

EQUIPMENT PURCHASE AND IMPROVEMENT FUNDING AGREEMENT

THIS EQUIPMENT PURCHASE AND IMPROVEMENT FUNDING AGREEMENT (hereinafter, this "**Agreement**") is effective as of April 1, 2015 by and between (i) the NJ Transit Corporation, an instrumentality of the State of New Jersey, and (ii) Port Imperial Ferry Corporation d/b/a NY Waterway (hereinafter referred to as "**NY Waterway**") a New Jersey corporation having its principal place of business at 4800 Avenue at Port Imperial, Weehawken, New Jersey 07086.

WITNESSETH:

WHEREAS, NJ TRANSIT (as defined below) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State of New Jersey to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner; and

WHEREAS, NJ TRANSIT has elected to support the public transportation system through funding the purchase of equipment and making of improvements by privately owned ferry carriers whose primary mission is to provide Regular Route Ferry Service (as defined below); and

WHEREAS, the purchase of equipment and making of improvements by ferry operators will provide improved and more reliable mass transit service to the public, contribute to increasing ridership on public transportation, reduce the need for ferry carriers to use their own financial resources for capital requirements, and provide assistance to ferry carriers to enable them to hold down fares for the riding public; and

WHEREAS, NJ TRANSIT has determined that NY Waterway provides Regular Route Ferry Service for the citizens of New Jersey, including the operation of a bus fleet in support of such Regular Route Ferry Service; and

WHEREAS, NJ TRANSIT has also determined that the funding of NY Waterway's purchases of Equipment and making of Improvements for use in support of and in connection with its existing ferry service is in the public interest; and

WHEREAS, the Equipment to be purchased and Improvements to be made by NY Waterway with the funding to be provided hereunder is intended to enlarge and enhance NY Waterway's operational capacity and capital infrastructure under NJ TRANSIT's legislative mandate as set forth in the New Jersey Public Transportation Act of 1979.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, including the above whereas provisions contained herein which are made part of this Agreement, the parties hereto covenant and agree with each other as follows:

1. INTENT AND PURPOSE

(a) The purpose of this Agreement is for NJ TRANSIT to provide NY Waterway with funding to purchase Equipment and make Improvements to be used in support of, and in connection with its provision of, essential ferry transportation services to and from New Jersey.

(b) NJ TRANSIT and NY Waterway agree that it is the intent of the parties that at all times prior to the applicable End Date for each item of Equipment or Improvement, NY Waterway shall be bound and obligated by each and every provision of this Agreement which relates to such item of Equipment or Improvement.

2. DEFINITIONS

The following words and terms, as used in this Agreement, shall have the following meanings:

(a) "**ADA**" shall mean the Americans with Disabilities Act (P.L. 101-336, 42 USC sec 12101 et seq.) and the rules and regulations promulgated pursuant thereto (49 CFR 37.161-173, 38.21-39, 38.151-159 and 29 CFR 1630.1 et seq.).

(b) "**Board Member**" shall mean any person appointed to the NJ TRANSIT Board of Directors pursuant to N.J.S.A. 27:25-4 (b) and (d).

(c) "**Dispute**" shall have the meaning ascribed to such term in Section 27(a) hereof.

(d) "**Dispute Notice**" shall have the meaning ascribed to such term in Section 27(a) hereof.

(e) "**Employee**" shall mean, with respect to NJ TRANSIT, any officers or full time or part time employees of NJ TRANSIT.

(f) "**End Date**" means, with respect to each item of Equipment or Improvement, the earliest to occur of (i) the end of the Useful Life of such item of Equipment or Improvement, (ii) any sale or other disposal of such item of Equipment or Improvement permitted hereunder, or (iii) the termination of this Agreement.

(g) "**Equipment**" shall mean any item of equipment listed and separately described in Exhibit A attached hereto and made a part hereof. All such items of equipment are collectively referred to herein as the "**Equipment**".

(h) "**Improvement**" shall mean any improvement made to the real property or tangible personal property owned, leased or licensed by NY Waterway as listed and separately described in Exhibit A attached hereto and made a part hereof. All such improvements are collectively referred to herein as the "**Improvements**".

(i) "**NJ TRANSIT**" shall mean the New Jersey Transit Corporation and its subsidiaries and their respective Boards of Directors, officers, agents and Employees.

(j) "**Regular Route Ferry Service**" shall mean the operation of any ferry service over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states.

(k) "**Sale Transaction**" shall mean, with respect to NY Waterway, the occurrence of any of the following: (i) the consummation of any acquisition, in a single transaction or a series of related transactions, by any person or entity or group of persons or entities (other than the current shareholders of NY Waterway, their family members and affiliates of the foregoing) of

voting securities of NY Waterway which represent more than 50% of the combined voting power of NY Waterway immediately after the acquisition; (ii) the consummation of any merger or consolidation of NY Waterway, other than a merger or consolidation in which the voting securities of NY Waterway immediately prior to the merger or consolidation continue to represent (either by remaining outstanding or being converted into securities of the surviving entity) 50% or more of the combined voting power of NY Waterway or the surviving entity immediately after the merger or consolidation with a third party; (iii) the consummation of any sale, transfer, or other disposition (in a single transaction or a series of related transactions) of items of Equipment and Improvements aggregating more than 50% of the aggregate value of the items of Equipment and Improvements; or (iv) any transaction or series of related transactions having, directly or indirectly, the same effect as any of the foregoing.

