MARITIME TRANSPORT OPERATIONS AND MAINTENANCE AGREEMENT

dated as of

October 27, 2020

by and among

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY,

HMS FERRIES, INC.

and

HMS FERRIES - PUERTO RICO, LLC
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MARITIME TRANSPORT OPERATIONS AND MAINTENANCE AGREEMENT

This Maritime Transport Operations and Maintenance Agreement ("Agreement") is made and entered into, and is intended to become effective, on this 27th day of October, 2020 (the "Effective Date") by and among PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY (the "Authority"), a public corporation and instrumentality of the Commonwealth of Puerto Rico (the "Commonwealth") created pursuant to Act No. 1-2000, as amended, HMS FERRIES - PUERTO RICO, LLC, a limited liability company organized and existing under the laws of the Commonwealth ("HMSPR" or the "Operator") and HMS FERRIES, INC. ("HMSI"), a corporation duly organized and existing under the laws of Delaware. The Authority, HMSI and the Operator are each a "Party" and shall sometimes be referred to herein collectively as the "Parties". The references to "Operator," "HMSI" and "Party" in this Agreement are subject to the provision of Section 34.1(c) of this Agreement.

RECITALS

WHEREAS, the Authority, in collaboration with the Puerto Rico Public-Private Partnership Authority, desires to establish a public private partnership in order to have a private sector entity participate in the operation and maintenance of the Authority’s Ferry System, including the operation and maintenance of its Vessels and Facilities, and engage in other ancillary commercial activities (the "Project"), and, in accordance with that policy, interested persons were invited to submit statements of qualification and proposals for the Project pursuant to a Request for Proposals dated April 30, 2019, herein incorporated by reference, as amended, issued by the Puerto Rico Public-Private Partnership Authority (the “Request for Proposals”).

WHEREAS, consistent with the provisions of Act No. 29-2009, as amended, also known as the Public-Private Partnership Act (the “PPP Act”), and the procurement guidelines of the Federal Transit Administration, HMSI was selected as the preferred proponent to carry out the Project in accordance with and subject to the terms and conditions set forth in this Agreement.

WHEREAS, the Authority’s objectives with respect to the Project include the improvement of the Ferry System’s operational safety and quality of service provided to customers, the introduction of efficiencies into the operation of the Ferry System, the increase in resources available for vessel maintenance and service improvement, and a reduction in the public sector subsidy of the Authority’s operations.

WHEREAS, the Project constitutes a Priority Project (as that term is defined in the PPP Act and the regulations thereunder) and will proceed according to the provisions set forth in the PPP Act. This Agreement is entered into as, and constitutes, a PPP Contract under and as defined in the PPP Act and the regulations thereunder.

WHEREAS, HMSI formed HMSPR as its wholly-owned subsidiary, to act as the initial Operator hereunder and requested the Authority’s approval to the assignment of all of its rights, interest and obligations under the Procurement Documents and this Agreement to HMSPR, effective as of the date hereof, concurrently with the execution of this Agreement, which request
is approved by the Authority provided HMSI remains obligated under this Agreement as provided in Section 34.1(b) hereto.

WHEREAS, the Parties acknowledge that before the Effective Date of this Agreement, the outbreak of the novel Coronavirus disease ("COVID-19") was recognized as a global pandemic and that the Government of Puerto Rico has taken a series of actions in response to the outbreak including, but not limited to, declaring a state of emergency, and issuing Executive Orders to control the effects of the pandemic;

WHEREAS, notwithstanding the COVID-19 pandemic, the Parties have determined to move forward with the execution of this Agreement, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms, conditions and mutual promises set forth herein and in HMSI’s proposal (the “Proposal”) submitted in response to the Request for Proposals, which is incorporated herein by reference as if fully set forth herein, the Authority, HMSI and HMSPR agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions

“AAA” means the American Arbitration Association.

“AAA Technical Arbitration Rules” has the meaning set forth in Section 33.2(b)(i) of this Agreement.

“Acceptable Operator Security” means a Payment Bond, an Escrow Agreement substantially in the form of Appendix II, or another form of guarantee or security acceptable in form and substance to the Authority.

“Acceptance Date” means a Facility Acceptance Date or a Vessel Acceptance Date, as applicable.

“Act No. 173” has the meaning set forth in Section 27.9 of this Agreement.

“Act No. 237” means Act No. 237-2004 of the Legislative Assembly of Puerto Rico, as amended from time to time.

“Actual Ancillary Costs” means the actual amount of Permitted Costs incurred by Operator in the generation of Ancillary Revenues as certified by the Operator’s independent auditors.

“Actual Ancillary Revenues” means, with respect to any Contract Year, the Ancillary Revenues for one or more Ancillary Activities, as applicable, for such Contract Year as certified by the Operator’s independent auditors.
“Actual Ancillary Income” means, with respect to any Contract Year, the Ancillary Income for one or more Ancillary Activities, as applicable, for such Contract Year as certified by the Operator’s independent auditors.


“Adjusted for Inflation” means adjusted by the percentage increase, if any, in the Index during the applicable adjustment period.

“Affiliate” when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a ten percent (10%) (or in the case of “majority-owned Affiliates,” fifty percent (50%)) or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person and any Person or Persons with whom that other Person is acting jointly or in concert, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed that for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing such fund or trust).

“Agreement” means this Maritime Transport Operations and Maintenance Agreement, including the Appendices hereto, each of which is incorporated by reference herein, as amended from time to time.

“Agreed Modification” has the meaning set forth in Section 16.1(c) of this Agreement.

“Ancillary Activities” means the Special Services, the activities that are described in Sections 13.1(c) and (e), Article 18, and Section 19.2 of this Agreement, and any other activity that the Operator is expressly authorized by the Authority in writing after the date hereof to carry out in connection with the operation of the Vessels and Facilities in accordance with Section 4.5(b).

“Ancillary Income” means the net income generated by the Ancillary Activities, which shall be determined by deducting Actual Ancillary Costs from Actual Ancillary Revenues.

“Ancillary Revenues” has the meaning set forth in Section 5.2(a) of this Agreement.

“Anti-Corruption Code” means Act No. 2-2018 of the Legislative Assembly of Puerto Rico, as amended from time to time.
“Applicable Law” means any Law that is binding on the Parties.

“Approval,” “Approved,” “Approves,” “Approved by the Authority” and similar expressions mean approved or consented to by the Authority in accordance with the provisions of Section 1.16 of this Agreement.

“Assessment” shall mean a dollar amount assessed by the Authority against the Operator as liquidated damages for specified performance failures in the amounts specified in Section 9 of Appendix B – Scope of Work.

“Asset Acceptance Date” means, with respect to each individual Authority Provided Vessel, its Vessel Acceptance Date, and with respect to each individual Facility, its Facility Acceptance Date.

“Asset Assessment” means the evaluation of the condition of the Project Assets made pursuant to the Asset Assessment Plan that is agreed to by the Authority and Operator in accordance with the Transition Plan.

“Asset Assessment Plan” means the plan agreed to by the Authority and the Operator during the Transition Period establishing the process under which the Asset Assessment will be carried out.

“Asset Rehabilitation Plan” means the plan agreed to by the Authority and Operator during the Transition Period to correct any deficiency in any Project Asset identified during the Transition Period to bring such Project Asset into the condition required for acceptance by the Operator.

“Audit” means a review with respect to any matter relating to the Maritime Transport Operations or the Maritime Transport Services or this Agreement, including compliance with the terms of this Agreement, conducted in accordance with applicable United States audit practices or as required by Applicable Law.

“Authority” means the Puerto Rico and the Island Municipalities Maritime Transport Authority, and any of its successors and assignees, including, without limitation a successor by mandate of Law. Should the legal existence of the Authority terminate without a successor being mandated, then all reference in this Agreement to the Authority shall be treated as a reference to the PPP Authority or to the governmental entity authorized by law to administer this Agreement.

“Authority Board of Directors” means the Board of Directors of the Authority or, if applicable, the person exercising control of the Authority, that is vested under Act No. 1-2000, as amended from time to time, with the power to exercise the functions of the Board of Directors of the Authority, and any successor ruling body thereof.

“Authority Manager” means the Executive Director of the Authority or his or her designee.
“Authority-Provided Intellectual Property” has the meaning set forth in Section 4.2(b) of this Agreement.

“Authority-Provided Vessels” has the meaning set forth in Section 8.1(a) of this Agreement.

“Authority’s Surveyor” means a certified and qualified marine surveyor, who shall be selected by the Authority and the Operator from the list of approved surveyors provided by the Authority’s insurance underwriter.

“Authorizations” means any approval, certificate of approval, franchise, final determination, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization, or other requirement of any Governmental Authority that applies to all or any part of the Maritime Transport Operations.

“Bareboat Charter” means the bareboat charter agreement to be executed by the Authority and the Operator to govern the terms of use of the Authority Provided Vessels by the Operator, as the same may be amended or otherwise modified from time to time. Each Authority-Provided Vessel shall have its own Bareboat Charter document, the form of which is included as Appendix C.

“Base Scope of Work” means the Scope of Work that is described in Appendix B on the Effective Date.

“Budget” means the budget for Phase 1 attached hereto as Appendix G.

“Business Day” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the Commonwealth or the United States government.

“Capital Improvement Plan” means collectively the Fleet Capital Improvement Plan and the Facility Capital Improvement Plan.

“Casualty Cost” has the meaning set forth in Section 24.5(a).

“Change in Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, (i) a change in ownership so that fifty percent (50%) or more of the direct or indirect voting or economic interests in such Person is transferred to another Person or group of Persons acting in concert, (ii) a change in the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert, or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided, however, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a “Change in Control” for the purposes of this Agreement:
(A) Transfers of direct or indirect ownership interests in the Operator between or among Persons that are majority-owned Affiliates of each other or Persons who are under common control, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

(B) Transfers of shares of the Operator or the direct or indirect shareholders of the Operator pursuant to bona fide open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or “follow on” public offering; provided that no Person or group of Persons acting in concert (that is not the Operator or an Equity Participant) acquires securities such that such Person or group of Persons beneficially owns more than fifty percent (50%) of the publicly traded securities of the Operator; and

(C) Transfers of direct or indirect ownership interests in the Operator by any Equity Participant or its beneficial owner(s) to any Person so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in the Operator as of the Effective Date together retain, in the aggregate, fifty percent (50%) or more of the direct or indirect voting or economic interests in the Operator or the power directly or indirectly to direct or cause the direction of management and policy of the Operator, through ownership of voting securities or common directors, officers or trustees.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any new Law, or (b) any change in existing Law or in the administration, interpretation or application thereof by any Governmental Authority. Change in Law does not include a change in Tax law that has general application.

“Charter Fee” has the meaning set forth in Section 8.1(b) of this Agreement.

“Claim” means (i) any dispute between the Parties, and (ii) any demand, action, cause of action, suit, proceeding, arbitration, or claim, and any judgment or settlement or compromise relating thereto, including a claim that may give rise to a right to indemnification under Article 28.

“Claiming Party” has the meaning set forth in Section 38.1(a) of this Agreement.

“Commonwealth” means the Commonwealth of Puerto Rico.

“Commonwealth Court” has the meaning set forth in Section 33.2(b)(ii) of this Agreement.

“Compensation Event” has the meaning set forth in Article 47 of this Agreement.

“Compensation Event Payment” has the meaning set forth in Article 47 of this Agreement.

“Confidential Information” means data or information in any form disclosed by one Party to the other Party by any means, if and for so long as the data and information are
protectable as trade secrets by the disclosing Party or are otherwise confidential. As a non-exhaustive list of examples, “Confidential Information” includes non-public information regarding a Party’s Intellectual Property, financial condition and financial projections, business and marketing plans, research data, market intelligence, source code of proprietary software, customer lists, vendor lists, internal cost data, the terms of contracts with employees and third parties, and information tending to embarrass the disclosing Party or tending to tarnish its reputation or brand. For the avoidance of doubt, information in this list of examples is only considered “Confidential Information” for so long as (i) it has not been made known to the general public by the disclosing Party or through the rightful actions of a third party, (ii) it is information in the public domain at the time of disclosure, or (iii) it is information independently developed by any Party without use of any Confidential Information and/or breach of this Agreement.

“Contract Administrator” shall mean the Person appointed by the Authority to administer this Agreement on its behalf.

“Contract Term” has the meaning set forth in Section 4.1 of this Agreement.

“Contract Year” means the twelve (12) month period beginning on July 1 and ending on June 30, provided that the first Contract Year shall begin on the Effective Date and end on the succeeding June 30, and the last Contract Year shall begin on the July 1 preceding the End Date and end on the End Date.

“Contractor” means, with respect to a Person, any contractor, with whom such Person contracts to perform work or supply materials or labor in relation to the Services, including any subcontractor of any supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor but excluding, for the avoidance of doubt, any financial advisor retained by the Equity Participants or the Operator to provide advice in relation to the financing of the Services.

“Covered Party” has the meaning set forth in Section 25.2(i) of this Agreement.

“COVID-19” has the meaning set forth in the sixth WHEREAS in the Recitals.

“CRIM” means the Municipal Revenue Collection Center (by its Spanish acronym), including any successor by mandate of Law.

“Daily Operating Hours” or “D.O. Hours” means the total time a Vessel is in a Service operation, beginning on its departure from a Facility and ending on its return to a Facility. It does not include crew meal breaks or layover periods in excess of 15 minutes.

“Days” means calendar days, unless otherwise designated in this Agreement.

“DBE” has the meaning set forth in Section 30.1 of this Agreement.

“DBE Regulations” has the meaning set forth in Section 30.1 of this Agreement.
“Defending Party” has the meaning set forth in Section 28.1(e) of this Agreement.

“Delay Event” has the meaning set forth in Section 45.3(c) of this Agreement.

“Delay Event Cure Period” has the meaning set forth in Section 45.3(a) of this Agreement.


“Designated Person” means, (i) with respect to the Operator, the General Manager, President or Legal Counsel, and (ii) with respect to the Authority, the Executive Director of the Authority or, if the position of Executive Director is vacant, the Secretary of Transportation and Public Works, or the person so designated by the Secretary of Transportation and Public Works.

“Document” has the meaning set forth in Section 1.16(b) of this Agreement.

“Effective Date” has the meaning set forth in the preamble of this Agreement.

“Eligible Investments” means any one or more of the following obligations or securities: (i) direct obligations of and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers’ acceptances issued by any Lender (provided that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Lender at the time of such investment or contractual commitment providing for such investment have been rated “A” or higher by a Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated “A” or higher by a Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “A” or higher by a Rating Agency; and (v) other investments then customarily accepted by the Authority in similar circumstances; provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

“Emergency Management Act” has the meaning set forth in Section 17.1 of this Agreement.

“End Date” means the date on which this Agreement expires, is cancelled or is terminated.
“Environment” means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, plants and animals and other life forms.

“Environmental Laws” means any Laws applicable to the Maritime Transport Operations, including the Service and the Facilities, regulating or imposing liability or standards of conduct concerning or relating to Hazardous Substances, natural resources, the protection of human health and safety based on environmental exposure or the Environment itself.

“Equity Participant” means any Person who holds any shares of capital stock or securities of, or any units, partnership interests, membership interests or other equity interests in, the Operator.

“Event of Default” means any of the events set forth in Sections 45.1 and 45.4 of this Agreement and in Section 11 of Appendix B.

“Evidence of Insurance” has the meaning set forth in Section 24.3 of this Agreement.

“Executive Director of the Authority” means the Authority’s Executive Director or his or her designee.

“Existing Contracts” has the meaning set forth in Section 2.1(i) of this Agreement.

“Extended Force Majeure Event” has the meaning provided in Section 38.3 of this Agreement.

“Extraordinary Repair” means a Vessel Extraordinary Repair or a Facility Extraordinary Repair, as applicable.

“Facility” means, individually, each of the Authority’s Ferry Terminals and Mooring Facilities, the Isla Grande Facility, and any other facility designated by and under the control of the Authority, listed in Appendix E, as amended from time to time, which are referred to collectively as the “Facilities”.

“Facility Acceptance Date” means the date in which a Facility is accepted by and delivered to the Operator.

“Facility Capital Improvements” has the meaning set forth in Section 13.2(c).

“Facility Capital Improvement Plan” has the meaning set forth in Section 13.2(c).

“Facility Document” has the meaning set forth in Section 2.5(a).

“Facility Extraordinary Repairs” has the meaning set forth in Section 13.2(b).
“Facility Extraordinary Repair Period” means, with respect to each Facility, the period commencing on the date on which all Priority 3 repairs for such Facility have been completed in accordance with the Asset Assessment of such Facility and expiring on the third anniversary thereof.

“Facility Lease Agreement” has the meaning set forth in Section 13.1(b).

“Facility Maintenance and Ordinary Repair” has the meaning set forth in Section 13.2(a).

“Federal Aviation Administration” or “FAA” means the Federal Aviation Administration of the United States Department of Transportation.

“Federal Highway Administration” or “FHWA” means the Federal Highway Administration of the United States Department of Transportation.

“Federal Transit Administration” or “FTA” means the Federal Transit Administration of the United States Department of Transportation.

“Ferry System” means the entirety of the Project Assets used in connection with the Authority’s Maritime Transport Operations, including but not limited to all Vessels, Facilities, docks, maintenance facilities, equipment, documents, information and software and information systems developed, licensed or owned by the Authority, regardless of its format (including, without limitation, all assignable or transferable intellectual property existing as of the Effective Date related to the establishment of an online ticketing and reservations system or the implementation of a computerized fare collection system).

“Ferry Terminals” means those terminals listed in Appendix E, as amended from time to time during the term of the Agreement.

“Fleet Capital Improvement Plan” has the meaning set forth in Section 8.5(a).

“Force Majeure” means any event beyond the reasonable control of and that is unforeseeable by, or if foreseeable could not have been avoided by, the performing party that delays or interrupts the performance by such party of its obligations hereunder, including, but not limited to, an intervening act of God or public enemy, war (whether or not declared), invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, strike or labor disturbance (other than as set forth in clause (iv) below), nuclear or other explosion, radioactive or contamination or ionizing radiation, fire, flood, tornado, hurricane, storm (that is not an Ordinary Storm), earthquake, riot or other public disorder, epidemic, pandemic (including COVID-19), quarantine restriction, curfew, lockdown, stop-work order or injunction issued by a Governmental Authority, governmental embargo or national or local emergency declared by a Governmental Authority; provided that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of (i) the negligence or intentional misconduct of the performing party or its Representatives, (ii) any act or omission by the performing party or its Representatives in breach of the provisions of this Agreement, (iii) lack or insufficiency of funds
or failure to make payment of monies or provide required security on the part of the performing party, (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the performing party or its Representatives to supply materials or services for or in connection with the Maritime Transport Operations or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the performing party or its Representatives, or (v) any weather conditions that are ordinarily or customarily encountered or experienced at or in the vicinity of the Ferry Terminals or Facilities, including any Ordinary Storm, but excluding any tornado, hurricane or Named Windstorm.

“General Manager” means the person occupying the position of General Manager of the Operator.

“Governmental Authority” means the Commonwealth or any municipality, political subdivision, instrumentality or public corporation of or in the Commonwealth, and any federal, state, commonwealth, county, local (including all municipalities, municipal authorities and districts) or foreign government, department, court, commission, board, bureau, agency or instrumentality or other regulatory, judicial, administrative, governmental or quasi-governmental authority.

“Handback Plan” has the meaning set forth in Section 46.4.

“Hazardous Substance” means, but is not limited to, any solid, liquid, gas, odor, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, regulated substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“HMSPR” means HMS Ferries-Puerto Rico LLC.

“HMSI” means HMS Ferries, Inc.

“Incidental Use” has the meaning set forth in the Award Management Requirements (FTA Circular 5010.1E) published by the Federal Transit Administration and dated as of March 21, 2017, as revised as of July 21, 2017 and July 16, 2018, and as the same may be amended from time to time.

“Indemnified Party” means any Person entitled to indemnification under this Agreement.

“Indemnifier” means any Party obligated to provide indemnification under this Agreement.

“Indemnity Payment” has the meaning set forth in Section 28.3(b) of this Agreement.
“Independent Engineering Arbitrator” means an engineering firm with locally or nationally recognized engineering experience related to comparable ferry systems or maritime transport operations.

“Independent Operating Engineer” means the licensed professional consulting engineering firm reasonably acceptable to the Authority and the Operator.

“Index” means the “Consumer Price Index – United States City Averages for all Urban Consumers, All Items” (not seasonally adjusted) as published by the United States Department of Labor, Bureau of Labor Statistics; provided, however, that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics; provided further that if the Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised (provided that any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision).

“Isla Grande Facility” means the Authority maintenance base located in the Isla Grande portion of San Juan.

“Isla Grande Facility FTA Approval” has the meaning set forth in Section 13.1(c).

“Island Service” means ferry services between Vieques, Culebra and the main Island of Puerto Rico.

“Key Personnel” means the positions identified as “Key Personnel” in Appendix F.

“Law” means any constitution, order, writ, injunction, decree, judgment, law, directive, rule, regulation, ordinance, court decision, principle of common law, ruling that is binding upon its subjects or otherwise has the force of law, statute, code, rule or regulation of any Governmental Authority.

“Lender” means (i) the United States of America, any state or commonwealth thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States, (C) pension fund, foundation or university or college or other endowment fund, (D) infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, or (E) entity which is formed for the purpose of originating and causing the securitizing of mortgages, which securities are backed by such...
mortgages and are sold by public offering or to qualified investors under the Securities Act, (iii) any “qualified institutional buyer” under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms, (iv) conduit issuers established for the purpose of issuing private activity bonds authorized by Law for the benefit of the Operator or (v) any other financial institution or entity designated by the Operator and Approved by the Authority (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the Authority).

“List of Ferry Terminals, Mooring Facilities and Other Facilities” has the meaning set forth in Section 13.1(a).

“Loss” or “Losses” means any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense, but excluding any lost profits or any unforeseeable punitive, special, indirect and consequential damages, and any contingent liability until such liability becomes actual. For avoidance of doubt, all actual payments reasonably made by any Person to third parties or reasonable out-of-pocket and documented costs or expenses actually suffered or incurred by any Person in respect of Claims made by third parties shall constitute Losses of such Person whether or not such payments or such costs and expenses relate to punitive, special, indirect and consequential damages or contingent liabilities of such third parties.

“Management Fee” means the fee paid to the Operator by the Authority above and beyond any and all costs incurred by Operator in the provision of Services described in this Agreement. During Phase 1, the Management Fee is the amount set forth in Appendix G. During Phase 2, the Management Fee is included in the Phase 2 Fixed Fee payment. Additional Management Fee will be paid in the case of (i) Modifications to the Base Scope of Work, and (ii) an Extraordinary Repair carried out by Operator on behalf of the Authority (collectively “Special Events”). In each of those cases involving Special Events, during the period preceding the tenth (10th) anniversary of the Phase 2 Commencement Date, the Management Fee with respect to such Special Events shall be equal to five percent (5%) of the actual costs incurred and disbursed by Operator in connection therewith. Commencing on the tenth (10th) anniversary of the Phase 2 Commencement Date, the Management Fee corresponding to any such Special Event shall be determined by mutual agreement of the Operator and the Authority based on the scope, timing, difficulty and risk applicable to the proposed Work for which the Management Fee shall be payable, but in no event will it be less than five percent (5%).

“Maritime Transport Operations” means operations and maintenance of the Vessels and Facilities used in the Maritime Transport Services, including the Isla Grande Facility.

“Maritime Transport Service” means passenger and cargo ferry service, including the Island Service and the Metro Service.

“Material Adverse Effect” means a material adverse effect on the business, financial condition or results of operations of the Maritime Transport Operations taken as a whole; provided, however, that no effect arising out of or in connection with or resulting from
any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting any or all of the maritime transport industry in the United States or internationally; (iv) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby, with the exception of litigation related to the execution or delivery of this Agreement; or (v) any negligence, intentional misconduct or bad faith of the Operator or its Representatives.

“Metro Services” means ferry services between Old San Juan and Cataño.

“Modification” means an amendment to this Agreement regarding (i) a change in the services, obligations or work to be performed by, or rights of, the Operator with respect to the Maritime Transport Operations from that provided for in this Agreement prior to such amendment, including changes to the compensation, Service schedules and routes, level of services or other Work described in the Scope of Work, including those required by changes to the approved Standard Operating Procedures subsequent to the execution of this Agreement, or (ii) deleting, dispensing with or changing the dimensions, character, quantity, quality, description, location or position of any part of the Services or the Facilities or making other changes to the Service or the Facilities. For the avoidance of doubt, neither Special Services nor Unscheduled Trips shall constitute Modifications.

“Modification Compensation” means, with respect to a Modification, the amount mutually agreed to by the Authority and the Operator as compensation for any given modification.

“Monthly Payment Date” has the meaning set forth in Section 5.1(c).

“Mooring Facilities” means those docks and other maritime facilities under the control of the Authority used to moor or service Vessels identified in Appendix E.

“MTA” means the Authority.

“MTSA” means Maritime Transportation Security Act of 2002 (or MTSA), which requires vessel and port facilities owners or operators to develop security plans; plans require approval by the U.S. Coast Guard.

“Named Windstorm” is a storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body until sustained wind speeds drop below the parameter for naming storms.

“Negotiation Period” has the meaning set forth in Section 33.2(a)(iii) of this Agreement.

“Notice of Satisfaction of Conditions to Phase 1” has the meaning provided in Section 2.4.
“Notice of Satisfaction of Conditions to Phase 2” has the meaning provided in Section 2.6.

“Notice Period” has the meaning set forth in Section 28.1(d) of this Agreement.

“NTD” means the National Transit Database.

“Offsets” has the meaning set forth in Section 28.5(a) of this Agreement.

“Operating Account” means the account referenced in Section 5.11(a).

“Operator” means, subject to the provisions of Section 34.1(c), HMSPR, as the initial Operator and, upon the occurrence of the events contemplated in Section 34.1(b), shall mean HMSI, and any other successor or permitted assignee of HMSPR or HMSI.

“Operator Interest” means the interest, benefits and rights of the Operator in the Maritime Transport Operations, including the Services, the Authority Provided Vessels and the Facilities, created by this Agreement and the rights and obligations of the Operator under this Agreement.

“Operator-Provided Intellectual Property” has the meaning set forth in Section 4.2(c) of this Agreement.

“Operator’s Surveyor” means a certified and qualified marine surveyor, who shall be selected by the Authority and the Operator from the list of approved surveyors provided by the Operator’s insurance underwriter.

“Ordinary Storm” means a storm that is comparable to any storm in length or severity of its effect on the Maritime Transport Operations that has affected the Maritime Transport Operations within ten (10) years prior to the date of the Proposal; provided that in no event shall a Named Windstorm be deemed an Ordinary Storm.

“Party” means either the Operator or the Authority, as the context requires.

“Payment Bond” means a Surety Bond in the form of Appendix H in the amount of $5,000,000.00.

“Permitted Costs” means the items of costs incurred by the Operator in carrying out an Ancillary Activity that the Authority and the Operator have agreed will be allowed as deductions for purposes of determining the Actual Ancillary Income from such Ancillary Activity. Such Permitted Costs will include the amount paid by the Operator to the Authority under Section 48.12(b)(iii) for “wear and tear”.

“Person” means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.
“Phase 1” means the period of time commencing on the Phase 1 Commencement Date and ending at midnight on the date immediately preceding the Phase 2 Commencement Date. For avoidance of doubt, Phase 1 includes the Transition Period.

“Phase 1 Commencement Date” means (i) the date when the Operator, upon receipt of written notice from the Authority that all the conditions specified in Section 2.4 have been satisfied, confirms in writing that all the conditions specified in Section 2.4 have been satisfied, or (ii) if applicable, the date determined in accordance with the dispute resolution process of Article 33.

“Phase 1 Commencement Deadline” has the meaning set forth in Section 2.4 of this Agreement.

“Phase 1 Conditions Precedent” has the meaning set forth in Section 2.4 of this Agreement.

“Phase 1 Service Payments” means the monthly payments required to be made by the Authority to the Operator during Phase 1 to cover the cost of the Work during that Phase, as provided in Section 5.1(a).

“Phase 2” means the period of time commencing on the Phase 2 Commencement Date and continuing thereafter for the duration of the Contract Term.

“Phase 2 Commencement Date” means, the latter of: (i) the date of the third anniversary of the Phase 1 Commencement Date, (ii) the date when the Operator, upon receipt of the Authority’s written notice that all Phase 2 Conditions Precedent have been satisfied, confirms in writing that all Phase 2 Conditions Precedent have been satisfied, or (iii) if applicable, the date determined in accordance with the dispute resolution process of Article 33.

“Phase 2 Commencement Deadline” has the meaning set forth in Section 2.6 of this Agreement.

“Phase 2 Conditions Precedent” means the conditions set forth in Section 2.6 hereto.

“Phase 2 Fixed Fee” has the meaning set forth in Section 5.2(b) of this Agreement.

“PPP Act” has the meaning set forth in the Recitals to this Agreement.

“PPP Authority” means the Puerto Rico Public-Private Partnerships Authority.

“PR Code” means Act No. 1-2011, as amended, also known as the Internal Revenue Code for a New Puerto Rico, as amended from time to time.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by Citibank, N.A. or its successor as its prime or base rate in effect at its principal office in New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.
“Priority 1, Priority 2 and Priority 3” shall have the meaning set forth in the Standard Asset Acceptance.

“Procurement Documents” means the Request for Qualifications, the Request for Proposals and the Proposal.

“Project” has the meaning set forth in the Recitals to this Agreement.

“Project Assets” has the meaning set forth in Section 4.2(a) of this Agreement.

“Projected Allowable Ancillary Costs” means, for any Contract Year, the items of Permitted Costs agreed to in writing by the Authority and the Operator in accordance with Section 4.5.

“Projected Ancillary Revenues” means, for any Contract Year, the Ancillary Revenues projected by the Operator for such Contract Year and agreed to by the Authority in writing in accordance with Section 4.5.

“Projected Ancillary Income” means, for any Contract Year, (i) in the case of the Ancillary Activities consisting of Special Services, and the activities described in Section 13.1(c), the Ancillary Income for such Contract Year projected by the Operator that is set forth in Appendix D, which was calculated by subtracting Projected Allowable Ancillary Costs from Projected Ancillary Revenues for such activities, and (ii) in the case of all other Ancillary Activities, the projection of the Ancillary Income for each Contract Year proposed by the Operator and approved by the Authority in writing for each such Ancillary Activity in accordance with Section 4.5 which will be calculated by subtracting Projected Allowable Ancillary Costs from Projected Ancillary Revenues.

“Projected Service Revenues” means, for any Contract Year, the Service Revenues projected by the Operator and set forth as Service Revenues in Appendix D.


“Proponent” has the meaning set forth in the Recitals to this Agreement.

“Proposal” has the meaning set forth in the Recitals to this Agreement.

“Public Transportation” has the meaning set forth in 49 USC 5302(14), as amended.

“Quarterly Deposit Amount” has the meaning set forth in Section 5.1(b).

“Quarterly Deposit Date” has the meaning set forth in Section 5.1(b).

“Rating Agency” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody’s Investors Service, Inc., Fitch Ratings, Ltd. or any other
nationally recognized statistical rating organization (within the meaning of the rules of the United States Securities and Exchange Commission).

“Reasonable Efforts” means the taking of those steps in the power of the relevant Person that are capable of producing the desired result, being steps that a reasonable person desiring to achieve such result would take; provided that, subject to the relevant Person’s other express obligations under this Agreement, the relevant Person shall not be required to expend any funds other than those funds (A) necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Person and (B) the expenditure of which is not the obligation of another Person hereunder.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, or Contractor of such Person, any other Person for whom such Person is responsible at law, any other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Restoration,” “Restore” or “Restoring” means, with respect to any casualty loss, destruction or damage of a Facility or Vessel, to repair or rebuild the affected parts of the Facility or Vessel to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage.

“Restoration Funds” has the meaning set forth in Section 24.5(a).

“Required Modification” has the meaning set forth in Section 16.2(a) of this Agreement.

“Request for Proposals” has the meaning set forth in the Recitals to this Agreement.

“Request for Qualifications” means the PPP Authority’s Request for Qualifications dated June 29, 2018.

“Reversion Date” means the day immediately following the End Date.

“Scope of Work” means the operations and maintenance services that the Operator must provide pursuant to this Agreement, as detailed in Appendix B to this Agreement, as amended from time to time.

“Section 13(c)” means and refers to Section 5333(b) of Title 49 of the United States Code.

“Service” means, each of the Island Service and the Metro Service, and “Services” means, collectively, the Island Service and the Metro Service.

“Service Revenues” means any and all revenues derived by the Operator from farebox collections for the operation of the Services. For avoidance of doubt, and unless
otherwise specifically provided for in this Agreement, the term “Service Revenues” excludes Ancillary Revenues.

“Special Event” has the definition set forth in the definition of Management Fee.

“Special Services” has the meaning set forth in Section 6.1(a).

“Standard Asset Acceptance” means the standards for acceptance by the Operator of Project Assets provided in Appendix S.

“Standard Operating Procedures” means the standard operating procedures developed by the Operator pursuant to the Scope of Work and approved by the Authority.

