.

The Operator shall employ, or cause to be employed, at its own expense all personnel and retain all subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of the Services pursuant to this Agreement, except to the extent provided in this Agreement. The Operator’s personnel and subcontractors shall cooperate with the personnel of the Corporation and its designees, and, in the event the Operator’s personnel fail to so cooperate, subject to any obligations of the Operator under applicable collective bargaining or other agreements or applicable laws, the Operator shall upon request of the Corporation relieve them of their duties.

The experience and training of Operator’s key personnel, identified as Terry MacRae, Michael Burke, and Cameron Clark, is a material inducement for the Corporation to enter into this Agreement. If the Operator substitutes any other personnel for such key personnel, the Operator shall assign persons of equivalent or better competence or experience and training. All personnel providing Services under this Agreement shall be employees or permitted subcontractors of the Operator and shall not be employees (or subcontractors) of the Corporation or the City.
Section 5.02 Subcontractors.

A. The Operator is authorized to enter into subcontracts (including collective bargaining agreements) as required for performance of the Services. Except with respect to emergencies, all subcontracts shall be subject to the prior written approval by the Corporation as to the subcontractor, the scope of services, and the individual(s) responsible for supervising the performance of the subcontractor’s activities, which approval shall not be unreasonably withheld or delayed. For the avoidance of doubt, the chartering of a Vessel by the Operator to perform part of the Services shall be considered a subcontract, however the use of ancillary services generally available in the market (for example delivery services such as FedEx), shall not be considered a subcontract; provided however that any expenses incurred by the Operator in connection such ancillary services: (i) shall not exceed $75,000 and (ii) shall not be eligible for reimbursement as a “wind-down” cost (See Section 3.01(C), Section 3.02 (A), and Section 4.02 hereof for circumstances that allow for wind-down costs). The Operator, and not the Corporation, is responsible for the work, acts and omissions of subcontractors. The Operator shall inform each subcontractor of the material terms and conditions of this Agreement relevant to the required performance of such subcontractor. All subcontracts (including, but not limited to, charter agreements) shall provide (i) that there is no privity of contract between the subcontractor and the Corporation or the City, respectively; (ii) that the Corporation and the City will not incur any liability by virtue of any act, omission, negligence, or obligation of the subcontractor or the Operator (including any conditions of unseaworthiness of the Vessels); (iii) that the subcontractor shall indemnify and hold harmless the Corporation and the City and their respective agents, employees, officials and officers against any and all claims, judgments or liability due to any act or omission of the subcontractor, its agents and employees, or due to any conditions of
unseaworthiness of vessels provided by such subcontractor and the Corporation and the City shall be named third party beneficiaries in the subcontract solely with respect to such indemnity with the power to enforce such indemnity; and (iv) that all work under the subcontract shall strictly comply with the requirements of this Agreement (including, without limitation, compliance with all of the operating procedures, safety measures, Branding and Sponsorship requirements (as defined in Article 9) as well as the customer service and ticketing requirements as set forth in this Agreement). If the Operator fails to include the provisions set forth in this Section 5.02 in any subcontract, the Operator hereby agrees to indemnify and hold harmless the Corporation and the City and their respective agents, employees, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses and/or fees incurred by or imposed upon the Corporation and the City and their respective agents, employees, officials and officers, including reasonable attorneys' fees, as a result of said failure.

B. The Operator shall provide the Corporation with a list of all subcontractors employed for the performance of the Services with contracts over $25,000. The Operator will furnish each such subcontractor with qualification and background investigation forms ("Investigation Forms") provided by the Corporation to the Operator, and shall cause each such subcontractor to submit the Investigation Forms in a timely fashion but in no event later than the commencement of the services performed by such subcontractor pursuant to its subcontract.

Section 5.03 Person in Charge.

The Operator identifies Cameron Clark, (the "Principal") as the person who will have primary responsibility to supervise and coordinate the performance of the Services. Substitution of said person shall be made only with a person of equivalent or better competence based or experience and training. Failure to make the Principal available to the extent reasonably
necessary to ensure skillful and prompt performance of the Services shall be a material breach of the terms of this Agreement that shall be subject to the Cure Period.

The Corporation identifies Peter Flynt and/or the Executive Vice President of Asset Management as (the “CFS Manager”) as the person who will have primary responsibility to supervise and coordinate the performance of the Services. The Corporation may substitute said persons upon written notice to the Operator.

Section 5.04 Operator’s Commitment to Seek Labor Harmony.

The Corporation and Operator recognize the significant role a quality work force will play in the success of CFS. In awarding the CFS to the Operator, the Corporation considered the Operator’s demonstrated experience and qualifications including a record of recognizing the rights of its crews to avail themselves of the benefits and protections of the National Labor Relations Act (“NLRA”), 29 U.S.C. Section 151 et. seq., as amended, and the Rules & Regulations of the National Labor Relations Board (“NLRB”), 29 C.F.R., Subtitle B, Chapter 1. The NLRA includes the specific right of workers to petition for representation by a bona fide labor organization(s), as defined by the NLRA, 29 U.S.C. § 152(5), (a “Labor Organization”) which may seek to represent an appropriate bargaining unit of captains and deckhands employed by Operator (the “Bargaining Unit”). Operator hereby acknowledges that: (i) it is aware of the laws ("Labor Laws") protecting the rights of its employees and of Labor Organizations; (ii) the Corporation has informed Operator that it must comply with such Labor Laws; and (iii) the Operator has agreed to comply with all applicable Labor Laws.
ARTICLE 6

PLANS

Section 6.01 Plans.

The Operator will perform the Services in accordance with the following “Plans” attached hereto as follows: (i) Vessel Acquisition Plan (Appendix G-1), (ii) Services Plan (Appendix A), and (iii) Support Services Plan (Appendix A, Exhibit 6). The Operator will create the following Plans in the course of the phases of this Agreement, subject to the Approval of the Corporation as described in Section 6.02 below, as follows: (i) Staffing Plan (Appendix M), and (ii) Standard Operating Procedures Plan (Appendix N).

Section 6.02 Review and Approval of Plans.

A. The Corporation shall have the right to review and approve all Plans, such approval to be granted in the Corporation’s sole discretion (“Approval”). (For the avoidance of doubt, the approval process for the Vessel Contracts shall be governed by Section 3.05 hereof.) The Corporation shall notify Operator of the Corporation’s approval or disapproval of the preliminary plans within twenty-one (21) days after receipt thereof. Upon approval by the Corporation, the Preliminary Plans shall constitute “Approved Plans.” However, if directed by the Corporation, Operator shall revise the Preliminary Plans in accordance with the directions of the Corporation, and until the Corporation issues its approval thereof, the Operator shall submit revised Preliminary Plans to the Corporation for its review, in each case, within seven (7) days after receipt by Operator of directions to that effect from the Corporation. In the case of each submission of Preliminary Plans to the Corporation for its review and approval, if the Corporation fails to direct Operator to revise the Preliminary Plans within said twenty-one (21) day period, and not less than five (5) days, and not more than ten (10) days prior to the expiration of such twenty-one (21) day...
period, Operator asks the Corporation to issue its determination regarding the Preliminary Plans (pursuant to the notice provisions set forth in Section 13.10 of this Agreement), the Corporation shall be deemed to have given its approval thereto, and the Preliminary Plans shall constitute Approved Plans. All deadlines set forth in this Agreement shall be tolled on a day-for-day basis for each day that the Corporation is late in providing comments with respect to reviewing Plans, unless the Corporation waives in writing its right to review such Plans. The Operator shall provide at least 48 hours’ notice of each deadline set forth in this paragraph. To the extent the Corporation adds a cost to the Operator’s Cost of Operations as a part of the Corporation’s right to modify the Services (unless such cost should have been included in Operator’s budget), the Corporation shall provide funding for such increased cost. For example, if the Corporation changes the passenger requirement for a Shuttle Bus to 50 from 28 passengers, then the Corporation shall be obligated to pay the increased cost for such change and approval.