(l) "State" means the State of New Jersey.

(m) "**Successful Bidder**" means the successful bidder for the applicable item of Equipment purchased or Improvement made by NY Waterway with funding provided by NJ TRANSIT pursuant to this Agreement.

(n) "**Useful Life**" shall have the meaning ascribed to such term in Section 17 hereof.

3. TERM OF AGREEMENT: AMENDMENTS

(a) This Agreement shall commence on the effective date of this Agreement as stated above. This Agreement shall continue in full force and effect until terminated in accordance with Section 15 (*NY Waterway's Insolvency*) or Section 18(b) (*End Date of Equipment or Improvement; Termination of Agreement*).

(b) NJ TRANSIT and NY Waterway upon mutual agreement may amend this Agreement at any time.

(c) NJ TRANSIT and NY Waterway hereby agree that, upon authorization by NJ TRANSIT of the purchase of any item of equipment, such item of equipment shall be deemed to be added to the roster of Equipment listed in Exhibit A, which shall be deemed to be amended accordingly, and to be "Equipment" under this Agreement and, without limiting the foregoing, the parties shall revise Exhibit A to add such item of Equipment.

(d) NJ TRANSIT and NY Waterway hereby agree that, upon authorization by NJ TRANSIT of any improvement to be made to the real property or tangible personal property owned, leased or licensed by NY Waterway, such improvement shall be deemed to be added to the roster of Improvements listed in Exhibit A, which shall be deemed to be amended accordingly, and to be an "Improvement" under this Agreement and, without limiting the foregoing, the parties shall revise Exhibit A to add such Improvement.

4. DUTIES AND OBLIGATIONS

(a) NJ TRANSIT Responsibilities. NJ TRANSIT's responsibilities shall include:

(i) Ensuring compliance by NY Waterway with competitive procurement bid requirements;

(ii) Reviewing each Successful Bidder's responsiveness and responsibility,

and determining whether the bid price is fair and reasonable;

(iii) Recommending the Equipment procurement or Improvement work and materials contract award to the Successful Bidder; and

(iv) Maintaining satisfactory continuing control during the Useful Life of each item of Equipment or Improvement as provided in Section 6 (Satisfactory Continuing Control).

(b) NY Waterway Responsibilities. NY Waterway's responsibilities shall include:

(i) Submitting a general scope of work for the purchase of Equipment or making of an Improvement to NJ TRANSIT for review and approval;

(ii) Submitting a procurement bid package for the purchase of Equipment or making of an Improvement to NJ TRANSIT for review and approval and incorporating NJ TRANSIT'S comments on the bid procurement package as mutually agreed by NY Waterway and NJ TRANSIT;

(iii) Making a good faith effort to obtain a minimum of three (3) bids and submitting the bids received to NJ TRANSIT, along with a recommendation for the award; provided that, if only one bid is received, then NY Waterway shall require the sole bidder to submit for NY TRANSIT's review and approval, if appropriate based upon the item of Equipment or Improvement, a detailed breakdown of costs and profits;

(iv) Executing a separate contract with the Successful Bidder based on NJ TRANSIT's recommendations;

(v) Providing NJ TRANSIT with a copy of the executed contract with the Successful Bidder; and

(vi) Administering the contract with the Successful Bidder to ensure compliance with the bid specifications.

5. CONSIDERATION/USE OF EQUIPMENT AND IMPROVEMENTS

(a) NY Waterway shall use the Equipment and Improvements to support, enlarge and enhance NY Waterway's operational capacity and capital infrastructure.

(b) NY Waterway hereby agrees to provide information regarding its Regular Route Ferry Service and otherwise cooperate and participate in any route rationalization studies performed by, or on behalf of, NJ TRANSIT which may affect public transit services to and from the State of New Jersey, all as reasonably requested by NJ TRANSIT.

6. SATISFACTORY CONTINUING CONTROL

NJ TRANSIT will maintain satisfactory continuing control over the items of Equipment and Improvements as follows:

(a) In the event that NY Waterway loses possession or control of any item of Equipment or Improvement or this Agreement is terminated in accordance with Section 15 (NY Waterway's Insolvency) hereof or Section 18 (End Date of Equipment and Improvements;

Termination of Agreement) hereof prior to the end of the Useful Life of the applicable item of Equipment or Improvement, then the Ferry Capital Improvement Program funds which otherwise would have been paid to NY Waterway in the subsequent calendar year shall be offset and reduced by an amount to (i) such Equipment's or Improvement's deemed initial value, multiplied by (ii) the unamortized portion of such Equipment's or Improvement's Useful Life, divided by (iii) the total Useful Life of such Equipment or Improvement.

Example: An item of Equipment has a deemed initial value of \$60,000 and a Useful Life of 5 years (i.e., 60 months). After 20 months, such Equipment is sold. On the sale date, the value of the unamortized portion of its Useful Life is calculated as (i) the Equipment's deemed initial value (i.e., \$60,000)] multiplied by (ii) the unamortized portion of the Equipment's Useful Life (i.e., 40 months) divided by (iii) the total Useful Life of the Equipment (i.e., 60 months) = $\$60,000 \times 40/60 = \$40,000$. Thus, NJ TRANSIT will be permitted to make an offset of \$40,000 against Ferry Capital Improvement Program funds which otherwise would have been paid to NY Waterway in the subsequent calendar year.