“Surveyor” means anyone of the Authority’s Surveyor, the Operator’s Surveyor or the Third Surveyor, and “Surveyors” means, collectively, all such surveyors.

“Tax” means any federal, state, Commonwealth, municipal, local or foreign income, gross receipts, license, payroll, employment, excise, construction excise tax, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“Termination Fee” has the meaning set forth in Section 45.4(e) of this Agreement.

“Third Party Claim” means any Claim asserted against an Indemnified Party by any Person who is not a Party or an Affiliate of such a Party.

“Third Surveyor” means a marine surveyor selected jointly by the Authority and the Operator to survey an Authority-Provided Vessel or a Facility prior to delivery of such Vessel or Facility to the Operator or prior to the end of the Contract Term, to identify any wear and tear or damage other than in the ordinary course and to reach an agreement as to the same among Operator’s Surveyor, Authority’s Surveyor and the Third Surveyor, as provided in the Bareboat Charter and Section 13.3 of this Agreement.

“Transaction Documents” means this Agreement, the Bareboat Charters, the Facility Lease Agreements, the Procurement Documents, and any other agreements executed by the Authority and HMSI or HMSPR in connection with this Agreement.

“Transfer” means to sell, convey, assign, delegate, sublease, mortgage, encumber, transfer or otherwise dispose of.

“Transferee” has the meaning set forth in Section 34.1(a) of this Agreement.
“Transition Period” means the period of time, forming a part of Phase 1, commencing on the Phase 1 Commencement Date and ending on the later of (i) the first anniversary of the Phase 1 Commencement Date, or (ii) the date upon which all Authority-Provided Vessels and Facilities have been accepted by the Operator.

“Transition Plan” means the Operator’s Phase 1 plan approved by the Authority and attached hereto as Appendix I, describing the general strategy and approach to a safe, reliable and efficient transition of Maritime Transport Operations from the Authority to the Operator during Phase 1. By its nature the Transition Plan will be implemented in stages and will be modified based on actual conditions encountered.

“Unified Protective Arrangement” means that certain Unified Protective Arrangement for Application to Capital and Operating Assistance Projects pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53 dated as of January 3, 2011, published by the U.S. Department of Labor’s Office of Labor-Management Standards.

“Unscheduled Trips” has the meaning set forth in Section 6.3(a).

“USCG” means the United States Coast Guard.

“USL&H” means the Longshoremen and Harbor Workers Act.

“Vessel” means any vessel owned or chartered by the Authority or the Operator and used by the Operator to provide Maritime Transport Services under this Agreement.

“Vessel Acceptance Date” means the date when an Authority-Provided Vessel is delivered to and accepted by the Operator.

“Vessel Assessment” means the evaluation of the condition of an Authority-Provided Vessel in accordance with the Asset Assessment Plan.

“Vessel Capital Improvements” has the meaning set forth in Section 8.6(c).

“Vessel Extraordinary Repair Period” means, with respect to each Authority-Provided Vessel, the period commencing on the date on which all Priority 3 repairs for such Authority-Provided Vessel have been completed in accordance with the Asset Assessment of such Vessel and expiring on the third anniversary thereof.

“Vessel Extraordinary Repairs” has the meaning set forth in Section 8.6(b).

“Vessel Maintenance and Ordinary Repairs” has the meaning set forth in Section 8.6(a).

“wear and tear” has the meaning set forth in Award Management Requirements (FTA Circular 5010.1E) published by the FTA and dated as of March 21, 2017, as revised as of July 21, 2017 and July 16, 2018, as the same may be amended from time to time.

“Windfall Net Income” has the meaning set forth in Section 5.2(d).
“Windfall Revenues” has the meaning set forth in Section 5.2(c).

“Work” has the meaning provided in Section 3.1(a).

Section 1.2 Number and Gender. In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa and words in one gender include all genders.

Section 1.3 Headings. The division of this Agreement into Articles, Sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

Section 1.4 References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified Article, Section, paragraph, sentence, clause or schedule of, or to, this Agreement. All references to this “Agreement” shall mean the Agreement, including all appendices and attachments, and the documents listed in Section 1.17, including all amendments to the foregoing.

Section 1.5 References to Any Person. A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assigns.

Section 1.6 Meaning of Including. In this Agreement, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including, without limitation,” respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

Section 1.7 Meaning of Discretion. In this Agreement, unless otherwise qualified or limited, the word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

Section 1.8 Meaning of Notice. In this Agreement, the word “notice” means “written notice” unless specified otherwise.

Section 1.9 Meaning of Promptly. In this Agreement, the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

Section 1.10 Consents and Approvals. Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

Section 1.11 Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.
Section 1.12 Laws. Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of any Governmental Authority to enact, administer, apply and enforce any Law. Except to the extent that compensation or other relief is otherwise available or provided for pursuant to Applicable Law or this Agreement, the Operator shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of any Law by any Governmental Authority.

Section 1.13 Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

Section 1.14 Generally Accepted Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States of America, consistently applied.

Section 1.15 Time.

(a) References to Specific Time. Unless specified otherwise, all statements of or references to a specific time in this Agreement are to Atlantic Standard Time.

(b) Period of Days. For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. on the next Business Day.

Section 1.16 Approvals, Consents and Performance by the Authority.

(a) Procedures. Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Authority of or to any action, Person, Document or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, (B) clearly set forth the matter in respect of which such approval or consent is being sought, (C) form the sole subject matter of the correspondence containing such request for approval or consent and (D) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or that it may be given or provided at the discretion of the Authority); (iii) the Authority shall within such time period set forth herein (or if no time period is provided, within thirty (30) days, unless a shorter period is required given the particular circumstances of the request, in which case the Authority shall act promptly) after the giving of a notice by the
Operator requesting an approval or consent, advise the Operator by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the Authority) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the Authority acting reasonably, of the information or documentation provided; (iv) if the responding notice mentioned in clause (iii) of this Section 1.16(a) indicates that the Authority does not approve or consent, the Operator may take whatever steps may be necessary to satisfy the objections of the Authority set out in the responding notice and, thereupon, may submit a revised request for approval or consent from time to time and the provisions of this Section 1.16(a) shall again apply until such time as the approval or consent of the Authority is finally obtained; (v) if the disapproval or withholding of consent mentioned in clause (iii) of this Section 1.16(a) is subsequently determined pursuant to Article 33 to have been improperly withheld, conditioned or delayed by the Authority, such approval or consent shall, unless otherwise determined pursuant to Article 33, be deemed to have been given on the date on which such approval or consent was originally required; and (vi) any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 33.

(b) **Approved Documents.** Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, studies or other written instrument whatsoever (a “**Document**”), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any material respect without first obtaining a further Approval in accordance with the provisions of this Section 1.15(b).

**Section 1.17 Order of Precedence.** Each Appendix, Exhibit to an Appendix or other attachment to this Agreement is an essential part hereof, and a requirement occurring in one is as binding as though occurring in all. All parts of this Agreement are intended to be complementary to each other and to describe and provide for a complete Agreement. In the event of any conflict among the parts of this Agreement, the order of precedence shall be as set forth below:

1. Amendments (including Modifications) to this Agreement.
2. Agreement.
3. Amendments to Appendices.
4. Appendices.
5. Bareboat Charters.
6. Facility Lease Agreements.
7. Terms offered and commitments made in the Proposal to the extent they are consistent with the requirements of, or provide enhancements to, the obligations of Operator under this Agreement. To the extent that such commitments provide enhancements to other parts of this Agreement, such
commitments shall have the same priority as an amendment to such other parts of this Agreement.

ARTICLE 2

TRANSITION PERIOD; NO ASSUMPTION OF LIABILITIES; CONDITIONS PRECEDENT

Section 2.1 Phase 1 - Transition Period.

(a) During the Transition Period, the Authority and the Operator shall cooperate with each other and provide reasonable assistance in carrying out the Transition Plan attached hereto as Appendix I to ensure the orderly transition of control, custody, operation, management and maintenance of the Maritime Transport Operations. The Operator will provide support and advisory services to the Authority during the Transition Period to stabilize the Maritime Transport Operations, prepare and implement the Transition Plan and the Fleet Improvement Plan, among other support services contemplated in this Agreement for the Transition Period and Phase 1.

(b) During the Transition Period, the Authority shall (i) give, or cause to be given to, the Operator and its Representatives reasonable access during normal business hours and on reasonable notice to (A) the Project Assets, including the Authority Provided Vessels and the Facilities, subject to the Authority’s policies and regulations regarding safety and security and any other reasonable conditions imposed by the Authority and notified to Operator in writing and (B) employees and management personnel of the Authority involved in the operation of Authority Provided Vessels and the Facilities, (ii) permit the Operator and its Representatives to make such due diligence and inspections as they may reasonably request on the Project Assets (including, without limitation, the review and inspection of matters related to the environment), (iii) furnish the Operator and its Representatives with such financial and operating data and other information that is available with respect to the Ferry System and Project Assets, including the Authority Provided Vessels and Facilities, as the Operator and its Representatives may from time to time reasonably request, and (iv) provide to the Operator the services of the Authority employees who do not become employees of the Operator and remain with the Authority pursuant to the terms and conditions set forth in the Transition Plan.

(c) During the Transition Period, the Authority shall cause the Authority Provided Vessels and the Facilities to comply with the standards for delivery and acceptance set forth in the Standards of Asset Acceptance to the extent the Authority Provided Vessels and the Facilities are not in compliance therewith as of the Phase 1 Commencement Date.

(d) During the Transition Period, the Authority or, if requested by the Authority, the Operator (at the Authority’s cost provided a mutual agreement is reached) will be responsible for carrying out all required repairs or refurbishments identified by the Operator (and agreed to by the Authority) to the Authority Provided Vessels, Facilities and any other Project Asset. If any repair or refurbishment is identified by the Operator, it shall inform the same to the Authority and the Authority and the Operator shall promptly agree on the scope of work required to address the repair or refurbishment, the budget therefor, the timeframe to complete and who
will be responsible for carrying out such repair or refurbishment. If the required repair or refurbishment could have an adverse impact on the progress of completing the Transition Plan in a timely manner, and is not promptly resolved by the Authority, then the Operator shall have the right to perform the work in accordance with the approved budget (as modified by mutual agreement) and the Authority shall, within thirty (30) days from the receipt of an invoice in connection therewith, reimburse all costs incurred by Operator in accordance with the approved budget thereof, plus Operator’s Management Fee of five percent (5%) of such costs.

(e) During the Transition Period, the Authority shall provide notice in the form of Appendix K-1 or K-2, as applicable, to each of the concessionaries, lessees, service providers and other third-parties having the right to enter into, occupy or otherwise use any of the Project Assets or any portion thereof pursuant to an agreement with the Authority, requesting that they (i) acknowledge Operator’s rights under this Agreement, (ii) include Operator as an additional insured under any insurance policies required under their respective contracts with the Authority, and (iii) collaborate with the Operator, when needed and as the case may be, with the objective of allowing the uninterrupted operation of the Maritime Transport Service and the safe, reliable and efficient transition of the Maritime Transport Operations from the Authority to the Operator.

(f) Until each applicable Facility Acceptance Date and each Vessel Acceptance Date, the Authority shall operate the related Facility and the related Authority Provided Vessel, respectively, in a manner consistent with past practice of the Authority.

(g) Commencing on each applicable Facility Acceptance Date and Vessel Acceptance Date, and subject to the Transition Plan, the Operator shall (i) operate and maintain the related Facility and the related Authority Provided Vessel, respectively, as described in the Scope of Work, and (ii) shall be responsible for all Vessel Maintenance and Ordinary Repairs and Facility Maintenance and Ordinary Repairs with respect to each Vessel and Facility being accepted.

(h) Commencing on the date of termination of the Transition Period, the Operator shall perform all its obligations in accordance with this Agreement.

(i) From and after the Phase 1 Commencement Date and subject to Section 48.12, the Operator shall have the right to administer, manage, negotiate, enter into, execute and deliver concessions, contracts and agreements in connection with each of the Authority Provided Vessels and Facilities accepted by it during the Transition Period, in compliance with its rights and obligations under this Agreement during Phase 1 and in furtherance of the rights and obligations of the Operator under this Agreement for performance of Ancillary Activities during Phase 2. On or prior to each Facility Acceptance Date, to the extent requested by the Operator, the Authority shall terminate any such concession agreements and service provider agreements that will not be assumed or which, at the Operator’s reasonable request, may require termination or renegotiation, provided such agreement may be terminated without liability or penalty for the Authority. A complete list of the Authority’s contracts in effect as of the Effective Date with respect to any Project Asset or any portion thereof, and/or otherwise related to the Maritime Transport Operations and Maritime Transport Services, including, without limitation, concession agreements, lease agreements, sublease agreements,
service contracts and other agreements between the Authority or other Facility owner and any other third-party in place as of the Effective Date in connection with any of the Project Assets, is included in Appendix AA hereto (the “Existing Contracts”).

(j) To the extent requested by the Operator and subject to the availability of employees of the Authority therefor, the Authority shall provide to the Operator, for up to 24 months following the termination of the Transition Period, the administrative or operational information, technology systems and services related to the operation of the Maritime Transport Operations that were provided prior to the Effective Date. Unless within the scope of work of any of the Authority’s employees, the Operator shall compensate the Authority for the provision of all such services in an amount equal to the Authority’s cost thereof, including pro rata employment costs and related reasonable expenses allocable to such employees, for the relevant period of time for services being rendered to the Operator, as reasonably determined by the Authority, which amount shall be billed to the Operator as soon as reasonably practicable following the end of each month in which such services were provided, but any event no later than thirty (30) days from the last day of the month in which the service was provided, to the extent permitted under Law. Such services shall be provided upon such other reasonable terms and conditions as the Authority and the Operator shall agree.

(k) With respect to each Authority Provided Vessel and Facility, the Operator shall, at the request of the Authority, provide reasonable assistance with respect to claims or actions brought by or against third-parties after the respective Acceptance Date of each such Authority Provided Vessel or Facility, based upon events or circumstances occurring prior to their respective Acceptance Date and, in that regard, the Operator shall take Reasonable Efforts to (A) provide assistance in the collection of information or documents and (B) make the Operator’s employees available when requested by the Authority. The Authority shall indemnify Operator for any claims or action brought by or against third-parties prior to acceptance of the respective Authority Provided Vessel or Facility, or any condition pre-existing as of the respective Acceptance Date that may lead to future claims or actions, subject to and in accordance with the provisions of Section 28.1.

Section 2.2 No Assumption of Liabilities. The Operator shall not be liable and shall assume no liability whatsoever for any claims, liabilities, Losses and obligations relating to the ownership, use, condition and operation of, or any event occurring on or arising in connection with the Project Assets, the conduct of Maritime Transport Operations and any activities conducted at the Authority Provided Vessels, Facilities or elsewhere, arising from: (A) events occurring prior to the applicable Acceptance Date, if specifically related to an Authority Provided Vessel or Facility, including, without limitation, any and all liabilities, losses and obligations (i) related to employees, personnel and contractors of the Authority; (ii) related to third-party leases, service contracts, concession agreements and other contracts of which the Authority is a party in connection with any of the Project Assets; and (iii) arising from any fines, penalties, charges or other impositions imposed by any Governmental Authority on the Authority (including from FTA), lessees, contractors, service providers or concessionaires or other Authority subcontractor’s due to non-compliance or violation of Applicable Laws, including any permit issued thereunder or any order of any Governmental Authority in connection therewith, (B) the negligence or willful misconduct of the Authority, (C) any Hazardous Substance that was present or released on, or migrated or escaped from, or was released from the Ferry Terminals,
the Mooring Facilities and the Isla Grande Facility or that otherwise existed at any time prior to the Effective Date (a “Pre-Existing Hazardous Substance”), to the extent the release or condition is not exacerbated as a result of the Operator’s proven negligent, unlawful or willful acts or omissions. For purposes of clarification, Pre-Existing Hazardous Substances refers to any and all environmental conditions existing prior to the Effective Date, whether or not the manifestation of which occurs at or following the Effective Date, in each case whether known or unknown by the Authority or the Operator on the Effective Date (including the Environmental Exceptions listed in Appendix GG, and any conditions identified as recognized environmental conditions in each of the Phase I Environmental Site Assessment Reports of AG Environmental PSC dated October 2019); or, (D) any obligation not transferred to Operator under the terms of this Agreement.

Section 2.3 Conditions Precedent to the Execution of this Agreement. Unless waived by the Parties, to the extent permitted under Applicable Law, the following are conditions precedent to the execution of this Agreement:

(a) **Governmental Authority Approvals.** All Governmental Authority approvals (other than (A) any approval by (i) FTA required for the Incidental Use of any Project Asset, or (ii) FAA with respect to the non-aeronautical use of the Isla Grande Facility by the Operator, or other certifications that may be required for the award to the Authority of federal-aid funds, or (B) any licenses, permits or approvals listed in Appendix CC) required for (i) the effectiveness of this Agreement under Applicable Law, (ii) the enjoyment of Operator’s rights under this Agreement, and (ii) the execution, delivery and performance of this Agreement by the Parties, shall have been issued or obtained and shall be in full force and effect, including, without limitation, all approvals and filings required under Section 9(g) of the PPP Act, and approval from the Fiscal Oversight and Management Board created under PROMESA;

(b) **Representations.** The representations of the Parties set forth in Article 25 of this Agreement shall be true and correct as of the Effective Date;

(c) **Supporting Certifications.** Each Party shall deliver to the other Party certified resolutions and incumbency certificates evidencing the authority and representative capacity of the Parties and their representative to execute this Agreement and related transaction documents;

(d) **Acceptability and Effectiveness of Documents.** This Agreement shall be in form and substance reasonably satisfactory to both Parties, and, when executed by all Parties hereto, shall be valid, in full force and effect and enforceable against each Party thereto on the Effective Date;

(e) **No Change in Law Affecting this Agreement.** No Change in Law shall have occurred that would make the authorization, execution, delivery, validity, enforceability or performance of this Agreement a violation of Applicable Law;

(f) **Delivery of Closing Documents.** All documents required by this Agreement or by the PPP Act to be delivered by a Party on or prior to the Effective Date
(including the certifications required under Section 25.3(b) and 27.11) shall have been delivered in form and substance acceptable to the other Party;

(g) **Legal Opinions.** Each Party’s outside counsel qualified to practice in the Commonwealth shall have delivered legal opinions, in form and substance acceptable to the other Party and its legal counsel, covering authority, due execution and delivery, legal, valid and binding obligations and enforceability, subject to customary exceptions and assumptions;

(h) **Commitment from Facility Owners.** The Authority shall have executed, or caused to be executed, and delivered to the Operator, copies of such agreements, consents, authorizations, board approvals, term sheets and/or other form of binding acknowledgment and agreement by each of the owners of the Ferry Terminals and other Facilities not owned by the Authority, including from the Puerto Rico Ports Authority, the Local Redevelopment Authority for Roosevelt Roads, the Municipalities of Vieques and Culebra, each in form and substance reasonably satisfactory to the Operator, providing the agreement of such entities with the Authority to execute the applicable Facility Document (or, if required, modify the existing Facility Document) and authorizing the execution by the Authority and the Operator of each Facility Lease Agreement in accordance with the terms of this Agreement.

(i) **Filings under PPP Act.** The Authority shall have submitted the Partnership Committee Report with respect to this Agreement in accordance with Article 9(g) of the PPP Act; and

(j) **Delivery of Payment Bond.** The Operator shall have delivered to the Authority the Payment Bond.

On the Effective Date, each of the Parties shall execute a certificate confirming to the other Party that all conditions precedent hereunder, as applicable to each Party, have been satisfied.

**Section 2.4 Conditions Precedent to Commencement of Phase 1.**

Unless waived by the Authority and the Operator to the extent permitted by Applicable Law, the following are conditions precedent to the commencement of Phase 1 (the “Phase 1 Conditions Precedent”):

(a) **Legal Proceedings.** There shall be no Legal Proceeding pending before or by any Governmental Authority which: (i) challenges the authorization, execution, delivery, validity or enforceability of this Agreement; or (ii) seeks to enjoin or restrict the use of any of the Project Assets in the manner or for the purposes contemplated by this Agreement;

(b) **Use and Access Agreements.** The Authority shall have executed and delivered to the Operator copies of such agreements, consents, authorizations and/or waivers, including any applicable use or other interagency agreements with the Puerto Rico Ports Authority, the Local Redevelopment Authority for Roosevelt Roads, the Municipalities of Vieques and/or Culebra and/or any other fee simple title owners of the Ferry Terminals and any other Facilities, as the case may be, and those relating to the Isla Grande Facility and the Mooring Facilities, each in form and substance reasonably satisfactory to the Operator, covering
the access, use and other property rights over and authorized use of such Facilities by the Authority and the access, use and rights granted to the Operator during the term comprised from the Phase 1 Commencement Date up to each of the Project Assets Acceptance Date, in accordance with this Agreement;

(c) **Taxes.** (i) The Department of Treasury of the Commonwealth shall have issued an Administrative Determination and a private letter ruling, in substantially the form attached hereto as Appendices DD and EE-1, respectively, and such Administrative Determination and private letter ruling shall remain in effect; (ii) the Authority shall have issued the Certificate of Covered Items as contemplated in said Administrative Order for purposes of the application of the exemption from sales and use taxes and excise taxes as applicable in accordance therewith; and (iii) the Department of Treasury of the Commonwealth shall have issued a Certificate of Exemption in connection therewith;

(d) **Operating Account.** The Authority shall have (i) established the Operating Account and (ii) created a first priority lien and security interest over the same in favor of the Operator, as security for the payment and performance of the Authority’s obligations hereunder. Such obligation shall include the execution, delivery and filing of an account control agreement substantially in the form that is attached hereto as Appendix JJ and UCC-1 Financing Statement in form and substance acceptable to the Authority and the Operator;

(e) **Funding of Initial Phase 1 Service Payment.** The initial deposit of the Quarterly Deposit Amount shall have been made in the Operating Account;

(f) **Filing with Comptroller.** The Authority shall have filed this Agreement with the Office of the Comptroller of the Commonwealth pursuant to Puerto Rico Act No. 18 of October 30, 1975, as amended and shall have provided the Operator with evidence of such filing; and

(g) **Notices to Vessel Operators.** With respect to any Authority contract in effect as of the Effective Date and the Phase 1 Commencement Date with respect to the operation of any vessel to and from the Facilities or any portion thereof, and/or otherwise related to the Maritime Transport Operations and Maritime Transport Services, the Authority shall have delivered to its counterparty(ies) thereunder a notice in substantially the form attached hereto as Appendix K-1.

The above conditions precedent must be satisfied on or before the date that falls ninety (90) days after the Effective Date; provided, however, that, if the existence and continuance of a Force Majeure event affects compliance with any of the above conditions precedent, the foregoing ninety (90) day period will be extended for up to an additional thirty (30) days, for an aggregate period of up to one hundred twenty (120) days. Notwithstanding the foregoing, if, upon expiration of the foregoing periods, the condition specified in Section 2.4(a) hereof is pending satisfaction, then such period shall be automatically extended to up to one hundred eighty (180) days. The date by which such conditions precedent must be satisfied, as the same may be extended as set forth hereinbefore or as may be further extended by mutual agreement of the Parties as provided in Section 2.7, is referred to as the “Phase 1 Commencement Deadline”.

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The Authority shall provide written notice to the Operator when all the conditions specified in Section 2.4 have been satisfied (the "Notice of Satisfaction of Conditions to Phase 1") and, if the Operator agrees therewith, the Operator will confirm to the Authority in writing that all conditions precedent hereunder, as applicable to each Party, have been satisfied. The Operator’s written confirmation will indicate what is the Phase 1 Commencement Date.

Any dispute as to the satisfaction of the conditions provided in this Section 2.4 shall be resolved as provided in Article 33.

If, upon reaching the Phase 1 Commencement Deadline, the Operator reasonably determines that any of the conditions specified in this Section 2.4 have not been duly satisfied by the Authority in accordance with the terms of this Agreement, then the Operator shall give written notice to the Authority informing it of its decision to proceed with any of the following alternatives: (i) waiver of compliance by the Authority with respect to any condition precedent pending due completion or satisfaction; (ii) extension of the term for compliance or satisfaction of any pending conditions precedent; or (iii) termination of this Agreement. Notwithstanding the foregoing, the Operator may not terminate this Agreement if, within five (5) Business Days from the receipt by the Authority of the Operator’s notice contemplated in the preceding sentence, the Authority gives written notice to the Operator specifying in reasonable detail the reasons for which the Authority, in good faith, disputes its alleged non-satisfaction of such conditions as claimed by Operator in its notice. If the Operator and the Authority cannot reach an agreement on such dispute, then such dispute shall be resolved in accordance with Article 33.

Any disagreement with respect to the determination of the Phase 1 Commencement Deadline shall be resolved in accordance with Article 33. Once the Phase 1 Commencement Deadline has been determined by agreement of the Parties or in accordance with Article 33, the Parties shall jointly certify in writing the establishment of the Phase 1 Commencement Deadline.

Notwithstanding anything to the contrary in this Agreement, the Authority and the Operator hereby agree that the Operator shall not be obligated to incur any expenses in connection with the provision of the Services until the conditions set forth in Section 2.4 of this Agreement have been satisfied.

Section 2.5 Conditions Precedent for Delivery to and Acceptance by Operator of Authority Provided Vessels and Facilities. The Acceptance of Authority Provided Vessels, Facilities and other Project Assets shall take place in stages throughout the Transition Period and shall be guided by the strategy and approaches established in the Transition Plan. Unless waived by the Operator to the extent permitted by Applicable Law the following are conditions precedent to the acceptance of any Vessel or Facility:

(a) Right to Occupy the Facility. The Authority shall be (i) the fee simple title owner of the Facility being delivered as evidenced by the corresponding public instrument(s) recorded or filed and pending recordation in the Registry of Property of Puerto Rico, or (ii) the holder of a leasehold right under a lease agreement signed with the corresponding Facility owner (with respect to (i) and (ii) above, each a “Facility Document” and
collectively, the “Facilities Documents”), whereunder the Authority is authorized to enter into the Facility Lease Agreement for such Facility to be executed with Operator. Notwithstanding the foregoing, Operator acknowledges that title to the Sardinas and Isabel II Facilities has not yet been recorded in the Registry of Property of Puerto Rico. The Authority agrees to employ Reasonable Efforts to cause the owner of the Sardinas and Isabel II Facilities to record the parcels of land upon which such Facilities are constructed in the corresponding sections of the Registry of the Property of Puerto Rico. Each of the underlying documents in connection with such rights shall be in form and substance reasonably satisfactory to the Operator, and reasonable evidence thereof shall be provided by the Authority to the Operator, including any modifications, amendments and supplements thereto. Prior to each Facility Acceptance Date, the Authority shall have in effect a Facility Document substantially in the form of Appendix FF-1 and Appendix FF-2, as applicable.

(b) **Environmental Studies.** Phase I environmental studies of the Ferry Terminal being delivered shall have been completed and delivered to Operator; and, to the extent that the Ferry Terminal in Ceiba has not been relocated to a new Ferry Terminal, a vapor intrusion assessment shall have been completed in accordance with applicable legal requirements and shall have (1) concluded that no further action is necessary; or (2) concluded that no further mitigation or remediation measures are warranted; or (3) concluded that conditions do not present an unacceptable risk to human health.

(c) **Compliance with Asset Rehabilitation Plan.** The Vessel or Facility being delivered shall satisfy the requirements for acceptance thereof provided in the Asset Rehabilitation Plan. The Authority is responsible for completion of all Priority 1, 2 and 3 items as identified in the Rehabilitation Plan. All Priority 1 items must be completed and plans for completion of all Priority 2 and Priority 3 repairs have been mutually agreed to prior to acceptance of the asset by the Operator. Priority 2 items must be planned for repair within six (6) months from date of asset acceptance and Priority 3 items planned for repair as a Condition Precedent to Phase 2;

(d) **Agreement for Use of Facilities.** The Authority and the Operator shall have executed a Facility Lease Agreement substantially in the form of Appendix T-1, Appendix T-2 and Appendix T-3, as applicable in accordance with Section 13.1;

(e) **Landlord’s Estoppel Certificate.** With respect to each Facility not owned by the Authority, the Authority shall have delivered to the Operator a consent and estoppel agreement duly executed by the Puerto Rico Ports Authority, the Local Redevelopment Authority for Roosevelt Roads, the Municipalities of Vieques and/or Culebra and/or any other owner of each Facility, as applicable, substantially in the form attached hereto as Appendix J;

(f) **Notices to Lessees, Concessionaries and Others.** With respect to each Authority contract in effect as of the Acceptance Date with respect to any Project Asset or any portion thereof, and/or otherwise related to the Maritime Transport Operations and Maritime Transport Services, the Authority shall have delivered to its counterparty(ies) thereunder a notice in substantially the form attached hereto as Appendix K-2;
(g) **Tenant's or Concessionaire Estoppel Agreement.** With respect to each contract or concession agreement to be assumed by the Operator as per the terms of this Agreement, the Authority shall have delivered to Operator a consent and estoppel agreement duly executed by each counterparty thereunder, in the form attached hereto as **Appendix L** and the parties shall have executed an assignment of contract in the form attached hereto as **Appendix M**, unless the Operator has requested the Authority to terminate such contract or concession pursuant to Section 2.1(i);

(h) **Approval of Handback Plan.** The Operator shall have presented to the Authority for its approval the proposed Handback Plan and the Authority and the Operator shall have agreed in writing to the terms of the Handback Plan.

(i) **Legal Proceedings.** There shall be no Legal Proceeding pending before or by any Governmental Authority which: (i) challenges the authorization, execution, delivery, validity or enforceability of this Agreement; or (ii) seeks to enjoin or restrict the use of any of the Project Assets in the manner or for the purposes contemplated by this Agreement.

(j) **Bareboat Charters.** The Authority and the Operator shall have executed a Bareboat Charter in the form of **Appendix C**.

(k) **Designation of Facilities as Ports or Docks.** The Authority shall have obtained one or more written determinations of the designation of each of the Ceiba, Vieques and Culebra Facilities as a “port” or “dock” under Article 2 of the **Puerto Rico Docks and Ports Act of 1968**, Act No. 151 of June 28, 1968, as amended; or as a “dock” or “port” under the jurisdiction of a Municipality pursuant the **Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991**, Act. No. 81 of August 30, 1991, as amended, as the case may be.

(l) **Required Permits.** The Authority and the Operator shall have obtained all such material permits, licenses and approvals of Governmental Authorities that (i) are required for the acceptance of delivery by the Operator of such Vessel or Facility, and (ii) failing to obtain the same would have Material Adverse Effect on the Operator or the Authority.

On each Acceptance Date, each of the Authority and the Operator shall execute a certificate confirming to the other Party that all conditions precedents hereunder, as applicable to each Party, have been satisfied with respect to the Project Asset being accepted. If either Operator or the Authority, in good faith, disputes the satisfaction of any condition specified in this Section 2.5 or whether the condition of a Vessel or Facility satisfies the requirements of the Asset Rehabilitation Plan, such dispute shall be resolved in accordance with Article 33.

**Section 2.6 Conditions Precedent for Phase 2.** Unless waived by the Authority and the Operator, to the extent permitted under Applicable Law, the following are conditions precedent to the Phase 2 Commencement Date:

(a) the representations of the Authority and of the Operator set forth in Section 25.1(a)-(c) and Section 25.2(a)-(c) of this Agreement, respectively, shall be true and correct as of the Phase 2 Commencement Date;
(b) all Governmental Authority approvals required for (i) the effectiveness of this Agreement under Applicable Law and (ii) the execution, delivery and performance of this Agreement by the Parties, shall continue to be in full force and effect;

(c) there shall be no Legal Proceeding pending before or by any Governmental Authority which: (i) challenges the authorization, execution, delivery, validity or enforceability of this Agreement; or (ii) seeks to enjoin or restrict the use of any of the Project Assets in the manner or for the purposes contemplated by this Agreement;

(d) no Change in Law shall have occurred that would make the validity, enforceability or performance of this Agreement a violation of Applicable Law;

(e) the Authority and the Operator shall have executed, delivered, filed, transferred, exchanged or otherwise complied with each of the items set forth in this Agreement to be completed within Phase 1;

(f) the Travel Lift at the Isla Grande Facility shall be fully functional;

(g) all Asset (Vessel and Facility) Priority 1, Priority 2 and Priority 3 work shall have been accomplished;

(h) the construction at the Mosquito Facility and the Sardinas Facility shall have been completed;

(i) The Department of Treasury of the Commonwealth shall have issued a Ruling in substantially the form attached hereto as Appendix EE-2; (ii) the Authority shall have issued the Certificate of Covered Items as contemplated in said Ruling for purposes of the application of the exemption from sales and use taxes and excise taxes as applicable in accordance therewith; and (iii) the Department of Treasury of the Commonwealth shall have issued a Certificate of Exemption in connection therewith;

(j) the fares set forth in Appendix B shall be in full force and effect; and

(k) the system described in Appendix N for identifying the residents of Vieques and Culebra shall be in effect.