B. If Operator desires to materially modify the Approved Plans, the Operator shall submit the proposed modifications to the Corporation for its prior review and approval. The Corporation shall review the proposed changes as if such were an original submission of Preliminary Plans proposed under paragraph 2 above, and the provisions thereof governing such a submission shall apply.

Section 6.03 Corporation Modifications to Services Plan.

A. Annual Vessel-Service-Hours ("AVSH") are the total annual hours that Vessels are scheduled to travel while in revenue service, excluding deadheading or positioning. AVSH are based on the Service Plan (see Appendix A - Exhibit 4 attached hereto):.

B. The Corporation may require changes to the Services Plan (See Appendix A and Appendix A, Exhibit 5), including the addition or removal of Landing Sites. The Operator and the
Corporation shall meet to discuss any required changes and modifications to the Agreement, and any such changes and modifications to the Agreement may be made by the Corporation in the Corporation's sole discretion. Otherwise, the following terms and compensation shall be applicable:

(1) The Corporation may require the Operator to make changes to the Schedule or routes with no change in Compensation, as long as the Corporation provides the Operator with 10 days' notice and the total number of AVSH necessary for the changes are less than or equal to 1.03 multiplied by the baseline AVSH for that year. Notwithstanding the foregoing, there shall be no change to Compensation for certain changes described in Appendix A, Exhibit 5.

(2) As described in Appendix A, Exhibit 5, the Pilot Service Rate of $400/VSH will be applied to the marginal increase in AVSH necessary for the changes, as long as a) the total number of AVSH necessary for the changes is more than 1.03 multiplied by the baseline AVSH for that year and less than or equal to 1.10 multiplied by the baseline AVSH for that year and b) the changes can be performed with a Vessel.

(3) As described in Appendix A, Exhibit 5, the Corporation may request the use of crewed Vessels or Interim Vessels from time to time for events or other one-time transport needs, which Operator will make available at the Charter Service Rate, which shall include crew, fuel, and Interim Vessel and mobilization costs. The Charter Service Rate is set forth in Appendix A, Exhibit 5. At its discretion, the Corporation may elect to use this service as revenue or non-revenue service. Onboard food and beverage, entertainment or other services shall be provided by Operator at prevailing rates.
In the event that the Corporation requests the Operator to provide an Interim Vessel which is not under the control of the Operator, the Operator shall charter such Interim Vessel (a “Third Party Charter Vessel”) in accordance with the following procedure, as further set forth in Appendix A, Exhibit 5: (a) the Corporation shall provide a detailed list of its requirements for such Third Party Charter Vessel, including the scope of travel, the number of passengers, the date of travel and the amount of time such vessel is needed; (b) the Operator shall obtain bids from three potential Third Party Charter Vessel operators and present such bids to the Corporation; and (c) and the Corporation shall have sole approval regarding which, if any, bid it shall accept.

For increases in service where the total number of AVSH necessary for the changes are greater than 1.10 multiplied by the baseline AVSH for that year or that require the introduction of an Interim Vessel or removal of a permanent Vessel(s), the Cost of Operations and Management Fee for that change in service will be negotiated.

The Operator shall regularly update the Service Plan to reflect operational changes pursuant to the approval procedures set forth herein.

In response to an exigent Life Safety Incident (as described on Appendix A – Exhibit 2) where the Plan modification and approval process cannot be reasonably accomplished using the standards set forth in Section 6.02, the Operator may use reasonable judgment to maintain Service and order.

C. Certain Definitions.

“Annual Vessel-Service Hours” means the total number of revenue service Vessel-hours required to meet the Schedule, excluding layover, positioning and deadheading time.
(2) “Schedule” means the planned arrival and departure time of ferries on each “Trip” at each Landing. The Schedule must adhere to specific operating parameters as described in Appendix A such as minimum headway (the time between successive trips in the same direction at a specific landing), operating hours (departure of the first and arrival of the last trips), and total trip length (time from departure at first stop to arrival at last stop on a Ferry Route).

(3) “Vessel Service Hour” means each hour that a Vessel is scheduled to travel while in revenue service. This does not include hours for deadheading, positioning or layovers.

ARTICLE 7

Section 7.01 Review and Approval of Approved Plans and Vessel Contracts.

Operator understands and agrees that the Corporation shall not incur any liability, except as otherwise provided in this Agreement, to any Person for any good faith act or omission in connection with the review and approval of the Approved Plans or the Vessel Contracts, or failure to review or approve the foregoing in accordance with the provisions of this Agreement, and the Corporation’s approval of the Approved Plans or the Vessel Contracts shall not be, or be construed or interpreted, or otherwise relied upon, by any Person as: (1) a representation, warranty or determination by the Corporation that the Approved Plans comply with all applicable rules, laws or regulations, or are structurally or architecturally sound or safe, or technically correct, (2) a waiver of any of the Corporation’s rights, or (3) a release of Operator from any of its obligations under this Agreement. Notwithstanding the foregoing, any approval for documents other than the Approved Plans and the Vessel Contracts must be from the CFS Manager.
ARTICLE 8
REPORTING

Section 8.01 Reporting during Implementation/Pre-Launch Phases.

A. The Weekly Implementation & Pre-Launch Report will update the Corporation on the progress of Milestones leading to Route Start Dates, requests for information for the Corporation, and any material issue that may impact a Route Start Date. The Operator will develop the report format and submit for final Approval no later than 30 days after the Effective Date. The Operator and the Corporation will develop a mutually agreed upon due date/time for the weekly report.

B. The Operator will develop a real-time reporting solution that must support web and mobile applications (the “Dashboard”). At a minimum, the Dashboard must report the following: (a) live map with locations of in service Vessels, (b) daily and per Trip ridership by Vessel Routes and Shuttle Bus Routes, (c) Vessel Maintenance status, (d) fuel use per Vessel and (e) events that would impact operations (the “Dashboard Information”). The Dashboard Information elements identified as (c), (d) and (e) above shall be treated by the Corporation as confidential and proprietary information of the Operator, and shall not be disclosed to third parties except that the Corporation may make any disclosures related to Vessel fuel usage in the aggregate as well as any disclosures that are required pursuant to a subpoena or any applicable law after providing the Operator a reasonable opportunity to object. The Dashboard must be fully operational by the first Route Pre-Launch Date. As part of the development process, the Operator shall use commercially reasonable efforts to identify for the Corporation any material Third Party Materials prior to the commencement of its development of the Dashboard.
C. The parties anticipate that the Dashboard will be comprised of (i) Pre-Existing Materials (as defined in Section 13.23 below), (ii) software, intellectual property or other materials licensed from third parties ("Third Party Materials"), and/or (iii) software, intellectual property or other materials that are newly developed by the Operator as part of its development services hereunder ("New Materials"). Use of Operator Pre-Existing Materials and Third Party Materials is subject to the Corporation’s prior reasonable written approval.

D. For the avoidance of doubt, any New Materials that are embedded within or used in conjunction with the Dashboard shall be considered Work Product (as defined in Section 13.23 hereof).