(b) If any item of Equipment shall be subject to the issuance of a certificate of title, NY Waterway shall deliver such certificate to NJ TRANSIT within ten (10) business days after NY Waterway's receipt thereof. NJ TRANSIT shall re-deliver such certificate of title to NY Waterway within ten (10) business days after the End Date for such item of Equipment.

7. FUNDING

Payment of invoices for the purchase of each item of Equipment or work and materials for any Improvement shall be as follows:

(a) NJ TRANSIT will fund to NY Waterway all appropriately invoiced costs and expenses incurred in connection with the contract with the Successful Bidder; provided, however, that all cost overruns or other costs in excess of the allocated funding for such contract shall be the sole responsibility of NY Waterway.

(b) NY Waterway shall cause copies of all invoices which it receives from the Successful Bidder to be delivered to NJ TRANSIT. Upon receipt of such invoice, NJ TRANSIT shall have 30 days to review and approve the invoice, which approval shall not be unreasonably withheld, conditioned or delayed, and to make payment to NY Waterway in the amount of such approved invoice for NY Waterway to use to pay the Successful Bidder.

8. MAINTENANCE AND NJ TRANSIT INSPECTIONS

(a) General Maintenance Requirements. NY Waterway will cause each item of Equipment or (if applicable) Improvement to be maintained in accordance with the manufacturer's warranty requirements, and to be maintained in proper working condition free from damage and malfunction (if reflected in a defect report or otherwise known), reasonable wear and tear excepted. NY Waterway will cause any significant damage incurred by any item of Equipment or (if applicable) Improvement (if reflected in a defect report or otherwise known) to be repaired promptly and prior to the operation in service of such item of Equipment or (if applicable) Improvement when it is determined such damage impairs the proper and safe mechanical operation of the item of Equipment or Improvement, and all other such damage will be repaired in a reasonable time, reasonable wear and tear excepted. In no event will NJ

TRANSIT be required to repair, replace or maintain any item of Equipment or Improvement or to reimburse NY Waterway for such costs.

(b) Americans with Disabilities Act Compliance. NY Waterway will ensure that all items of Equipment or (if applicable) Improvement which are subject to the provisions of the ADA will be in full compliance therewith. NY Waterway will use all commercially reasonable efforts to ensure that all equipment required to be installed on such item of Equipment or (if applicable) Improvement is properly maintained in accordance with the O.E.M. recommendations and is fully functional during all operations.

(c) Required Maintenance Documentation. NY Waterway will be responsible for maintaining for each item of Equipment or Improvement maintenance records throughout the term of this Agreement.

(d) Operations and Maintenance Facilities. NY Waterway will provide adequate facilities for the support of the operation and maintenance of all items of Equipment or Improvement as required hereunder. NY Waterway will be responsible for obtaining and complying with all required building, occupancy or other governmental permits or codes for such facilities.

(e) Inspections and Audit. NJ TRANSIT, or its representatives, will have access to NY Waterway's facilities and to its Equipment or Improvement maintenance records during planned or unannounced visits or inspections.

(f) Accessions. NY Waterway is prohibited from making any structural or material modifications to any item of Equipment or Improvement without the express written consent of NJ TRANSIT, not to be unreasonably withheld, delayed or conditioned; provided, however, that no such consent shall be required to make any modifications pursuant to the requirements of Section 8(a) hereof.

9. NO NJ TRANSIT WARRANTIES

NY Waterway hereby specifically and expressly agrees and covenants that NJ TRANSIT makes no warranties, expressed or implied, as to any item of Equipment or Improvement and NJ TRANSIT assumes no risk or responsibility whatsoever for the same.

10. INDEMNIFICATION

(a) NY Waterway hereby agrees that it shall defend, indemnify, protect, and save harmless NJ TRANSIT, its subsidiaries, their respective Boards of Directors, officers, agents, and Employees from any and all claims of injury or death of persons and/or damage to property or a violation of any law whatsoever, including any claim for protection made pursuant to 49 U.S.C. Sec.5333(b) or any agreement executed pursuant thereto, arising or claimed to arise from any act, omission, fault, breach, failure, negligence, or responsibility therefor by NY Waterway, its subsidiaries, their officers, directors, agents and Employees in connection with the purchase, use, maintenance or possession of any Equipment or Improvement, including, but not limited to, costs of preparation, handling of investigations, court costs, counsel fees, settlements, judgments, or otherwise.

(b) In the event of any claim, demand, or suit against or joining the United States Department of Transportation, the State of New Jersey, NJ TRANSIT, its subsidiaries, their

respective officers, directors, agents, and/or employees arising out of the performance of this Agreement, NY Waterway hereby agrees that it shall assume and take over the investigation and defense thereof solely at its own cost and expense, including, but not limited to, costs of preparation, handling of investigations, court costs, counsel fees, settlements, judgments, or otherwise. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall forward to NY Waterway every demand, complaint, notice, summons, pleading, or other process received by NJ TRANSIT or its representatives.