The above conditions precedent must be satisfied on or before the third (3rd) anniversary of the Phase 1 Commencement Deadline (such date being referred to as the “Phase 2 Commencement Deadline”) subject to extension as a result of a Force Majeure event as provided below or by mutual agreement of the Authority and the Operator as provided in Section 2.7.

If, during the period between the Phase 1 Commencement Deadline and the Phase 2 Commencement Deadline, any Force Majeure event occurs which affects compliance with any pending conditions precedent hereunder, then, the Phase 2 Commencement Deadline shall be extended by the number of days during which the Force Majeure event prevented the satisfaction of the pending conditions precedent, up to a maximum extension period of one hundred and eighty (180) days, subject to further extension by mutual agreement of the
Authority and the Operator as provided in Section 2.7. The Party claiming the occurrence of a Force Majeure event preventing compliance with a condition precedent hereunder shall provide written notice to the other Party as promptly as possible, but in any event later than ten (10) Business Days after it becomes aware that the Force Majeure event will delay compliance with a condition precedent stating, in reasonable detail and with supportive evidence (if available) (i) the particulars of the Force Majeure event claimed; (ii) the condition precedent affected; and (iii) the number of days during which the Force Majeure event prevented or will prevent the completion of such conditions precedent; provided, however, that if the duration of such period is still unknown as of the date of this notice, a subsequent notice shall be provided as soon as the information is available.

The Authority shall provide written notice to the Operator when all the conditions specified in Section 2.6 have been satisfied (the “Notice of Satisfaction of Conditions to Phase 2”) and, if the Operator agrees therewith, the Operator will confirm to the Authority in writing that all conditions precedent hereunder, as applicable to each Party, have been satisfied. The Operator’s written confirmation will indicate what is the Phase 2 Commencement Date.

If, upon reaching the Phase 2 Commencement Deadline, the Operator reasonably determines that the conditions specified in this Section 2.6 have not been duly satisfied by the Authority in accordance with the terms of this Agreement, then the Operator shall give written notice to the Authority informing it of its decision to proceed with any of the following alternatives: (i) waiver of compliance by the Authority with respect to any condition precedent pending due completion or satisfaction; (ii) extension of the term for compliance or satisfaction of any pending conditions precedent; or (iii) termination of this Agreement. Notwithstanding the foregoing, the Operator may not terminate this Agreement if, within five (5) Business Days from the receipt by the Authority of the Operator’s notice contemplated in the preceding sentence, the Authority gives written notice to the Operator specifying in reasonable detail the reasons for which the Authority, in good faith, disputes its alleged non-satisfaction of any condition as claimed by Operator. If the Authority and the Operator cannot reach an agreement on such dispute, such dispute shall be resolved in accordance with Article 33. In that case, Phase 1 of the Contract Term shall be extended during the pendency of the dispute resolution process.

Any disagreement with respect to the determination of the Phase 2 Commencement Deadline shall be resolved in accordance with Article 33. Once the Phase 2 Commencement Deadline has been determined by agreement of the Parties or in accordance with Article 33, the Parties shall jointly certify in writing the establishment of the Phase 2 Commencement Deadline.

Section 2.7 Termination of Agreement for Failure to Satisfy Condition Precedent.

(a) (i) If any of the conditions precedent set forth in Section 2.4 are not satisfied by the Phase 1 Commencement Deadline, and (A) such condition has not been waived by both Parties, (B) the Authority and the Operator have not agreed to extend the deadline for meeting such condition, and (C) satisfaction of such condition is not the subject of a dispute allowed to be resolved under Article 33, or (ii) if any of the conditions precedent set forth in Section 2.6 is not satisfied by the Phase 2 Commencement Deadline and (A) such condition has not been waived by both the Authority and the Operator, (B) the Authority and the Operator have
not agreed to extend the deadline for meeting such condition, and (C) satisfaction of such condition is not the subject of a dispute allowed to be resolved under Article 33, then in each such case, either Party shall have the right to terminate this Agreement upon providing not less than ninety (90) days’ notice to the other Party.

(b) A termination under this Section (other than a termination attributable to an act or a failure to act by the Operator) shall be treated as a termination subject to the terms of Section 45.4; provided, that the Operator shall not be entitled to the reimbursement of costs related to the procurement of this Agreement as provided in Section 45.4(e)(v) if the conditions precedent that are not satisfied are those specified in Section 2.4(a) or 2.6(c) or (d) or if the conditions precedent were not satisfied as a result of a delay caused by a Force Majeure event.

ARTICLE 3
OPERATOR PERFORMANCE OF WORK, PERFORMANCE REQUIREMENTS, EXCLUSIVITY AND PAYMENT BOND

Section 3.1 General.

(a) Commencing on each applicable Facility Acceptance Date and Vessel Acceptance Date with respect to each accepted Authority Provided Vessel and Facility, and on and after the termination of the Transition Period with respect to the Ferry System, the Operator shall at all times thereafter during the term of this Agreement, (i) perform all Services described in the Scope of Work and Transition Plan diligently, carefully, and in a manner consistent with the standards set forth in Article 23 and Appendix B and otherwise to the extent not provided in Appendix B, the best practices of the maritime industry in the United States, and (ii) furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefor as required under this Agreement (collectively the “Work”). The Operator shall perform all Work in the Operator’s own name and as an independent contractor (as provided in Article 36) and not in the name of, or (except for excise taxes and sale and use tax purposes) as an agent for, the Authority.

(b) Subject to Section 2.1 which governs the understandings of the Authority and the Operator with respect to the Transition Period, the Operator shall coordinate, manage, and control all activities necessary to carry out its responsibilities under the Scope of Work. Except as expressly provided in Article 5 herein and, except for Vessel Extraordinary Repairs, Vessel Capital Improvements, Facility Extraordinary Repairs and Facility Capital Improvements, the Operator shall pay the costs of all labor, equipment and supplies necessary for the performance of the Work.

Section 3.2 Requisite Skill and Authority.

The Operator represents that it has and throughout the Contract Term shall have all required corporate authority, licenses, necessary skills and capacity to perform its obligations hereunder and shall perform them in a manner consistent with the requirements of this Agreement.
Section 3.3  Legal Requirements and Performance.

The Operator represents that it has knowledge of all of the applicable legal requirements and business practices in the Commonwealth and FTA that should be followed in performing the Work and shall perform the Work and its obligations under this Agreement in conformity with such requirements and practices and in accordance with the standards set forth in Article 23 and Appendix B of this Agreement.

Section 3.4  Continuous Performance.

Provided the Authority is not in default pursuant to Section 45.4(a)(iii) hereunder with respect to the payments due to the Operator and notwithstanding the existence of any dispute, at all times during the Contract Term, the Operator shall (a) perform its duty in a diligent manner and without delay, (b) abide by the Authority’s decision or order in accordance with this Agreement, and (c) comply with all applicable provisions hereof. In the event a dispute arises regarding such performance or direction, it shall be resolved in accordance with Article 33 hereof.

Section 3.5  Purchase of Fuel.  Until otherwise instructed by the Authority in the event that the Authority concludes that its direct purchase of fuel will result in lower prices than those obtained by the Operator (provided that the cost thereof shall remain for the account of the Operator, subject to Section 5.12), the Operator shall purchase all fuel necessary for the operation of the Vessels. The price of fuel shall be an item of adjustment of the compensation payable to the Operator as provided in Section 5.12. The Authority may require the Operator to purchase fuel in an amount (subject to availability of storage capacity) and on a date or dates that enables the Authority to take advantage of beneficial fuel pricing.

Section 3.6  Exclusivity.  The Operator shall be the Authority’s exclusive provider of subsidized Maritime Transport Services subject to the terms of this Agreement. The Operator acknowledges that it does not have an exclusive right to utilize the Facilities that are not owned or exclusively leased or licensed to, or otherwise under the exclusive control of, the Authority, unless otherwise consented by the owner of such Facilities.

Section 3.7  Payment Bond.

(a)  Unless some other form of Acceptable Operator Security is provided to the Authority with its consent, HMSI shall procure and keep in effect at all times during the term of this Agreement a Payment Bond in favor of the Authority in the amount of Five Million Dollars ($5,000,000.00), guarantying the performance by HMSI of the terms and conditions of this Agreement and the due and punctual payment by HMSI of its monetary obligations to the Authority herein. The Payment Bond shall be in the form that is attached hereto as Appendix H and, except as provided in the next sentence, shall be issued by a Surety with an A.M. Best and Company rating of no less than A or as otherwise approved by the Authority. In the case of the initial Payment Bond delivered to the Authority by HMSI on or prior to the Effective Date, and any subsequent annual renewal of such Payment Bond by the same Surety company, the A.M. Best rating of the Surety company providing such initial Payment Bond shall be at least A-. The Payment Bond must be governed by the laws of the Commonwealth.
(b) The Payment Bond shall be conditioned upon faithful performance by HMSI of its obligations under this Agreement, including its payment obligations. The Payment Bond must be kept in full force and effect at all times during the Contract Term. Such bond shall not be subject to cancellation by the Surety except after notice to the Authority Executive Director (i) delivered by hand or registered mail at least sixty (60) days prior to the date of cancellation, or (ii) delivered by electronic correspondence to the Executive Director of the Authority and to the Executive Director of the Public Private Partnership Authority, with receipt of such electronic correspondence acknowledged by each, at least sixty (60) days prior to the date of cancellation, followed by delivery of such notice to the same recipients by certified mail sent on the same or the following day as the delivery of the electronic correspondence. Failure to maintain such Payment Bond shall be a default of this Agreement and may, at the Authority’s discretion, result in termination of this Agreement. If (i) the Payment Bond is not renewed nor substituted, (ii) the Authority receives the full payment of the Payment Bond by the Surety, and (iii) the Authority does not terminate this Agreement, the amount paid by the Surety shall be held in escrow by an escrow agent mutually selected by the Parties under an Escrow Agreement substantially in the form of Appendix II.

(c) If the Authority determines that HMSI has failed to comply with any of its obligations under this Agreement, including its payment obligations, then the Authority may collect under the Payment Bond or other Acceptable Operator Security, as the case may be.

(d) The Authority Executive Director, in his or her sole discretion, may permit HMSI to substitute Eligible Investments approved by the Authority or an irrevocable letter of credit from a bank acceptable to the Authority for the bond required by this section. No such substitution shall be permitted without the prior written consent of the Authority.

(e) Each bond executed by an agent or attorney-in-fact for the corporate Surety must include a power of attorney in favor of the signatory agent or attorney-in-fact, executed by the corporate Surety upon a date reasonably proximate to the date of the bond.

(f) Each Surety must agree to submit to the jurisdiction of federal courts located in the Commonwealth. This undertaking shall be expressly acknowledged in the bond.

(g) The Operator or HMSI shall be solely responsible for the payment of the premium on the Payment Bond.

ARTICLE 4

CONTRACT TERM, PROJECT ASSETS AND ANCILLARY ACTIVITIES

Section 4.1 Contract Term.

This Agreement shall have a term of twenty-three (23) years (“Contract Term”); subject to early termination pursuant to Articles 2, 42, 43, 44 and 45. The Contract Term shall begin on the Phase 1 Commencement Date. This Agreement shall be divided into three separate periods, namely: the period between the Effective Date and the Phase 1 Commencement Date, Phase 1), and Phase 2, as defined in this Agreement.
The Scope of Work applicable in Phase 1 (after each Acceptance Date) and Phase 2 of the Project is described in Appendix B hereto. No Work is required from the Operator from the period comprised from the Effective Date to the Phase 1 Commencement Date. However, if the Authority and the Operator agree for the Operator to Work during the period between the Effective Date and Phase 1 Commencement Date, the costs and expenses incurred by the Operator in connection with such Work will be reimbursed by the Authority to the Operator upon the Phase 1 Commencement Date. The Operator shall not perform any Work until the Authority and the Operator shall have agreed in writing as to the scope of such Work and the compensation therefor payable by the Authority.

Section 4.2 Right to Operate and Ownership of Project Assets.

(a) Subject to the terms hereof, the Authority grants the Operator exclusive right to operate and maintain the Project Assets during the Contract Term for purposes of providing Maritime Transport Services, performing Maritime Transport Operations and carrying out Ancillary Activities in accordance with this Agreement; provided, however, that Ancillary Activities shall not be performed by Operator until the corresponding conditions precedent thereto have been met, in each case, as required by Sections 4.5.

(b) All rights, title and interest in and to all assets now utilized or that hereinafter are utilized in the Project, as described in this Agreement (collectively, the “Project Assets”), including but not limited to all (i) Ferry Terminals, Mooring Facilities and other Facilities, (ii) Authority Provided Vessels, and (iii) all data, documents and information developed or owned by the Authority, regardless of its format (including, without limitation, all assignable or transferable intellectual property created for the Authority by the Operator or third parties as part of the establishment of an online ticketing and reservations system or the implementation of a computerized fare collection system) (such data, documents, information and intellectual property, the “Authority-Provided Intellectual Property”), shall be owned by the Authority throughout the Contract Term and following the expiration or termination of this Agreement, and the Operator, except to the extent set forth in this Agreement and any document ancillary hereto, shall have no rights, title or interest therein or thereto. The Authority and the Operator agree and acknowledge that this Agreement does not provide for the transfer to the Operator of any title or ownership right of the Authority with respect to any Project Assets, but only provides to the Operator the exclusive right to operate and maintain the Project Assets in accordance with this Agreement. Title to any assets, materials, tools, furniture, equipment, intangibles and other personal property brought in, acquired, leased or provided by the Operator with its own funds, shall remain with Operator.

(c) The Authority and the Operator acknowledge and agree that, subject to the rights of the Authority under Section 46.1(j), intellectual property, software and other technology developed, collected, licensed or supplied by the Operator during the Contract Term (other than any relating to the establishment of the online ticketing and reservation system and a computerized fare collection system developed by the Operator for the Authority which shall be the property of the Authority) shall remain the sole and exclusive property of the Operator during the Contract Term and following the End Date, to the maximum extent permitted under Applicable Law (the “Operator-Provided Intellectual Property”). Operator-Provided Intellectual Property will be deemed to include any derivatives, modifications, enhancements or
improvements to the Operator-Provided Intellectual Property. Nothing in this Section 4.2 shall limit or condition the Operator’s obligations under Section 46.1(j). The Operator shall ensure that any custom made or custom developed software or intellectual property to be used in connection with the Work shall be transferable or licensable to the Authority under commercially reasonable terms at least as favorable as those available to the Operator at the time of such license or assignment, subject to any variation required by virtue of the identity or circumstances of the licensee or transferee (such as its governmental nature, credit, business relations and other factors). With respect to such custom made or custom developed property, the Operator shall have the indemnity obligation provided in Section 28.6(b).

Section 4.3 Access to Project Assets.

The Authority shall, at its own cost, obtain and provide the Operator with access to all Authority Provided Vessels, Facilities and other Project Assets from the commencement of Phase 1 until the end of the Contract Term for the sole purpose of the Operator’s performance of its obligations and exercise of its rights under this Agreement.

Section 4.4 Data Protection.

Each of the Authority and the Operator shall comply with its respective obligations as the corresponding data owner/controller/covered entity and the data processor/licensee/business associate/trading partner/service provider under applicable data protection Laws governing the collection, use and protection of information or data naming or identifying a natural person such as (a) personally identifying information that is explicitly defined as a regulated category of data under any data privacy or data protection laws applicable to Authority; (b) non-public information, such as a national identification number, passport number, social security number, driver’s license number; (c) health or medical information, such as insurance information, medical prognosis, diagnosis information or genetic information; (d) financial information, such as a policy number, credit card number and/or bank account number; (e) sensitive personal data, such as mother’s maiden name, race, marital status, gender or sexuality; and/or any other non-public personal information as defined by or mandated under Applicable Law.

Section 4.5 Right to Carry Out Ancillary Activities.

(a) In addition to the Work, subject to the provisions of Section 48.12, during Phase 2 the Operator shall be permitted to carry out the Special Services and the activities described in Section 13.1(c), provided however, that the Operator shall not be authorized to carry out the Special Services and the activities described in Section 13.1(c) unless prior to commencing to carry out such activities, as a condition precedent thereto, the Operator and the Authority shall have agreed in writing as to what will be the Projected Ancillary Revenues, and the Projected Allowable Ancillary Costs for each such activity.

(b) Subject to the provisions of Section 48.12 the Operator shall also be permitted during Phase 2 to carry out other Ancillary Activities (other than those described in Section 4.5(a)) involving the Project Assets, including, without limitation, those contemplated in Sections 13.1(e), 18.1 and 19.2, provided that prior to commencing to carry out such other
activities, as a condition precedent thereto, the Operator shall have obtained the Authority’s written permission to carry out the same and the Operator and the Authority shall have agreed in writing as to what would be the Projected Ancillary Revenues, Projected Allowable Ancillary Costs and Projected Ancillary Income for each such activity for each Contract Year.

(c) During Phase 1 the Operator (i) shall provide Special Services, as contemplated in Section 6.1, subject to the conditions provided therein, and (ii) may carry out other Ancillary Activities provided that (A) any required approval from the FTA of Incidental Use are obtained, and (B) the Authority and the Operator shall agree on how the Ancillary Income therefrom shall be shared.

ARTICLE 5

COMPENSATION

Section 5.1 Compensation During Phase 1.

(a) Phase 1 Service Payments and Management Fee. Subject to and in accordance with this Agreement, during Phase 1 of the Contract Term (including the Transition Period), and subject to the provisions of Section 48.12, the Authority shall pay the Operator the Phase 1 Service Payments to cover the reimbursement due to the Operator for the performance of all of the Work during this phase. The Phase 1 Service Payments represent the amount budgeted by the Authority and the Operator to cover the costs to be incurred by the Operator in performing the Services and includes the costs of Vessel Maintenance and Ordinary Repairs and the costs of Facility Maintenance and Ordinary Repairs required to be incurred by the Operator during the Transition Period (after each applicable Acceptance Date). During Phase 1, and subject to the provisions of Section 48.12, Phase 1 Service Payments will also include reimbursement for (i) any excise or sales and use taxes imposed on Operator with respect to the introduction into Puerto Rico or acquisition of taxable items acquired by the Operator on behalf of and for the Authority for use in connection with the operation of the Project Assets and the maintenance and repairs of Vessels and Facilities, or in connection with the performance of the Operator’s obligations under this Agreement; (ii) any construction excise tax imposed with respect to the maintenance and repairs of Facilities, and (iii) any income or municipal license taxes imposed in connection with the Phase 1 Service Payments but excluding any Taxes imposed with respect to (x) the Management Fee, (y) any property acquired by Operator for its own use or (z) any revenues from Ancillary Activities. During Phase 1 the Authority shall also pay to Operator the Management Fee, set forth in Appendix G, which shall be the Operator’s compensation for the performance of the Work during Phase 1.

(b) Quarterly Deposit Mechanisms of Phase 1 Service Payments and the Management Fee. During Phase 1 of the Contract Term, the Authority shall make quarterly deposits of the Phase 1 Service Payments and Management Fee to the Operating Account in an amount at least equal to one fourth of the annual amount set forth in the Budget that is attached hereto as Appendix G and in any case sufficient to comply with the requirement of Section 5.11(e) (the “Quarterly Deposit Amount”), or in the case of agreed Modifications or option to expand the Services (as set forth in Article 15 hereof), the associated revised annual budget. The Phase 1 Service Payments and the Management Fee shall be deposited in the
Operating Account in advance commencing on the day preceding the first day of the Transition Period and, thereafter, on or before February 15, May 15, August 15 and November 15 of each year (each a “Quarterly Deposit Date”).

(c) Payment Mechanism of Phase 1 Service Payments and Management Fee. The Phase 1 Service Payment and Management Fee shall, absent an Event of Default of the Operator, be disbursed by the Authority to the Operator in advance commencing on the day preceding the first day of the Transition Period and, thereafter, on the 15th day of each month (the “Monthly Payment Date”) in an amount equal to one twelfth of the annual budget appearing in Appendix G or in the case of agreed Modifications or option to expand the Services (as set forth in Article 15 hereof), the associated revised annual budget. Each monthly payment shall cover the payment due with respect to the following month. Accordingly, the payment due with respect to the month of February shall be paid on January 15th.

(d) Reimbursement for Costs. During Phase 1 of the Contract Term (including the Transition Period), the Operator shall be entitled to reimbursement for all costs incurred by the Operator in the performance of the Work during such period (separately from, and in addition to, the Management Fee included in Appendix G), provided such costs are included in the Budget and, if not included, have been previously approved by the Authority (or with respect to Taxes for which Operator is entitled to reimbursement under Section 5.1(a), if paid or incurred under Applicable Law). To the extent that the costs incurred by the Operator in the performance of the Work for any quarterly period exceed the costs included in the Phase 1 Service Payments for such quarterly period, the Operator shall be reimbursed by the Authority, within thirty (30) days from the date of receipt of an itemized invoice covering the amounts due with respect to the immediately preceding quarterly period, such invoice being in an amount equal to the difference between the costs incurred by the Operator for such quarterly period and the costs included in the corresponding Phase 1 Service Payments, provided that any cost incurred by the Operator that is not included in the Budget shall have been previously approved by the Authority (unless such amount does not exceed $5,000 and is consistent with ensuring that the operational performance standards are maintained). Conversely, to the extent that the costs included in any Phase 1 Service Payments exceed the costs incurred by Operator in the performance of the Services for any quarterly period, the Authority shall be reimbursed by the Operator in an amount equal to the difference between the costs included in the Phase 1 Service Payments and the costs incurred by the Operator for such quarterly period. Such reimbursement shall be made within thirty (30) days from the end of the corresponding quarterly period.

(e) Tax Treatment. The Authority and the Operator acknowledge that it is their intent that the Phase 1 Service Payments (excluding the Management Fee) be treated for all Tax purposes as reimbursements of costs incurred by the Operator on behalf of the Authority in order to fulfill its obligations under this Agreement and not as gross income or revenues for tax purposes. No withholding of Taxes shall be made by the Authority with respect to the Phase 1 Service Payments, provided that the withholding of any Taxes may be made with respect to the Management Fee to the extent required by Applicable Law.

(f) Monthly Revenue and Expense Report. Actual expenses incurred in any given month shall be reported by the Operator in a monthly revenue and expense report.
submitted to the Authority in a format approved by the Authority within twenty (20) days from the last day of each month.

(g)  *Phase 1 Quarterly Revenues and Expense Reports.* On or before the last day of each April, July, October and January during Phase 1, the Operator shall submit to the Authority a report of the revenues and expenditures during the preceding quarterly period. The report shall be accompanied by the corresponding invoices itemizing such expenditures in reasonable detail with back-up documentation satisfactory to the Authority. Such back-up documentation shall also evidence that the Operator complied with all FTA procurement guidelines and USCG regulations. The report shall indicate the amount of any excess payment made by the Authority to the Operator or any excess cost incurred by the Operator.

**Section 5.2 Compensation During Phase 2.**

(a)  *Collection of Revenues.* Subject to and in accordance with this Agreement, during Phase 2 of the Contract Term, Operator shall have the exclusive right to collect all Service Revenues. It shall also have the right to collect all revenues from Ancillary Activities (the “Ancillary Revenues”).

(b)  *Phase 2 Fixed Fee.* Subject to and in accordance with this Agreement, during Phase 2 of the Contract Term, the Authority shall pay the Operator a fixed annual fee in the amount set forth in Section 1 of Appendix D, subject to any mutually approved Modifications (the “Phase 2 Fixed Fee”). During Phase 2 of the Contract Term, equal quarterly installments of the annual Phase 2 Fixed Fee shall be deposited quarterly by the Authority in the Operating Account in advance, such deposit constituting the Quarterly Deposit Amount agreed to for Phase 2. The amount required to be deposited shall be sufficient to comply with Section 5.11(e). The initial deposit of such Quarterly Deposit Amount shall be made on or before the fifteenth (15th) day preceding Phase 2 Commencement Date, and shall continue thereafter on or before each Quarterly Deposit Date, in an amount sufficient to cover the Phase 2 Fixed Fee applicable to the period ending on the last day of the month of the immediately succeeding Quarterly Deposit Date in accordance with the Phase 2 Fixed Fee budget in Section 1 of Appendix D. The Phase 2 Fixed Fee shall be paid monthly in advance by the Authority to the Operator on each Monthly Payment Date, in an amount equal to one twelfth (1/12) of the corresponding annual Phase 2 Final Fee budget set forth in Section 1 of Appendix D. The Phase 2 Fixed Fee is the consideration paid by the Authority for the Operator’s performance of the Work, other than Ancillary Activities or Special Services.
(c) Sharing Service Revenues.

(i) For any Contract Year during the Phase 2 period that the cumulative Service Revenues collected by the Operator exceed, by thirty percent (30%) or more, the amount of cumulative Projected Service Revenues set forth in the upper box of Section 3(a) of Appendix D for such period, the cumulative excess above such thirty percent (30%) threshold shall be shared equally between the Authority and the Operator.

(ii) The thirty percent (30%) threshold for each Contract Year is set forth in the lower box of Section 3(a) of Appendix D and is identified therein as the “Windfall Revenues Threshold”.

(iii) The amount by which the cumulative Service Revenues exceeds the Windfall Revenues Threshold is referred to as the “Windfall Revenues”.

(iv) The portion of the Windfall Revenues payable to the Authority with respect to each Contract Year shall be equal to fifty percent (50%) of the cumulative Windfall Revenues for such Contract Year less the sum of all prior payments of Windfall Revenues made to the Authority. Should the calculation called for in the preceding sentence yield a negative number, the Authority shall not be required to reimburse the Operator for any payment of Windfall Revenues made in any prior Contract Year.

(v) For avoidance of doubt, the calculation of the cumulative Service Revenues collected by the Operator during Phase 2 and the amount of Cumulative Projected Service Revenues for such period shall be made each Contract Year and shall be calculated taking into account the cumulative amount of actual Service Revenues and Cumulative Projected Service Revenues during the entire Phase 2 period through the end of such Contract Year.

(vi) Within four (4) months following the end of each Contract Year, the Operator will determine the Authority’s share of Windfall Revenues and reconcile accordingly based on the audited financial reports of the Operator. notice to the Authority, and payment to the Authority, of the Authority’s share of the Windfall Revenues shall be made by the Operator to the Authority within such four (4) month period.

(d) Sharing Actual Ancillary Income.

(i) For any Contract Year during the Phase 2 period in which the cumulative Actual Ancillary Income collected by the Operator with respect to the Special Services and the Ancillary Activities described in Section 13.1(c) exceeds, by thirty percent (30%) or more, the amount of cumulative Projected Ancillary Income for such Ancillary Activities for such period, the amount of such excess above such thirty percent (30%) threshold shall be shared equally between the Authority and the Operator. The amount of this thirty percent (30%) threshold is set forth in the lower box of Section 3(b) of Appendix D and is identified therein as the “Windfall Net Income Threshold”. The portion of the Windfall Net Income (defined below) for such Ancillary Activities payable to the Authority shall be equal to fifty percent (50%) of the cumulative Windfall Net Income for such Contract Year for such Ancillary Activities less the sum of all prior payments of Windfall Net Income made to the Authority in any prior Contract Year with respect to such Ancillary Activities. Should the
calculation called for in the preceding sentence yield a negative number, the Authority shall not be required to reimburse the Operator for any payment of Windfall Net Income made in any prior Contract Year.

(ii) The term “Windfall Net Income” means (A) in the case of the Ancillary Activities described in clause (i) above, the amount by which the cumulative Actual Ancillary Income collected by the Operator for those Ancillary Activities as of the end of a Contract Year exceeds the Windfall Net Income Threshold for such Contract Year and (B), in the case of each of the Ancillary Activities described in clause (iii) below, the amount by which the cumulative Actual Ancillary Income collected by the Operator for each such Ancillary Activity exceeds the threshold for such Contract Year that will be used to determine the Windfall Net Income for each such Ancillary Activity, as such threshold has been agreed to by the Authority and the Operator in accordance with clause (iv) below.

(iii) For any Contract Year during the Phase 2 period in which the cumulative Actual Ancillary Income collected by the Operator with respect to any Ancillary Activity, other than the Special Services and the Ancillary Activities described in Section 13.1(c), exceeds the threshold used to determine the Windfall Net Income, as such threshold was agreed to by the Authority and the Operator for such Ancillary Activity, such excess shall be shared equally between the Parties. The Windfall Net Income for each such Ancillary Activity shall be determined in accordance with clause (iv) below and shall be calculated separately for each such Ancillary Activity by utilizing the cumulative Projected Ancillary Income and the cumulative Actual Ancillary Income attributable to each such Ancillary Activity. The portion of the Windfall Net Income of each such Ancillary Activity payable to the Authority shall be equal to fifty percent (50%) of the cumulative Windfall Net Income for such Contract Year for such Ancillary Activity less the sum of all prior payments to the Authority of Windfall Net Income for such Ancillary Activity. Should the calculation called for in the preceding sentence yield a negative number, the Authority shall not be required to reimburse the Operator for any payment of Windfall Net Income made in any prior Contract Year.

(iv) For avoidance of doubt, for any new Ancillary Activities not referred to in Section 5.2(d)(i), a business plan will be developed by the Operator that, if approved by the Authority as required by Section 4.5(b), will establish a Projected Ancillary Income for each Contract Year that will serve as the basis for establishing the threshold that will be used in determining the Windfall Net Income for that new Ancillary Activity. The threshold for each Contract Year shall always be thirty percent (30%) over the cumulative Projected Ancillary Income. The calculation of Windfall Net Income shall be made on an individual basis for each Ancillary Activity other than the Ancillary Activities referred to in Section 5.2(d)(i).

(e) Within four (4) months following the end of each fiscal year of the Operator, the Operator will determine the Authority’s share of Windfall Net Income and reconcile accordingly based on the audited financial reports of the Operator. Notice to the Authority, and payment to the Authority, of the Authority’s share of the Windfall Net Income shall be made by the Operator to the Authority within such four (4) month period.
(f) **Certification.** The independent accounting firm certifying the Operator’s annual audited financial statements shall certify the correctness of the Operator’s calculation of the Windfall Revenues and Windfall Net Income.

(g) **Adjustments.** The Authority and the Operator acknowledge that the Phase 2 Fixed Fee may be adjusted pursuant to the provisions of Sections 23.4 and 5.12 of this Agreement.

**Section 5.3 General Provisions Regarding Payments.**

(a) **Conditions Precedent to Payments.** The Authority will not be obligated to make any payment to the Operator in Phase 2 unless all conditions precedent applicable to such payment under applicable government contracting requirements set forth in Appendix O, have been satisfied by the Operator, including the provision of any and all reports required to be submitted by this Agreement to the Authority.

(b) **Invoices.** Prior to making any disbursement of a Phase 1 Service Payment or Phase 2 Fixed Fee, the Operator shall submit to the Authority an invoice for the amounts payable by the Authority on the immediately succeeding due date. Each monthly invoice shall be submitted on or before the Monthly Payment Date. The invoice shall include the certification required in Section 5.3(i). The funds for the payment of the Authority’s monetary obligations will be disbursed from the Operating Account after receipt of the invoice required hereunder on or before the Monthly Payment Date.

(c) **Limited Sources of Payments.** The obligations of the Authority under this Agreement are subject to the availability of public funds in its annual budgets sufficient to carry out the provisions of this Agreement in full. The Authority certifies to the Operator that the current annual budget of the Authority is sufficient to carry out the provision of this Agreement in full for the periods comprised in such annual budget (i.e., from July 1, 2019 to June 30, 2020). The Operator acknowledges and agrees that the Authority’s sole source of payment for the Work is from Commonwealth appropriations and reimbursements for costs or expenses incurred by the Authority subject to federal participation allocated specifically for the Services pursuant to applicable regulations. The Operator expressly agrees that the Authority’s obligation to pay the Phase 1 Service Payment, the Phase 2 Fixed Fee and any other costs, expenses or amounts due under or in any way related to this Agreement is limited to the Commonwealth’s approval of the corresponding budgetary appropriation, the availability of such funding at the moment needed to pay the Phase 1 Service Payments or the Phase 2 Fixed Fee, and in no event shall the Authority be obligated to make payment from any other Authority sources of money; provided, that (i) the Authority shall be diligent in (x) presenting and pursuing an Authority budget inclusive of all projected funds needed to comply with this Agreement, and (y) procuring and pursuing the federal funding needed to support the Maritime Transport Operations and the obligations under this Agreement, and (ii) to the extent permitted by applicable Law the Authority will apply to FTA for reimbursement of the Authority’s costs of preventive maintenance previously paid by the Authority to the Operator hereunder. Nothing contained herein shall be deemed as a waiver or renunciation of rights of the Operator to demand and collect payment of any and all amounts due to the Operator under this Agreement for Work already provided subject to the availability of funds under the Authority’s budget.
(d) **Financial Records.** The Operator shall provide such assistance to the Authority as is reasonably necessary to maintain such financial records for the Maritime Transport Operations, including but not limited to maintaining records and providing such ferry service revenue and cost information, passenger counts, and other information as is necessary to meet any regional, state, Commonwealth, and federal planning and reporting requirements.

(e) **Budget and Federal Fund Petitions.** The Authority shall keep the Operator reasonably informed on the status of budget and federal fund petitions and approvals, including previously notifying the Operator any reasons why any of these petitions would be delayed, objected or not finally-approved. Nothing contained herein shall be deemed as a waiver or renunciation of rights of the Operator to demand and collect payment of any and all amounts due to the Operator under this Agreement for services already provided.