E. To the extent that there are any Third Party Materials utilized in the Dashboard, the Operator shall, as part of the Transition Actions, either (i) to the extent permitted pursuant to applicable licenses, assign to the Corporation any license(s) to such Third Party Materials (whereupon the Corporation will be fully responsible for all obligation under such license agreement(s) following the date of such assignment) or (ii) if such assignment is not permitted, provide the Corporation with reasonable information to enable the Corporation to directly license the applicable Third Party Materials.

F. Domain names utilized for the Dashboard shall be registered by and owned by the Operator during the Term of this Agreement. Thereafter, the Operator shall to the extent lawful assign or transfer such domain names to the Corporation upon the expiration or earlier termination of this Agreement.

G. Subject to the terms and conditions of this Agreement, the Operator hereby grants to the Corporation a royalty-free, non-exclusive license during the Term and during any Transition Actions (to the extent such Transition Actions extend beyond the Term) to install, use, modify,
enhance, copy, and distribute the Operator Pre-Existing Materials solely in conjunction with the operation and use of the Dashboard.

H. Subject to the term and conditions of this Agreement, the Corporation hereby grants to the Operator a royalty-free, non-exclusive license during the Term of this Agreement and during any Transition Actions (to the extent such Transition Actions extend beyond the Term) to install, use, modify, enhance, copy, and distribute the City Pre-Existing Materials solely in conjunction with the development, operation and use of Dashboard or to otherwise perform the Operator’s services hereunder.

I. The licenses set forth in this 8.01 and/or Section 13.23 below may be sublicensed by a party to its contractors or service providers (collectively, “Contractors”), provided that such party shall (i) require in writing that its Contractors adhere to the applicable terms and conditions of this Agreement and (ii) be responsible for the acts and omissions of such Contractors as if the same were performed by such party.

Section 8.02 Reporting during Route Operations.

A. Any emergency or incident that involves the United States Coast Guard (“USCG”), law enforcement, or fire department must be reported to the Corporation as soon as reasonably practicable but in no event longer than 10 minutes of reporting to the above mentioned authorities.

B. The Operator will ensure that the Corporation has access to the Dashboard 24 hours a day and 365 days a year, except for periods of regularly scheduled updates and maintenance.

C. On a quarterly basis, the Operator shall provide the Corporation with unaudited financials (income statement, balance sheet and cash flow statement). In addition, the Operator shall provide a Monthly Report comprised of Trip Summaries for all scheduled Vessel and Shuttle Bus trips in the prior week, including those that were delayed, cancelled, rescheduled or otherwise
disrupted. All information must be submitted in a digital database format (Excel, CSV, .dbf or other similar formats accepted). A “Trip Summary” includes:

1. Completion Status - characterizing the trip (As scheduled, modified, cancelled);
2. Ridership - actual passenger on and off counts at each stop, including the number of bicycles, strollers, and wheelchairs. The Operator must digitally collect data for ridership, using passive technology such as Automated Passenger Counters;
3. On-time Performance - scheduled and actual departure times at each Landing Site on the Trip;
4. Weather - actual weather conditions (Temperature, precipitation, sky condition) at the start of the Trip;
5. Notes for any major events affecting service for that Trip. (i.e. - traffic detours, traffic incidents, etc.);
6. Fare summary - revenue collected by fare type;
7. Total monthly fuel consumption according to the fuel usage meters aboard each Vessel (including a description of any variance between the meter, fuel tank logs, and the shore side fueling pump).

D. On an annual basis, to be delivered within ninety (90) days after the close of the Calendar Year the Operator must provide financial statements in accordance with GAAP and certified by an independent auditor as an appendix to the Annual Report. Separate audited financials should be provided for any subsidiary or special purpose entities of the undersigned that are contracted by the Operator to provide some of the Services (e.g. any special purpose entity that may own the Vessels) or undertake any portion of the Services. The annual financial statements
must include quarterly and annual income statements, balance sheet, statement of cash flow, and statement of owner’s equity or the equivalent financial statements for partnership. The annual financial statements should include a schedule of all line item revenues and expenses which are listed in Appendix A, Exhibit 4 as Operating P&L Line Items. The annual financial statements must include the then current book value of each Vessel used in the CFS including in-service and Spare Vessels. The Vessel valuation maybe included in the Operator’s annual financial statements or in a footnote, but must be presented as a discrete audited component. The annual financial statements must include all revenues and expenses associated with the CFS. The Operator shall provide an Annual Report that will include all of the above financial statements as well as:

(1) Ridership analysis (including Shuttle Bus);
(2) Support services analysis;
(3) Safety Management System Audit findings;
(4) On time Performance analysis;
(5) Workforce Requirements—progress made;
(6) Financial Analysis; and
(7) Total fuel consumption and analysis of usage by Vessel and Ferry Route.

E. Any transactions more than $100,000 combined annually with an affiliated company or a company partially or entirely owned by the shareholders or employees of the Operator, must be separately disclosed in annual financial statements. Monthly and annual financial reports shall contain separate line items and supporting calculations as to the Cost of Operations, each Component Fee, Fuel Costs (with specific line items for marine diesel costs, distribution fee, delivery fee, and tax, as each is applicable), Management Fee and all revenue line items including any participation payments due to the Corporation. Upon the Corporation’s
written request, the Operator shall provide the Corporation supporting documentation, including annual audited financial statements, with respect to all of the financial statements, and all line items indicated in Appendix A, Exhibit 4, all Component Fees described in Article 3 above without limitation including participation payments (e.g. register receipts, invoices etc.). Upon the Corporation’s written request, the Operator shall provide the Corporation supporting documentation with respect to all of the financial reporting, and all line items indicated in Appendix A, Exhibit 4, and all Component Fees described in Article 3 above.

F. The Operator shall prepare reports as required by the National Transit Database (formerly Section 15 of the Urban Mass Transportation Act of 1964 as amended), in a form reasonably acceptable to the City’s Department of Transportation, the Corporation and the Federal Transit Administration. A draft of the report shall be submitted to the Corporation (with a copy to the City as directed in writing by the Corporation) for review no later than 20 days before the due date of final extended due date approved by the Federal Transit Administration. The Operator shall also assist the Corporation (and, as applicable, the City) in preparing reports required for other Federal, State, or other assistance programs as reasonably requested by the Corporation. The Operator’s responsibility to provide such information, complete such forms, to file such reports, and to fully cooperate so that the City may qualify for State or Federal assistance or other assistance shall in no way be diminished by the fact or possibility that the Operator does not or may not benefit in any way from such State or Federal financial or other assistance.

G. Fuel consumption must be tracked by Vessel. Upon the Corporation’s written request, the Operator shall provide a fuel usage report. The Operator shall utilize the fuel tracking systems to be built into the engine of each Vessel used in CFS. Upon the Corporation’s request, the Operator will provide every invoice and vessel fuel log on a monthly basis and on the 15th day
of the month within thirty (30) days after the completion of each operating year. If Interim Vessels are used to provide the Services (subject to the Corporation’s reasonable approval), such Interim Vessels must use a certified flow meter or other fuel tracking system approved by the Corporation in order for any Fuel Costs incurred in connection with the use of such Interim Vessels to be eligible for reimbursement. No reimbursements for fuel used by Interim Vessels used in connection with the CFS shall be made without the Corporation’s receipt of an invoice that includes a calibration for the fuel flow meter associated with such Interim Vessel.