(c) In the event that NJ TRANSIT determines in its own discretion and finds it in its best interest to have counsel of its choosing appointed to monitor, track or handle a case or any matter where NJ TRANSIT's interests may be impacted, NJ TRANSIT may use its own legal counsel at its sole expense and NY Waterway shall preserve any and all of NJ TRANSIT's rights and privileges under law and this Agreement; provided, however, NJ TRANSIT may elect to employ separate counsel and/or assume the defense and control the settlement of any lawsuit or other legal proceeding, and the defense expenses thereof will be at the cost of NY Waterway, if NY Waterway has failed to: (i) employ counsel to assume the defense of a lawsuit or other legal proceeding by the 20th day after receiving notice of the commencement thereof; or (ii) proceed diligently with the defense of a lawsuit or other legal proceeding, provided that NJ TRANSIT has provided NY Waterway with written notice of such failure to proceed diligently and NY Waterway does not reasonably cure such failure within a reasonable period of time, accounting for all relevant facts and circumstances, following such written notice.

(d) This Section 10 shall survive the termination of this Agreement.

11. INSURANCE, SETTLEMENT, AND RISK OF LOSS

(a) NY Waterway hereby agrees that it shall obtain, pay for, and maintain throughout the term of this Agreement insurance for injury, death, collision, comprehensive (fire, theft, all other peril), personal injury, and property damage against all risks of damage, loss, theft, or destruction, partial or complete, arising out of the use, maintenance, and/or possession of any item of Equipment or Improvement and arising out of performance of ferry service and attendant activities, protecting NJ TRANSIT and NY Waterway against the aforesaid injuries and damages.

NY Waterway shall maintain the following levels of insurance unless a different level or levels is approved by NJ TRANSIT:

- Commercial Automobile Liability Insurance. The policy shall name NJ TRANSIT and the State of New Jersey as additional insured with respect to the operations to be performed. Coverage under this policy shall have limits of liability of not less than \$500,000 each occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability and a deductible no greater than \$1,000.
- Workers' Compensation Insurance complying with the statutory requirements of the State of New Jersey covering all employees of NY Waterway.
- All Risk Property Insurance for such coverage covering the replacement cost (if applicable) of each item of Equipment or Improvement prior to the End Date applicable thereto.

(b) Promptly following a written request from NJ TRANSIT, NY Waterway shall furnish NJ TRANSIT with written evidence from its insurer of the insurance coverage described within this Section 11 satisfactory to NJ TRANSIT. NY Waterway shall also provide NJ TRANSIT with written evidence from its insurer of the insurance coverage described within this Section 11 promptly following a written request from NJ TRANSIT and within five (5) business days of any change in coverage or insurance.

(c) NY Waterway shall not take any action by omission or commission to cancel or materially change any of the insurance required under this Agreement without NJ TRANSIT's prior written approval of any such cancellation or change, which approval shall not be unreasonably withheld, delayed or conditioned.

(d) The maintenance of insurance under this Section 11 shall not relieve NY Waterway of any liability under Section 10 where liability for injury, death, and/or property damage is greater than the insurance coverage.

(e) In the event of any loss, theft, damage, or destruction of an item of Equipment or Improvement, (i) NY Waterway shall promptly notify NJ TRANSIT, promptly notify its insurance carrier, and initiate the appropriate property damage claim(s) with its insurance carrier and/or third parties on a timely basis, (ii) the decision regarding settlement amounts and terms regarding property damage recovery shall be made by NY Waterway, and (iii) NY Waterway shall be the loss payee on all settlement payments involving such item of Equipment or Improvement.

(f) Each insurance company issuing a policy referred to in this Section 11 shall be licensed to transact such business in the State of New Jersey, and shall hold a policy holder's rating of "A" or better by A.M. Best and Company, Inc. or by Underwriters of Lloyds of London.

12. ACCIDENT AND INCIDENT REPORTS

NY Waterway shall promptly notify NJ TRANSIT in writing if NY Waterway takes any item of Equipment or Improvement out of service for a period in excess of three (3) days in connection with any incidents, accidents, property damage, personal injury or death.

13. CHARGES, FEES, AND EXPENSES

(a) NY Waterway shall be responsible for the payments for any and all expenses, taxes, charges, assessments, license fees, inspection fees, fines, and other costs, including but not limited to gross receipts taxes, highway use taxes, and vehicle excise taxes, imposed upon the items of Equipment or Improvements or the operation thereof, whether such taxes, charges, fees, or other costs are levied against the operator or the owner.

(b) NY Waterway will pay, in addition to all expenses, any fees, charges, and taxes incurred in connection with the titling, licensing, and registration of any item of Equipment or Improvement, if any.

(c) The cost of any newly imposed State or Federal mandates imposed upon any item of Equipment or Improvement or the operation thereof shall be solely borne by NY Waterway.

14. SALE TRANSACTION; SALE OF EQUIPMENT OR IMPROVEMENTS; RETURN OF

CERTIFICATE OF TITLE

(a) During the term of this Agreement, NY Waterway shall not consummate any Sale Transaction unless NY Waterway has obtained the prior written commitment of the new, merged or consolidated enterprise to continue to operate Regular Route Ferry Service at all times in accordance with the terms of this Agreement. If NY Waterway consummates any such Sale Transaction without the foregoing written commitment, or if the new, merged or consolidated enterprise materially breaches said commitment, then NJ TRANSIT may declare NY Waterway and/or such enterprise, as applicable, to be in default of this provision. NY Waterway shall notify NJ TRANSIT in writing at least thirty (30) days prior to the anticipated consummation of any Sale Transaction.