(f) **Operator Costs.** Except as expressly provided for in this Article 5 or elsewhere in this Agreement, the Operator shall not be entitled to any additional compensation and/or reimbursement (including reimbursements provided by the FTA, which shall be the sole property of the Authority) under this Agreement, and all other costs, expenses or liabilities that the Operator may incur in the performance of the Work pursuant to the terms, conditions and standards set forth in this Agreement shall be the Operator’s sole responsibility.

(g) **Termination Fee.** If this Agreement is terminated by the Authority for convenience under Section 43.2 before the expiration of the Contract Term, the Authority will pay to the Operator the Termination Fee set forth in Section 45.4(e).

(h) **Operator’s Rights upon a Payment Default.** The Authority and the Operator agree that if the required quarterly deposits to the Operating Account to cover any Phase 1 Service Payments or any Phase 2 Fixed Fees due to the Operator under this Agreement are not made within fifteen (15) days from their due date, or any payment required to be made to the Operator on a Monthly Payment Date is not made within ten (10) days of its due date, the Operator shall have the right, at its discretion, cease to provide any portion or all Work hereunder, without incurring any fault, penalty, default, cause of action, claim, obligation or liability of any kind, all of which is hereby expressly waived by the Authority. Upon a cease of Work under this Section 5.3(h), the Authority hereby covenants and agrees to defend, indemnify and keep the Operator harmless from any claims or liabilities that may arise upon the Operator’s exercise of its rights hereunder except those that arise as a result of the Operator’s negligence or willful actions.

(i) **Monthly Invoices.** All monthly invoices submitted by the Operator under Section 5.3(b) must include a written certification stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement. Invoices that do not include this certification will not be accepted or processed. Such certification must read as follows:

“We certify under penalty of nullity that no public servant of the Puerto Rico and the Island Municipalities Maritime Transport Authority (the “Authority”) will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The
only consideration to be received in exchange for the delivery of goods or for the services provided is the agreed-upon price that has been negotiated with an authorized representative of the Authority. The total amount shown on this invoice is true and correct. The services have or will be rendered in accordance with the written agreement with the Authority, and no other payment has been received for such services.”

(j) **Revenues and Expense Reports.** Upon written request by the Authority, the Operator shall submit to the Authority a report of its revenues and expenditures for the period specified by the Authority. The report shall be submitted as frequently as required for the Authority to comply with Applicable Law, with applicable FTA requirements or as required for the Authority to obtain reimbursements from FTA. Such report shall also include a certificate (together with other evidence reasonably requested by the Authority) stating that the Operator complied with all applicable FTA procurement guidelines and USCG regulations during such period. In addition, at any time, the Authority may request from the Operator, and the Operator shall provide to the Authority, invoices and evidence of payment thereof by the Operator with respect to the expenditures that the Authority reasonably believes are eligible for reimbursement to the Authority by FTA.

**Section 5.4 Late Payments.**

If any undisputed payment due under this Agreement remains unpaid after its due date, such payment will bear interest at a rate equal to the Prime Rate plus two percent (2%) per annum from the day after the date on which the payment was due to (and including) the date of payment. The right of either the Operator or the Authority to receive interest in respect of the late payment of any sum due is without prejudice to any other rights that Party may have under this Agreement.

**Section 5.5 Overpayments.**

During Phase 1 and Phase 2, as a result of any inaccuracy in an invoice submitted by the Operator to the Authority, any overpayment is made by the Authority to the Operator (as against the sum that would have been paid but for such inaccuracy) then the Operator will promptly reimburse to the Authority the amount overpaid. If the overpayment represents five percent (5%) or more of the amount that should have been paid, in addition to repaying such overpayment to the Authority, the Operator shall pay interest thereon at a rate equal to Prime Rate plus two percent (2%) per annum from the date of payment of the invoice by the Authority to the Operator to the date of repayment of such overpayment by the Operator (which sums the Authority may set off as permitted under Section 28.5 or pursue and recover as a debt in any Commonwealth Court). The right of the Authority to recover the overpayment and interest thereon is without prejudice to any other rights the Authority may have under this Agreement. For avoidance of doubt, during Phase 1 any overpayments will be subject to the reconciliation procedure set forth in Section 5.1(d), without application of this Section 5.5.

**Section 5.6 Satisfaction of Obligation.**

If the calculation of any amounts payable by the Authority under this Agreement would (but for this Section 5.6) require the Authority to pay an amount to more than one person
or more than once within the same provision or under more than one provision of this Agreement, in respect of the same cost, expense, liability or obligation, the Authority’s obligations in respect thereof will be discharged if and to the extent that payment of such amount is paid once only.

**Section 5.7 Set Off.**

The set off provisions of Section 28.5 shall be applicable to the payment of all undisputed amounts hereunder.

**Section 5.8 Maintenance and Examination of Records.**

(a) The Operator shall maintain all account records as required pursuant to Articles 21 and 40.

(b) Without limiting the provisions of Article 21 and Section 40.2, the Authority or its authorized Representative will have the right, at reasonable hours upon giving the Operator at least a three (3)-day prior written notice, and at its own expense, to examine and make copies of the books and records of the Operator relative to the Project and/or this Agreement to the extent necessary to verify the accuracy, completeness and correctness of any accounting statement, charge, computation or claim made pursuant to any of the provisions of this Agreement, provided that:

(i) such books and records need not (unless the same contain information relating to a dispute pursuant to Article 33) be preserved longer than the period required in accordance with Section 40.2;

(ii) if any such examination reveals any inaccuracy, incompleteness or incorrectness in any invoice issued pursuant to this Agreement, the necessary adjustments in such invoice and payment will be made within fourteen (14) days after the date such inaccuracy is established and documented by mutual agreement of the Authority and the Operator or pursuant to the provisions of Article 33; and

(iii) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by the Authority, the Operator shall reimburse the Authority for all costs relating to the examination (including any costs of an auditor) to a maximum amount that is the lesser of (1) the actual costs relating to the examination; or (2) an amount equal to the amount of any overpayment. For purposes of this Section 5.8(b)(iii), a material overpayment shall mean an overpayment of five percent (5%) or more of the amount that should have been invoiced.

(c) During Phase 2, except for the audit rights provided in the PPP Act and except as otherwise required by Applicable Law, the Authority shall have the right to audit, only the Revenue records of the Operator for purposes of determining possible Windfall Revenue sharing. The other financial records of the Operator shall be subject to audit or review by the Authority and any other governmental entity to the extent required or allowed by Applicable Law.
(d) All examinations and inspections under this Section 5.8 shall be performed in a prompt, diligent and professional manner, and in such way as to reduce undue interference or interruption of the normal business operations of the Operator.

Section 5.9 No Other Entitlement.

The Operator shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Agreement, except as specifically and expressly set out in this Agreement.

Section 5.10 Revenues from Fares and Ancillary Activities.

(a) Fare Revenue. From the Effective Date up to the date when all Authority Provided Vessels and Facilities have been accepted by the Operator, the Authority shall be responsible for collecting farebox revenue and internet ticket sales. Upon acceptance by the Operator of all Authority Provided Vessels and Facilities as further provided in Section 4.7 of Appendix B, the Operator shall be responsible for (A) collecting farebox revenue and internet ticket sales and (B) paying all costs associated with the collection thereof, subject to the terms of Section 5.1. During Phase 1 of the Contract Term, the Operator shall deliver all amounts so collected to the Authority within three (3) days of receipt by wire transfer to the account identified by the Authority. During Phase 2 of the Contract Term, the Operator shall be entitled to retain the Service Revenues that are not Windfall Revenues as provided in Section 5.2(c) of this Agreement.

(b) Revenues and Expenses from Ancillary Activities. During Phase 2, if the Operator (i) establishes food, beverage or other concessions as permitted by Article 18 below, (ii) uses the Isla Grande Facility to provide services to third parties as provided in Section 13.1(c), and/or (iii) generates revenues from third parties from (A) marketing, advertising and/or public relations services as permitted by Article 19 below, (B) the use of parking facilities as permitted under Section 13.1(e), (C) the leasing of space in the Facilities as permitted under Section 13.1(b), or (D) providing Special Services, the Operator shall have the right to collect the revenues therefrom and, subject to the net income sharing provision of Section 5.2(d), keep its portion of the net income generated by such Ancillary Activities and any other revenue generating activity. The Operator shall be responsible for paying all costs associated with such activities, including labor, costs of goods sold, equipment maintenance and supplies, fuel (subject to Section 5.12(a)(ii)), applicable sales and excise tax (to the extent not otherwise exempt) and any other costs allocable to the particular activity. The Actual Net Ancillary Income produced by such activities shall be shared between the Authority and the Operator in the manner specified in Section 5.2(d). For purposes of the PPP Act, Ancillary Income shall be the net income derived from the Ancillary Activities permitted by this Agreement. The sharing of Ancillary Income for any Ancillary Activity to be carried out during Phase 1 will be agreed upon by the Authority and the Operator in accordance with Section 4.5(c).

(c) With respect to such Ancillary Activities that require approval by FTA as an Incidental Use, Section 48.12 shall apply.
Section 5.11 Establishment of Operating Account.

(a) Prior to the commencement of the Transition Period, the Authority shall establish, and shall maintain during the Contract Term, an operating account from which it shall draw funds from time to time to pay for the Phase 1 Service Payments and the Phase 2 Fixed Fee in accordance with Sections 5.1, 5.2 and 5.3 (the “Operating Account”).

(b) Prior to each payment to the Operator from the Operating Account, the Operator shall provide the Authority with an invoice corresponding to such payment that meets the requirements of Section 5.3(i).

(c) The Operating Account shall be subject to an account control agreement substantially in the form that is attached hereto as Appendix JJ under which the Operator shall have the right to gain control over the Operating Account and the amounts deposited thereunder upon the occurrence of an Event of Default of the Authority.

(d) The Authority (i) shall grant to the Operator a first priority security interest in the Operating Account and all deposits at any time contained therein and the proceeds thereof, subject to the terms and conditions of the account control agreement substantially in the form attached hereto as Appendix JJ, and (ii) will take all actions necessary to maintain in favor of the Operator a perfected first priority security interest in the Operating Account, including, without limitation, filing or authorizing the Operator to file UCC-1 financing statements, amendments and continuations thereof. The Authority will not, in any way, alter, modify or close the Operating Account except as contemplated in the account control agreement substantially in the form that is attached hereto as Appendix JJ.

(e) The Authority shall at all times maintain in the Operating Account sufficient funds to cover the payments due to the Operator in the next succeeding sixty (60) days.

(f) Monthly and at any given time upon request, the Authority shall promptly provide the Operator with the last available monthly account statement of the balance of the Operating Account.

Section 5.12 Adjustment to Compensation

(a) The compensation payable to the Operator during Phase 2 shall be adjusted upward or downward, as applicable, to account for any increase or decrease in the following items:

(i) Insurance Premiums.

(A) In any Contract Year that the cost of the annual insurance premiums corresponding to the insurance coverage specified in Section 24.1 and Appendix U exceeds the “Operator Insurance Cost Ceiling” for such year as specified in the lower box of
Section 2(a) of Appendix D, such excess shall be an additional compensation payable to the Operator for such Contract Year; provided, however, that no adjustment shall be made with respect to an increase in insurance premium attributable to a negligent act or omission of the Operator;

(B) In any Contract Year that the cost of such annual insurance premium is less than the Operator’s “Base Cost of Insurance” specified in the upper box of Section 2(a) of Appendix D, the amount by which the “Base Cost of Insurance” exceeds the actual cost of insurance shall be deducted from the Phase 2 Fixed Fee for such Contract Year; and

(C) The amount of the additional compensation payable to the Operator and the deduction from the Phase 2 Fixed Fee, as applicable, shall be calculated and documented by the Operator. The required amount shall be paid to the Operator or deducted from the Phase 2 Fixed Fee payment, as applicable, on the month following the month in which the annual insurance premium is paid.

(ii) Price of Fuel. Subject to Section 48.12, if during any Contract Year the price (including Taxes thereon) of fuel (other than fuel utilized exclusively and directly for providing Special Services or utilized exclusively and directly in performing any other Ancillary Activity that requires fuel for its performance) is in excess of the “Operator Fuel Price Ceiling” specified in the lower box appearing in Section 2(b) of Appendix D or is below the “Operator Base Price of Fuel” specified in the upper box appearing in Section 2(b) of Appendix D, the following adjustment shall be made:

A. For any individual purchase of fuel made by the Operator during any Contract Year in which the price per gallon paid by the Operator exceeds the “Operator Fuel Price Ceiling” specified in the lower box appearing in Section 2(b) of Appendix D, the Operator shall be entitled to compensation in an amount equal to the difference between: (i) the price per gallon paid times the number of gallons purchased, and (ii) the Fuel Price Ceiling times the number of gallons purchased. For any individual purchase of fuel made by the Operator for a price per gallon that is lower than the “Operator Base Price of Fuel” specified in the upper box appearing in Section 2(b) of Appendix D, the Authority shall be entitled to a reduction in the Phase 2 Fixed Fee payable to the Operator in an amount equal to the difference between: (i) the Base Price of Fuel multiplied by the number of gallons purchased, and (ii) the price per gallon paid multiplied by the number of gallons purchased.

B. At the end of each Contract Year the Operator shall calculate and report to the Authority the dollar amount of adjustments covered by clause A above and the dollar amount of adjustments covered by clause B above.

C. The total amount of adjustments in favor of the Authority under clause (B) above shall be deducted from the total amount of adjustment payable by the Authority to the Operator under clause (A) above and the net amount shall be paid to the party to whom it is owed in accordance with Section 5.12(b) and (c) below.
D. The prices paid by the Operator and the number of gallons purchased shall be documented by the Operator. Evidence of the applicable adjustment shall be submitted annually to the Authority within sixty (60) days after the end of each Contract Year.

(b) If the adjustment required under 5.12(a) is in favor of the Operator, the Operator shall submit an invoice therefor accompanied by all supporting documentation with sufficient detail to permit the Authority to verify its accuracy. Payment of such invoices shall be made by the Authority within forty-five (45) days from the date the invoice and supporting documentation satisfactory in form and substance to the Authority is delivered to the Authority.

(c) If the adjustment is in favor of the Authority, the Authority shall submit an invoice therefor. Payment of such invoices shall be made by the Operator within forty-five (45) days from the date the invoice (stating the amount and concept therefor) is delivered to the Operator.

(d) The Operator’s independent accounting firm that audits its annual financial statements shall be required to confirm the accuracy of the adjustments calculated by the Operator.

(e) Notwithstanding the foregoing, for purposes of the adjustment referred to in: (i) Section 5.12(a)(i), any increase in insurance premiums that is reasonably attributable to an act or omission of the Operator shall be excluded from such adjustment and the Operator shall be solely responsible for the payment of such increase; and (ii) Section 5.12(a)(ii), in calculating the amount of the adjustment required to be made, all the fuel utilized in connection with Ancillary Activities shall be excluded.

Section 5.13 Use of Federal Funds.

Subject to compliance with applicable federal requirements and the eligibility of such funds for use therefor, the Authority agrees to use any funds received from FTA in connection with a federal assistance grant to carry out any required Capital Improvements to the Vessels or Facilities or, at the Authority’s discretion, to carry out any Extraordinary Repairs or any Maintenance and Ordinary Repairs to the Vessels or Facilities.

ARTICLE 6

SPECIAL SERVICES AND UNSCHEDULED TRIPS

Section 6.1 Special Services.

(a) The term “Special Services” means unscheduled trips of Island Service that (i) are not included as part of the regular scheduled service for any particular month, (ii) are requested by the Authority or a third party, and (iii) involve carrying passengers or cargo for the benefit of a Person or group of Persons and not for the benefit of the general population.

(b) From time to time, at the request of the Authority, subject to mutual agreement, the Operator shall provide Special Services. Any such special service requests will be subject to the corresponding operational, safety and security considerations as reasonably
determined by the Operator. The Operator may, on its own initiative, seek to provide any Special Service subject, during Phase 1, to requesting and obtaining the Authority’s prior approval, not to be unreasonably withheld nor denied. Upon receipt by any of the Authority and the Operator of a Special Service request, the Authority and the Operator shall promptly work to establish the terms and conditions that shall apply to any such Special Services.

(c) Any such request by the Authority or the Operator shall be made in writing, and shall be made not less than fifteen (15) days in advance of the date the special services are proposed to be provided.

(d) The Operator shall not provide Special Services at any time during the Contract Term unless the Authority shall have obtained the approval of FTA in accordance with Chapter IV (Management of the Award) of FTA Circular 5010.1E (Award Management Requirements) but only to the extent such Special Services require approval by FTA as an Incidental Use as confirmed pursuant to the FTA Document referred to in Section 2.5(g).

(e) No Special Service shall adversely affect the provision of the Services.

Section 6.2 Rates and Other Terms for Special Services.

The compensation for Special Services shall be in accordance with the fee schedule set forth in Appendix P to this Agreement, unless a different rate is agreed upon in writing by the Authority and the Operator.

Section 6.3 Unscheduled Trips.

(a) The term “Unscheduled Trips” means those trips for Island Services that are in addition to the scheduled service and routes set forth in Appendix B, including extended service hours and/or trips that are not included as part of the regular, scheduled service for any particular month that are typically required to accommodate an abnormal demand for Island Service or to respond to a Vessel breakdown. Each Contract Year the Operator shall be required to provide free of charge the aggregate number of Unscheduled Trips of Island Service set forth in the table below:

<table>
<thead>
<tr>
<th>Aggregate Number of Unscheduled Trips</th>
<th>Time Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>No more than 1</td>
<td>Daily</td>
</tr>
<tr>
<td>No more than 2</td>
<td>Weekly</td>
</tr>
<tr>
<td>No more than 8</td>
<td>Monthly</td>
</tr>
<tr>
<td>No more than 24</td>
<td>Quarterly</td>
</tr>
<tr>
<td>No more than 104</td>
<td>In any Contract Year</td>
</tr>
</tbody>
</table>
(b) The Operator agrees to provide the number of Unscheduled Trips set forth in Appendix Q to accommodate the anticipated increase in Island Service for the periods identified in Appendix Q. The limitations set forth in Section 6.3(a) shall not apply to the Unscheduled Trips set forth in Appendix Q. The actual number of Unscheduled Trips carried out by the Operator during the year under this Section 6.3(b) shall be deducted from the number of trips set forth in the table in Section 6.3(a).

(c) For any Unscheduled Trips requested by the Authority in excess of the aggregate number of Unscheduled Trips set forth for a given period of time as per the table in Section 6.3(a), the Operator shall charge the Authority the fees set forth in Appendix P. Trips required to relocate Vessels to meet scheduled demand, trips required to comply with the terms and conditions of this Agreement, or any other trip required to meet the Operator’s logistical requirements for the provision of the Maritime Transport Operations, shall not be considered Special Services nor Unscheduled Trips.

(d) The Operator’s ability to make such Unscheduled Trips shall be subject to reasonable operational, safety and security considerations.

ARTICLE 7
OPERATOR PERSONNEL

Section 7.1 General.

(a) The Operator shall be solely responsible for the satisfactory work performance of all its employees as required by this Agreement and the approved Standard Operating Procedures. The Operator shall be solely responsible for payment of all its employees and/or subcontractors’ wages and benefits. Without any additional expense to the Authority, the Operator shall comply with the statutory and/or regulatory requirements of employee liability, workers’ compensation, the Merchant Marine Act of 1920, as amended, unemployment insurance, social security, occupational health and safety rules, statutory leaves and disability laws, including but not limited to the Americans with Disabilities Act and Act No. 44 of July 2, 1985. The Operator shall defend, indemnify and hold the Authority harmless from any liability, damages, claims, costs, and expenses of any nature arising from violations or alleged violations of personnel practices, or of statutory, regulatory, or contractual obligations to the Operator’s employees, in accordance with the provisions of Section 28.1 below.

(b) The Operator hereby designates the General Manager as its agent authorized to bind the Operator in all aspects of this Agreement, who shall be available at all times, either by phone or in person, to make decisions or provide coordination as necessary.

(c) The Operator confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, sexual orientation, gender identity, ancestry or marital status, social condition, genetic information, age, religion, political ideas, being or being perceived as a victim of domestic violence, veterans status, mental or physical disability, or any other basis not permitted by Applicable Law; and that it maintains no employee facilities segregated on the basis of race, color, religion, national origin or any other basis not permitted by Applicable Law. The Operator shall not discriminate on the
grounds race, color, national origin, sex, sexual orientation, gender identity, ancestry or marital status, social condition, genetic information, age, religion, political ideas, being or being perceived as a victim of domestic violence, veteran status, mental or physical disability, as provided for in federal, state and local laws in the performance of its obligations under this Agreement.

Section 7.2 General Manager.

The Operator’s General Manager shall oversee the Operator’s performance of the Work under this Agreement and shall be a full-time employee of the Operator. The General Manager shall be responsible for monitoring all aspects of the Services, including, but not limited to, ridership, quality of service, fare collection, operations, maintenance and repairs, attitudes, motivation, and employee performance. In advance or promptly following a vacancy in the General Manager position, the Operator shall notify the Authority of the person the Operator proposes to utilize to fill the vacant position.

Section 7.3 Supervisory Personnel.

The Operator shall designate such supervisory personnel as may be necessary to assure the performance of the Work in accordance with this Agreement.

Section 7.4 Changes in Key Personnel.

The Operator shall notify the Authority in advance or promptly following a vacancy in any Key Personnel position of the persons the Operator proposes to appoint to fill the vacant position. In the event the Authority considers any Key Personnel employee to be unsuitable, the Authority shall notify the Operator and explain the reasons therefor.

Section 7.5 Requirement for Qualified Workforce.

The Operator shall provide and maintain throughout the term of this Agreement a properly qualified and trained General Manager, Key Personnel and a sufficient number of other personnel to operate, repair and maintain the Vessels, Facilities and other equipment and to perform the Work in accordance with the standards required under this Agreement. The number, qualifications, and class, craft, or position of the personnel provided shall be in accordance with the information submitted by the Operator in the Proposal. The Operator also agrees that no personnel assigned to perform maintenance on the Facilities or the Vessels or otherwise required to perform the Services shall be used for any other purposes to the detriment of the Work that is required under this Agreement.

Section 7.6 Compliance with Drugs and Alcohol Testing Policy.

The Operator shall comply with 49 C.F.R. Parts 653 and 654, and with other drug and alcohol testing rules and regulations as may be required by the FTA and USCG (33 CFR Part 95, 46 CFR Parts 4 and 16 and 49 CFR Part 40), or Puerto Rico and Act No. 59 of August 8, 1997, respectively. The Operator will also provide the Authority with a list of those positions subject to submit reports of drug and alcohol tests quarterly to the Authority on an approved Authority form; provided, that the Operator shall be required to submit separate lists detailing
those positions subject to compliance under FTA regulations and those positions subject to compliance pursuant to USCG regulations, irrespective that the same position is included on both lists. The Operator shall make other information regarding its drug and alcohol surveillance program available to the Authority upon request and shall notify the Authority of any FTA or USCG audit of compliance thereunder and allow the Authority to participate in any such audit.

Section 7.7 Workers’ Compensation.

The Operator hereby certifies that it is aware of the provisions of workers compensation requirements in the Commonwealth which require every employee to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with Applicable Law, and shall comply with safety measures customary in the industry, and with such provisions, and shall submit satisfactory evidence to the Authority of such insurance or self-insurance, before commencing the performance of Work and at all times from the Effective Date through the end of the Contract Term, as may be requested by the Authority from time to time.

Section 7.8 Additional Personnel and Services.

The Operator shall have available, or shall acquire in a timely fashion, any additional personnel required for the provision of additional service necessary to accommodate any increases in the number of Vessels, number of routes, and/or service frequency agreed upon between the Authority and the Operator pursuant to a Modification to this Agreement.

ARTICLE 8

VESSELS

Section 8.1 Authority-Provided Vessels.

(a) The Authority shall provide the eight (8) Authority-owned Vessels listed in Appendix R (herein referred to as “Authority-Provided Vessels”), in the working order and condition provided for in the Standards of Asset Acceptance attached as Appendix S and in compliance with Applicable Law, as accepted by the Operator under separate Bareboat Charters in the form attached hereto as Appendix C for use and maintenance by the Operator in performing the Work required under this Agreement as described more particularly in the Scope of Work. The procedure for acceptance by the Operator of delivery of the Authority Provided Vessels shall be established in the Transition Plan. The Operator shall be required to accept delivery of Vessels that comply with the Standards of Acceptance attached as Appendix S (subject to the last three sentences of this Section 8.1(a)). Notwithstanding the foregoing, the Operator acknowledges and accepts that the Vessel known as La Décima cannot dock at the Cataño Facility and that such circumstance, by itself, shall not permit the Operator to refuse acceptance of such Vessels. The Authority agrees that it shall cause work to be performed to the Cataño Facility in order to allow La Décima to dock at such facility. The Authority shall also deliver the Vessel known as La Princesa, which is currently out of service due to unidentified electrical problems, if the electrical problems affecting such Vessel are able to be repaired for a cost that does not exceed $200,000. If La Princesa is so delivered, the total number of Authority Provided Vessels delivered to the Operator would be nine (9).
(b) The Authority agrees to let, and the Operator agrees to charter, on a bareboat basis, the Authority-Provided Vessels, on the terms and conditions set forth in the Bareboat Charter. The Operator shall charter the Authority-Provided Vessels under the terms of the Bareboat Charter for a fee ("Charter Fee") of One Dollar ($1.00). Notwithstanding any other provisions of this Agreement, it is the intent of the Authority and the Operator that the Operator shall be a bareboat charterer, and the Authority and the Operator do not intend by the terms of this Agreement to waive any of the protections available under 46 U.S.C. §§ 30501 et seq. Notwithstanding any provision to the contrary, in the event of any inconsistency between the provisions of the Bareboat Charter and the provisions of this Agreement, the provisions of this Agreement shall prevail.

(c) The Authority warrants that at the time of delivery, the Authority-Provided Vessels (other than La Princesa), including title thereto, will be in compliance with all national, state and local laws, and regulations applicable to passenger and cargo ferries in the United States and will be U.S. coastwise qualified, with the Authority taking no action during the Contract Term which results in loss of such U.S. coastwise qualification. All Authority-Provided Vessels will have a current USCG Certificate of Inspection and will have no outstanding Form CG-835 and to the extent applicable a Rehabilitation Plan in place with all Priority 1 work items (as defined in the Asset Assessment Plan) completed.

(d) Without the Authority’s specific prior written authorization, the Operator shall not operate, lease or sub-charter Authority-Provided Vessels, equipment or other assets provided by the Authority for the Operator’s use to perform the Work required under this Agreement for any purpose other than performance of such Work.

Section 8.2 Other Chartered Vessels Utilized by Operator.

The Operator may utilize chartered Vessels during any Phase of the Project, so long as the requirements in this Agreement are met, including any performance specifications surrounding capacity and other availability metrics, as well as maintenance requirements set forth in Appendix B. The Operator will be responsible for the costs associated with such Vessels, unless the required number of Authority-Provided Vessels are not made available as provided in this Agreement or are unavailable due to Extraordinary Repairs or Capital Improvements, in which case the cost of the charter of a supplemental vessel will be on the account of the Authority. When the Authority needs to remove from service one of the Authority-Provided Vessels for Extraordinary Repairs or Capital Improvements, it must coordinate this with the Operator in a manner that provides for continuous service.

Section 8.3 Continuous Service during Repair Periods.

During any period of repair and/or Restoration of any Authority Provided Vessel, the Operator shall continue to maintain the published ferry schedule for the relevant Service. Subject to Section 8.2 above, if one or more substitute Vessels are required during Phase 2 to avoid any interruption of Service while Vessel Maintenance and Ordinary Repairs are being carried out on one or more of the Vessels, the cost of charter of such Vessels shall be paid by the Operator. The charter of such Vessel must be previously approved by the Authority.
Section 8.4 Optional Inspections.

(a) Inspections by the Authority. The Authority shall have the right, at the Authority’s cost and expense, to conduct an independent inspection of each of the Authority-Provided Vessels for wear and tear and other damage whenever an Authority-Provided Vessel is dry docked. The Authority shall also have the right, at the Authority’s cost and expense, to conduct an independent inspection of any Authority-Provided Vessel with reasonable prior notice. The Operator shall cooperate with the Authority’s inspector(s), and shall provide such reasonable assistance and access to maintenance and repair records and other relevant documents as may be requested by such inspector(s) and/or the Authority.

(b) Inspections by Federal Agencies or Authorities. The FTA and the USCG shall have the right to conduct any and all inspections authorized by Applicable Laws and regulations, including monthly inspection of Facilities and Vessels, review of maintenance records, review of ship repair specifications, etc. At the direction of the Authority (which shall serve as the lead for interface with FTA), the Operator shall cooperate with the inspectors of the FTA, the USCG or any other federal agency with jurisdiction over the Operator’s operations, and shall provide such reasonable assistance and access to maintenance and repair records and other relevant documents as may be requested by such inspector(s). The Operator shall also cooperate with the FTA’s staff or designated representative including, but not limited to, attendance at meetings and addressing action items provided by such staff or designated representative. For avoidance of doubt, nothing in this Section 8.4(b) shall affect the Authority’s obligation to the FTA as recipient of federal assistance.

Section 8.5 Fleet Capital Improvement Plan.

(a) During Phase 1, the Authority is responsible for developing a plan for carrying out required Vessel acquisitions, retirements, and capital improvements with a view to maximizing the amount of FTA assistance funds available to fund such expenditures and assuring the number, quality and capacity of the vessels required by the Operator to carry out the services required hereunder at the required performance level (the “Fleet Capital Improvement Plan”). The Fleet Capital Improvement Plan shall cover the entire period of the Contract Term and the Authority shall update the same every three years during the Contract Term. The Fleet Capital Improvement Plan shall comply with any FTA requirements for purpose of obtaining FTA assistance funds for all such expenditures. During Phase 1 the Operator shall play a support and advisory role in the development of such plan as part of its services to the Authority. During Phase 2, the Operator will be available under such conditions to be agreed upon by the Authority and the Operator to provide support and advice in the development of such plan. All Vessels to be acquired shall be purchased by the Authority and shall be capable of maintaining the Phase 2 operating schedule.

(b) If Governmental Authority funding is to be provided for Vessel acquisition or capital improvements, the Operator and the Authority shall work together to ensure such efforts complies with all funding agency requirements. All procurement documents therefor, including plans and specifications, shall be developed by the Authority as part of the Fleet Improvement Plan. The Operator shall support Authority and/or other Governmental Authority
efforts to obtain grants to support the Fleet Improvement Plan, as part of its services to the Authority during Phase 1 and Phase 2.

(c) Any Vessel acquired by the Authority shall be made available for use by the Operator during the Contract Term under the terms of a Bareboat Charter.

Section 8.6 Vessel Maintenance, Repairs and Capital Improvements.

(a) Vessel Maintenance and Ordinary Repairs. Until the corresponding Vessel Acceptance Date occurs, the Authority shall be responsible for conducting all Vessel Maintenance and Ordinary Repairs required for the Vessels in a manner consistent with past practice of the Authority. During Phase 1, after the corresponding Vessel Acceptance Date (subject to the terms of Section 5.1), and throughout Phase 2, the Operator shall cover all costs and expenses for all Vessel Maintenance and Ordinary Repairs required for the Vessels subject to the corresponding reimbursement provisions, applicable in Phase 1.

The term “Vessel Maintenance and Ordinary Repairs” means all repairs, replacements, corrections, maintenance and rebuilding work, overhaul and upgrades (to the extent that they do not constitute Vessel Extraordinary Repairs and Vessel Capital Improvements) required for the Vessels to remain in good working condition and in compliance with Applicable Law, including, but not limited to, the following items:

(i) All necessary hull and vessel system repairs and painting;

(ii) All preventative and scheduled maintenance for all vessel systems in accordance with the equipment manufacturer’s recommendations, including, without limitation, to the propulsion, electrical, communications, navigation, piping, ventilation and auxiliary systems as well as interior and exterior furnishings, hardware and finishes;

(iii) Cylinder rebuilds and engine overhauls per the manufacturer’s recommendations as well as the periodic replacement of lubricants, filters, seals, gaskets, impellers, and other system components that are subject to normal wear;

(iv) Periodic dry-docking activities such as, but not limited to, application of bottom coatings, shaft and bearing maintenance, and propeller maintenance; and

The Operator assumes full responsibility for the repair of component and system failures in Phase 2.

(b) Vessel Extraordinary Repairs. During the Vessel Extraordinary Repair Period, the Authority shall cover the costs and expenses of all Vessel Extraordinary Repairs required for the Authority Provided Vessels. The term “Vessel Extraordinary Repairs” means (i) those items identified during the Asset Assessment and addressed in the Asset Rehabilitation Plan; (ii) latent defects that (A) existed prior to the Vessel Acceptance Date, (B) were not discovered during the Asset Assessment, and (C) materialize and are notified in writing to the Authority during the Vessel Extraordinary Repairs Period; and (iii) any repair that (A) is not considered an item of Vessel Maintenance and Ordinary Repair or Vessel Capital Improvements and (B) is required in connection with (y) catastrophic engine failure or (z) major
structural issues that prevent a vessel from sailing and is not attributable to Operator’s failure to operate or maintain the Vessel in accordance with the terms of this Agreement.