H. To the extent that the Corporation uses or intends to use federal funds (the “Federal Funds”) that the Corporation has received or anticipates receiving from the Federal Transit Administration (the “FTA”) of the United States Department of Transportation to pay or reimburse the Operator, the parties hereto understand that Corporation’s use of Federal Funds for this Agreement may impose additional obligations on both the Corporation and the Operator, the Operator may request in writing that the Corporation reimburse the Operator for any additional Cost of Operations that the Operator incurs in connection with such additional FTA Obligations (“FTA Costs”) (excluding overhead and non-direct costs in connection with such FTA Obligations). The Corporation, in its sole discretion, may elect to either make such requested additional payment or terminate this Agreement upon ninety (90) days’ prior notice to the Operator. Upon receipt of the Corporation’s notice of termination, the Operator may rescind its request for said additional payment in writing to the Corporation within (10) business days’ of receipt thereof, and the Corporation’s right to terminate this Agreement with respect to the Operator’s additional payment request shall be deemed waived in that particular instance. The Corporation shall not be required to consider any late requests for additional payment or honor late notifications with respect to this paragraph.
Section 8.03  Traveler Information and Data Collection.

A. The Operator must digitally collect data for all Traveler Information (including, for the avoidance of doubt with respect to certain non-Operator equipment such as the shuttle buses or vessels operated by others in providing the Services), using passive technology such as Global Positioning System ("GPS") or Automated Information System ("AIS"), such data will be used for both Traveler Information purposes and to track on-time performance. “Traveler Information” includes the Schedule, mapped Ferry Routes and Shuttle Bus Routes, real-time location of Vessels and Shuttle Buses, real-time arrival predictions, customer service contact information, and any additional information needed by customers as reasonably requested by Corporation.

1. The Operator must collect data for ridership using passive technology such as Automated Passenger Counters.

2. The Operator will provide, install and operate “Digital Information Displays ("DIDs") that visually and audibly announce the next ferry arrival, to be located at all Landing Sites. DIDs may be incorporated into the design of an information kiosk or a TVM. No advertisements may be shown on Digital Information Displays.

3. The Operator is responsible for the cost and maintenance of all DIDs, which must be available by the Pre-Launch Phase of each Route.

4. All Traveler Information data and additional data generated while providing the Services will be available for unlimited and unrestricted use by the Corporation, which may be shared with the public, subject to privacy laws, and shall be the property of the Corporation.
5. Operator shall have a limited license to use the Traveler Information (excluding any personal identifying information) during the Term of this Agreement for the purpose of advertising the CFS, subject to all applicable laws including privacy laws. Notwithstanding anything herein to the contrary, subject to all applicable laws including privacy laws, the Operator shall have the right to retain and use the personal identifying information of passengers to communicate during and after the Term of this Agreement for any lawful purpose with all passengers who opt in and consent to receive such communications from the Operator (the “Opt In Passenger Information”).

6. All DIDs, and Traveler Information technology become property of the Corporation at no cost to the Corporation (See also Appendix A- Exhibit 6 attached hereto). The provisions of this subsection 8.03(A) (5) shall survive the expiration or earlier termination of this Agreement.

B. The Operator must provide printed Schedules with route maps and general information such as fares and customer service information on board all Vessels, at information kiosks, and with customer service agents. The Operator must develop a uniformly designed series static Traveler Information and wayfinding information signage at the direction of the Corporation.

C. The Operator shall, if directed by the Corporation in writing, revise any Report in accordance with the reasonable directions of the Corporation, and until the Corporation issues its approval thereof, the Operator shall submit revisions of the Report. In the case of each submission of a Report, if the Corporation fails to direct the Operator to revise the Report within ten (10) days of receipt thereof, the Report shall be deemed to be approved by the Corporation.
ARTICLE 9  
BRANDING AND SPONSORSHIP

The Corporation contemplates that the CFS will include a branding and sponsorship program which will include, without limitation, a display on the Vessel exteriors and will be integrated and compatible with the Services ("Corporation Branding and Sponsorship Program" or "CBSP"). The objectives of the CBSP shall be developed jointly by the Corporation and the Operator as described below (the “Operator Branding Consultation”) and implemented in accordance with the agreed upon B&S Plan (the plan setting forth how the Corporation and the Operator shall secure Branding & Sponsorship Agreement(s), said plan shall be mutually agreed to by the Corporation and the Operator and shall be referred to herein as the “B&S Plan”). Following the development of the B&S Plan, the CBSP may be implemented by either the Corporation or the Corporation and the Operator (as the parties may agree and as may be consistent with applicable law) entering into a separate agreement(s) (e.g., “Branding and Sponsorship Agreement(s)”) with CFS sponsor(s) ("Sponsor(s)"). Any such Branding and Sponsorship Agreement(s) shall be transferable to future CFS Operator(s). All revenue associated with the Branding and Sponsorship Agreement(s) shall be due to the Corporation, with the exception of the provisions of 9(ii), below.

The Operator Branding Consultation shall be conducted as follows:

(i) Within thirty days of the Effective Date of this Agreement, the Corporation and the Operator shall meet and confer and;

   (a) shall endeavor to agree upon goals, objectives and parameters of any prospective CBSP, taking into account: (i) potential revenue to the Corporation; (ii) potential revenue to the Operator; (iii) economic impact (positive or negative) on the Operator, including, but not limited to, cost to develop and implement the CBSP, impacts on ridership and market awareness of the
Services, and any limitations on the Operator’s revenue strategies (e.g., advertising, media and concessions); and,

(b) shall disclose the names and status of respective Sponsor development activities to date.

(ii) Promptly thereafter, the Corporation shall approve a plan for Operator to endeavor to secure Branding and Sponsorship Agreement(s) in accordance with the provisions set forth above in subsection (i) (the “B&S Plan”), including a proposed fee or compensation which the Operator will be entitled to either from the Sponsor or to be paid to the Operator by EDC in the event that the Operator should successfully be the procuring cause of the Branding and Sponsorship Agreement(s), expressed as a percentage of the total value of the Agreement(s);

(iii) The Operator shall have ninety (90) days from the date of the approval of such B&S Plan to identify a Sponsor prepared to execute a Branding and Sponsorship Agreement(s) with the Corporation or the Corporation and the Operator;

(iv) The proposed Branding and Sponsorship Agreement(s) shall be subject to the Corporation’s approval, such approval to be granted in the Corporation’s sole discretion.

Once such Branding and Sponsorship Agreement(s) have been executed, the Operator shall accommodate and incorporate the applicable provisions of such Branding and Sponsorship Agreement(s) into its operations as provided by such Branding and Sponsorship Agreement(s). The CBSP may include, without limitation, a universal brand name, imprints, a style guide for the CFS, and exterior wraps for the Vessels. All development and uses of the CBSP elements shall be subject to the Corporation’s written approval and, as applicable, the Sponsor’s written approval, which such approval shall be granted in each respective party’s sole discretion. Incorporation of the CBSP elements into the CFS is included in the Compensation or, if net new costs are imposed,
the Compensation will be adjusted to include such costs. The Operator shall endeavor to ensure that no conflict is created between the Operator’s Sales and Media Agreements and the Branding and Sponsorship Agreement(s) and any corresponding Branding and Sponsorship License Agreement(s), however, in the event of a conflict between the Operator’s Sales and Media Agreements and the Branding and Sponsorship Agreement and any corresponding Branding and Sponsorship License Agreement(s), the terms and conditions of the Branding and Sponsorship Agreement shall prevail, as determined in the Corporation’s reasonable discretion.