(b) During the term of this Agreement, NY Waterway shall not sell any item of Equipment or Improvement which has any remaining Useful Life unless NY Waterway has obtained the prior written approval of NJ TRANSIT, which approval shall not be unreasonably withheld, conditioned or delayed. If NY Waterway consummates any such sale of Equipment or Improvement without the foregoing written approval of NJ TRANSIT, then NJ TRANSIT may declare NY Waterway to be in default of this provision.

(c) If any item of Equipment sold shall be subject to the issuance of a certificate of title, NJ TRANSIT shall re-deliver such certificate of title to NY Waterway in accordance with Section 6, provided that the requirements of subsection (a) or (b) above, as applicable, are satisfied.

15. NY WATERWAY'S INSOLVENCY

(a) This Agreement may be immediately terminated without advance notice, at the election of NJ TRANSIT in writing, if (i) a voluntary and/or involuntary petition in bankruptcy has been filed in connection with NY Waterway, (ii) NY Waterway shall have made an assignment for the benefit of creditors, (iii) NY Waterway shall have been voluntarily or involuntarily adjudicated as bankrupt by any court of competent jurisdiction, (iv) a receiver shall have been appointed for NY Waterway's business, or (v) NY Waterway shall have permitted or suffered any distress, attachment, levy, or execution to be made or levied against all or any substantial portion of the property of NY Waterway.

(b) In the event this Agreement is terminated under this Section 15, NY Waterway shall not be thereby released of any liability or obligation for its failure to make any payment or act in any manner required hereunder by NY Waterway or for NY Waterway's failure or inability to perform in accordance with the terms, covenants, and conditions of this Agreement.

16. EVENT OF DEFAULT

(a) If during the term of this Agreement, an Event of Default (as defined below) shall occur, NJ TRANSIT at its sole discretion may proceed by appropriate action or actions, as provided under Section 27 (Disputes) of this Agreement, in tandem with action or actions at law or in equity, where applicable and required, to enforce performance by NY Waterway or to recover damages for the breach thereof.

(b) "**Event of Default**" shall mean that NJ TRANSIT shall have declared NY Waterway to be in default in connection with any provision in this Agreement and such default shall have continued and not been remedied and corrected within thirty (30) consecutive

calendar days after written notice is given by NJ TRANSIT to NY Waterway specifying the default and demanding the same to be remedied; provided, however, that if such remediation and correction requires work to be done, actions to be taken or conditions to be remedied which by their nature cannot reasonably be accomplished within such thirty (30) day period, so long as NY Waterway commences such observance or performance within such period and shall be proceeding diligently and continuously with respect thereto, then the fact that the same shall not have been corrected during such period shall not constitute an Event of Default.

17. USEFUL LIFE OF EQUIPMENT AND IMPROVEMENTS

The useful life for each item of Equipment or Improvement ("*Useful Life*") shall be as set forth on Exhibit A. In the event that any item of Equipment or Improvement is out of service for a period of more than thirty (30) consecutive days, then the period for which such item of Equipment or Improvement is out of service shall not count towards the amortization of the Useful Life of such item of Equipment or Improvement.

18. END DATE OF EQUIPMENT AND IMPROVEMENTS: TERMINATION OF AGREEMENT

(a) Notwithstanding anything in this Agreement to the contrary, after the applicable End Date for each item of Equipment or Improvement, (i) such item of Equipment or Improvement shall cease to be deemed to be "Equipment" or an "Improvement" hereunder, (ii) this Agreement shall deemed to have been terminated solely with respect to such item of Equipment or Improvement (but shall continue with respect to all other items of Equipment and Improvements) and, (iii) without limiting the foregoing, the restrictions, reporting requirements and other obligations under this Agreement shall cease to apply with respect to such item of Equipment or Improvement.

(b) When all the items of Equipment and Improvements listed on Exhibit A (as amended from time to time) have reached their End Dates, this Agreement shall terminate.

19. FEDERAL CHANGES

NY Waterway shall at all times comply with all applicable Federal laws, regulations, policies, procedures, and directives as they may be applicable to the items of Equipment or Improvements and amended or promulgated from time to time during the term of this Agreement, including any Federal labor protection requirements or agreements applicable to this Agreement.

20. AMERICANS WITH DISABILITIES ACT

The parties to this Agreement agree that the provisions of the ADA are made part of this Agreement and are binding upon them. It is also agreed by the parties that, as provided in Section 10 (Indemnification) above, NY Waterway shall indemnify, protect and save harmless the State of New Jersey, NJ TRANSIT, its officers, agents and employees and each and every one of them against all suits, claims, penalties and costs of every kind and description to which NJ TRANSIT may be subjected to by NY Waterway's failure to comply with the ADA.