If any Vessel Extraordinary Repair is identified by the Operator, the Operator shall inform the same to the Authority and the Authority and the Operator shall promptly agree on the scope of the work, the budget and the timeframe to complete the Vessel Extraordinary Repair identified. If the required Vessel Extraordinary Repair could have an adverse impact on the operation of the Operator under this Agreement if not promptly resolved by the Authority, then the Operator shall have the right to perform the work and the Authority shall reimburse all reasonable costs plus Management Fee thereon to the Operator within thirty (30) days from the receipt of an invoice in connection therewith. If there is a dispute regarding whether a repair or work is a Vessel Maintenance and Ordinary Repair or a Vessel Extraordinary Repair, the Authority and the Operator shall follow the proceedings set forth in Article 33 hereof.

(c) **Vessel Capital Improvements.** During Phase 1 and Phase 2 the Authority may, but shall not be required to, carry out Vessel Capital Improvements to the Authority Provided Vessels. The term “Vessel Capital Improvements” means work to the Vessels that will either enhance the asset’s overall value, prolong its useful life or productivity, or adapt it to new uses or better services, but that is not required to maintain the Vessel in good working condition and in compliance with Applicable Law, including, but not limited to:

(i) Hull extensions or structural modifications (including hull plating renewal, but only to the extent that such renewal work (y) does not constitute Vessel Maintenance and Ordinary Repairs and (z) is planned and notified by the Operator to the Authority at least one (1) year in advance from the proposed commencement date thereof);

(ii) Main engine replacements;

(iii) Propulsion shaft, reduction gear and driveline replacements;

(iv) Ship Service Generator and/or electrical distribution system replacements or improvements;

(v) Major hull and machinery and ships system replacements (replacement of individual components due to ordinary wear and tear does not constitute a Vessel Capital Improvement);

(vi) Major interior furnishing, joiner work and cabin replacements; and

(vii) Major safety systems replacements.

If there is a dispute regarding whether a repair or work is a Vessel Maintenance and Ordinary Repair, a Vessel Extraordinary Repair or a Vessel Capital Improvement, the Authority and the Operator shall follow the proceedings set forth in Article 33 hereof. The Operator shall not be required to carry out Vessel Capital Improvements.
ARTICLE 9

WARRANTY REPAIRS

The Operator shall be responsible for the exercise and enforcement of all warranties relating to Project Assets provided by the Authority to the extent that: (i) full, correct and complete copies of the warranties are provided, and (ii) upon receipt of the Project Assets such warranties were in full and force and event and unaffected by any event or action occurring prior to the date of acceptance and receipt of such Project Assets by the Operator. The Operator shall not take any actions that might result in the waiver or unenforceability of any such warranties. Nothing herein shall make the Operator liable for any condition of the Project Assets existing prior to each Asset Acceptance Date or otherwise arising out of the negligence of willful misconduct of the Authority.

ARTICLE 10

LABOR AND EMPLOYMENT REQUIREMENTS

Section 10.1 Hiring.

(a) Workforce Positions. The Operator shall provide no less than the number of operational personnel, including personnel related to the operation and maintenance of the Vessels and Facilities and personnel providing customer service and support, including ticketing, set forth in its Proposal. For employment positions other than those of Key Individuals identified in the Proposal, the Operator shall be required to interview and consider for employment all Authority employees as of the date hereof who apply to the Operator for employment and, at the Operator’s sole discretion, may offer employment to such employees of the Authority who meet the Operator’s stated requirements for employment. For the avoidance of doubt, the Operator shall not have an obligation to offer employment to the employees of the Authority. Upon request by the Authority, the Operator shall provide updates to the Authority on the status of its implementation of the hiring policy established under this paragraph.

(b) Pension Benefit. As required by the PPP Act, those eligible employees with more than ten (10) years of employment with the Authority hired by the Operator may choose to continue to make employee contributions to their retirement accounts administered by the Government Employees Retirement System applicable to the Authority, in which case the Operator will make the required withholding of employee contributions to such System that it is permitted to make under Applicable Law.

(c) Subsequent Hiring. If, at any time during the Contract Term, the Operator determines that additional employees are required in order to fill the job positions described in Section 10.1(a) above, whether this need is caused by attrition, by the acquisition of additional routes or services, or otherwise, the Operator shall make offers to hire in accordance with its internal policies and procedures and with Applicable Law.

(d) Workforce Management. The Operator shall not offer employment to any person who fails (A) to have a required U.S. Coast Guard credential, Transportation Worker Identification Credential or other applicable USCG approved training course or certification to
execute the duties to be performed; (B) to successfully complete drug and alcohol testing as per 49 C.F.R. Part 40 and 46 C.F.R. Parts 4 and 16 and Act No. 59 of August 8, 1997 respectively; (C) to meet the minimum physical requirements as per U.S. Coast Guard Navigation and Vessel Inspection Circular No. 191; or (D) any criminal background check required by law as a condition of employment.

Section 10.2 Federal Labor Protections.

(a) General. Except as provided in clause (b) of this Section 10.2, the Authority shall be administratively and financially responsible for obligations arising under Section 5333(b) of title 49 U.S.C. (commonly known as “Section 13(c)”) and applicable to the Authority grants of federal financial assistance.

(b) Operator Responsibility.

(i) The Operator shall have financial liability for any Section 13(c) claims or obligations that are created by the acts or omissions of the Operator that are not directed by the Authority. In addition, the Operator shall carry out any responsibilities that it has under applicable Section 13(c) arrangements or agreements, and shall cooperate with the Authority in the administration of Section 13(c) protections (including the resolution or defense of any Section 13(c) claims or disputes for which the Authority has responsibility). The Operator shall defend and indemnify and hold harmless the Authority from any claims, demands, suits, arbitrations, administrative proceedings or controversies arising from or by virtue of the Operator’s failure to perform its obligations under this subsection (b).

(ii) The Operator shall not assist or encourage any employee to file or otherwise pursue a Section 13(c) claim against the Authority or take any action which is contrary to the interests of the Authority under Section 13(c). The Operator shall be liable for all costs incurred by the Authority (including attorney’s fees) associated with any Section 13(c) claims or delays in receipt of Federal grants resulting from the Operator’s failure to comply with this requirement.

(iii) Nothing herein shall limit the obligations of the Operator set forth in Section 3.3 of Appendix Y.

ARTICLE 11

MATERIALS AND EQUIPMENT

From each Asset Acceptance Date related to each individual Asset, the Operator shall be responsible for the maintenance and ordinary repair of all materials and equipment used to perform the Work pursuant to this Agreement.
ARTICLE 12

INVENTORY

Section 12.1 Initial Equipment Inventory.

During the Transition Period, the Authority shall provide the Operator with an initial inventory of equipment, tools and other Authority property used by the Authority in connection with the Services. The initial inventory shall identify all items to be transferred to the Operator, their current condition, identify their location and provide their current value. After reviewing the initial inventory, the Operator shall identify the Authority equipment, tools and other Authority property it desires to utilize to provide the Works. The Authority will transfer custody of such identified property to the Operator for the Operator’s performance of its obligations hereunder during the Contract Term without the payment of any consideration, which property shall be considered part of the Project Assets; provided, that the Authority shall identify such property as being “government furnished” prior to its transfer of custody thereof to the Operator.

Section 12.2 Final Inventory.

During the last month of the Contract Term, the Operator shall conduct a final inventory. The Operator shall provide the Authority with a final inventory list identifying all items to be transferred to the Authority, their current condition, providing their location and their current value. On the End Date, the Operator shall transfer such inventory to the Authority at an agreed upon price in accordance with the terms of Section 5.6 of Appendix B. The value of the equipment, tools and other Authority property the custody of which transferred by the Authority to the Operator without consideration during the Transition Period shall be deducted from the agreed upon price of the inventory being transferred by the Operator to the Authority upon termination of the Agreement.

ARTICLE 13

USE, MAINTENANCE AND OPERATIONS OF FERRY TERMINALS AND OTHER FACILITIES

Section 13.1 Ferry Terminals and Facilities.

(a) Ferry Terminals and Facilities. A list and description of the Ferry Terminals, Mooring Facilities and other Facilities to be delivered to the Operator is provided in Appendix E (the “List of Ferry Terminals, Mooring Facilities and other Facilities”). True, correct and complete copies of the agreements relating to the use by the Authority of the Ferry Terminals and Mooring Facilities that exist as of the Effective Date have been delivered to the Operator. The Operator acknowledges and agrees that the Operator is familiar with the Authority’s rights under each such agreement.

(b) Facility Lease Agreement. On each Facility Acceptance Date, the Authority and the Operator shall enter into a Sublease Agreement or Sublease and Concession Agreement (a “Facility Lease Agreement”) substantially in the form of Appendix T-1, for all
of the Facilities except for the Isla Grande Facility and the Local Redevelopment Authority for Roosevelt Roads Facility, Appendix T-2, for the Isla Grande Facility, and Appendix T-3 for the Local Redevelopment Authority for Roosevelt Roads Facility, providing the Operator the right to use such Ferry Terminal, Mooring Facility or other Facilities or Project Asset being accepted during the Contract Term exclusively to provide the Services, the Maritime Transport Operations, and conduct the Ancillary Activities in each case, subject to the terms of this Agreement and such Facility Lease Agreement. With respect to the Ferry Terminals, the Operator shall have legal rights or interests associated with a leasehold interest in real property, but shall not have the right to record the Facility Lease Agreement in the corresponding section of the Registry of Property of Puerto Rico. With respect to the Mooring Facilities and any other facility in the public domain, the Operator shall have the right to use such facilities in accordance with the terms of this Agreement. The Operator shall use the Ferry Terminals, Mooring Facilities, and other Facilities solely to support and provide the Maritime Transport Operations and, subject to Section 48.12, conduct the Ancillary Activities as per the terms of this Agreement. The Operator’s right to use the Ferry Terminals, Mooring Facilities, and other Facilities may not be transferred or assigned in whole, except to a wholly owned subsidiary of the Operator in accordance with Section 34.1 and subject to the conditions of this Agreement.

(c) Isla Grande Facility. The Operator may use the Isla Grande Facility (i) as its principal office in Puerto Rico solely for the performance of this Agreement; and (ii) to provide commercial maintenance services to private parties; provided, that the Isla Grande Facility must prioritize maintenance and repairs related to the Services over those of any other commercial customer and FTA shall have approved such commercial maintenance services in accordance with Chapter IV (Management of the Award) of FTA Circular 5010.1E (Award Management Requirements) (the “Isla Grande Facility FTA Approval”).

(d) Existing Contracts. The Authority and the Operator shall execute the form of assignment of contract attached as Appendix M whereby the Authority shall assign to the Operator its rights under those existing lease or concession agreements identified in Appendix AA relating to the use of space by a third party at the Ferry Terminals that the Operator has identified to the Authority in writing on or prior to the corresponding Facility Acceptance Date, except if any of such Existing Contracts have been previously terminated by the Authority in accordance with this Agreement

(e) Parking Facilities. The Operator shall have responsibility and control over the operation and maintenance of any parking facility utilized in connection with the operation of the Ferry Terminals.

(f) Terminal at Ceiba. The Authority and the Operator agree that the operations conducted at the Ferry Terminal in Ceiba on the Effective Date may be relocated to a new Ferry Terminal located near where such existing Ferry Terminal is located.

Section 13.2 Facility Maintenance and Repair Obligations of Operator and Authority.

(a) Facility Maintenance and Ordinary Repairs. Until each applicable Facility Acceptance Date, the Authority shall carry out all Facility Maintenance and Ordinary Repairs, in
a manner consistent with past practice of the Authority. During Phase 1 after the applicable Facility Acceptance Date (subject to the terms of Section 5.1), the Operator will manage all Facility Maintenance and Ordinary Repair. During Phase 2, the Operator shall cover all costs and expenses for all Facility Maintenance and Ordinary Repairs at all Facilities, except San Ildefonso Pier in Culebra and Isabel Segunda Pier and Terminal in Vieques, which were not contemplated in the RFP for use during Phase 2.

The term “Facility Maintenance and Ordinary Repairs” means all repairs, replacements, corrections, and cleaning (to the extent that they do not constitute Facility Extraordinary Repairs and Facility Capital Improvements or are otherwise covered by rent payable by the Authority under any of its agreements with the owners of the Facilities) required or desirable for the Facilities to remain in good working condition and in compliance with Applicable Law, including, but not limited to, the following items:

(i) Daily cleaning and trash collection;
(ii) Restocking of restrooms;
(iii) Maintenance and repair of all fenders, dolphins, ramps, gangways, and other terminal components that are used during passenger and cargo loading and unloading;
(iv) Maintenance of terminal systems, furnishings, and finishes in accordance with equipment manufacturer’s or vendor’s recommended maintenance schedules and warranty requirements; and
(v) Maintenance of all passenger and vehicle loading systems, including ramps and gangways.

The Operator assumes full responsibility for the repair of component and system failures in Phase 2, except for components and systems identified as Facility Capital Improvements that have failed prior to their refurbishment and/or replacement.

(b) Facility Extraordinary Repairs. During the Facility Extraordinary Repairs Period, the Authority shall undertake, at its sole cost and expense, all Facility Extraordinary Repairs.

The term “Facility Extraordinary Repairs” means (i) those items identified during the Asset Assessment and addressed in the Asset Rehabilitation Plan; and (ii) the latent defects that: (A) existed prior to the Facility Acceptance Date, (B) were not discovered during the Asset Assessment, (C) materialize during the Facility Extraordinary Repair Period and (D) are not attributable to the Operator’s failure to operate or maintain the Facility in accordance with the terms of this Agreement.

If any Facility Extraordinary Repair is identified by the Operator, the Operator shall inform the same to the Authority and the Authority and the Operator shall promptly agree on the scope of the work, the budget and the timeframe to complete the Facility Extraordinary Repair identified. If the required Facility Extraordinary Repair could have an adverse impact on the operation of the Operator under this Agreement if not promptly resolved.
by the Authority, then the Operator shall have the right to perform the work and the Authority shall reimburse all reasonable costs plus the Management Fee thereon to the Operator within thirty (30) days from the receipt of an invoice in connection therewith. If there is a dispute regarding whether a repair or work is a Facility Extraordinary Repair or a Facility Extraordinary Repair, the Authority and the Operator shall follow the proceedings set forth in Article 33 hereof.

(c) **Facility Capital Improvements and Facility Capital Improvement Plan.** During Phase 1 and Phase 2, the Authority may, but shall not be required to, undertake, at its sole cost and expense, any Facility Capital Improvements. Although the Authority is not required under the Agreement to carry out any Facility Capital Improvements, the Authority shall prepare, together with its Fleet Capital Improvement Plan, a plan of the capital improvements required to be carried out during the entire Contract Term to preserve the Facilities in sound operating condition (the “**Facility Capital Improvement Plan**”) and shall update such plan every three (3) years in conjunction with the update of the Fleet Improvement Plan. The Facility Capital Improvement Plan shall comply with any FTA requirements for purposes of obtaining FTA assistance funds for such Facility Capital Improvements and shall be prepared with a view to maximizing such FTA assistance funds. The Authority’s failure to complete such Facility Capital Improvement Plan shall not constitute an event of default hereunder. During Phase 1 the Operator shall play a support and advisory role in the development of such plan. During Phase 2 the Operator will be available under such conditions to be agreed upon by the Authority and the Operator to provide support and advice in the development of such plan.

The term “**Facility Capital Improvements**” means work that will either enhance the asset’s overall value, prolong its useful life or productivity, or adapt it to new uses or better services, but that is not required to maintain the Facilities in good working condition and in compliance with Applicable Law, including, but not limited to:

(i) Renovation or rehabilitation of a building structures;

(ii) Energy efficiency upgrades;

(iii) New landscaping and/or site reconfiguration;

(iv) Roof replacement;

(v) Repaving and parking facility and improvements;

(vi) Utility connections repairs and upgrades;

(vii) Replacement of fenders, dolphins, ramps, gangways, and other terminal components that are used during passenger and cargo loading and unloading due to either structural deterioration, severe damage by third parties, or force majeure event;

(viii) Construction of new fenders, dolphins, ramps, gangways, and other terminal components that are used during passenger and cargo loading and unloading; and
(ix) Improvements to major systems, such as HVAC, emergency power, or firefighting, to comply with new regulations, but only to the extent that such work does not constitute Facility Maintenance and Ordinary Repairs.

If there is a dispute regarding whether a repair or work is a Facility Extraordinary Repair, a Facility Extraordinary Repair or a Facility Capital Improvement, the Authority and the Operator shall follow the proceedings set forth in Article 33 hereof. The Operator shall not be required to carry out Facility Capital Improvements.

Section 13.3 Facility On-Hire and Off-Hire Inspections/Surveys.

(a) The Operator shall have the right to require on-hire, and the Authority shall have the right to require off-hire, surveys or inspections of the Facilities.

(b) If any on-hire survey(s) or inspection(s) is required, the same shall be conducted at the Authority’s cost by the Operator’s Surveyor before delivery to the Operator of the applicable Facility. The Authority shall have the right to hire an Authority’s Surveyor to inspect the Facilities in conjunction with the Operator’s Surveyor. The cost of the Authority’s Surveyor shall be borne solely by the Authority. If the Operator’s Surveyor or inspector reasonably requires a diver’s inspection (for purposes of inspection only, as distinguished from repair), the Operator shall have the right to require a diver’s inspection, the cost of which shall be equally shared by the Authority and the Operator.

(c) If any off-hire survey or inspection is required by the Authority, the same shall be conducted at the Operator’s cost by the Authority’s Surveyor.

(d) The determination of the Operator’s Surveyor and the Authority’s Surveyor regarding damages shall be binding on both Authority and the Operator; provided, however, if the Operator’s Surveyor and the Authority’s Surveyor disagree about damage or excessive wear and tear, the Authority and the Operator shall hire a Third Surveyor, such surveyor/inspector to be mutually agreed upon by the Authority and the Operator and which cost shall be shared equally by the Authority and the Operator. The determination of the Third Surveyor regarding wear and tear and damages shall be binding on both the Authority and the Operator.

Section 13.4 Repair Prior to Redelivery.

(a) The Operator shall redeliver the Facilities in as good condition as they were when delivered to the Operator (reasonable wear and tear excepted). Should extraordinary wear and tear and/or damages be identified by the Authority or by the Authority Surveyor, the Authority shall notify the Operator in writing within thirty (30) days of the Authority’s receipt of the report(s) from the Surveyor as to required repairs to each Facility due to damage or excessive wear and tear. Failure by the Authority to supply such written notification within the stated time period shall not be deemed an acceptance by the Authority that no such wear and tear and/or damage has occurred to the Facility while in the Operator’s custody and care, and the Authority shall not be deemed to have waived its rights with respect to the same; provided that such waiver shall be deemed given if such written notification is not delivered on or prior to the date of the first anniversary of the date of the Surveyor’s Report.
(b) Should any Facility require repair of extraordinary wear and tear and damage in order to restore the same to as good condition and repair as it was when delivered to the Operator (reasonable wear and tear excepted), and such repair and restoration work would extend beyond the end of the Contract Term, the Operator shall initiate the required repair and restoration work in such a manner as to ensure redelivery of the Facility on the expiration date of this Agreement. The Operator’s restoration and repair obligations shall survive the termination of this Agreement for one (1) year unless the written notification required under Section 13.4(b) above shall have been provided in which case it shall survive until the Operator’s obligation is fully satisfied. After the termination of this Agreement, the Authority may, but shall not be obligated to, complete such repairs on behalf of the Operator and invoice the Operator for the cost of such repairs, which invoice the Operator shall pay within thirty (30) days of receipt.

ARTICLE 14

COMPUTER AND TECHNOLOGY REQUIREMENTS

Section 14.1 Equipment Specifications.

Other than with respect to equipment from time to time declared obsolete by the Operator, the Operator shall be responsible for the proper care and handling of any computer equipment provided by the Authority, as specified in the initial inventory list.

Section 14.2 Hardware.

The Operator shall install and maintain any and all hardware necessary to back-up critical files including, but not limited to, all reports, statistics and other Service-related records and information required.

Section 14.3 Software.

The Operator shall supply such properly licensed software as may be necessary to perform its obligations under this Agreement, which shall be considered an Operator-Provided Intellectual Property. The Operator’s personnel shall be thoroughly trained in the data entry and reporting procedures for the Services.

Section 14.4 Ticketing System.

(a) New Ticketing System. The Operator acknowledges that the Operator shall be responsible for developing and implementing during the first twelve (12) months of Phase 1 a new integrated ticketing system for the Maritime Transport Services (the “New Ticketing System”), which shall belong to the Authority and shall be considered Authority-Provided Intellectual Property. Upon delivery and implementation of the New Ticketing System, the Authority shall pay $300,000 to the Operator as compensation for the development and implementation of the New Ticketing System. Any costs in excess of that amount shall be borne by the Operator. The new integrated ticketing system must allow for fare card integration between different mass transit services provided in the San Juan Metropolitan Area and the Island Service, in accordance with Chapter 12.3 of the Commonwealth Fiscal Plan for fiscal year 2020. Subject to the Transition Plan and the Acceptance Date of the Project Assets, the Operator
shall be responsible for the operation and maintenance of the current ticketing system for the Service while the New Ticketing System is being developed. The New Ticketing System must be made fully available to the Authority or any other third-party operator at no cost to them upon the expiration or termination of this Agreement in accordance with and subject to Section 46.1(j).

(b) Online Ticketing System. The Operator shall be required to provide an online ticketing system for the Service that meets the requirements set forth in Appendix B, Scope of Work. The Operator may provide online ticketing through the use of the system currently being developed by the Authority or through the implementation of any other online ticketing system; provided, that any such online ticketing system must be fully transferrable to the Authority or any other third-party operator at no cost to them upon the expiration or termination of this Agreement in accordance with and subject to Section 46.1(j).

ARTICLE 15

ESTABLISHMENT AND REVISIONS OF FARES, ROUTES AND SCHEDULES

Section 15.1 General. The Operator shall implement the Authority-established fare structure, routes and minimum schedules set forth in Appendix B, as modified from time to time in accordance with the terms of this Agreement. The Operator shall perform all of the fare collection responsibilities set forth in the Scope of Work in accordance with the Scope of Work and approved Standard Operating Procedures.

Section 15.2 Revisions to Routes and Minimum Schedule.

(a) The Authority shall consult with the Operator regarding any Authority proposal to revise the routes and minimum schedule for each Service. Prior to any revision, all required Approvals from Governmental Authorities shall have been obtained, all applicable federal requirements shall have been satisfied, and FTA shall not have objected to such revision (following notice thereof to FTA from the Authority in writing) prior to the effective date of such revision. Any such revision (other than the revision contemplated in clause (b) below) shall be treated as a Required Modification subject to Article 16 and agreed upon by both parties. The Authority shall notify the Operator no fewer than ninety (90) calendar days in advance of the effective date of any such revision.

(b) The Parties have agreed that, at the request of the Authority during Phase 1, the Operator shall provide any or all of the additional Services set forth in the scope of work included in Appendix BB. As compensation therefor, the Authority shall pay the fees set forth in the budget estimate included in Appendix BB. The Authority will have the right to make use of this option to expand the Services at any time during Phase 1 by providing written notice thereof to the Operator at least one hundred twenty (120) days in advance of the proposed commencement date. Prior to commencing to provide such additional Services, all Facilities required for the performance of the Island Service shall have been accepted by Operator, the number of Vessels identified in Appendix BB shall have been accepted by Operator, all required Approvals from Governmental Authorities shall have been obtained, all applicable federal requirements shall have been satisfied, and FTA shall not have objected to such additional Services (following notice thereof to FTA from the Authority in writing). All details and terms
applicable to such expanded services, not otherwise covered herein, must be exchanged between the parties at least ninety (90) days before the expanded services are expected to commence.

Section 15.3 Fare Increases.

(a) During Phase 2, with prior approval by the Authority and subject to any applicable federal requirements, the Operator shall be able to modify and implement fares for non-residents of Vieques and Culebra.

(b) During Phase 2, beginning on the third anniversary of the Effective Date, with prior approval of the Authority and subject to any applicable federal requirements, the Operator shall be permitted to increase the fares for residents of Vieques and Culebra not more often than once every three (3) years in an amount not exceeding one percent (1%) per year, (rounded up to the nearest five (5) cents). The Authority shall comply with all requirements under Applicable Law for approving an increase in fares. If, after complying with any Applicable Law, the Authority changes the fare amounts and/or structure applicable to any Service, the Operator shall be required to implement such revisions in the manner approved by the Authority, within ninety (90) days from the receipt of a written notice thereof. To the extent that the changes in the fare structure are proposed and initiated by the Authority, the Operator shall have the right to recover from the Authority all reasonable costs and expenses incurred in connection with the implementation of such changes, which shall be included in the monthly invoices submitted by the Operator under Section 5.3(b).

Section 15.4 Establishment of New Trips by the Operator. The Operator shall have the right to schedule additional trips not contemplated under Appendix B hereto, provided that (i) no event of default on the part of the Operator has occurred and is continuing under this Agreement, (ii) the Operator complies with Applicable Laws for the establishment of such additional trips, and (iii) FTA has approved such additional trips as an Incidental Use (if applicable) and such additional trips otherwise comply with applicable federal requirements.

Section 15.5 Right of First Refusal for New Services and Routes. If at any time during the Contract Term, the Authority wishes to establish new services and routes, in addition to the scheduled service and routes set forth in Appendix B (the “New Services”), then, to the fullest extent permitted by Applicable Law, the Authority shall provide to the Operator a right of first refusal to provide such New Services, in the following manner:

(a) The Authority shall deliver to the Operator a notice (“Offer Notice”) (i) setting forth a detailed description of the New Services, and (ii) outlining the salient terms of the offer (“Salient Terms”) and the proposed payment or financial arrangement for the provision of the same (“Refusal Price”).

(b) The Operator shall have an option exercisable within sixty (60) days of receiving the Offer Notice to elect to provide the New Services at the Refusal Price and on the Salient Terms, or in such other terms as the Authority and the Operator may agree upon during such period (the “Exercise Period”). If the Operator shall elect to exercise such option, it shall deliver notice to the Authority to that effect (“Notice of Election”) on or before midnight of the
last day of the Exercise Period. Promptly upon receipt of the Notice of Election, the Authority and the Operator shall implement the appropriate Modification pursuant to Section 16.3.

(c) If the Operator shall fail to send its Notice of Election to the Authority within the Exercise Period, then, in any such event, the Authority shall have the right to procure the New Service with a third party, at not less than the Refusal Price and without any variation from the Salient Terms.

(d) The foregoing process shall apply and be followed in each subsequent case in which the Authority decides to provide New Services, or in each case in which previously notified terms and conditions (including Salient Terms and Refusal Price) are changed.

ARTICLE 16
MODIFICATIONS TO THE WORK

Section 16.1 Agreed Modifications.

(a) Either the Authority or the Operator may propose a Modification. Promptly after any proposal of a Modification by the Authority or the Operator is made, the proponent of the Modification shall prepare and deliver to the other Party a written statement setting forth (i) a description of the Modification and any services, obligations, rights or work related to the Modification, and (ii) if applicable, a schedule for the implementation of the Modification.

(b) Promptly upon receipt from the Authority of the request for Modification or as part of its request for Modification, the Operator shall submit to the Authority (i) if applicable, a firm price for implementing the Modification and (ii) the impact the Modification would have on (A) the Scope of Work and Standard Operating Procedures, if any, (B) Maritime Transport Operations, (C) Service Revenues, both during any related construction or work and after implementation or completion of the Modification, (D) increases or decreases to the forecasted cost of operation and maintenance of the Maritime Transport Operations following completion of the Modification, and (E) any other obligations of either Party under this Agreement related to the proposed Modification. The costs of preparing such written statement shall be borne by the Party proposing the Modification.

(c) Upon receipt by the Authority of the Operator’s written statement required under Section 16.1(b) above, the Authority and the Operator will negotiate in good faith to determine the following, while having no obligation to agree with respect thereto: (i) the final scope of the Modification and any work related to the Modification, (ii) if applicable, the contribution to the cost of implementing the Modification to be made by each of the Authority and the Operator, (iii) if applicable, the schedule for implementing the Modification, (iv) if applicable with respect to Modifications proposed by the Authority, the compensation for any decrease in any Service Revenues projected to be incurred during the implementation of the Modification to be paid to the Operator by the Authority, (v) any change to the fare structure applicable to the Service, (vi) any additional fee or share of additional Service Revenues to be paid to the Authority following implementation of the Modification, (vii) related changes to the Scope of Work and Standard Operating Procedures, if any, and (viii) any other related changes in
the obligations of the Authority and the Operator under this Agreement (including any obligation to pay monies with respect to such Modification or any of the matters contemplated in these clauses (i) through (viii)). If the Authority and the Operator agree on the terms of the Modification, they shall memorialize their agreements in a written document (an “Agreed Modification”) that shall take effect when executed by the Authority and the Operator or as otherwise agreed to by the Authority and the Operator. To the extent applicable, an Agreed Modification shall provide for the receipt of all necessary Authorizations by the Operator, and evidence of compliance by the Authority with all applicable government contracting requirements (including the filing of such modification with the Office of the Comptroller of the Commonwealth of Puerto Rico and obtaining any approval required by PROMESA) as a condition precedent to the commencement of any such Modification.

Section 16.2 Required Modifications.

(a) If the Authority and the Operator cannot agree on the terms of a Modification proposed by the Authority pursuant to Section 16.1 or Article 15, then the Authority shall have the right to require the Operator to implement the Modification under terms set forth by the Authority, and the Authority shall provide the Operator with Modification Compensation related thereto (a “Required Modification”) in accordance with the process set forth in Section 16.2(b).

(b) The Operator shall not be required to commence any work related to a Required Modification, until (i) the Authority has provided to the Operator evidence reasonably satisfactory to the Operator of the Authority’s ability to pay for such Required Modification and, if the Operator has requested the Authority to advance funds necessary to implement the Required Modification, the Operator has received such funds from the Authority, (ii) the Operator has obtained all Authorizations required to begin work on the Required Modification and the Operator has no reason to believe that other required Authorizations that cannot be obtained until a later date will not be obtained when needed (iii) the Operator and the Authority have agreed to the terms of the Required Modification (including, as applicable, the amount of Modification Compensation payable pursuant to this Section 16.2 and any additional fee or share of additional Service Revenues to be paid to the Authority following implementation of such Required Modification) or, if they have not so previously agreed to the terms of the Required Modification and the amount of such Modification Compensation payable pursuant to this Section 16.2 (or additional fee or share of additional Service Revenues to be paid to the Authority), such disagreement has been resolved pursuant to Article 33; and (iv) evidence of compliance by the Authority with all applicable government contracting requirements (including providing evidence of the filing of such modification with the Office of the Comptroller of the Commonwealth of Puerto Rico and of obtaining any approval required by PROMESA).

Section 16.3 Implementation of Modifications.

The Operator shall (a) ensure that any work or construction performed in connection with a Modification is performed in a good and workmanlike manner, (b) ensure the terms of an Agreed Modification or a Required Modification are diligently complied with and implemented in such manner that the costs and delays relating to a Modification are minimized and (c) conduct an FTA compliant competitive procurement for the services of any Contractor to
be engaged in connection with a Modification, based on commercially reasonable criteria for contract award (including such Contractor’s technical qualifications, bid price and relevant experience). Without limiting the generality of the foregoing, the Operator shall comply with Applicable Law, applicable codes, good industry practice and, to the extent not superseded by the terms of the relevant Agreed Modification or Required Modification, the provisions of the Scope of Work and the Standard Operating Procedures with respect to the manner in which Modifications are implemented.

ARTICLE 17

OPERATION DURING AN EMERGENCY

Section 17.1 Declaration of State of Emergency.

In connection with the declaration of a state of emergency by the Governor pursuant to Article 15 of the Emergency Management and Disaster Administration Agency Act, Act No. 20 of April 10, 2017, as amended (the “Emergency Management Act”), or any Law succeeding thereto, the Authority may require the Operator to provide Unscheduled Trips in order to meet customer or any emergency demands or needs. The Authority shall use its Reasonable Efforts to minimize the scope and duration of any designation made pursuant to this Section 17.1; provided that the Authority shall have no obligation to provide any compensation or restitution to the Operator for the amount of Unscheduled Trips set forth in Section 6.3 hereof. For any trips exceeding the amounts of Unscheduled Trips provided under Section 6.3, the Operator shall charge the Authority the fees set forth in Appendix Q to this Agreement for any such additional Unscheduled Trips requested. Subject to safety and operations limitations, the limitation on the number of daily or weekly Unscheduled Trips set forth in Section 6.3 shall not apply in a state of emergency. Upon the declaration of a state of emergency pursuant to this Section 17.1, the Operator shall be required to deploy vehicles, including, but not limited to, vessels, in the manner described in its Emergency Management Plan, unless unsafe conditions prevail, in which case the provisions of Section 17.2 below shall apply.