In the event the Corporation rejects a proposed CBSP in its sole discretion, it shall then be entitled to seek alternate Branding and Sponsorship Agreement(s) consistent with the provisions this Section 9, including, without limitation, with Sponsor(s) previously identified by the Operator, and in that event, the parties shall meet and confer annually regarding the performance of the CBSP. In all circumstances, whether Sponsor(s) is procured by the Corporation or the Operator and unless otherwise provided in the Branding and Sponsorship Agreement, the Corporation retains all intellectual property related to the CBSP (for the avoidance of doubt elements of the Branding and Sponsorship Program may be owned by the City and/or third parties). The Operator may own and exploit its own intellectual property ("Operator IP") including but not limited to, its name, trademarks or methods, subject and subordinate to CBSP Branding and Sponsorship Agreements, and it is also contemplated that the Operator may have to enter into a separate license or other agreement with the Corporation (or the City or another third party(ies), including, without limitation the Sponsor(s)) in connection with the use of the CBSP elements (the "Branding and Sponsorship License Agreement"). The Operator shall use the CBSP at all times when providing the Services. Specifically, all marketing of the CFS by Operator must incorporate the CBSP. The Operator may incorporate Operator IP in its marketing, subject to
the Corporation’s, or, as applicable, the Sponsor’s, prior written approval thereof, such approval to be granted in each party’s respective sole reasonable discretion.

Any physical additions or modifications to the Vessels in connection with CBSP (e.g., coatings, reflective surfaces, protrusions, etc.) must be approved by Operator, such approval not to be unreasonably withheld.

ARTICLE 10
INSURANCE AND INDEMNIFICATION

Section 10.01 General.

It is contemplated that the insurance coverage requirements set forth in this Article 10 may be phased-in based on the Operator’s activities during the term of the Agreement as directed by the Corporation.

A. The Operator, at its sole cost and expense, commencing upon the Commencement Date and continuing up to the Expiration Date, shall carry, or cause to be carried insurance policies as set forth in Appendix H, annexed hereto and made a part hereof.

B. Limits of Insurance Coverage. All policies of insurance required by this Article shall be written on the applicable ISO forms set forth in Appendix H, or if no specific ISO form is set forth in Appendix H, then said policies shall contain terms and conditions at least as favorable to the Operator and additional insureds as the terms and conditions found in standard ISO forms of policies and endorsements available for such risks.

C. All policies of insurance required by this Agreement, except for Statutory Worker’s Compensation, Employer’s Liability and Hull and Machinery Insurance, shall name the Corporation, the City and their respective officers, directors, officials, agents and employees and any other entities or individuals as directed by the Corporation as additional insureds (the
“Additional Insureds”) and shall protect the Additional Insureds on a primary and non-contributory basis. With respect to protection and indemnity insurance, the foregoing requirement may be satisfied by issuance of a Mis-Directed Arrows Endorsement to Operator’s policy which provides for equivalent protection to additional insured status.

D. The Operator shall comply with the provisions of all insurance policies required pursuant to this Agreement, and shall give the Corporation and the City notice of any claim, accident or loss promptly upon its acquiring knowledge of the same. With respect to any incident requiring a report to the USCG or other third-party, the Operator shall notify the Corporation of such incident immediately verbally and in writing within one business day.

E. All of the insurance policies required by this Agreement shall be procured from companies licensed or authorized to do business in the State of New York (the “State”) that have a rating in the latest edition of “Bests Key Rating Guide” of “A:VII” or better and a claims paying ability of “AA” (or its equivalent) or better, by at least two nationally recognized rating agencies acceptable to the Corporation in all respects.

F. The Operator shall deliver to the Corporation a certificate of insurance for each such policy on or prior to the Commencement Date in form reasonably satisfactory to the Corporation, and not less than ten days prior to the expiration of any policy, the Operator shall deliver to the Corporation a confirmation of renewal. The Operator shall undertake no services under this Agreement unless and until it has provided the Corporation with the above with respect to all insurance required to be obtained by the Operator under this Agreement. Copies of individual policies and endorsements are to be furnished by the Operator to the Corporation within thirty days after request therefor.
G. Operator shall procure policies for all insurance required by this Agreement for periods of not less than one year.

H. All policies of insurance required under this Agreement (except for Workers’ Compensation and Protection and Indemnity insurance) shall include a waiver of the right of subrogation with respect to all the named insureds and Additional Insureds. With respect to Protection and Indemnity insurance, Operator shall provide a Mis-Directed Arrows endorsement which provides protection equivalent to a waiver of subrogation.

I. Operator assumes all risk of, and shall be fully responsible for and reimburse fully the City and the Corporation for any loss, cost or expense arising out of any personal or bodily injury, death, or loss or damage to any property arising out of the Services provided under this Agreement, or any of the acts, omissions, events, conditions, occurrences or causes described in the next sentence. The Operator shall forever, defend, indemnify and hold harmless the City, and the Corporation, and their respective officials, officers, agents, representatives and employees from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature, known or unknown, contingent or otherwise arising from personal or bodily injury to any person or persons, including death, or any damage to property of any nature, but solely to the extent occasioned by any willful or negligent action, error or omission of Operator or of the employees, guests, invitees, contractors, subcontractors, representatives, officials, officers, servants or agents of Operator solely arising out of or as a result of the Agreement.

J. The Corporation and the City each reserve, and the Operator grants to the Corporation and to the City, respectively, the right to intervene in any suit, action or proceeding by any person or persons, firm or corporation seeking to enjoin, restrain or in any manner interfere
with the Operator in its performance or observance of any of the terms or conditions of this Agreement, or of its obeying any notice or direction of the Corporation, which involves or might involve the constitutionality, validity, or enforcement of any section, subdivision, clause, or sentence of this Agreement, and the Corporation or the City may move to vacate any such injunction or restraining order or take any other appropriate step, in any such suit, action or proceeding which it may deem necessary or advisable to protect their respective interests.

Section 10.02 Provisions to be Included.

A. The insurance policies provided above shall contain the following provisions:

1. Notices from the insurer (the “Insurer”) to New York City Economic Development Corporation (the “Corporation”), and The City of New York (the “City”) in connection with this policy, shall be addressed to New York City Economic Development Corporation, at 110 William Street, New York, New York 10038 attention: with a copy to General Counsel at the same address, to the Commissioner, New York City Department of Transportation, 40 Worth Street, New York New York 10013, and to the Commissioner, New York City Department of Small Business Services, at 110 William Street, New York, New York 10038 or such other addresses as may be specified by the Corporation or the City.

2. The Insurer shall accept notice of accident from the Corporation, or the City as soon as practicable after receipt by an official of such additional insured party of notice of such accident as valid and timely notice under this policy.

3. The Insurer shall accept notice of claim from the City as soon as practicable after receipt by such party as valid and timely notice under this policy.
4. Notice of accident or claim to the Insurer by the Operator, the City, the Corporation, or any insured shall be deemed notice by all under this policy.

5. This policy shall not be cancelled, terminated or modified by the Insurer or the Operator unless thirty days prior written notice is sent by registered mail to the Corporation and the City, nor shall this policy be cancelled, terminated or modified by the Operator without the prior written consent of the Corporation and the City.

6. The presence of engineers, inspectors or other employees or agents of the Corporation or the City, respectively, at the site of any activities undertaken by the Operator or any persons or entities employed or otherwise hired by the Operator shall not invalidate this policy of insurance.”