21. FILING AND REPORTING REQUIREMENTS

NY Waterway shall submit reports to NJ TRANSIT in accordance with the various Sections of this Agreement, in a form prescribed by NJ TRANSIT, and due within the time required. NY Waterway shall also provide, as NJ TRANSIT may request, at any time, any additional information deemed necessary and reasonably requested by NJ TRANSIT. NY Waterways hereby agrees to comply with the following filing and reporting requirements in addition to the filing and reporting requirements described in other Sections of this Agreement:

a. Reports Required by Federal, State, or Other Regulatory Authorities NY Waterway shall prepare, in a form prescribed by NJ TRANSIT, and deliver to NJ TRANSIT within a reasonable time prior to the required date of filing (or to the extent permissible, file on behalf of NJ TRANSIT), any and all reports which NJ TRANSIT is required to file with any Federal, state, or other regulatory authority.

b. FTA National Transit Database Data Requirements NY Waterway shall provide NJ TRANSIT with the annual FTA National Transit Database (formerly Section 15) report, prepared in accordance with the instructions provided by FTA and NJ TRANSIT, and including the required certification(s), by April 30 of each year covering NY Waterway's operations for the preceding year. NY Waterways shall maintain and safeguard all source documents used to prepare the FTA National Transit Database reports for a period of three years following the filing, by NJ TRANSIT, of the report with the FTA. Such documents will be available for audit and review by representatives of the FTA or NJ TRANSIT. These documents shall include all materials used to calculate actual revenue vehicle mileage, including, but not limited to, dispatch sheets. Actual revenue vehicle miles shall be calculated in accordance with Federal reporting standards, which standards shall be made available to NY Waterway by NJ TRANSIT. Fuel consumption shall not be utilized for purposes of such calculations.

22. PROHIBITED INTEREST

No director, officer, or Employee of NJ TRANSIT or its subsidiaries shall have any interest, direct or indirect, in this Agreement or any benefit arising therefrom. No former director, officer, or Employee of NJ TRANSIT or its subsidiaries who, during his or her tenure, had a direct, personal involvement with matters that are closely related to this Agreement, shall have any interest, direct or indirect, in this Agreement or any benefit arising therefrom.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND DISQUALIFICATION

NY Waterway hereby certifies that it is not listed on the Record of Suspensions, Debarments, and Disqualifications produced by the State of New Jersey, Department of Treasury, Division of Property Management & Construction, in accordance with Executive Order Numbers 34 and 189.

24. AUDIT, INSPECTION, AND RECORDS RETENTION

(a) In accordance with N.J.S.A. 52:15C-14(d), NY Waterway shall maintain, and authorized representatives of NJ TRANSIT and the State of New Jersey shall have the right to examine and/or photocopy NY Waterway's books of account, records, reports, and all other documents that are related, directly or indirectly, to NY Waterway's operations, receipts, obligations, and claims pertaining to the items of Equipment or Improvements. Such information shall be kept confidential except as otherwise required by law. NY Waterway shall also allow unimpeded access to its real and personal property for the purpose of such inspection by NJ

TRANSIT examiners. NY Waterway shall permit NJ TRANSIT, the State of New Jersey, or their authorized representatives to inspect all items of Equipment or Improvements as part of this Agreement, and all transportation services rendered by NY Waterway by use of such items of Equipment or Improvements, including all relevant data and records. NY Waterway shall also permit the above mentioned persons to audit the operating books and records of NY Waterway, and any operating subsidiary or affiliate under common control of NY Waterway, as may be deemed necessary by the aforementioned persons pertaining to this Agreement.

(b) NY Waterway agrees to maintain all books, records, accounts, and reports required under this Agreement with respect to each item of Equipment or Improvement for a period of not less than five (5) years after the End Date applicable to such item of Equipment or Improvement, except in the event of litigation or settlement of claims arising from performance under this Agreement, in which case NY Waterway agrees to maintain same until NJ TRANSIT, the State of New Jersey or any of their duly authorized representatives have disposed of all such litigation, appeals, claims, or exceptions thereto.

25. CIVIL RIGHTS

The parties to this Agreement do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (L. 1975, c. 127, as amended and supplemented), dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereunto, are hereby made a part of this contract and are binding upon them. During the performance of this Agreement, the Operator agrees as follows:

- (a) The Operator will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Operator will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by NJ TRANSIT's Office of Civil Rights setting forth provisions of this nondiscrimination clause.
- (b) The Operator will, in all solicitations or advertisements for employees placed by or on behalf of the Operator, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- (c) The Operator will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by NJ TRANSIT's Office of Civil Rights advising the labor union of the Operator's commitments under this act and

shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (d) The Operator agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

26. NJ TRANSIT CODE OF ETHICS

NJ TRANSIT considers the maintenance of public trust and confidence essential to its proper functioning. Vendors, including persons, firms, corporations, or other entities, including their officers, agents, and representatives, who do or may do business with NJ TRANSIT must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead to favored treatment for any organization or individual. Vendors must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nonetheless appear questionable to the general public, thus compromising the integrity of NJ TRANSIT. This policy is based upon the principles established in the laws governing the Executive Commission on Ethical Standards, N.J.S.A 52:13D-12 et seq., and Executive Order No. 189. A vendor lack of knowledge shall not in any way relieve the vendor of any of the provisions of this Code of Ethics. The following Code of Ethics requirements apply to the underlying Agreement and NY Waterway hereby agrees to comply with these requirements:

- (a) A vendor must warrant and affirm that the vendor has received a copy of NJ TRANSIT's Code of Vendor Ethics and that the vendor has read and studied such document and distributed such document to all of the vendor's personnel involved in seeking to do business with NJ TRANSIT and required said personnel to fully read this document. In addition, the vendor must further warrant and affirm that the vendor has received from NJ TRANSIT a document entitled "Important Notice to All Contractors and Consultants" and that the vendor has read and studied this document, including the page setting forth various New Jersey statutory provisions, and that the vendor has distributed this document to all of the vendor's personnel involved in seeking to do business with NJ TRANSIT and required said personnel to fully read such document.
- (b) The vendor must warrant and affirm that it has issued written instructions to all of the vendor's personnel involved in seeking to do business with NJ TRANSIT instructing and requiring same to strictly adhere to the the vendor's responsibilities as set forth in NJ TRANSIT's Code of Vendor Ethics and in the "Important Notice to All the vendors and Consultants".
- (c) the vendor must warrant and affirm that during the bidding or proposal process for the contract with NJ TRANSIT, no gratuities or other inducements have been offered or given or will be offered or given in any form including gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment, or any other thing of value or favors of any kind to any member of NJ TRANSIT's Board of Directors, officer or employee of NJ TRANSIT.
- (d) The vendor must warrant and affirm that during the Request for Proposals ("*RFP*") or Invitation for Bids ("*IFB*") process for the contract with NJ TRANSIT,

the vendor has not and will not make any offers of employment to any member of the NJ TRANSIT Board of Directors, officer or employee directly involved with this contract or solicit or interview therefor, directly or indirectly, without first seeking and obtaining written approval from NJ TRANSIT's Ethics Liaison Officer.

- (e) The vendor must warrant and affirm that during the RFP or IFB process for the contract with NJ TRANSIT it has and shall promptly report in writing to NJ TRANSIT every instance that comes to the the vendor's attention and knowledge regarding any member of NJ TRANSIT's Board of Directors, officer or employee of NJ TRANSIT who has solicited or asked the vendor to provide gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment or any other thing of value or favors of any kind or has made any solicitation or request, directly or indirectly, for employment with or through the the vendor.
- (f) The vendor must acknowledge and accept that for breach or violation of the foregoing warranties and affirmations, NJ TRANSIT shall have the discretion and legal right to disqualify the vendor from bidding or proposing for a contract between the the vendor and NJ TRANSIT.

27. DISPUTES

(a) Disputes. In the event of any dispute between the parties regarding the terms and conditions of this Agreement or the performance of any obligation between or among the parties contemplated herein (a "**Dispute**"), either party may, by written notice to each other party (a "**Dispute Notice**"), schedule a meeting between an executive officer of NY Waterway and the Vice President/General Manager of Bus Operations, or another relevant senior Employee of NJ TRANSIT to discuss and seek an amicable resolution of the Dispute. In the event the parties are unable to resolve the Dispute within thirty (30) days after the date of the Dispute Notice, either party may elect to initiate legal action against the other subject to the provisions of Section 27(b) below.

(b) Venue. In the event any Dispute is not resolved by discussion in accordance with the provisions of Section 27(a) above, any subsequent legal action, suit, or proceeding relating to such Dispute may only be instituted in a state court in the State of New Jersey, in accordance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and each party agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit, or proceeding, any claim that it is not subject personally to the jurisdiction of such court, that the action, suit, or proceeding is brought in an inconvenient forum, that the venue of the action, suit, or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party further irrevocably submits to the jurisdiction of any such court in any such action, suit, or proceeding.

(c) Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION LITIGATED IN ANY COURT BASED UPON, WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT AND ANY AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

28. NO ABATEMENT OR SET-OFF

(a) Sums payable by NY Waterway to NJ TRANSIT under any provisions of this Agreement shall not be subject to any set-off, counterclaim, or recoupment whatsoever, by reason of damage to, or loss or destruction of any item of Equipment or Improvement or any part thereof, or by reason of any interruption from whatever cause in the use, operation, or possession of any item of Equipment or Improvement or any part thereof.

(b) NY Waterway understands and hereby agrees that any sums payable by NY Waterway to NJ TRANSIT under any provisions of this Agreement may be recovered by deduction from any amounts that may otherwise be due or may be allocated to NY Waterway pursuant to any NJ TRANSIT program or agreement between NJ TRANSIT and NY Waterway. In all such instances, NJ TRANSIT must first provide NY Waterway with written notice, or invoice, for the sum payable by NY Waterway; thereafter, if the sum payable remains outstanding after thirty (30) days, NJ TRANSIT may deduct the sum from any amounts that may otherwise be due or may be allocated to NY Waterway pursuant to any NJ TRANSIT program or any other agreement between NJ TRANSIT and NY Waterway.

29. REMEDIES NOT EXCLUSIVE; NON-WAIVER

(a) The remedies in this Agreement provided in favor of NJ TRANSIT shall not be deemed to be exclusive, but shall be cumulative, and shall supplement and be in addition to all other remedies in its favor existing at law or in equity or otherwise.

(b) NY Waterway hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify in any manner any of the remedies herein provided for NJ TRANSIT, to the extent that such waiver is permitted by law.

(c) The failure of NJ TRANSIT to exercise any of the rights or remedies granted it hereunder upon any action, behavior, contingency, or occurrence related to or subject to this Agreement shall not constitute a waiver of any such right or remedy and shall not constitute consent for the continuation or recurrence of any such actions, behavior, contingency, or occurrence, or similar action, behavior, contingencies, or occurrences by NY Waterway.