Section 17.2 Declaration of Unsafe Operational Condition.

In the event the Operator believes conditions exist that would make the operation of the Service or any portion thereof unsafe, the Operator shall immediately notify the Authority Manager of the existence of such conditions and provide the Authority Manager with detailed information regarding the condition and the reason why the Service should not continue. The Authority Manager, at its sole discretion, may authorize the Operator to discontinue such Service while such condition exists; provided, that the Authority Manager shall not have the authority to override the decision of a Vessel captain not to provide service due to any unsafe conditions.
ARTICLE 18

FOOD AND BEVERAGE CONCESSIONS

Section 18.1 General.

The Authority does not currently provide food and beverage concessions onboard vessels and food and beverage concessions at the Ferry Terminals are provided by third-party vendors that lease space from the Authority or have contracts for the placement of vending machines. The Operator shall assume any and all contracts for the provision of food and beverages at the Ferry Terminals between the Authority and third-party vendors that may not be terminated without penalty, including any contract in connection with the placement of vending machines at the Ferry Terminals. Those contracts that may be terminated without penalty may be terminated or assumed by the Operator at its option. Subject to FTA’s approval in accordance with Chapter IV (Management of the Award) of FTA Circular 5010.1E (Award Management Requirements), the Operator may also provide and serve a variety of hot and cold foods and beverages, including alcoholic beverages, onboard the vessels and at the Ferry Terminals. To the extent the Operator establishes food and beverage concessions, the revenues derived therefrom shall be subject to the provisions of Section 5.10(b).

Section 18.2 Changes.

The Operator may change the food, beverages, and sundry items to be sold on the Vessels and Terminals at its discretion; provided, that the Operator shall notify the Authority of its proposed material changes at least thirty (30) days prior to their implementation and FTA shall have approved such changes, if such approval is required.

Section 18.3 Inventory.

To the extent the Operator establishes food and beverage concessions, it shall maintain adequate inventories of food, beverages, sundries and supplies necessary for the proper operation of its business, as it deems appropriate.

Section 18.4 Licenses.

To the extent the Operator establishes food and beverage concessions, it shall serve food and beverages to passengers at the times and in the manner required to comply with Applicable Laws and regulations covering food preparation, liquor sales and service establishments. At the End Date, the Operator shall assist and reasonably cooperate with the Authority in providing its consent and any other requirements of the Puerto Rico Department of the Treasury to facilitate the obtention of a temporary operation permit to the new operator with regard to obtaining a new liquor license as provided by Law.
ARTICLE 19
MARKETING AND ADVERTISING

Section 19.1 Marketing of Maritime Transport Services. The Operator will be responsible for marketing, advertising and public relations activities relating to the Maritime Transport Services as described more particularly in the Scope of Work. The Operator shall have the right to develop their own logo and name for the Services. The Operator shall not use the Authority’s name or logo without the Authority’s prior written consent.

Section 19.2 Marketing Services to Third Parties. The Operator shall be authorized to utilize the Vessels and Facilities to offer advertising and marketing services to third parties, subject to compliance with Applicable Law and any restriction imposed in connection with the use of the Facilities or by FTA. Any revenue from such services shall be subject to the provisions of Section 5.10(b). Any advertising materials shall conform to any restriction as to content or use established and notified or published by the Authority or FTA, as applicable.

ARTICLE 20
PASSENGER COMPLAINTS

The Operator shall implement a passenger complaint and suggestion management system, which shall include a process by which the Authority shall refer to the Operator any complaints about the Service it receives. The Operator shall document and inform the Authority of all passenger complaints, whether submitted in writing, electronically, or telephonically, regarding operational or service deficiencies in accordance with the following:

(1) If the complaint relates to safety, security or serious operational deficiencies, the Operator shall (A) contact the Authority and the person filing the complaint within twenty-four (24) hours after it is filed; and (B) investigate the complaint and file a report with the Authority explaining the results of the investigation within five (5) days after the complaint is filed. For purposes of this requirement, a “serious operational deficiency” is one that would require the Operator to complete USCG Form 2692.

(2) If the complaint is of a less serious nature, the Operator shall contact the Authority and the person filing the complaint, investigate the complaint, and file a report with the Authority within fourteen (14) days after the complaint is filed.

The Authority agrees to forward to the Operator any customer complaint it may receive. The Operator shall be required to address and respond to such customer complaint as provided in this Article 20; provided, that the deadlines imposed by this Article 20 shall be measured from the time the Operator receives the customer complaint from the Authority. The Authority and the Operator shall establish a procedure by which the notification and resolution of customer complaints received by the Authority may be expedited.
ARTICLE 21

PROJECT OPERATION RECORDS

Section 21.1 General Duties.

(a) In order to document Services under this Agreement and compliance with all Agreement requirements and Applicable Law, the Operator shall maintain all records as required by good business practices and Applicable Law and as described more particularly in the Scope of Work. The records shall document daily operations and shall be sufficient to serve as a database to monitor and evaluate productivity of the services provided and the Service requirements and methods.

(b) National Transit Database. The Operator shall prepare and, as directed by the Authority, file with FTA on behalf of the Authority, all reports that the Authority is required to make for purposes of the FTA National Transit Database (“NTD”). As part of the annual NTD reporting requirement, the Operator shall conduct all analyses, including on-board data sampling, and prepare all reports required to be made by the Authority to FTA in order to comply with NTD reporting requirements. The Operator will use on-board data collection specialists to conduct sampling on the Vessels and shall otherwise conduct its sampling in a manner that will assure maximum accuracy in reporting and that is consistent with the techniques described in FTA Circular 2710.1A (dated July 18, 1988). The Operator shall be responsible for ensuring that all reported NTD data including financial and operating data not otherwise addressed above, meets FTA requirements and definitions, and for maintaining the most recent NTD data collection procedures.

(c) Financial Records.

(i) The Operator shall establish and maintain a separate account of all Project expenditures and any other relevant financial records or documents, and shall maintain complete records reflecting all farebox and other receipts and revenues. The Operator also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents related in whole or in part to the Agreement so that they may be clearly identified, readily accessible and available to FTA, FHWA, DHS and/or the Authority upon request. The Operator’s financial records during Phase I shall be kept according to Puerto Rico Office of Budget and Management Circular Letter OMB-A-87 and on a strict accrual basis with an annual financial and data collection audit performed by an accounting firm contracted by the Authority. During the Contract Term and for six (6) fiscal years following the date of the Authority’s delivery to FTA, FHWA and/or DHS (which date of submission shall be informed in writing to the Operator), as the case may be, of the final expenditure report, the Operator shall maintain intact and readily accessible all data, documents, reports, records, sub-agreements, leases, third party contracts, and supporting materials related to the Agreement and may be audited by the Authority or the FTA, FHWA or DHS at any time within this period. Any and all reports required to be provided by this clause shall be provided to the Authority’s designated disadvantaged business enterprise officer.
(ii) Until the End Date, the Operator shall deliver to the Authority (a) within ninety (90) days after the end of each six (6) month period following the first day of each Contract Year, a copy of the unaudited balance sheets of the Operator at the end of each such six-month period and the related unaudited statements of income, changes in equity and cash flows for such six (6) month period, in a manner and containing information consistent with the Operator’s current practices and (b) within one hundred twenty (120) days after the end of each Contract Year a copy of the audited balance sheets of the Operator at the end of each such Contract Year, and the related audited statements of income, changes in equity and cash flows for such Contract Year, including in each case the notes thereto, in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States and certified by the Operator’s chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Operator as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. In addition to the foregoing, together with the financial statements identified in clause (b) of this Section 21.1(c)(ii), the Operator shall provide an opinion thereon of a well-recognized independent public accountant firm that is duly licensed, in Puerto Rico (must be one of the top ten firms in Puerto Rico in terms of size), engaged by the Operator.

(d) Disadvantaged Business Enterprise (DBE) Report. The Operator shall prepare a semi-annual DBE report to be submitted to the Authority’s designated DBE officer no later than thirty (30) days after (i) the end of the Authority’s fiscal year and (ii) the last day of the sixth calendar month following the end of the Authority’s fiscal year. The report shall include (A) a listing of all DBE firms used; (B) the type of procurement in which DBEs were involved; and (C) a percent (by dollar amount of purchases from DBE firms) as measured against all other purchases.

(e) Equal Employment Opportunity (EEO) Affirmative Action Report. The Operator shall maintain and implement an Equal Employment Opportunity/Affirmative Action Program and policy in accordance with FTA guidelines 49 C.F.R. 18.37 and 18.40, and FTA Circular 4704.1, Ch. II, Section 2. The Operator shall, not later than thirty (30) days after the end of each fiscal year of the Authority, submit to the Authority an EEO report which consists of the following:

(A) Workforce Analysis for each job category;
(B) Job Group Analysis for each job category;
(C) Hiring Analysis for each job category;
(D) Promotional Analysis for each job category;
(E) Termination Analysis for each job category;
(F) Utilization Analysis that shows the ethnic and gender breakdown for each job category as well as indicates the short term and long-term goals for achieving underutilized minority groups; and

(G) Availability Analysis that compares the current workforce against the available workforce.

(f) Surveys. The Authority may, in its sole discretion, obtain additional documentation of Service through the use of passenger surveys, provided that at least a five (5) days prior written notice thereof is provided to the Operator. These surveys may be administered by authorized representatives of the Authority or its designee. The Operator shall ensure the cooperation of all personnel with any operational procedures relating to survey work, including the distribution and collection of survey questionnaires or other actions necessary to obtain service related information in compliance with the terms of this Section 21.1(f). Operator shall have the right to have a Representative present during all surveys, inspections and audits.

(g) Inspection and Audit of Records. The Authority shall have the right to enter the Operator’s offices where records related to this Agreement are maintained at all times during regular business hours, by providing at least a three (3) days prior written notice to the Operator, for the purpose of inspecting and auditing all data and records pertaining to the Operator’s performance under this Agreement.

(h) Inspections by Other Governmental Entities. Subject to adherence to applicable confidentiality obligations hereunder and under Applicable Law, the Authority may authorize representatives of other Governmental Authorities to inspect, audit and analyze the Operator’s records of operating the Services under this Agreement limited to the information otherwise subject to inspection by the Authority under the terms of this Agreement (except as otherwise required by Applicable Law), provided that at least a five (5) days prior written notice thereof is provided to the Operator.

Section 21.2 Meetings.

The Authority management staff, the Operator’s General Manager and appropriate Key Personnel shall meet at least once each month by conference call, and at least once each quarter in person for purposes of reviewing the overall performance and administration of this Agreement; and at other times as reasonably determined by the Authority. The Operator shall make available any document and/or report the Authority may reasonably request in advance of any such meetings. In addition, upon the Authority Manager’s request, designated senior management of the Operator shall meet the Authority staff at reasonable times.

ARTICLE 22

INSPECTION OF WORK

Section 22.1 General.

During the Contract Term, all Work, including services performed, material furnished or utilized in the performance of services, and workmanship in the performance of
services, shall be subject to inspection and testing by the Authority and/or any other applicable local and/or federal agency at all places during regular business hours, by providing at least a three (3) days prior written notice to the Operator. All inspections by the Authority shall be made in such manner as to not unduly interfere with or delay the Work. The Operator shall have the right to have a Representative present during all inspections and audits.

Section 22.2 Re-Performance.

If the Authority, in its reasonable discretion, determines that any Work is not in conformity with the material requirements of this Agreement, the Authority shall have the right to require the Operator to re-perform the Work in conformity with such requirements for no additional compensation. In the event the Operator fails promptly to re-initiate, satisfactorily perform and complete the Work, the Authority shall have the right to have the Work performed in conformity with such requirements and charge to the Operator any costs to the Authority of correcting such nonconforming work, or terminate this Agreement for default as provided in Article 45. When the nonconforming Work is of such a nature that the defect cannot be corrected by re-performing the work, the Authority shall have the right to require the Operator to immediately take all necessary steps to ensure future performance of the Work in conformity with the requirements of this Agreement. Any disagreement between the Authority and the Operator as to whether any work is conforming or nonconforming will be resolved pursuant to the dispute resolutions provisions included in Article 33 of this Agreement.

ARTICLE 23
PERFORMANCE STANDARDS AND ASSESSMENTS

Section 23.1 General.

The Operator shall manage the Work in accordance with the Standard Operating Procedures and Scope of Work set forth in Appendix B. The Authority may, after agreement with the Operator, establish additional rules for the operation of the Service and Ancillary Activities.

Section 23.2 Operating Performance Standards.

(a) Service shall be provided as established in Appendix B to this Agreement and in the Authority’s published schedule included as Appendix B to this Agreement or according to any agreed Modifications that result from planned scheduled changes or are a result of an emergency, or, if the Authority has exercised the option provided in Section 15.2(b), in accordance with the Schedule provided in Appendix BB. The Authority will provide the Operator with notice of a planned change to the published schedule included as Appendix B to this Agreement at least one hundred twenty (120) days in advance of its proposed effective date. The details and terms of such change and the resultant contract Modification must be agreed at least ninety (90) days before a schedule change goes into effect.

(b) The Operator shall maintain on-time performance according to the requirements of Appendix B to this Agreement; provided that Operator shall not be held responsible for the failure to provide on-time service due to conditions resulting from the latent
deficiencies, or Vessel Extraordinary Repairs, involving an Authority-Provided Vessel, or due to
conditions described in Section 17.2 of this Agreement.

(c) The Operator shall accurately and completely generate the required operating reports on a monthly basis or more frequently if so required under Appendix B.

**Section 23.3 Personnel Performance Standards.**

(a) The Operator shall assure that regularly assigned staff or a trained back-up are available daily to ensure consistent and reliable service under this Agreement.

(b) All Operator personnel shall be knowledgeable with respect to the Work provided under this Agreement. Personnel must maintain a courteous attitude and answer to the best of their ability any questions from the public regarding the provision of service. All Operator personnel shall refrain from making any disparaging or negative remarks concerning the Authority. Customer service training must include a focus on passenger relations. Personnel must report all passenger complaints and/or operation problems to the General Manager.

(c) While in uniform (whether on-duty or off-duty), Vessel crew shall be in conformance with the uniform requirements described in the Scope of Work.

**Section 23.4 Assessments.**

The Authority and the Operator acknowledge that from the nature of the services to be rendered by the Operator hereunder, it is extremely difficult to fix actual damages which may result from failure on the part of the Operator to perform its obligations as outlined in Appendix B – Scope of Work to this Agreement. As a result, the Authority shall have the right in its discretion to charge Assessments, as liquidated damages, in accordance with the Scope of Work and to deduct any uncontested Assessments from the Phase 1 Service Payments and the Phase 2 Fixed Fee in accordance with the provisions of Section 28.5(a). The Authority and the Operator further acknowledge that the Assessments detailed in Appendix B – Scope of Work are reasonable estimates of the costs and damages that the Authority will incur as a result of the Operator’s failure to perform. The Operator shall have the opportunity to contest any Assessments in accordance with Article 33, but the pendency of any contest shall not affect the right of the Authority to invoice it for such Assessments. If the Authority Manager and the General Manager are unable to resolve any dispute with respect to Assessments, the matter shall be resolved pursuant to the provisions of Article 33 below.

**ARTICLE 24**

**INSURANCE AND CASUALTY**

**Section 24.1 Coverage.**

Until otherwise instructed by the Authority in the event that the Authority concludes that its direct purchase of insurance will result in lower premiums than those obtained
by the Operator (provided that the cost thereof shall remain for the account of the Operator, subject to Section 5.12), during the Contract Term (in the case of insurance coverage for Vessels and Facilities, commencing on each applicable Acceptance Date) the Operator shall procure and maintain in full force and effect at its sole cost (subject to the adjustment of the Phase 2 Fixed Fee provided for in Section 5.12) the insurance coverage set forth below and in Appendix U:

(a) Marine General Liability insurance in an amount no less than ten million dollars ($10,000,000) each and every occurrence. Coverage shall be extended to include the locations of all premises. The Marine General Liability shall also include an aggregate for Products -Complete Operations of ten million dollars ($10,000,000), a limit of one million dollars ($1,000,000) for Personal Injury and Advertising Injury, a Fire Damage Limit of one million dollars ($1,000,000) for any one fire and a Medical Expenses Coverage with a limit no less than fifty thousand dollars ($50,000) any one person.

(b) Commercial Property and Crime for all the property at the Facilities for the amount of insurance listed according the actual cash value of building and premises, Business Personal Property and Business Income. System Breakdown Coverage, shall be included and Flood Insurance Building shall be included, blanket building and content for no less than five million dollars ($5,000,000). A crime and fidelity coverage shall be extended to be included in all premises in an amount of no less than fifty thousand dollars ($50,000) for Employee Theft, Forgery or Alteration. Inside and outside premises theft of money and securities with a limit of no less than fifteen thousand dollars ($15,000).

(c) Workers’ compensation insurance (State Insurance Fund) in the full statutory limits as required by (i) the Commonwealth of Puerto Rico, and (ii) the laws of the United States (including, to full statutory limits, the USL&H, as applicable).

(d) Employers’ Liability insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence.

(e) Commercial general liability insurance in an amount not less than Two Million Dollars ($2,000,000) per occurrence. Coverage shall be extended to include coverage for Terminal Operations, Action Over Indemnities, Contractual Liability and Blanket Additional Insureds, and any watercraft exclusion deleted. General liability insurance shall also include a no host alcohol endorsement.

(f) Protection and Indemnity insurance pursuant to Form SP-23 (Revised 1/56) or equivalent, including, without limitation, Jones Act Insurance, with a minimum of Twenty-Five Million Dollars ($25,000,000) per occurrence. Any “as owner” limitations to be deleted. Insurance to include, or be provided under a separate policy, War & Terrorism coverage in accordance with American Hull Insurance Syndicate War Risk Protection & Indemnity Clauses.

(g) Pollution and environmental liability insurance, including coverage for damages, cleanup and restoration costs, with an amount not less than One Million Dollars ($1,000,000) per occurrence.
(h) With respect to the Vessels, insurance covering navigating hull and machinery, subject to the terms and conditions of the American Institute Hull Clauses policy (6/2/1977) and the American Institute Liner Negligence Clause (6/2/1977) or equivalent, in an amount equal to such Vessels’ agreed value as per Appendix U. Insurance coverage shall include, or provide under a separate policy, War & Terrorism coverage in accordance with American Institute Hull War and Strikes Clauses including damage by acts of vandalism, sabotage or malicious mischief.

(i) Automobile liability (bodily injury and property damage) in an amount not less than One Million Dollars ($1,000,000) combined single limit extending to owned, non-owned, and hired vehicles.

(j) Bumbershoot liability in the amount of Fifty Million Dollars ($50,000,000) each occurrence in excess of the primary limits specified in Section 24.1(b), (c), (d), (e) and (g) above covering all legal liability for personal injury, bodily injury or death to passengers and crew; property damage; and pollution and environmental liability, which may arise out of the Services.

(k) Innocent Owners insurance naming the Authority as the assured for an amount equal to the insured value stated in Appendix U.

Section 24.2 General Requirements.

(a) All insurance provided pursuant to this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having either an S&P “Claims-Paying Ability Rating” of at least A- or an A.M. Best “Financial Strength Rating” rating of at least A-/VIII.

(b) All insurance policies, except workers’ compensation, required by this Agreement shall be endorsed or otherwise provide the following:

(i) With respect to all policies covering the Project Assets, the Authority shall be named as the “primary insured” and the Operator shall be named as an “additional insured” and the coverage shall contain no special limitations on the scope of protection afforded to the Authority, and its board, directors, officers, employees, agents and volunteers. Any owner limitations applicable to the Protection and Indemnity insurance shall be deleted. For all other policies the Operator shall be the “primary insured” and the Authority shall be the “additional insured”. Except as otherwise provided in Section 24.5(e) the Authority shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on the policies required hereunder or any extension thereof. Any other insurance, self-insurance, or joint self-insurance held by the Authority shall not be required to contribute anything toward any loss or expense covered by the insurance required hereunder and shall be considered excess insurance.

(ii) All policies shall be endorsed to provide thirty (30) calendar days’ advance written notice to the Authority of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) business days prior written notice has been given.
(c) All insurance coverage shall be primary insurance to any other insurance available to the Authority (including self-insurance or joint self-insurance). All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the Authority. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(d) The Operator shall be solely responsible for the payment of all premiums and deductibles in connection with the insurance coverage required by this Agreement, subject to reimbursement by the Authority during Phase 1 and subject during Phase 2 to the adjustment to the Fixed Fee provided in Section 5.12.

(e) All insurance coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(f) The amounts of required insurance may be increased in commercially reasonable amounts from time to time by the Authority upon one hundred twenty (120) calendar days’ written notice to the Operator.

(g) Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, the Operator shall have the right to request that the Authority consent to waive such requirement. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates; provided that during the period of such waiver, the Operator maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

(h) All insurance policies providing coverage for the Project Assets shall provide that all insurance proceeds shall be paid to the Authority.

Section 24.3 Certificates.

On or prior to each Facility Acceptance Date and Vessel Acceptance Date, the Operator shall deliver to the Authority certificates of insurance in form reasonably satisfactory to the Authority, evidencing the coverage required hereunder (“Evidence of Insurance”) with respect to the Facility or Vessel being accepted, and the Operator shall provide the Authority with Evidence of Insurance thereafter before the expiration dates of expiring policies together with evidence of payment of the insurance premiums. Such certificates shall also contain substantially the following statement:

“Should any of the insurance covered by this Certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance notice to the Authority.”
Section 24.4  Failure to Secure.

If the Operator, at any time during the Contract Term, should fail to secure or maintain or fail to cause to be maintained the foregoing insurance, the Authority shall be permitted to obtain such insurance; provided, however, the Authority shall notify the Operator in writing of the inadequacy of the Operator’s insurance and the Operator shall have a ten (10) calendar day cure period to allow the Operator time to secure such insurance. If the Operator fails to secure such insurance after the expiration of the cure period, the Authority shall be compensated by the Operator for the costs of the insurance premiums (subject to the adjustment provided in Section 5.12), plus interest at the Prime Rate computed from the date such premiums have been paid by the Authority. The Operator shall indemnify and hold harmless the Authority from any Claims arising from the failure to maintain any of the insurance policies required above.

Section 24.5  Restoration of Facilities and Vessels Upon Casualty.

(a)  Obligations of Operator. Subject to each Party’s right to terminate this Agreement under Article 38 hereof, if all or any part of any of the Facilities or Vessels are destroyed or damaged during the Contract Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was required to be obtained by the Operator and was not obtained), whether ordinary or extraordinary, foreseen or unforeseen, the Operator shall: (i) give the Authority notice thereof promptly after the Operator becomes aware or receives actual notice of such casualty; (ii) assist the Authority with the assessment of the damages impacting the Services and with the filing of the applicable insurance claims and (iii) deposit all insurance proceeds received by the Operator in connection with any Restoration with the Authority in a segregated account of the Authority; provided, however, that if at any time the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the “Casualty Cost”) exceeds the net insurance proceeds actually deposited with the Authority, then the Authority (or the Operator if the Operator shall have failed to obtain the required insurance) shall deposit in a segregated account of the Authority such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (such net insurance proceeds and such additional cash, together with any interest earned thereon, the “Restoration Funds”); provided further that the procedures of this Section 24.5(a) shall only apply to casualty events in which the cost of restoration exceeds $100,000 Adjusted for Inflation since the date of the applicable Facility or Vessel Acceptance Date.

(b)  Rights of Authority. The Authority shall be entitled to receive and retain the Restoration Funds and may, but shall not be required to, complete such Restoration of the Facilities or Vessels.

(c)  Authority’s Election that the Facilities or Vessels not be Restored. If the Authority, in its sole discretion, elects that it shall not perform the Restoration of the affected Facilities or Vessels, the Authority may:

(i)  in case of only a partial destruction of the Facilities or Vessels, omit from the Work the relevant portion of the affected Facilities or Vessels, in which case, the
decision not to proceed with the Restoration thereof shall be deemed to be a change in the scope of the Services directed by the Authority;

(ii) if the loss or damage is due to a Default by the Operator and the Facilities or Vessels are wholly or substantially destroyed, terminate this Agreement for a Default by the Operator; or

(iii) if the loss or damage is not due to a Default by the Operator and the Facilities or Vessels are wholly or substantially destroyed, terminate this Agreement.

(d) Benefit of Authority. No person shall have or acquire any claim against the Authority as a result of any failure of the Authority to undertake or complete any Restoration as provided in this Section 24.5.

(e) Treatment of Deductibles. During Phase 1, the Casualty Costs representing deductibles from insurance coverage shall be paid by the Authority as per the mechanisms set forth in Section 5.1 of this Agreement. During Phase 2, such Casualty Costs shall be paid, in the case of the casualty insurance covering the Project Assets, by the Authority, and in all other cases by the Operator.

ARTICLE 25

REPRESENTATIONS AND WARRANTIES

Section 25.1 Representations and Warranties of the Authority.

The Authority makes the following representations and warranties to the Operator and acknowledges that the Operator and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) Organization. The Authority is an instrumentality and public corporation of the Commonwealth.

(b) Power and Authority. The Authority has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. The Board of Directors of the Authority has approved the execution and delivery of this Agreement and authorized the performance of its obligations hereunder and thereunder. The approval of the Fiscal Oversight and Management Board and the approvals required under the provisions of the PPP Act for the due execution and validity of this Agreement have been obtained.

(c) Enforceability. This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof, subject only to (i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar requirements of Law and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor’s rights and remedies; (ii) the effect of requirements of Law governing equitable
remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including the doctrine of sovereign immunity; and (iii) the effect of requirements of Law governing enforcement and collection of damages against the Authority; provided, however, that the enforcement of any Claims presented in accordance with this Agreement shall be resolved as provided herein.

(d) **No Conflicts.** The execution and delivery of this Agreement by the Authority, the consummation of the transactions contemplated hereby and the performance by the Authority of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Authority under (i) any Applicable Law or (ii) any agreement, instrument or document to which the Authority is a party or by which the Authority is bound.

(e) **Certain Consents; Notice.** Except for (i) the Authorizations or filings set forth in Sections 2.3, 2.4, 2.5 and 2.6 hereof, and (ii) any approval required by (y) FTA for any Ancillary Activity that constitutes an Incidental Use and (z) FAA with respect to non-aeronautical use by the Operator of the Isla Grande Facility, or other certifications that may be required for future award of federal aid, no Authorization or Approval is required to be obtained by the Authority from, and, except for the filing of this Agreement with the office of the Comptroller, no notice or filing is required to be given by the Authority to or made by the Authority with, any Person (including any Governmental Authority) in connection with the execution, effectiveness, performance or delivery of this Agreement.

(f) **Compliance with Law; Litigation.**

(i) Except for the permits listed in Appendix DD, the Authority possesses all Authorizations from any Governmental Authority necessary, in all material respects, for the operation of the Services as currently being operated, including but not limited to all environmental compliance and consultation requirements under U.S. and Commonwealth laws, regulations and requirements.

(ii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Authority’s knowledge, threatened against the Authority, which would (A) have a Material Adverse Effect or (B) materially affect the validity or enforceability of this Agreement.

(iii) Except as set forth in Appendix V, there is no litigation or similar procedure pending or threatened in connection with any of the Project Assets.

(g) **Brokers.** There is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of the Authority who might be entitled to any fee or commission from the Authority in connection with the transactions contemplated by this Agreement.

(h) **Project Assets.** Except for any encumbrance of the Project Assets arising by virtue of federal assistance in connection with such assets, the Project Assets are free and clear of any liens and encumbrances. Each of the Project Assets have, in full force and effect, all
licenses, permits, registrations and other Authorizations required under Applicable Law for the Authority to occupy and use the same for the Maritime Transport Operation and the provision of the Services, as the same are contemplated under this Agreement.

(i) **Environmental Matters.** Except as otherwise disclosed in Appendix GG:

(1) The Ferry Terminals, the Mooring Facilities and the Isla Grande Facility are in material compliance with Environmental Laws and with all the Authorizations.

(2) The Authority (and to the knowledge of the Authority, any other third party), has never stored, treated or disposed of Hazardous Substances at the Ferry Terminals, the Mooring Facilities and the Isla Grande Facility other than in compliance with Environmental Law.

(3) Aboveground and underground storage tanks or underground injection control systems on or at the Ferry Terminals, the Mooring Facilities and the Isla Grande Facility are in material compliance with all Environmental Laws and Authorizations.

(4) There has never been a material release of any Hazardous Substance in non-compliance with any Environmental Laws or Authorization on or at or from the Ferry Terminals, the Mooring Facilities or the Isla Grande Facility.

(5) The Ferry Terminals, the Mooring Facilities and the Isla Grande Facility have never been the subject of a governmental investigation, site cleanup, assessment or remediation as a result of a material release of Hazardous Substance.

(6) The Authority is in material compliance with all Environmental Laws and Authorizations pertaining to all requirements relating to notice, recordkeeping and reporting.

(7) The Authority has not received enforcement notice of any past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may materially interfere with or prevent compliance or continued material compliance with applicable Environmental Laws or Authorizations, or which may reasonably give rise to any statutory or common law legal liability, or otherwise form the basis of any claim, action, demand, suit, proceeding, or
investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the release into the environment, of any Hazardous Substances, with respect to the operation of the Ferry Terminals, the Mooring Facilities and the Isla Grande Facility.

(j) **Title.** In the case of Project Assets owned by the Authority, the Authority has good and sufficient title thereto, and in the case of other Project Assets, has sufficient rights in each of such Project Assets to grant to the Operator the rights described in this Agreement (including, without limitation, those set forth in Section 13.1(b)) and the rights to be provided in the Facility Lease Agreements. With respect to the Facilities, Appendix E includes a true, correct and complete list of the Facilities, setting forth (i) the name and address of each of the owners of the Facilities, (ii) a reference to the deed or lease agreement(s) governing the Authority’s rights thereunder, as amended from time to time, and (iii) the term of each agreement. Except as set forth in Appendix E, each of the agreements mentioned in Appendix E is in full force and effect, and there is no action, lawsuit, proceeding, investigation, proposed legislation, Change in Law or any other claim of any kind pending, or to the Authority’s knowledge, threatening the validity of such agreements or the Authority’s rights thereunder.

(k) **ADA Compliance.** Each of the Vessels and Facilities is in compliance with the applicable provisions of ADA, and there are no actions, lawsuits, proceedings, investigations or other claims of any kind pending, or to the Authority’s knowledge, threatened, alleging any violations to ADA or any other Applicable Law governing access for the disabled or handicapped.

(l) **Insurance.** Each of the insurance policies listed in Appendix W, covering each of the Project Assets in the amounts specified therein, are in full force and effect and will continue to be in full force and effect up to the Acceptance Date of each applicable Project Assets if any such insurance policy is required to be obtained by the Operator as per the terms of Article 24 hereof.

(m) **Material Adverse Effect.** Since the issuance of the Request of Proposal, through and including the Effective Date, no transaction or occurrence has taken place that has resulted or is reasonably likely to result in a Material Adverse Effect.

(n) **Authority Employees.** As a “Priority Project” and “Partnership Contract” under the PPP Act, any hiring or contracting of Authority employees by the Operator as part of the Project and to perform the Services, shall be exempted from the provisions of Act 1-2012, regarding the government ethics prohibition rules for hiring or contracting former government employees from the Authority for purposes of providing Services under the Agreement.

(o) **Public Private Partnerships Act.** The PPP Act is in full force and effect. The PPP Act authorizes the Authority to enter into this Agreement, in substantially the form and substance approved by the Authority. The Project is a “Priority Project” and this Agreement is a “Partnership Contract” under the PPP Act.
Existing Contracts. The list of Existing Contracts appearing in Appendix BB is correct and complete.

Section 25.2 Representations and Warranties of the Operator and HMSI.

The Operator and HMSI each make the following representations and warranties to the Authority (and acknowledges that the Authority is relying upon such representations and warranties in entering into this Agreement):

(a) Organization. Each is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to conduct business in the Commonwealth. Except as disclosed in the written certification that HMSI delivered to the Authority in its Proposal, no Person owns, directly ten percent (10%) or more of the capital stock, units, partnership or membership interests and other equity interests or securities of HMSI or the Operator (including options, warrants and other rights to acquire any such equity interests).

(b) Power and Authority. Each has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder or thereunder to be done, observed or performed by it in accordance with the terms hereof or thereof.

(c) Enforceability. This Agreement has been duly authorized, executed and delivered by each and constitutes a valid and legally binding obligation of each, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity. Each has carefully examined and understands this Agreement, and enters into this Agreement on the basis of its own examination, investigation, and evaluation of all such matters that may affect its performance hereunder, other than the current conditions the Project Assets, and not in reliance upon any opinions or representations of the Authority or its officers, agents, or employees, except to the extent expressly set forth in this Agreement.

(d) No Conflicts. The execution and delivery of this Agreement by each of the Operator and HMSI, the consummation of the transactions contemplated hereby and the performance by the Operator and HMSI of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of any of them under (i) any Applicable Law, (ii) any material agreement, instrument or document to which any of them or any Equity Participant is a party or by which it is bound or (iii) the articles, bylaws or governing documents of each of them and each of the Equity Participants.