B. Each policy provided pursuant the above, except for Statutory Worker’s Compensation and Employer’s Liability Insurance, shall provide as follows:

1. that the coverage shall contain no special limitations on the scope of protection afforded to the Corporation and the City, and their respective officers, directors, officials, agents and employees;

2. that the insurance applies separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability; and

3. that the insurance shall be primary insurance as respects the Corporation and the City, and their respective officers, directors, officials, agents, and employees, and the Corporation and the City will not be called upon to contribute to a loss. The Operator agrees that any other insurance or self-insurance maintained by the Corporation or the City, and their respective officers, directors, officials, agents, and employees, shall be in excess of and not contribute to the Operator’s insurance.
Section 10.03 No Representation as to Adequacy of Coverage.

The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by the Operator hereunder shall not constitute a representation or warranty by the Corporation that such insurance is in any respect adequate.

Section 10.04 Operator Responsibilities.

A. The Operator shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

B. The Operator shall be solely responsible for taking all reasonable precautions to protect the persons and property of the Corporation and/or the City and/or others from damage, loss or injury resulting from any and all operations under this Agreement. In particular, without limiting the foregoing, the Operator shall be responsible for the repair of any damages it causes to the Landing Site(s) or approaches thereto and the Vessels and shall notify the Corporation as soon as reasonably practicable and within one business day after the occurrence of any such damage. The Corporation may, at its option, repair or cause to be repaired any such damage to the Landing Sites at the sole cost and expense of Operator, or, alternatively, direct the Operator to repair or cause to be repaired such damage at its sole cost and expense (for the avoidance of doubt, if the Corporation directs the Operator to make such repairs to the Landing Sites, the cost of such repairs will not be reimbursed as part of the Operator’s Compensation). For the avoidance of doubt, the Operator shall not be responsible for the maintenance of the Landing Site(s) or the approaches thereto.
C. The Operator shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this Agreement, whether or not due to the negligence of the Operator, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

D. The Operator shall use the Landing Sites, Vessels and/or any Interim Vessels in compliance with, and shall not cause or permit the Landing Sites, Vessels, and/or any Interim Vessels to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Operator or the Landing Sites, Vessels and/or any Interim Vessels (collectively “Environmental Laws”). Except as may be agreed by the Corporation as part of this Agreement, or to the extent permitted under applicable law, the Operator shall not cause or permit, or allow any of the Operator’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on the Landing Sites, Vessels, and/or any Interim Vessels. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects and which is being brought upon, stored, used, generated, treated or disposed of in violation of any applicable law; provided, however, that Operator shall inform the Corporation of any materials that it intends to bring on the Landing Sites, Vessels and/or Interim Vessels prior to their use or storage thereon to the extent that the use or storage of such materials is subject to Environmental Law (e.g. gasoline, paint, cleaning solvents).
Notwithstanding the above, the Operator is authorized to utilize such materials as are legally permissible and as may be required for the Services.

Section 10.05 **Indemnification and Related Obligations.**

A. To the fullest extent permitted by law, the Operator shall indemnify, defend and hold the Corporation and the City and their respective officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this Agreement (regardless of whether or not the Operator itself had been negligent) and/or the Operator’s failure to comply with applicable law or any of the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the Corporation, the City or their respective officials and employees from being completely indemnified by the Operator, the Corporation, the City and their respective officials and employees shall be partially indemnified by the Operator to the fullest extent permitted by law. Notwithstanding the forgoing, in no event shall the Operator be responsible for any damage or injury caused by the gross negligence or willful misconduct of the Corporation.

B. The Operator’s obligation to defend, indemnify and hold the Corporation and City and their respective officers and employees harmless shall not be (i) limited in any way by the Operator’s obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Corporation, City or their respective officers and employees to avail themselves of the benefits of such insurance.
ARTICLE 11

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.01 Operator Representations.

The Operator represents, warrants and covenants that:

A. The Operator is a Delaware company duly authorized and organized, validly existing, and in good standing under the laws of the State of Delaware, is authorized to conduct business in New York, and has all requisite power and authority to execute, deliver and perform this Agreement.

B. The execution and delivery of this Agreement by Operator has been duly authorized by all required company action and creates legally binding and enforceable obligations on Operator’s part to be performed.

C. The execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any indenture, mortgage, deed of trust or other agreement or instrument to which the Operator is bound, or, to the knowledge of the Operator, any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Operator or any of its activities or properties.

D. The Operator has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Agreement.

E. The Operator has not employed any person to solicit or procure this Agreement in an unlawful manner, and has not made and shall not make, except to full-time employees and outside counsel of the Operator, any payment or any agreement for the payment of any
commission, percentage, brokerage, contingent fee or any other compensation (other than lawful fees) in connection with the procurement of this Agreement.

F. The Operator has not acquired nor will it acquire any interest of any nature, direct or indirect (including any interest in land in an area related to the Services or any interest in any corporation, partnership, or other entity with any such interest), which would create an unlawful conflict with the performance of the Services. The Operator further represents and covenants that in the performance of this Agreement no person having any such unlawful conflicting interest shall be knowingly employed by the Operator.

G. The Operator is not in arrears to the City upon any debt, contract or taxes and is not in default, as surety or otherwise, of any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Operator to receive public contracts. The Operator represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

H. All questionnaires and/or disclosure forms delivered by the Operator to the Corporation to date are true and correct; that no material change has occurred in the circumstances of the Operator, its principals, or affiliated persons or entities since the respective dates upon which such disclosure forms were executed which would otherwise require disclosure on such forms; and that no material disclosed in such disclosure forms contains any untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained in such form not misleading.

I. The Operator is authorized to provide the Services by all federal, state or local agencies having jurisdiction over Operator and/or the services and Operator possesses, or will
possess as of the Commencement Date, all licenses, authorizations and approvals as may be
required by all applicable Federal, state and local laws in order to provide the Services.

J. The Operator’s financial profile (e.g. financial statements and other supporting
information as to the Operator’s assets and liabilities) as submitted to the Corporation as part of the
RFP award process for this Agreement was true and correct as of the date(s) of submission, and no
event has occurred or failed to occur since such date(s) of submission which would cause any of
the said financial profile information to include any untrue statement of a material fact or omit to
state any material fact required to be stated therein or necessary to make such statements not
misleading.

Section 11.02 Corporation Representations.

The Corporation represents and warrants that:

A. The Corporation is a New York State Not-for-Profit Corporation, duly authorized
and organized, validly existing, and in good standing under the laws of the State of New York, is
authorized to conduct business in New York, and has all requisite power and authority to execute,
deliver and perform this Agreement.

B. The execution and delivery of this Agreement, and compliance with the provisions
hereof, do not and will not conflict with or constitute a violation of or default under any indenture,
mortgage, deed of trust or other agreement or instrument to which the Corporation is bound, or, to
the knowledge of the Corporation, any statute, order, rule or regulation of any court or
governmental agency or body having jurisdiction over the Corporation or any of its activities or
properties. To the extent the Corporation desires to take any discretionary act which subjects
Operator to any additional costs (excluding any overhead and non-direct costs) (“Discretionary
Action Costs”) or other obligations under federal, state or local law which does not exist as of the

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effective date and such satisfaction of such obligation shall cost the Operator an amount in excess of the contingency amount, the Corporation shall discuss such proposed act, and, provided the Corporation agrees to hold the Operator harmless from any adverse consequences (e.g., economically and with respect to performance standards) of such action, the Operator shall accommodate such action to the extent feasible, except that if the Corporation agrees to pay all costs necessary for the Operator to satisfy such obligation, the Operator shall fully accommodate such action. For the avoidance of doubt, the Corporation shall have the right to modify this Agreement as necessary, in accordance with this Section 11.02 (B), to conform with any conditions in any findings statements issued as a result of any environmental review undertaken pursuant to the State Environmental Quality Review and City Environmental Quality Review Procedures (collectively, SEQRA/CEQR) provided that the Corporation pays the cost of such changes or mutually agrees to offsetting provisions that eliminate such excess cost.