30. NOTIFICATION

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other document provided, necessary, or permitted by this Agreement to be made upon, given, furnished, or filed with one party by another party will be in writing and will be deemed to have been duly given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed facsimile or e-mail if sent prior to 5:00 pm during a business day or, if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) the next business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, in each case if sent as follows:

If to NJ TRANSIT:

Vice President/General Manager, Bus Operations
NJ TRANSIT

One Penn Plaza East
Newark, New Jersey 07105-2246
Fax Number: (973) 491-8454
Email: dmartin@njtransit.com

If to NY Waterway:

Port Imperial Ferry Corp. d/b/a NY Waterway
4800 Avenue at Port Imperial
Weehawken, New Jersey 07086.
Fax Number: (201) 313-9049
Attn: Armand Pohan, Chairman

With a copy (which shall not constitute notice) to:

Budd Larner, P.C.
150 John F. Kennedy Parkway
Short Hills, NJ 07078
Fax Number: (973) 379-7734
Attn: Mark D. Larner, Esq.

(b) Either party to this Agreement may re-designate the recipient or change the address of the recipient of notifications hereunder by notifying the other party to this Agreement of such change in writing.

31. APPLICABLE LAWS: GOVERNING LAWS

(a) NY Waterway shall comply with applicable laws, regulations, ordinances, and codes of the United States, the State of New Jersey, and local governments within the State with respect to its performance under this Agreement.

(b) This Agreement shall be construed in accordance with and governed by the procedural and substantive laws of the State of New Jersey.

32. ENTIRE AGREEMENT

(a) This Agreement embodies the entire understanding of the parties hereto with respect to the subject matter hereof. It may not be modified or terminated except by a written instrument duly signed by all of the parties hereto or their respective successors or assigns.

(b) If any provision of this Agreement is found to be invalid, such invalidated provision shall be considered deleted and shall not invalidate the remaining provisions hereof which will continue in full force and effect. No prior agreement between the parties shall effect the terms of this Agreement.

(c) Except as otherwise provided herein, if the fulfillment by NY Waterway of any provision of this Agreement would conflict with or fail to comply with the provisions of any applicable statute, regulation, or order of any state or Federal agency or court, then nonfulfillment of such provisions shall be excused solely to the extent and for the duration of the conflict or noncompliance.

33. SUCCESSION

This Agreement shall be binding upon NJ TRANSIT, its successor or assigns, and upon NY Waterway, its successor or assigns.

34. CAPTIONS; CONSTRUCTION.

The article, section and paragraph captions herein and the table of contents hereto are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all of the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement.

35. COUNTERPARTS; FACSIMILE SIGNATURES.

This Agreement may be executed in one or more counterparts, all of which taken together constitute one instrument. This Agreement may be executed and delivered by facsimile, email or other electronic transmission, which the parties agree shall have the same legal effect as if the parties had delivered copies bearing original signatures.

36. SIGNATURE AUTHORITY

The undersigned signatories to this Agreement hereby represent and certify that they have been duly authorized, permitted and instructed by either NJ TRANSIT or NY Waterway, as the case may be, to execute and enter into this Agreement on behalf of NJ TRANSIT or NY Waterway, as the case may be.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Equipment Purchase and Improvement Funding Agreement to be effective on the date first shown above.

NJ TRANSIT:

NEW JERSEY TRANSIT CORPORATION

WITNESS:

Deborah K. Heim
Print or Type Witness Name

By:

Dennis Martin
Dennis Martin,
Vice President/General Manager
Bus Operations

Deborah K. Heim
Witness Signature

April 1
Date: March, 2015

NY Waterway:

PORT IMPERIAL FERRY CORP. d/b/a NY
Waterway

Print or Type Witness Name

By:

Armand Pohan
Chairman

Witness Signature

Date: March, 2015

This agreement has been reviewed and is approved as to form.

John J. Hoffman
Acting Attorney General
of New Jersey

By:

John J. Hoffman
Deputy Attorney General

Apr 1
Date: March, 2015

IN WITNESS WHEREOF, the parties hereto have caused this Equipment Purchase and Improvement Funding Agreement to be effective on the date first shown above.

NJ TRANSIT:

NEW JERSEY TRANSIT CORPORATION

WITNESS:

Deborah L. Heim
Print or Type Witness Name

By:

Dennis Martin
Dennis Martin,
Vice President/General Manager
Bus Operations

Deborah L. Heim
Witness Signature

Date: April 1
March , 2015

NY Waterway:

PORT IMPERIAL FERRY CORP. d/b/a NY
Waterway

CONFERIDO MARTINEZ
Print or Type Witness Name

By:

Armand Pohan
Armand Pohan
Chairman

Conferido Martinez
Witness Signature

Date: April 1
March , 2015

This agreement has been reviewed and is approved as to form.

John J. Hoffman
Acting Attorney General
of New Jersey

By:

[Signature]
Deputy Attorney General

Date: Apr. 1
March , 2015

EXHIBIT A

EQUIPMENT AND IMPROVEMENTS

Description of Equipment or Improvement	Amount of Funding	Date Equipment First Placed in Operation or Improvement Completed	Useful Life