(e) Consents. No Consent is required to be obtained by the Operator or HMSI or any Equity Participant from, and no notice or filing is required to be given by the Operator or HMSI or any Equity Participant to or made by the Operator or HMSI or any Equity Participant with, any Person (including any Governmental Authority) in connection with the execution and delivery by the Operator and HMSI of this Agreement or the consummation of the transactions contemplated hereby, except for such consents which have been obtained and notices of filings
which have been given as of the date hereof or such other consents which are not required to be obtained as at the date hereof and are expected to be obtainable following the date hereof.

(f) **Compliance with Law; Litigation.** Neither the Operator nor HMSI is in breach of any Applicable Law that could have a Material Adverse Effect on the ability of the Operator or HMSI to comply with its obligations under this Agreement. Neither the Operator nor HMSI nor, to its knowledge, any Affiliate of the Operator, HMSI or Equity Participant is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, or on any other list of Persons with which the Authority may not do business under Applicable Law. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Operator’s or HMSI knowledge, threatened against the Operator or any Equity Participant, that would have a Material Adverse Effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

(g) **Brokers.** There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Operator, HMSI or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(h) **Accuracy of Information.** To the knowledge of the Operator and HMSI, all information regarding the Operator and HMSI provided to the Authority by the Operator or HMSI or on behalf of the Operator was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Effective Date, unless such information was specifically related to a prior date.

(i) **Anti-Corruption Code.** The Operator and HMSI acknowledge, represent and warrant that no official or employee of the Authority has a direct or indirect economic interest in the Operator’s or HMSI’s rights under this Agreement in accordance with the provisions of the Anti-Corruption Code, which Anti-Corruption Code the Operator and HMSI herein certifies it has received a copy of, read, understood and complied with at all times previous to the execution of this Agreement and agrees that it will subsequently comply with it in its entirety.

(j) **Criminal Proceedings.**

(i) Each of the Operator and HMSI warrants and certifies that as of the Effective Date and for the preceding twenty (20) years, (A) neither it nor its President, any of its Vice Presidents or Directors, Executive Director or Member of a Board of Officials or Board of Directors (or any person that holds a position with the Operator or HMSI equivalent to any of the foregoing), nor any of its subsidiaries nor any of its Equity Participants (each, a “Covered Party”), has been convicted, has entered a plea of guilty or nolo contendere or has been indicted in any criminal procedure in any State, Commonwealth or federal court or in any foreign country for criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property, or for the felonies or misdemeanors
mentioned in the Anti-Corruption Code, and (B) each Covered Party is complying and shall continue to comply at all times with laws that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to the Operator or HMSI under State or federal Law, including the Foreign Corrupt Practices Act. If a Covered Party after the Effective Date becomes indicted or convicted in a criminal procedure for any type of offense described in this Section 25.2(j), the Operator and HMSI shall immediately notify the Authority thereof in writing as required by the Anti-Corruption Code.

(ii) Neither the Operator, HMSI nor, to the knowledge of the Operator and HMSI, any of its officers, directors or Equity Participants has been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, and neither the Operator, HMSI nor any of its officers, directors or Equity Participants has been found guilty of any such type of offense in the Courts of the Commonwealth, the federal courts or any court of any jurisdiction of the United States of America.

Section 25.3 Required Governmental Certifications and Filings.

(a) Each of the Operator and HMSI represent that as of the date of this Agreement (x) it does not have any outstanding debts for unemployment insurance, temporary disability (workmen’s compensation), chauffeur’s social security with the Puerto Rico Department of Labor and Human Resources, income taxes with the PR Department of Treasury, or real or personal property taxes with the Municipal Revenues Collection Center (the “CRIM”).

(b) Each of the Operator and HMSI acknowledge and agree that it shall obtain and deliver to the Authority on or prior to the Effective Date, the following:

(i) a certification of filing of income tax return, issued by the Internal Revenue Division of the PR Department of the Treasury or a certification by the Operator and HMSI and each of their Equity Participants (if any of the Operator or HMSI is a partnership under the PR Code) that as of the date of this Agreement it does not have and has not had to submit income tax returns and pay taxes in the Commonwealth during the past five (5) years;

(ii) a no taxes debt due certificate, or payment plan and compliance therewith, issued by the Internal Revenue Division of the PR Department of the Treasury;

(iii) a certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the CRIM;

(iv) a certificate of no debt, or payment plan and compliance therewith, for unemployment insurance, temporary disability (workmen’s compensation) and chauffeur’s social security issued by the Puerto Rico Department of Labor and Human Resources;

(v) a copy of Operator’s and HMSI’s Merchant’s Registration Certificate (Form SC 2918);

(vi) a Puerto Rico Sales and Use Tax Filing Certificate issued by the Puerto Rico Treasury Department reflecting that Operator and HMSI have filed its Puerto Rico Sales and Use Tax returns for the last sixty (60) tax periods (Form SC 2942); and
(vii) a certification issued by the Puerto Rico Child Support Administration for Operator and HMSI reflecting that Operator and HMSI are in compliance with the withholdings required to be made by employers under applicable law.

If, in accordance with the policies of the Governmental Authorities in charge of the issuance of any of the above-mentioned certifications, any of such certifications is not obtainable by the Operator or HMSI, the Authority acknowledges and agrees that a sworn statement in connection thereof shall be sufficient for purposes of complying with this Section 25.3(b).

Section 25.4 Non-Waiver.

No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

Section 25.5 Survival.

(a) Authority’s Representations and Warranties. The representations and warranties of the Authority contained in Section 25.1 shall survive and continue in full force and effect for the benefit of the Operator as follows: (i) as to the representations and warranties contained in Sections 25.1(a) through (c), (e), (f), (h), (j) (m) and (o), without time limit; (ii) as to the representation and warranty contained in Section 25.1(i), until the expiration of the applicable statute of limitations, and (iii) as to all other matters, for a period that runs from the Effective Date until the first anniversary of the Effective Date, unless a bona fide notice of a Claim under Section 28.2(b) shall have been given, in writing in accordance with Section 47.1, prior to the expiry of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) Operator’s and HMSI’s Representations and Warranties. The representations and warranties of the Operator and HMSI contained in Section 25.2 shall survive and continue in full force and effect for the benefit of the Authority as follows: (i) as to the representations and warranties contained in Sections 25.2(a) through (c), (e) (i) and (j), without time limit; and (ii) as to all other matters, for a period that runs from the Effective Date until the first anniversary of the Effective Date, unless a bona fide notice of a Claim under Section 28.2(a) shall have been given, in writing in accordance with Section 47.1, prior to the expiry of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.
ARTICLE 26

FINANCE OBLIGATIONS

Section 26.1 Operator’s Obligations.

The Operator shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

Section 26.2 Authority’s Obligations.

(a) The Authority shall, to the extent consistent with Applicable Law and at the sole cost and expense of the Operator, reasonably cooperate with the Operator with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Operator hereunder.

(b) The Authority shall, promptly upon the request of the Operator or any Lender, execute, acknowledge and deliver to the Operator, or any of the parties specified by the Operator, and use commercially reasonable efforts to cause the owner of any of the Facilities not owned by the Authority to execute, acknowledge and deliver to the Operator, or any of the parties specified by the Operator, standard consents and estoppel certificates with respect to this Agreement and ancillary documents in connection hereof that may be qualified to the best of the knowledge and belief of a designated representative of the Authority. Nothing herein shall require the Authority to incur any additional obligations or liabilities (unless the Authority shall have received indemnification, as determined in the Authority’s discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with any Applicable Law or the provisions of this Agreement.

Section 26.3 Operator’s Obligation for Estoppel Certificates.

The Operator shall, promptly upon the request of the Authority, execute and deliver to the Authority, or any of the parties specified by the Authority, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Operator. Nothing herein shall require the Operator to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with Applicable Law and the provisions of this Agreement.

ARTICLE 27

COMPLIANCE WITH LAWS

Section 27.1 Compliance with Laws.

(a) The Operator shall, at all times and at its own cost and expense, observe and comply, in all material respects, and cause the Service and the Ancillary Activities to observe and comply, in all material respects, with all Applicable Laws now existing or later in
effect that are applicable to it or such Works, including laws and regulations enforced by the Puerto Rico Public Service Commission, Environmental Laws, the ADA and all other laws expressly enumerated in this Article 27, and those that may in any manner apply with respect to the performance of the Operator’s obligations under this Agreement. The Operator shall notify the Authority in writing within seven (7) days after receiving notice from a Governmental Authority that the Operator may have violated any of the above.

(b) The Operator agrees to comply with any standard or recommendation promulgated by FTA as guidance and not as Law, in each case to the extent set forth in any circular published by FTA (but subject to any exceptions or exemptions set forth therein).

(c) Each Party shall give all notices and comply with all existing and future federal, state, Commonwealth and local laws, ordinances, rules, and regulations, and orders of any Governmental Authority, applicable to the performance of its obligations under this Agreement, including, but not limited to, the laws referred to in this Agreement. Upon request, the Operator shall furnish to the Authority certificates of compliance with all such laws, orders and regulations.

(d) The Parties understand that, pursuant to Section 19(e) of the PPP Act, the Operator is not subject to any Commonwealth procurement requirements applicable to the Authority.

Section 27.2 Non-Discrimination Laws.


(b) Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Operator understands and agrees that it shall not cause any individual with a disability to be excluded from participation in
this Agreement or from activities provided for under this Agreement on the basis of the disability. The Operator agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the MTA through contracts with outside contractors. The Operator shall be responsible for and agrees to indemnify and hold harmless the MTA from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the MTA as a result of the Operator’s failure to comply with the provisions of this Section 27.2(b).

Section 27.3 Commonwealth Non-Discrimination/Sexual Harassment Clause.


(a) In the hiring of any employees for the manufacture of supplies, performance of Work, or any other activity required under this Agreement or any subcontract, the Operator, any Contractor or any Person acting on behalf of the Operator or a Contractor shall not by reason of gender, race, creed, or color discriminate against any person who is qualified and available to perform the work to which the employment relates.

(b) Neither the Operator nor any Contractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of grounds race, color, national origin, sex, sexual orientation, gender identity, ancestry or marital status, social condition, genetic information, age, religion, creed, political ideas, and being or being perceived as a victim of domestic violence.

(c) The Operator and all Contractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) The Operator shall not discriminate by reason of grounds of race, color, national origin, sex, sexual orientation, gender identity, ancestry or marital status, social condition, genetic information, age, religion, creed, political ideas, and being or being perceived as a victim of domestic violence, against any Contractor or supplier who is qualified to perform the work to which the contract relates.
(e) The Operator shall include the provisions of this Section 27.3 in every subcontract so that such provisions will be binding upon each Contractor.

(f) In the event that any Operator Default results from a violation of the terms and conditions of this Section 27.3 as described in Article 45, the Authority may cancel or terminate this Agreement in accordance with Article 45. In addition, the Authority may proceed with debarment or suspension and may place the Operator in any contractor responsibility file maintained by the Authority in accordance with the Authority’s normal practice in matters of suspension and debarment.

Section 27.4 Non-Collusion and Acceptance.

The Operator attests, subject to the penalties for perjury, that no Representative of the Operator, directly or indirectly, to the best of the Operator’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

Section 27.5 Local Goods and Services.

The Operator shall exercise commercially reasonable efforts to use, to the extent (i) available and applicable to the services provided hereunder and (ii) not in contravention with any federal law with supremacy over the provision of Act 14-2004, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth. For the avoidance of doubt, nothing herein shall require the Operator to exercise a “local preference” for any goods or services manufactured in or provided from Puerto Rico for purposes of applicable federal laws.

Section 27.6 Operator Integrity.

(a) The Operator shall maintain highest standards of integrity in the performance of this Agreement and shall take no action in violation of Commonwealth or federal Laws, regulations, or other requirements that govern contracting with the Authority. The Operator certifies that it does not represent particular interests in cases or matters that would imply a conflict of interest or public policy between the Authority and the interests it represents.

(b) The Operator shall not disclose to others any confidential information gained by virtue of this Agreement.

(c) The Operator shall not, in connection with this Agreement or any other agreement with the Authority, directly, or indirectly, offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any officer or employee of the Authority.

(d) The Operator shall not, in connection with this Agreement or any other agreement with the Authority, directly or indirectly, offer, give or agree or promise to give to
anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Authority.

(e) The Operator shall not accept or agree to accept from, or give or agree to give to, any Representative of the Authority, any gratuity from any person in connection with this Agreement that is intended by the provider thereof to be a material inducement to enter into this Agreement or any other agreement.

(f) The Operator, upon being informed that any violation of the provisions of this Section 27.6 has occurred or may occur, shall immediately notify the Authority in writing.

(g) The Operator, by execution of this Agreement and any request for compensation pursuant hereto, certifies and represents that it has not violated any of the provisions of this Section 27.6.

(h) The Operator, upon the inquiry or request of the Comptroller of the Commonwealth or any of that official’s agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Comptroller of the Commonwealth. Such information may include the Operator’s business or financial records, documents or files of any type or form that refers to or concerns this Agreement. Such information shall be retained by the Operator for a period of five (5) years unless otherwise provided by Law.

(i) In the event that any Operator Default results from a violation of any of the provisions of this Section 27.6, the Authority may terminate this Agreement in accordance with Article 46 and any other agreement with the Operator, claim liquidated damages in an amount equal to the value of anything received by the Operator in breach of these provisions, claim damages for all expenses incurred in obtaining another Operator to complete performance hereunder and debar and suspend the Operator from doing business with the Authority. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Authority may have under Law, statute, regulation, or otherwise.

(j) For purposes of this Section 27.6 only, the words “confidential information,” “consent,” “Operator” and “gratuity” shall have the following definitions:

(i) “confidential information” means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Authority; and

(ii) “gratuity” means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

Section 27.7 Commonwealth Tax Liabilities.

The Operator shall inform the Authority if, at any time during the Contract Term, it becomes delinquent in the payment of Taxes imposed by any Governmental Authority of the
Commonwealth, other than with respect to Taxes being contested in accordance with applicable Law.

Section 27.8 Contractor and Supplier Contracts.

The Operator shall include the provisions of Article 27 and Section 25.3 in every subcontract and supply contract so that they shall be binding on each Contractor.

Section 27.9 Practice of Engineering, Architecture and Other Professions in the Commonwealth.

To the extent that performance of the Maritime Transport Operations involves performance of architectural, engineering, land surveying, and landscape architecture services governed by Act No. 173 of the Legislative Assembly of Puerto Rico, enacted on August 12, 1988, 20 P.R. Laws Ann. § 711 et seq., as amended (“Act No. 173”), then (A) the Operator shall comply (and shall require its subcontractors or agents, if any, to comply) with Act No. 173 and (B) the Operator shall monitor compliance by its subcontractors and agents with Act No. 173.

Section 27.10 Governmental Contractor Code of Ethics.

The Operator shall comply with the requirements of Governmental Contractor Code of Ethics, which forms part of the Anti-Corruption Code.

Section 27.11 Certifications Required by Commonwealth Contractor Requirements.

The Operator has (i) certified that it has complied and is in compliance with the provisions of the PPP Authority’s Ethical Guidelines and (ii) delivered the Sworn Statement attached hereto as Appendix X. The Operator shall deliver to the Authority prior to the Effective Date a copy of its Certificate of Incorporation, Certificate of Organization and Certificate of Authorization to do Business in Puerto Rico issued by the Puerto Rico Department of State, in each case, as applicable, and a Certificate of Good Standing issued by the jurisdiction in which the Operator was incorporated or formed.

Section 27.12 Duty to Inform of Criminal Investigations.

The Operator shall inform the Authority if, at any time during the Contract Term, the Operator or any director, officer, employee or subsidiary (but only to the extent the Operator acquires actual knowledge thereof) has become subject to an investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.

Section 27.13 Filing with the Comptroller of the Commonwealth.

The Parties agree and acknowledge that this Agreement must be filed with the Office of the Comptroller of the Commonwealth, pursuant to the provisions of Act. No. 18 of the Legislative Assembly of Puerto Rico, approved October 30, 1975, as amended. The obligations pursuant to this Agreement shall not be enforceable until it shall have been submitted for filing with the Office of the Comptroller of the Commonwealth as provided by such Act No. 18.
Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution or delivery of this Agreement.

ARTICLE 28

INDEMNIFICATION

Section 28.1 Indemnification with Regard to Third Party Claims.

(a) Indemnification by the Operator. To the fullest extent permitted by Law, the Operator shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative as a result of any Third Party Claims arising from, related to, or in connection with (A) any failure on the part of the Operator to comply with any Applicable Laws, including, without limitation Environmental Laws and the ADA; or (B) the Operator’s performance of the Maritime Transport Operations as required by this Agreement, in each case arising from matters occurring on or after the Phase 1 Commencement Date (except that in the case of any matter related to a Facility, an Authority Provided Vessel or a Service, any matters occurring after the applicable Facility or Vessel Acceptance Date), including any Losses related to former Authority employees hired by the Operator or to contracts assumed or managed by the Operator for the performance of its obligations hereunder; provided, however, that such Third Party Claims are made in writing within a period of three (3) years from the expiration of the Contract Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations. Notwithstanding anything herein to the contrary, the Operator shall have no obligation, responsibility or liability whatsoever, and the Authority hereby release and agrees to indemnify and hold the Operator harmless from, any Third Party Claims arising under (i) any acts, omissions, non-compliant matters or violations pre-dating the applicable Facility or Vessel Acceptance Date, or (ii) any matters over which the Authority retains control over as per the terms of this Agreement. Without limiting the Authority’s rights or the Operator’s obligations under this Agreement or applicable law, the Operator shall be liable and shall indemnify the Authority for any damage arising through accident, misuse, improper handling or cleaning, neglect, or incorrect repair or adjustment of a Vessel or Facility, during the term of the Agreement.

(b) Indemnification by the Authority. To the fullest extent permitted by Law, the Authority shall indemnify and hold harmless the Operator and each of its Representatives from and against any Losses actually suffered or incurred by the Operator or any such Representative as a result of any Third Party Claims arising from the Maritime Transport Operations arising from matters occurring prior to the Phase 1 Commencement Date (except that in the case of any matter related to a Facility, an Authority Provided Vessel or a Service, any matter occurring prior to the applicable Facility or Vessel Acceptance Date); provided, however, that such Third Party Claims are made in writing within a period of three (3) years of the expiration of the Contract Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations. For purposes of clarification, indemnification obligations by the Authority under this Section 28.1(b) include, but
are not limited, to Losses actually suffered or incurred by the Operator or any such Representative as a result of any Third-Party Claims arising from the Environmental Exceptions disclosed in Appendix CC.

(c) **Notice of Third Party Claim.** If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than thirty (30) days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(d) **Defense of Third Party Claim.** The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than thirty (30) days after receiving notice of that Third Party Claim (the “**Notice Period**”); provided, however, that the Indemnifier shall not be permitted to assume the defense of such Third Party Claim to the extent such assumption would adversely impact any defense asserted by the Indemnified Party. The Indemnifier’s right to do so shall be subject to the rights of any insurer or other Party who has potential responsibility with respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall cooperate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(e) **Assistance for Third Party Claims.** The Indemnifier and the Indemnified Party will use all Reasonable Efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the “**Defending Party**”) (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim and (ii) to the extent permitted by Law, all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

(f) **Settlement of Third Party Claims.** If an Indemnifier elects to assume the defense of any Third Party Claim in accordance with Section 28.1(d), the Indemnifier shall not be responsible for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within thirty (30) days after receiving notice from the Indemnified Party that the Indemnified Party *bona fide* believes
on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be responsible for all reasonable costs and out-of-pocket expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any responsibility to, and does not require any action on the part of, the Indemnifier and does not in any way adversely affect the Indemnifier.

Section 28.2 Indemnification with Regard to Breaches of Covenants, Representations or Warranties.

(a) Indemnification by the Operator.

(i) The Operator shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative arising from (A) any failure by the Operator, its Affiliates or their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement, (B) any negligence or willful misconduct of the Operator or any Subcontractor, (C) any breach by the Operator of its representations or warranties set forth in Section 25.2; provided, however, that such representations and warranties continue to survive at such time as provided in Section 25.5(b) and a notice of a Claim shall have been given, in writing in accordance with Section 48.1, prior to the expiry of such survival period as provided in Section 25.5(b) and provided further that for purposes of this Section 28.2(a)(i) any qualifications relating to materiality contained in any such representation or warranties shall be disregarded for purposes of determining whether such representation or warranty was breached, and (D) any Third Party Claim arising from the fare increases contemplated in Section 15.3.

(ii) No Claim may be made by the Authority or the Authority’s Representatives against the Operator under Section 28.2(a)(i) for the breach of any representation or warranty made or given by the Operator in Section 25.2 unless the aggregate of all Losses suffered or incurred by the Authority or its Representatives exceeds $100,000, in which event the amount of all such Losses in excess of such amount may be recovered by the Authority or its Representatives; provided, however, that the maximum aggregate liability of the Operator to the Authority or its Representatives in respect of such Losses in connection with breaches of the Operator’s representations and warranties in Section 25.2 shall not exceed $5,000,000 and provided further that the foregoing limitations shall not apply to Claims for a breach of representation or warranties in Sections 25.2(a), (b), (c), (d), (e), (f) or to claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 25.2.

(b) Indemnification by the Authority.

(i) The Authority shall indemnify and hold harmless the Operator and each of its Representatives from and against any Losses actually suffered or incurred by the Operator or any such Representative arising from (A) any failure by the Authority or its
Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement, including payment terms, or (B) any negligence or willful misconduct of the Authority, or (C) any breach by the Authority of its representations or warranties set forth in Article 25.1; provided, however, that such representations and warranties continue to survive at such time as provided in Section 25.5(a) and a notice of a Claim shall have been given, in writing in accordance with Section 47.1 prior to the expiry of such survival period as provided in Section 25.5(a) and provided further that for purposes of this Section 28.2(b)(i) any qualifications relating to materiality contained in any such representation or warranties shall be disregarded for purposes of determining whether such representation or warranty was breached.

(ii) No Claim may be made by the Operator or the Operator’s Representatives against the Authority under Section 28.2(b)(i) for the breach of any representation or warranty made or given by the Authority in Section 25.1 unless the aggregate of all Losses suffered or incurred by the Operator or its Representatives exceeds $100,000, in which event the amount of all such Losses in excess of such amount may be recovered by the Operator or its Representatives; provided, however, that the maximum aggregate liability of the Authority to the Operator or its Representatives in respect of such Losses in connection with breaches of the Authority’s representations and warranties in Section 25.1 shall not exceed $5,000,000 and provided further that the foregoing limitations shall not apply to Claims for a breach of representation or warranties in Sections 25.1(a), (b), (c), (d), (e), (f), or (j) or to claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 25.1.

Section 28.3 Losses Net of Insurance; Reductions and Subrogation.

(a) For purposes of this Article 28, the amount of any Losses for which indemnification is provided hereunder shall be reduced by any amounts actually recovered by the Indemnified Party under insurance policies with respect to such Losses, it being understood that the obligations of the Indemnifier hereunder shall not be so reduced to the extent that any such recovery results in an increase in the Indemnified Party’s insurance premiums, or results in any other additional cost or expense to any such Indemnified Party.

(b) If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of a payment required under this Article 28 on account of such Losses (an “Indemnity Payment”) is reduced by any subsequent recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred or increased in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction at a rate equal to the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier.

(c) Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against
any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party’s rights against such third party.

Section 28.4 Payment and Interest.

All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Prime Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss or expense in respect of a Loss for which the Indemnifier is responsible to make payment pursuant to this Article 28, to the date of payment by the Indemnifier to the Indemnified Party.

Section 28.5 Offset Rights; Limitations on Certain Damages

(a) Any other provision herein notwithstanding, each Party’s obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, “Offsets”) which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party’s rights hereunder (to the extent permitted hereunder) as against such Party or any part thereof or interest therein, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets; provided, however, that, with respect to the payments required to be made by the Authority to the Operator under Section 5.1 or 5.2, and without prejudice to the rights of the Authority set forth in Section 5.2(g), the Authority may only apply its Offsets rights (i) with respect to undisputed amounts owed by the Operator to the Authority; (ii) only after the Operator shall have failed to make the payment of such amount due to the Authority after the latter of: (A) sixty (60) days from the due date and (B) thirty (30) days after receiving notice from the Authority of the amount due; and (iii) during Phase 1 only in connection with the quarterly reconciliation contemplated in Section 5.1(d).

(b) In no event shall any Party be responsible to the other Party under this Agreement for lost profit or consequential, indirect, exemplary or punitive damages, or unforeseeable damages, nor shall a Party be obligated to indemnify any other Party or any other Person with respect to any Losses or damages caused by the fraud of such other Party or Person.

Section 28.6 Indemnification with Respect to Intellectual Property.

(a) The Authority shall indemnify, defend and hold harmless the Operator from any and all claims, liabilities or Losses arising from the conditions, status of licensing, integrity of the data, compliance with applicable Laws and use of the Authority-Provided Intellectual Property during the Contract Term. The Operator shall indemnify, defend and hold harmless the Authority from any and all claims, liabilities or Losses arising from the conditions, status of licensing, integrity of the data, compliance with Applicable Laws and use of the Operator-Provided Intellectual Property during the Contract Term.
(b) In the case of any custom made or custom developed software or intellectual property that the Authority acquires from the Operator pursuant to Section 46.1(j), the Operator shall indemnify, defend and hold the Authority harmless from all losses, damages or expenses that relate to Third Party Claims or proceedings brought against the Authority in connection with an infringement or misappropriation of any right of any third party related to such software or intellectual property; provided, however, that (i) the Operator shall not be required to indemnify the Authority for any claim arising from the improper or negligent use by the Authority of such software of intellectual property, and (ii) any such Third Party Claims are made in writing within a period of three (3) years from the expiration of the Contract Term or earlier termination of this Agreement and the Operator is promptly notified of such claim in writing and given the authority, information and assistance needed for the defense or settlement of such Third Party Claim.

Section 28.7 Survival

This Article 28 shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

Section 28.8 Agency for Representatives

Each of the Authority and the Operator agrees that it accepts each indemnity under the terms of this Agreement in favor of any of its Representatives and/or Affiliates, as applicable, as agent and trustee of such Representative and/or Affiliate, as applicable, and agrees that each of the Authority and the Operator may enforce any such indemnity in favor of its Representatives and/or Affiliates, as applicable, on behalf of such Representative and/or Affiliate.

Section 28.9 Sole Remedy

Except with respect to Compensation Events and termination events, the provisions of this Article 28 shall constitute the sole and exclusive right and remedy available to any Party hereto for any Third Party Claim or for any actual or threatened breach by any Party of any representation, warranty, covenant or agreement contained herein.

ARTICLE 29

CERTIFICATION REGARDING LOBBYING

The Operator shall comply in all respects with the certifications made by the Operator in the certification regarding lobbying that the Operator has provided to the Authority as required by 31 U.S.C. 1352 and 49 C.F.R. Part 19, as included in Appendix B.
ARTICLE 30
DISADVANTAGED BUSINESS ENTERPRISE

Section 30.1 Policy.

The Authority is committed to a diversity program for the participation of Disadvantaged Business Enterprises ("DBE") in the Authority contracting opportunities, in accordance with 49 C.F.R. Part 26, as may be amended (the "DBE Regulations"). It is the policy of the Authority to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of the U.S. DOT assisted contracts. It is the intention of the Authority to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the Authority’s construction, procurement and professional service activities. A copy of the Authority’s FTA approved DBE Program shall be available upon request from the Authority’s DBE Administrator (following adoption thereof).

Section 30.2 Nondiscrimination Assurance.

The Operator agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The Operator agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. Failure by the Operator to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy as the Authority deems appropriate. Each subcontract the Operator signs with a subcontractor must include the assurances in this paragraph (see 49 C.F.R. Part 26.13(b)).

Section 30.3 Financial Institutions.

The Operator is encouraged to use financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.

Section 30.4 Prompt Payment of Subcontractors.

The Operator is required to pay its DBE subcontractors performing work related to this contract for satisfactory performance of that work no later than sixty (60) days after receipt of the corresponding invoice during Phase 2. In addition, the Operator is required to return any retainer payments to those subcontractors within thirty (30) days after the subcontractor’s work related to this Agreement is satisfactorily completed.

Section 30.5 Eligible DBEs.

Only a DBE that has been certified as such pursuant to the Uniform Certification Program for Puerto Rico shall be eligible to participate as a DBE pursuant to this Agreement. For purposes of this Section 30.5, the term “Uniform Certification Program” has the meaning set forth in 49 CFR §26.81.
Section 30.6 Participation Goal.

This Agreement may be assisted by funds from the U.S. Department of Transportation (U.S. DOT). The Authority proposes to meet 100% of its goals using race-neutral methods.

Section 30.7 Counting DBEs.

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the Operator or its affiliate) may also be counted. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. DBE achievement will not be counted toward the overall goal until the DBE has been paid. Additionally, a portion of a DBE’s participation that is achieved after the certification of the DBE has been removed during performance of this Agreement will not be counted.

Section 30.8 Reporting Requirements.

The Operator shall prepare and submit to the Authority a semi-annual DBE report in accordance with Section 21.1(d) of this Agreement.

Section 30.9 Administrative Remedies.

Failure by the Operator to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy as the Authority deems appropriate.

ARTICLE 31

COMPLIANCE WITH FEDERAL REQUIREMENTS

The Operator shall comply and shall cause its Subcontractors to comply with all applicable Federal requirements, including the Federal requirements set forth in Appendix Y (including any procurement requirements).

ARTICLE 32

NO FEDERAL GOVERNMENT OBLIGATIONS

The Federal Government shall not be subject to any obligations or liabilities to the Operator or any other person other than the Authority in connection with the performance of this Agreement. Notwithstanding any concurrence that may be provided by the Federal Government in or approval of any solicitation or contract, the Federal Government has no obligations or liabilities to any party, including the Operator.
ARTICLE 33

DISPUTE RESOLUTION

Section 33.1 Resolution Process for Disputes.

Any dispute between the Authority and the Operator hereunder shall be appealable in writing to the Authority Executive Director within five (5) Business Days of the decision giving rise to the dispute, which writing shall include a particular statement of the grounds of the dispute. In connection with any such dispute, the Operator shall be afforded an opportunity to offer written evidence on the issues presented to the Authority Executive Director or his or her duly authorized representative (and such other Authority staff persons as the Authority Executive Director may determine). The Authority Executive Director shall issue a decision in writing within thirty (30) Business Days of the receipt of the written evidence or of the date of the meeting, as the case may be. The Operator shall respond in writing, if it does not accept the Executive Director’s decision, by stating in general terms the factual and/or legal objections to the decision within ten (10) Business Days of such decision. The Operator’s failure to object within the above-specified time limit will constitute acceptance of the Executive Director’s decision. Thereafter, either the Operator, if the Operator objects to the Executive Director’s decision, or the Authority, at the Authority’s discretion, may seek a determination of the dispute by the dispute resolution procedure set forth below.

Section 33.2 Dispute Resolution.

The Authority and the Operator have agreed on the following mechanisms in order to obtain a prompt and expeditious resolution of disputes or Claims between them hereunder which are not resolved through the administrative procedures described above in Section 33.1. As a result, no dispute resolution procedure pursuant to this Section 33.2 may be initiated by either Party until the informal dispute resolution process described in Section 33.1 above have been exhausted.

(a) Mediation.

(i) If there is a dispute between the Authority and the Operator or if either Party believes that it has a Claim against the other under this Agreement, such Party shall notify the Designated Person of other Party of the same within six (6) months of the date that it became aware of facts giving rise to the dispute or Claim. The notice given pursuant to the preceding sentence shall state the general nature of the dispute or Claim, the estimated relief (if any) owed to the Party making the Claim, and the nature of the remedies sought by such Party.

(ii) Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 33.3 (other than provisional remedies sought on an expedited basis) unless (i) the matter in question has been submitted to mediation in accordance with the
provisions of Section 33.2 or (ii) such Party would be barred from asserting its Claim in a civil action if it were required to submit to mediation pursuant to Section 33.2(a).

(iii) Mediation of a dispute or Claim under this Agreement may not be commenced until the earlier of: (i) if, after following the procedures set forth in Section 33.1, the Authority and the Operator conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) twenty (20) days after the notice referring the dispute or Claim to the Designated Persons, pursuant to Section 33.2(a)(ii) (the “Negotiation Period”). If, after such time period, the dispute or Claim remains unresolved, either Party shall refer the dispute or Claim to a mediator, who shall be an attorney in good standing with the Puerto Rico Supreme Court or, if the matter in dispute is an engineering or technical dispute, the Authority and the Operator may refer the dispute to the Independent Operating Engineer for mediation, subject to the rights of the Authority and the Operator to proceed to arbitration pursuant to Section 33.2(b). With respect to the selection of a mediator, the Authority and the Operator, through their respective Designated Persons, shall attempt in good faith to agree on a mediator. If the Authority and the Operator cannot so agree within thirty (30) days after it is determined that the Designated Persons cannot resolve the dispute or after the end of the Negotiation Period, the Authority and the Operator shall promptly apply to the American Arbitration Association (“AAA”) for appointment of a single mediator in accordance with the Commercial Mediation Procedures of the AAA without there being a requirement of previously filing a request for mediation thereunder. The mediator selected by the AAA shall be an attorney authorized to practice law in the United States or the Commonwealth. The mediator or the Independent Operating Engineer, as the case may be, shall be paid for the mediation services, and shall be reimbursed for all reasonable out-of-pocket costs incurred in carrying out the mediation duties hereunder, including the costs of consultants. All fees and costs of the mediation (including payment for the services of the mediator or the Independent Operating Engineer and reimbursement of all reasonable out-of-pockets costs (including the costs of consultants) of the mediator or the Independent Operating Engineer) shall be shared equally by the Authority and the Operator. The Authority and the Operator shall request that the mediator schedule the mediation within thirty (30) days of the mediator’s appointment (or in the case of the Independent Operating Engineer, within thirty (30) days after the Authority and the Operator refer the dispute to the Independent Operating Engineer), and shall comply with all procedures the mediator or the Independent Operating Engineer establishes for the conduct of the mediation.