Section 11.03 Survival.

All the foregoing representations and warranties shall survive the expiration or earlier termination of this Agreement.

Section 11.04 No Representations.

Operator understands and agrees that neither the Corporation nor the City warrant the landings, docks, piers, landing barges, quays, gangways, ramps, platforms, bulkheads, buildings or other structures, upland area, and wharves to be safe for landing or tying-up of Vessels or for accepting and discharging passengers, for queuing or for ingress and egress and assumes no responsibility for such use.
ARTICLE 12

APPLICABLE LAWS, RULES AND REGULATIONS

Section 12.01 New York Law Governs.

A. The Agreement shall be governed by and construed in accordance with the laws of the State of New York.

B. The parties agree that any and all claims asserted by or against the Corporation arising under this Agreement or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in the City of New York or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, the Corporation and the Operator agree as follows:

C. If either party initiates any action against the other party in Federal Court or in New York State Court, service of process may be made on such party in person, wherever such party may be found, or by registered mail addressed to such party at its address as set forth in this Agreement, or to such other address as such party may provide to the other party in writing.

D. With respect to any action between the parties in New York State Court, the parties hereby expressly waive and relinquish any rights they might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court, and (iii) to move for a change of venue to a New York State Court outside New York County.

E. With respect to any action between the parties in Federal Court located in New York City, the parties expressly waive and relinquish any right they might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

F. If either party commences any action against the other party in a court located other than in the City and State of New York, then, upon request of such other party, the party
commencing the action shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is pending will not or cannot transfer the action, the party commencing such action shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

Section 12.02 Modification Required by Law.

A. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Agreement, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Agreement shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

B. If this Agreement contains an unlawful provision not an essential part hereof and which shall appear not to have been a controlling or material inducement to the making hereof, the same shall be deemed of no effect, and, upon application of either party, shall be stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

Section 12.03 Compliance with the Applicable Laws.

The Operator agrees that all acts to be performed by it in connection with this Agreement shall be performed in conformity with all applicable and binding federal, state, and local laws, rules, regulations, applicable and legally binding and orders, including, without limitation, certain FTA Guidelines for Safety (including, without limitation drug and alcohol testing) and Civil Rights, Title VI policies of the Corporation, to the extent applicable to the Services, Chapter 7 of the New York Administrative Code Accessible Water Borne Commuter
Services Facilities Transportation Act (Local Law 68/2005) and the DOT. Failure by the Operator to abide by any such law, rule, regulation, guideline or order shall be a default under this Agreement.

Compliance with the Title VI policies of the Corporation requires, without limitation, that the Operator display conspicuously to the public and crew the following statement on the Vessels:

**Commitment to Equality (Operator to complete contact information)**

[Operator] is committed to ensuring that no person is excluded from participation in, or denied the benefits of, or subjected to discrimination in the delivery of its services on the basis of race, color, national origin, age, sex, religion, gender identity, disability, or any other category protected by federal, state, or city law.

If you believe that you have been subjected to discrimination or would like additional information about [Operator’s] nondiscrimination policies, please contact [ ] at 212- or at [email]

The Commitment to Equality shall be translated into the following languages: French Creole, Italian, Spanish, Korean, Chinese, Bengali, and Russian

For the avoidance of doubt, the Operator is not responsible for installing the aforementioned display at the Landing Sites.


The Operator shall comply with the applicable provisions of all City and State laws regarding equal employment and affirmative action including, without limitation, the Executive Order No. 50 (1980) Supply and Service Rider attached hereto as Appendix I and made a part hereof. Appendix I shall be attached to and made a part of any subcontract entered into by the Operator pursuant to this Agreement which exceeds $50,000.

The provisions of this Section 12.04 shall be deemed supplementary to, and not in lieu of, or in substitution for, the applicable provisions of the New York State Labor Law relating to non-discrimination, and other applicable federal, state or city laws, ordinances, rules, regulations and orders.
Section 12.05 No Tropical Hardwoods.

Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be utilized in the performance of this Agreement except as expressly permitted by the foregoing provision of law.

Section 12.06 Local Law 34 Form.

A. Local Law No. 34 of 2007 amended the City’s Campaign Finance Law and required the City to establish a database containing the names of any “person” that has “business with the city”, as such terms are defined in LL 34. Operator shall comply with all requirements of LL 34 applicable to this Agreement.

B. Operator shall complete and submit a Doing Business Data Form Appendix P.

C. Operator’s failure to complete and submit a Doing Business Data Form and/or its submission of a form that is not accurate or complete may result in appropriate sanctions.

Section 12.07 Iran Divestment Act.

The Operator shall comply with Section 165-a of the New York State Finance Law.

ARTICLE 13
MISCELLANEOUS

Section 13.01 Operator as Independent Contractor.

Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that in the performance of the terms, covenants and conditions of this Agreement, the Operator and its employees, agents and subcontractors shall not be deemed to be acting as agents, servants or employees of the Corporation or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right, or other authorization given by the Corporation or the City or any of their respective officers, agents or employees in connection with
this Agreement, but shall be deemed to be independent contractors performing services for the Corporation, and shall be deemed solely responsible for all acts taken by them pursuant to this Agreement.

Section 13.02 Assignment.

The Operator shall not assign, convey, sublet or transfer this Agreement or the Operator’s rights hereunder without the written consent of the Corporation in its sole discretion. The Corporation shall not have the right to assign, convey, sublet or transfer this Agreement or the Corporation’s rights hereunder except to an affiliate or government or quasi-government entity (for the avoidance of doubt an entity of a type similar to the Corporation shall be permitted), without the consent of the Operator. Notwithstanding the foregoing, the Operator or its parent may form a special purpose entity to own the Vessels and enter into an intercompany agreement to make such Vessels available to the Operator in a manner which is in all respects consistent with the requirements of this Agreement.

Section 13.03 Right to Inspect and Audit.

In addition to the audit provisions set forth in Appendix A, at any time and from time to time, upon reasonable prior written notice, the Operator shall allow the Corporation, the City and the Comptroller and their respective officers, employees, servants, operators and agents to: (a) examine and make copies and abstracts from the records, books of account and documents related to this Agreement, including any audits, surveys or inspections conducted as part of the Operator’s safety management system, (b) visit and inspect the properties of the Operator, and (c) discuss the affairs, finances, and accounts of the Operator with any of its officers and directors and independent accountants.
In the event that an audit by a government entity (other than the Corporation or the Comptroller) with authority to conduct a financial and/or performance audit asserts that the Operator has failed to perform in any manner with respect to the Operator’s obligations under this Agreement, and the Corporation disagrees with such assertions, the Corporation shall reasonably coordinate with the Operator to defend its performance and shall reimburse the Operator for the reasonable third-party, out-of-pocket costs (i.e. excluding any overhead and non-direct costs) that the Operator incurs (“Audit Costs”) in excess of $50,000 to defend itself with respect to such audit up to a maximum amount of $100,000; provided, however, that the audit ultimately shows that the assertions against the Operator were false. In the event that the Corporation agrees with the audit’s assertions, if any, of a failure to perform, the Corporation shall afford the Operator a reasonable opportunity to correct, or cure, as the case may be, such non-performance, except in the event of suspected intentional misrepresentation or fraud.

Section 13.04 Maintenance of Records.

In order to facilitate any audit provided herein, the Operator agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles consistently applied of the Services performed by it, its employees, and its subcontractors under this Agreement and of all financial accounts and transactions maintained or undertaken in connection with this Agreement, including, but not limited to, time cards and records reflecting the nature of the work or services performed and time consumed, bank statements, cancelled checks, bills and receipts, requests for payment, and deposit slips, and to have such records available for inspection and audit by the Corporation, the Comptroller and/or their designees at reasonable times, on reasonable prior written notice. In addition, the Operator shall, upon reasonable demand, provide the Corporation, the Comptroller
and/or their designees with copies of any such records including, without limitation, photocopies and electronic copies. The Operator shall maintain such records, books of account and documents at its principal place of business in New York City for six years after the Expiration Date of this Agreement.

Section 13.05 Claims or Actions Against the Corporation.

Upon acceptance by the Operator of the final payment to be paid pursuant to this Agreement, the Operator agrees that it shall be deemed to have released the Corporation and the City from any and all claims, causes of action, and liability to the Operator, its successors, legal representatives and assigns for payment to Operator of the Compensation, in connection with this Agreement or the performance of the Services. No officer, employee, agent or other person authorized to act on behalf of the Corporation or the City shall have any personal liability in connection with this Agreement. The Operator agrees that no cause of action against the Corporation or the City in connection with this Agreement shall lie or be maintained by the Operator, its successors or assigns unless such action is commenced within twelve months after (i) the Expiration Date, or (ii) the accrual of the cause of action, whichever is earlier.

Section 13.06 Assistance by the Operator.

If any claim is made or any action brought relating to this Agreement or the Services, whether or not the Operator is a party, the Operator shall diligently render to the Corporation any and all assistance which the Corporation may reasonably require of the Operator, without compensation, except for reimbursement of Operator’s reasonable out-of-pocket expenses (including, without limitation, travel expenses) in connection therewith.

Section 13.07 Refusal to Testify.
A. The Operator agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a Federal, State or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. If

(i) any person who has been advised that her or his statement, and any information from such statement, will not be used against her or him in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the Federal, City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or the Corporation, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or

(ii) any person refuses to testify for a reason other than the assertion of her or his privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or the Corporation, or any local
development corporation within the City, then the commissioner or agency head (each of which is
hereinafter referred to as the “Commissioner”) whose agency is a party in interest to the
transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such
investigation, audit or inquiry shall convene a hearing, upon not less than five days written notice
to the parties involved, to determine if any penalties should attach for the failure of a person to
testify.

C. If any non-governmental party to the hearing requests an adjournment, the
Commissioner who convened the hearing or the Corporation may, upon the Commissioner
granting the adjournment, suspend any contract, lease, permit, or license pending the final
determination pursuant to subsection (E) below without the City or the Corporation incurring any
penalty or damages for delay or otherwise.

D. The Corporation or the City may impose the following penalties after a final
determination by the Commissioner that penalties should attach for the failure of a person to
testify:

(i) the disqualification for a period not to exceed five years from the date of an
adverse determination of any person, or any entity of which such person was a member at the time
the testimony was sought, from submitting bids for, or transacting business with, or entering into
or obtaining any contract, lease, permit or license with or from the City or the Corporation, as the
case may be; and/or

(ii) the cancellation or termination of any and all such existing City or
Corporation contracts, leases, permits or licenses that the refusal to testify concerns and that have
not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an
unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice

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scheduling the hearing, without the City or the Corporation incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City or the Corporation, as the case may be.

E. The Commissioner shall consider and address, in reaching her or his determination, and the Corporation and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in paragraphs (i) and (ii) below. The Commissioner and the Corporation may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The entity’s good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City or the Corporation.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity (subject to penalties under subsection (D) above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition
of the interest, or at the hearing called for in subsection (B) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. (i) The term “license” or “permit” as used in this Section 13.07 shall be defined as a license or permit not granted as a matter of right.

(ii) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or the Corporation or otherwise transacts business with the City or the Corporation.

(iv) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

Section 13.08 No Political Activity.

The Operator agrees that it shall not engage in any political activity or any activity to further the election or defeat of any candidate for public, political or party office as a part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.09 MacBride Principles.

The MacBride Principles Rider attached hereto as Appendix K, is hereby incorporated in this Agreement, and forms a part of this Agreement, as if fully set forth herein.
Section 13.10 Notices.

Each written notice, demand, request or other communication in connection with this Agreement shall be either served in person, with delivery of service acknowledged in writing by the party receiving the same or deposited in the United States mails, postpaid, and addressed to the respective address as follows, or to such other address as may be specified by written notice sent in accordance herewith, unless otherwise explicitly provided herein (e.g. in certain instances as set forth on Appendix A hereto email or phone is denoted as an acceptable form of communication).

If to the Corporation:

President
New York City Economic Development Corporation
110 William Street, 6th Floor
New York, New York 10038

with copies to:

General Counsel
New York City Economic Development Corporation
110 William Street, 6th Floor
New York, New York 10038

and

Executive Vice President, Asset Management
New York City Economic Development Corporation
110 William Street, 6th Floor
New York, New York 10038

If to the City:

Chief, Economic Development Division
New York City Law Department
100 Church Street
New York, New York 10007

Email Address:
Phone:
If to Operator:

VP & General Manager
HNY Ferry LLC
353 West Street
New York, New York 10014
Email Address: hnyferrygm@hornblower.com
Phone: (212) 337-0001

with copies to:

Charles Scot Birenbaum
Greenberg Traurig, LLP
4 Embarcadero Center, Suite 3000
San Francisco, California 94111
Email Address: birenbaumc@gtlaw.com
Phone: (415) 655-1310

and

Edward C. Wallace
Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, New York 10166
Emails Address: wallacee@gtlaw.com
Phone: (212) 801-9299

Every notice, demand, request or other communication hereunder shall be deemed to have been given two business days after the mailing as aforesaid.

Section 13.11 Company Requirements.

A. The Operator will strive to meet 10 to 25% participation by Minority and Women-Owned Business Enterprises (“M/WBE”) in connection with the Scope of Services including, as applicable, the Operator’s M/WBE Subcontractors Participation Plan or M/WBE Narrative Form attached hereto as Appendix J.

B. The Operator shall comply with the Living Wage requirements as set forth on Appendix O hereto.
C. The Corporation recognizes the importance of creating employment opportunities for low-income persons, enabling them to participate in the City’s economic growth. To this end, the Corporation has developed the HireNYC Program for all service contracts expected to produce ten (10) or more permanent jobs over the life of the project. Participation in this program requires the Operator to use good faith efforts to achieve the hiring and workforce development goals and perform the requirements of the Corporation’s HireNYC Program described in Appendix L.

Section 13.12 Non-Waiver.

Failure of the Corporation, its agents or its representatives, to enforce or otherwise require the performance of any of the terms and conditions of this Agreement, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the Corporation, and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the Corporation.

Section 13.13 Agreement Binding.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 13.14 Conflicts.

In the event any provisions set forth in the annexed Appendices or Exhibits conflict with any other provisions in the body this Agreement, the provision with the more specific or stringent requirements shall govern. In the event that any provisions set forth in this Agreement conflict with any of the Site Access Agreements, this Agreement shall control.

Section 13.15 Interpretation.

When a reference is made in this Agreement to an Article, Section, Schedule, Appendix or Exhibit, such reference shall be to an Article or Section of, or a Schedule, Appendix