(b) Technical Arbitration.

(i) Any engineering or technical dispute arising under or related to this Agreement that is not submitted by the Authority and the Operator to mediation by the Independent Operating Engineer pursuant to Section 33.2(a) or that remains unresolved after such mediation, shall be exclusively and finally settled by arbitration conducted in accordance with the Construction Industry Arbitration Rules for the AAA then in effect (the “AAA Technical Arbitration Rules”). Either Party may initiate the arbitration as provided in the AAA Technical Rules. Such engineering arbitration shall be conducted by an Independent Engineering Arbitrator that is acceptable to the Authority and the Operator. If the Authority and the Operator fail to agree upon the Independent Engineering Arbitrator within ten (10) Business Days after the Authority and the Operator agree to submit the dispute to engineering arbitration, then the Authority and the Operator shall each appoint an Independent Engineering Arbitrator
and both such arbitrators shall be instructed to select a third Independent Engineering Arbitrator to conduct the engineering arbitration (unless the Authority and the Operator agree in writing for the dispute to be heard by one Independent Engineering Arbitrator, who will then be selected by the AAA). If the two previously selected Independent Engineering Arbitrators cannot agree on the selection of the third Independent Engineering Arbitrator, the third Independent Engineering Arbitrator shall be selected by the AAA. The Authority and the Operator shall each bear their own costs with respect to the arbitration of any such engineering dispute and shall bear equally the cost of retaining such Independent Engineering Arbitrator(s). The award of the Independent Engineering Arbitrator(s) shall be in writing and state the reasons upon which it is based. The award of the Independent Engineering Arbitrator(s) shall be final and binding on the Authority and the Operator.

(ii) Any dispute between the Authority and the Operator as to whether a dispute shall be submitted to mediation or arbitration under Sections 33.2(a) or 33.2(b) shall be resolved by initiation of an action in the Commonwealth Court of First Instance, San Juan Part (the “Commonwealth Court”) pursuant to Section 33.3.

Section 33.3 Court Action.

In the event that the Authority and the Operator fail to resolve the Claim or dispute within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 33.2(a) (or such longer period as the Authority and the Operator may mutually agree), either the Authority and the Operator may initiate a civil action. Such civil action shall be filed in Commonwealth Court and in accordance with all applicable rules of civil procedure; provided that any engineering or technical dispute that is not resolved by mediation pursuant to Section 33.2(a) within the time period described in this Section 33.3 shall be submitted to arbitration pursuant to Section 33.2(b). The Authority and the Operator acknowledge and understand that, to resolve any and all disputes or Claims arising out of this Agreement (other than any engineering or technical claim), they may file a civil action, including actions in equity, and that any such actions whether in law or equity, must be filed in Commonwealth Court.

Section 33.4 Provisional Remedies.

No Party shall be precluded from initiating a proceeding in Commonwealth Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief, and restraining orders.

Section 33.5 Tolling.

If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 33, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final decision.
Section 33.6 Submission to Jurisdiction.

Subject to Section 33.2(a) and Section 33.2(b), and subject to any requirement applicable to the enforcement of the Authority’s rights under the Payment Bond, any judicial action or proceeding against the Operator, HMSI or the Authority relating in any way to this Agreement shall be brought and enforced exclusively in Commonwealth Court, and each of the Operator, HMSI and the Authority hereby irrevocably submits to the exclusive jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection it may have now or hereafter have to the jurisdiction and venue of the Commonwealth Court and any claim that any such action or proceeding brought therein has been brought in an inconvenient forum. Service of process on the Authority shall be made in accordance with the Laws of the Commonwealth on the Secretary of the Authority at the address specified in Article 48.1 and the Attorney General of the Commonwealth. The foregoing shall not constitute the consent by the Authority to receive service of process for actions or proceedings brought and enforced in any court other than the Commonwealth Court. Service of process on the Operator may be made either by registered or certified mail addressed as provided for in Article 48.1 or by delivery to the Operator’s registered agent for service of process in the Commonwealth.

Section 33.7 Request for Documents; Subpoena Duces Tecum.

If the Operator is presented with a request for documents by any administrative agency with subject-matter jurisdiction and legal standing, or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, the Operator shall, to the extent permitted by Law, give prompt notice to the Authority at the addresses specified for the Authority in Article 47.1. The Authority may contest such process by any means available to it before such records or documents are submitted to a court or other third party; provided, however, that the Operator shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

Section 33.8 Cooperation.

The Authority and the Operator shall diligently cooperate with one another and the person(s) appointed to resolve any dispute, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of such dispute. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this Article 33, incurs additional expenses or attorney’s fees solely as a result of such failure to diligently cooperate, then the referee, temporary judge or arbitrator(s) may award such additional expenses and attorneys’ fees to the party giving such notice, even if such party is not the prevailing party in the dispute.

Section 33.9 Continuing Duty.

Except with respect to a payment default, in which case the provisions of Section 5.3(h) shall apply, pending final resolution of a dispute under this Section, the Operator shall proceed diligently with performance of its duties under this Agreement and the
recommended decision of the Authority Manager. Failure to so proceed shall constitute a material breach of contract, regardless of the ultimate decision on the dispute, it being understood and agreed that any controversy between the Authority and the Operator shall not be deemed a basis for the Operator to delay or suspend the Work, unless directed otherwise by the Authority. Neither the Authority’s determination, nor either party’s response in connection therewith, nor the continued performance of the Agreement by either party shall constitute an admission by either party as to any factual and/or legal position in connection with the dispute or a waiver of its rights under the Agreement or at law.

Section 33.10 Attorneys’ Fees.

If any court action at law or in equity is brought on account of any breach of this Agreement, or to enforce or interpret Agreement or any provision hereof, the prevailing party in such action shall be entitled to recover from the other party its out-side counsel’s fees and costs of suit, the amount of which shall be fixed by the court and made a part of any judgment rendered.

ARTICLE 34

RESTRICTIONS ON TRANSFER

Section 34.1 Transfers by the Operator.

(a) The Operator shall not Transfer, or otherwise permit the Transfer of, any or all of the Operator Interest to or in favor of any Person (a “Transferee”), unless (i) the Transferee is an Affiliate of the Operator, the Operator remains liable for the performance of all obligations of Operator hereunder and the Operator provides the Authority with prior notice of such Transfer, or (ii)(x) the Authority has Approved (based upon a determination in accordance with Section 34.1(c)) such proposed Transferee and (y) the proposed Transferee enters into an agreement with the Authority in form and substance reasonably satisfactory to the Authority wherein the Transferee acquires the rights and assumes the obligations of the Operator and agrees to perform and observe all of the obligations and covenants of the Operator under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect.

(b) The Authority and the Operator agree that the initial obligor under the Agreement will be, and the Work required hereunder will be performed on behalf of HMSI, as the selected proponent, by HMSPR, its wholly owned subsidiary, to whom all of the Procurement Documents, rights under the Request for Proposal award notice and this Agreement are hereby assigned concurrently with its execution. The Authority hereby approves the foregoing assignment and Transfer by HMSI of the Operator Interest to HMSPR and HMSI agrees that, notwithstanding such Transfer, it shall remain jointly and severally liable with HMSPR for all of the Operator’s obligations hereunder, under the Procurement Documents and under the other Transaction Documents, including any obligation of the Operator to make any payment due hereunder for any reason (including for damages resulting from an event of default), and HMSI agrees that it shall be obligated to immediately perform any such obligation without any additional cure period (beyond the cure period enjoyed by HMSPR) in the event of
(i) a failure on the part of HMSPR to comply with any of its obligations, and (ii) the expiration of any applicable cure periods provided hereunder or thereunder without HMSPR having remediated the event of default during the applicable cure period, if any. Upon the occurrence of the events contemplated in the preceding sentence, HMSI shall promptly provide to the Authority proof of its qualification to do business in Puerto Rico and proof of having obtained its Merchant Registration Certificate (form SC2918).

(c) Prior to the time that HMSI becomes obligated to perform the Operator’s obligations hereunder, any reference to the term “Operator” in this Agreement and the other Transaction Documents, unless otherwise specified, shall be deemed to refer to HMSPR, subject to the continuing obligations of HMSI provided in Section 34.1(b) above; provided, however, that the references to Operator in Sections 25.2, 25.3, 27.4, 27.11 and Article 33 shall always include both HMSI and HMSPR. After HMSI becomes obligated to perform the Operator’s obligations, all references to Operator shall be deemed to refer to HMSI.

(d) The Authority’s Approval of a proposed Transferee may be withheld only if the Authority reasonably determines that (i) the proposed Transfer is prohibited by Applicable Law, (ii) such proposed Transferee’s entering into this Agreement with the Authority is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax obligation of the Authority, (v) such proposed Transferee fails to satisfy any requirements set forth in Article 27 or (vi) such proposed Transferee is not capable of performing the obligations and covenants of the Operator under this Agreement, which determination shall be based upon and take into account the following factors: (A) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (B) the experience of the proposed Transferee in operating comparable Maritime Transport Operations and performing other relevant projects; and (C) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person’s past or present performance on other projects).

(e) No Transfer of all or any of the Operator Interest shall be made or have any force or effect if, at the time of such Transfer there has occurred and is continuing an Operator Event of Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute an Operator Event of Default.

(f) A Change in Control of the Operator shall be deemed to be a Transfer of the Operator Interest for purposes of the foregoing provisions; provided that Section 34.1(a)(ii)(y) shall not apply to a deemed Transfer under this Section 34.1(e) and provided further that clauses (v) and (vi) of Section 34.1(c) shall apply to the entity exercising control after the Change in Control. The Authority’s judgment as to such Approval shall be based upon the Change in Control and the party or parties obtaining control and not upon considerations that do not arise out of the Change of Control.

(g) Nothing contained in the foregoing shall be deemed to prohibit or limit the Operator from changing its organizational form or status (including a change from a limited
liability company to a corporation or limited partnership); provided in each case that such change in organizational form or status does not result in a Change in Control of the Operator.

Section 34.2 Authority Assignment.

The Authority reserves the right to assign its responsibilities under this Agreement to any existing or future Governmental Authority engaged in the provision of public transportation services, which shall assume this Agreement, whereupon the Authority herein shall be released from all of its obligations hereunder. For the avoidance of doubt, the Operator agrees and acknowledges that the Puerto Rico Integrated Transit Authority is in the process of integrating various mass transit operations, including those of the Authority. As a result, this Agreement will be automatically assigned to the Puerto Rico Integrated Transit Authority once it has obtained grantee status from the FTA and it formally assumes the obligations and responsibilities of the Authority.

Section 34.3 No Liens.

During the Contract Term, the Operator shall not create, assume, or suffer to exist any lien upon or with respect to any of the Project Assets, whether owned as of or acquired after the Effective Date, without the prior written consent of the Authority.

ARTICLE 35
SUBCONTRACTING

Section 35.1 Generally.

The Operator shall not enter into any subcontract for any portion of the Work required hereunder without the prior review and written approval of the Authority. In any such case in which the Operator desires to enter into such a subcontract, it shall provide the Authority with all proposed subcontracting agreements and documents, including scope of work and terms of compensation. The approval from the Authority shall not be unreasonably withheld, and shall be deemed given if the Authority fails to reject a subcontract within fifteen (15) days after a second notice is delivered (which must be delivered thirty (30) days after the first notice is delivered) to the Authority Executive Director in accordance with Section 48.1 of this Agreement, requesting such approval and stating that approval will be deemed given if not expressly denied. The Operator shall be fully responsible for all work performed by any subcontractor. Further, the entering into of a subcontract shall not, under any circumstances, relieve the Operator of its obligations, responsibilities, and liabilities under this Agreement. All transactions and communications with the Authority regarding the performance of this Agreement must be through the Operator. Any approval of a subcontract shall not be construed as making the Authority a party to such subcontract, giving the subcontractor privity of contract with the Authority, or subjecting the Authority to liability of any kind to any subcontractor. The approval of the Authority shall not be required with respect to any subcontract: (i) involving an annual consideration of less than $100,000; (ii) engaging a Person who dedicates less than fifty percent (50%) of his/her/its time to provide advisory services related to the Services to be provided under the Agreement; and (iii) related to back-office, business consulting or administrative services such as legal, accounting, human resources, financial, IT or similar
services. Operator shall require any subcontractor to execute at the commencement of the subcontract a sworn statement and a certification substantially in the form of Appendix X.

Section 35.2 Changes in Subcontractors.

The Operator shall not, without prior written notice to and consent by the Authority, remove or replace any Subcontractors, or appoint any new subcontractors to those subcontracts, whether in an acting or permanent capacity, at any time during Phase 1 or Phase 2. In advance or promptly following a vacancy in any Subcontractor role, the Operator shall nominate, for the Authority approval, a replacement subcontractor to fill the vacant position. The Authority approval shall not be unreasonably withheld or denied, and shall be deemed given if the Authority fails to reject a nominee within fifteen (15) days after a second notice is delivered (which must be delivered thirty (30) days after the first notice is delivered) to the Authority Executive Director in accordance with Section 48.1 of this Agreement, requesting such approval and stating that approval will be deemed given if not expressly denied. In the event the Authority notifies the Operator pursuant to this Section 35.2, that the Authority considers any Subcontractor to be unsuitable, the Operator shall provide an Authority-approved replacement to fill such Subcontractor position within fifteen (15) calendar days of such notice from the Authority. The Authority approval of the replacement shall not be unreasonably withheld, and shall be deemed given if the Authority fails to reject a nominee within fifteen (15) days after a second notice is delivered (which must be delivered thirty (30) days after the first notice is delivered) to the Authority Executive Director in accordance with Section 48.1 of this Agreement, requesting such approval and stating that approval will be deemed given if not expressly denied.

ARTICLE 36

INDEPENDENT CONTRACTOR

Under the terms of this Agreement, the Operator is an independent contractor and has and retains control and supervision of the services it performs and also has authority and control as to the employment and direct compensation and discharge of all persons, other than the Authority representatives, assisting in the performance of its services. The Operator shall be solely responsible for all matters relating to hiring or terminating employees, wages, hours of work, and working conditions and payment of employees (including the negotiation of labor agreements, if applicable), and for compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. With respect to same, the Operator shall perform all functions and do all things necessary for the management of its employees including, but not limited to the authority to fix wages, hours, and other terms and conditions of employment, to bargain with its bargaining units, to establish and enforce rules and regulations concerning the work and conduct of its employees, to establish procedures for and handling of and resolving grievances of its employees, to hire, fire, promote, layoff, supervise and discipline its employees including discharge of employees, all of the above whether arising by collective bargaining agreement or otherwise. The Operator shall be responsible for its own acts and those of its subordinates, employees, and any and all subcontractor’s during the term of this Agreement. The Operator has complete and sole responsibility as a principal for its agents, subcontractors and all others that it hires to perform or assist in performing the Work. The
Operator further agrees that the Authority’s rights to approve or consent to any decisions of the Operator hereunder, including but not limited to staffing and subcontracting decisions, shall not subject the Authority to any liability whatsoever, and that the Indemnity provisions of Article 28, above, apply to such decisions of the Operator. The Operator shall be required to comply fully with the workers’ compensation laws of the Commonwealth regarding its employees, and to defend, indemnify and hold harmless the Authority from any failure to comply with such laws. The provisions of this Article shall not be considered inconsistent with the treatment with the Operator as an agent of the Authority for purposes of the excise and sales and use tax exemptions that may apply with respect to purchases of articles and services acquired in the performance of the Work.

ARTICLE 37

DEBARMENT/SUSPENSION STATUS

The Operator has provided the Authority with a certification addressing its debarment and suspension status and that of its shareholders. During the term of this Agreement, the Operator shall inform the Authority, in writing, of any change in the suspension or debarment status of the Operator or its principals within ten (10) calendar days after such change occurs.

ARTICLE 38

FORCE MAJEURE

Section 38.1 Notice of a Force Majeure Event; Mitigation.

(a) Notice. The Party claiming a Force Majeure event (the “Claiming Party”) shall notify the other Party in writing, on or promptly after the date it first becomes aware of such Force Majeure event, followed within five (5) Business Days, or as soon as practicable thereafter, by a written description of (i) the Force Majeure event and the cause thereof (to the extent known), (ii) the date the Force Majeure event began and its estimated duration, (iii) the manner in which and the estimated time during which the performance of the Claiming Party’s obligations hereunder will be affected, and (iv) mitigating actions that the Claiming Party plans to take in order to reduce the impact of the Force Majeure event; provided that the Claiming Party’s failure to promptly notify the other Party shall not preclude the Claiming Party from obtaining relief with respect to the Force Majeure event if the other Party has not been prejudiced by the Claiming Party’s delay to provide prompt notice.

(b) Mitigation. Whenever a Force Majeure event occurs, the Claiming Party shall, as promptly as reasonably possible, use commercially reasonable efforts to mitigate or eliminate the cause therefor, reduce costs resulting therefrom, mitigate and limit damage to the other Party and resume full performance under this Agreement.

(c) Burden of Proof. The Claiming Party shall bear the burden of proof as to the existence and impact of the Force Majeure event and shall furnish promptly in writing (if and to the extent available to it) any additional documents or other information relating to the Force Majeure event reasonably requested by the other Party. While the Force Majeure event continues, the Claiming Party shall give notice to the other Party before the first day of each
succeeding month updating the information previously submitted with respect to the nature, cause, impact and potential duration of the Force Majeure event pursuant to this Section 38.1. The Authority and the Operator hereby agree that, in the event that a dispute arises between the Authority and the Operator in connection with whether and to the extent an event, circumstance or condition constitutes a Force Majeure event, or whether such Force Majeure event continues, the matter shall be subject to dispute resolution in accordance with Section 33.2 (any such dispute, a “Force Majeure Event Dispute”).

(d) Notice of Cessation of Force Majeure Event. Upon the cessation of a Force Majeure event, including a determination pursuant to Section 33.2 of this Agreement that a Force Majeure event no longer exists, the Claiming Party shall (i) promptly (but in any event within five (5) Business Days) provide notice to the other Party and (ii) promptly thereafter resume compliance with this Agreement.

Section 38.2 Force Majeure - Relief.

(a) Generally. If and to the extent a Force Majeure event materially interferes with, delays or increases the cost of, a Party’s performance of its obligations under this Agreement, and such Party has given timely notice and description as required by Section 38.1, such Party shall be excused, subject to the limitation provided in Section 38.2(d) below, from performance of its obligations affected by such Force Majeure event and from any associated Events of Default, except to the extent contemplated in Article 45.3 of this Agreement.

(b) Relief to Operator. In the event the Operator is the party claiming the Force Majeure event, the Operator shall be (i) excused with respect to compliance with those operational requirements set forth in Appendix B – Scope of Work that are affected by the Force Majeure event, but only to the extent that such compliance is so affected, and (ii) if the Force Majeure event increases the cost of providing the Services, it shall be entitled to request and receive appropriate adjustments to the Phase 1 Budget or Phase 2 Fixed Fee, as applicable. Any adjustments during Phase 2 shall be made pursuant to a Modification in accordance with Section 16.1. For the avoidance of doubt, notwithstanding the relief provided herein, the Operator shall be required to continue providing the Service to the maximum extent possible within the circumstances created by the Force Majeure event. Any disputes as to the justification for, or the amount of such appropriate adjustment shall be resolved in accordance with Article 33.

(c) Limitations. The occurrence of Force Majeure event shall not excuse or delay the performance of (i) a Party’s obligation to pay amounts previously accrued and owing under this Agreement and (ii) any obligation hereunder not affected by the occurrence of the Force Majeure event.

(d) Emergency Management. To the extent any event of Force Majeure is reasonably foreseeable, such as a Named Windstorm, the Operator shall be required to implement the Emergency Management Plan in order to secure and protect any and all assets used in the Maritime Transport Operations, including any and all Vessels and Facilities. To the extent the Operator fails to comply with the provisions of the Emergency Management Plan,
the Operator shall be responsible for any and all damages suffered by any such assets, including the Vessels and the Facilities.

Section 38.3 Right to Terminate due to Extended Force Majeure.

(a) (i) In the event that, during the Contract Term, an event of Force Majeure occurs and is ongoing and, as a result of such event, a Party is unable to comply with most of its material obligations under this Agreement for a continuous period of more than one hundred eighty (180) consecutive days (an “Extended Force Majeure Event”) the other Party may terminate the Agreement by delivering to the non-complying Party a termination notice, as provided below.

(ii) If an Extended Force Majeure Event materially interferes with, delays, or increases the cost of, the Services, and the Operator has given timely notice and description as required by Section 38.1(a), the Authority and the Operator shall negotiate in good faith to determine whether modifications to the Service Fee, Term or other provisions of this Agreement are appropriate under the circumstances. If the Authority and the Operator are unable to agree on appropriate terms to mitigate the effect of such event of Force Majeure, either Party may terminate this Agreement by delivering a termination notice to the other Party.

(iii) A termination notice shall identify the event of Force Majeure and specify the date of such termination, which shall be no less than one hundred twenty (120) days after the other Party’s receipt of such notice.

(b) Notwithstanding the provisions of clause (a), any Force Majeure event occurring during Phase 2, that results in a permanent reduction of fare revenues in an amount that equals or exceeds thirty percent (30%) of the fare revenues collected by the Authority or the Operator in the preceding Contract Year shall give rise to a right of termination under Section 38.3(a).

(c) In the event that a termination notice is delivered by the Operator to the Authority pursuant to clause (a) above, the Authority may, at its option: (a) accept that this Agreement will terminate on the date specified in the notice, or (b) deliver to the Operator a notice that this Agreement will continue until the Authority delivers thirty (30) days’ notice of its election to terminate this Agreement and, until such time as the Authority terminates this Agreement, the Authority shall pay the Operator a periodic “service fee,” calculated to compensate the Operator: (a) during Phase 1, for (i) the management fee as if the Operator were fully providing the Services in compliance with this Agreement, (ii) the actual costs incurred by the Operator in providing the Service, and (iii) any Losses borne by the Operator as a result of such event of Force Majeure that are not already provided therefor in the budget for the relevant year of Phase 1, and (b) during Phase 2, the Fixed Fee and the amount of fare revenues that, but for such event of Force Majeure would have been received by the Operator from its provision of the Services after such one-hundred eighty (180) days based on the Phase 2 Fixed Fee and projected fare revenues set forth in Sections 1 and 3(a), respectively, of Appendix D.

(d) In the event that this Agreement is terminated due to an Extended Force Majeure Event, the Authority shall pay the Operator an amount calculated as follows:
(i) The Termination Fee determined in accordance with Section 45.4(e)(i), (ii), (iii) and (iv); minus,

(ii) Any insurance proceeds that the Operator would be entitled to retain in accordance with Article 24; minus,

(iii) Any liquidated damages payable by the Operator for noncompliance or unavailability assessed but not paid prior to the termination date.

ARTICLE 39

LICENSING, PERMITS, AND PROPERTY TAXES

(a) The Operator shall be appropriately licensed for the services to be performed under this Agreement. The cost for any required operating licenses or permits, including the cost of obtaining and/or maintaining, as applicable, the permits listed in Appendix 7 to the RFP, shall be the responsibility of the Operator.

(b) Except as provided in this Agreement, the Operator shall pay, and shall hold the Authority harmless from, all license, registration fees, Taxes, (except those for which the Operator is entitled to reimbursement hereunder or to an exemption therefrom) levies, imposts, duties, withholding or other charges of any nature whatsoever (together with any penalties, fines or interest thereon) now or hereafter imposed by any federal, state, Commonwealth or local government or taxing authority upon the Operator arising out of or with respect to the Work.

(c) Pursuant to, and to the extent provided in, Article 12(a) of the PPP Act, and except as otherwise provided in Section 48.12, during the Term, the Operator shall not be responsible for, and the Operator and the Project Assets shall not be subject to (i) any real property Tax imposed or measured by the value of the Project Assets that qualify under the definition of “Facility” in the PPP Act that belong to the Authority or to any third party (including any real property constituting part of the Project Assets) that is imposed by any body of the Commonwealth, or that is imposed on the “owner” (or a person treated as the “owner” by reason of the use and enjoyment of the property) of such Project Assets (including relating to future expenditures for real property) or (ii) any personal property tax that is imposed by any body of the Commonwealth on property owned by the Authority and used by the Operator exclusively for the Services or functions subject to this Agreement. For avoidance of doubt, the Authority and the Operator acknowledge that the Facilities, as such term is defined in this Agreement, are intended to be considered “Facilities” within the meaning of the PPP Act.

ARTICLE 40

INSPECTION AND TESTING; AUDIT AND INSPECTION OF RECORDS

Section 40.1 Inspection of Work.

If this Agreement or any governmental rule or regulation requires any portion of the Service be inspected, tested or approved, the Operator shall give the Authority timely notice
of its readiness so the Authority may observe such inspection, testing or approval. The Operator shall bear the cost of such inspections, tests or approvals as herein provided. If the Authority determines that any Work requires special inspection, testing or approval, it will instruct the Operator to order such special inspection, testing or approval and the Operator shall give notice of readiness so the Authority may observe such inspection, testing or approval. The Operator shall permit all reasonable inspection and testing that a Governmental Authority may desire to conduct. Such inspection and testing shall not relieve the Operator of any of its obligations under this Agreement. Notwithstanding the foregoing, Operator shall not be required to cover inspection costs hereunder (other than the costs of inspection required typically by Governmental Authorities for operators of the Services provided hereunder (such as USCG inspections) which costs shall be fully covered by the Operator) in excess of $50,000 per annum unless such inspection is required as a result of an act, omission or Event of Default of Operator. In those instances where this cap is applicable, any resulting difference between the foregoing cap and the actual cost of the inspections shall be covered by the Authority.

**Section 40.2 Audit and Inspection of Records.**

The Operator agrees to maintain a complete set of all books and records prepared or employed by the Operator in the performance of the Work for at least six (6) years after the Authority has made final payment and all other pending matters are closed. The Operator agrees that the Authority, the Comptroller of the Commonwealth, the Comptroller General of the United States, and the Secretary of Transportation, and any of their duly authorized representatives, shall, for the purpose of audit and examination, resolving disputes and verifying compliance with this Agreement and applicable law, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of this Agreement. In addition, the Operator shall allow the Authority’s auditors to review the Operator’s relevant books and records as reasonably requested in connection with preparation of financial statements with respect to the Authority and/or the operation of a Service. Any such access may be conditioned upon execution of appropriate agreements regarding nondisclosure of confidential information and for the minimization of disruption of the Operator’s ongoing operations. Such books and records shall not be interpreted so as to include books and records of the Operator not directly associated with the performance of the Work; provided, however that nothing herein shall be interpreted as a limitation on discovery rights in connection with any litigation arising out of or related to this Agreement.

**Section 40.3 External Audit on Compliance with Agreement.**

Pursuant to Article 10(a)(vi) of the PPP Act, the Authority shall conduct every five (5) years (or more frequently as determined by the Authority) during the term of this Agreement an external audit regarding the Operator’s compliance with this Agreement. The Operator agrees to cooperate with the Authority in connection with such audit and to provide the Authority all the information requested by the Authority which is necessary to carry out the audits.
ARTICLE 41
WAIVER OF TERMS AND CONDITIONS

The failure of the Authority or the Operator to enforce one or more of the terms or conditions of this Agreement or to exercise any of its rights or privileges, or the waiver by the Authority of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred. Furthermore, if the Authority and the Operator make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

ARTICLE 42
CANCELLATION OF AGREEMENT

In any of the following cases, the Authority shall have the right to cancel this Agreement immediately, or on such date selected by the Authority, upon notice to the Operator and without any expense to the Authority or liability to the Operator:

(1) the Operator is guilty of a material misrepresentation of the representations made under Section 25.2(a) through (f), (i) and (j) of this Agreement;

(2) the Operator or any of its officers, directors, managers and/or administrators is found guilty, or enters a plea of guilty, in Puerto Rico Court or Federal Court of one of the crimes listed in, or is found to have violated: (i) the Anti-Corruption Code, (ii) Act No. 237, (iii) Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, (iv) Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, or (v) any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico;

(3) this Agreement is obtained by fraud, collusion, conspiracy, or other unlawful means as determined by a final unappealable judgement of a court of competent jurisdiction;

(4) this Agreement conflicts with any statutory or constitutional provision of the Commonwealth or the United States of general application (not directly or indirectly aimed at the Operator) enacted after the Effective Date, and such conflict has the effect of rendering any of the material terms of this Agreement unenforceable, invalid or illegal, and an amendment to this Agreement to modify such conflicting terms is not feasible; or

(5) the Operator is found guilty, or enters a plea of guilty, in Puerto Rico or Federal Court of knowingly participating, or aiding and abetting, in the commission of any felony, or a court of law determines in a final and unappealable judgement that the
Operator knowingly allowed illegal activities constituting a felony to be carried out, in any of the Project Assets of the Ferry System.

In the case of a cancellation arising under paragraph five (5) above, in addition to any other remedies available hereunder, including those provided in Sections 45.1(c) and 46.2, the Operator shall be liable to the Authority for the payment of liquidated damages in the amount of Five Hundred Thousand Dollars ($500,000), subject to the limitations provided in Section 46.2.

This Article shall not be construed to limit the Authority’s right to terminate this Agreement for convenience or default, as provided in Articles 43 and 45, respectively.

ARTICLE 43
SUSPENSION; TERMINATION FOR CONVENIENCE

Section 43.1 Suspension.

The Authority may, at any time, order the Operator to suspend all or any part of the Services or Work required under this Agreement for the period of time that the Authority deems appropriate. During the term of any suspension, the Authority shall periodically update the Operator as to the anticipated duration of the suspension, provided, however, that such updates shall be delivered as a courtesy to the Operator and shall not be binding on the Authority. The Operator shall promptly recommence the Services upon resolution of the event causing the suspension or upon receipt of written notice from the Authority directing the Operator to resume, as the case may be. In the event of such suspension, the Operator shall be entitled to recover costs incurred and Losses which were directly attributable to such suspension, provided that such suspension was not due to an act, omission or Event of Default of the Operator. The Operator’s right to receive the Management Fee shall not be affected by such Suspension unless such suspension is due to an act or omission or Event of Default of the Operator. Any suspension of the Services having a duration of thirty (30) or more consecutive calendar days shall give the Operator a right to terminate this Agreement and receive the Termination Fee determined in accordance with Section 45.4(e) of this Agreement, unless such Suspension was due to an act, omission or Event of Default of the Operator.

Section 43.2 Termination for Convenience.

(a) The performance of Work under this Agreement may be terminated by the Authority for convenience in accordance with this Section in whole whenever the Authority Board of Directors determines, upon recommendation of the Authority Executive Director, that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Operator of a notice of termination specifying the extent to which performance of Work under this Agreement is terminated and the date upon which such termination becomes effective, which shall be no earlier than sixty (60) days from the date of such notice.

(b) Under no circumstances shall the Operator be entitled to anticipatory or unearned profits or consequential damages as a result of a termination under this Section or for any other termination by the Authority. The exclusive remedy of the Operator for a termination under Section 43.2 shall be the payment by the Authority of the Termination Fee determined in
accordance with Section 45.4(e) of this Agreement. The Authority shall exclude from the amounts payable to the Operator under this Article 43 lost or anticipated profits, unabsorbed overhead, opportunity costs and other such damages of the Operator. The Authority shall be entitled to deduct any undisputed amount owed by the Operator to the Authority. The Termination Fee shall be paid upon the effective date of the termination of this Agreement.

(c) In the event that the Authority terminates this Agreement for convenience and within twelve (12) months thereafter enters into a new Operations and Management Agreement with a substitute Operator that provides for the payment to such Operator of a fixed fee the present value of which (using a discount rate of 5%) exceeds by more than 10% the present value of the Fixed Fee provided hereunder, then in addition to the Termination Fee computed in accordance with Section 45.4(e), the Authority shall pay Operator an amount equal to the Management Fee paid to the Operator in the last Contract Year.

Section 43.3 Operator’s Actions upon Notice of Termination.

Upon receipt of a notice of termination pursuant to this Article 43, and except as otherwise directed by the Authority Executive Director, or upon the Operator issuing the termination notice, the Operator shall:

(a) Stop Work under this Agreement on the date and to the extent specified in the notice of termination;

(b) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under this Agreement as is not terminated;

(c) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

(d) Assign to the Authority in the manner, at the times, and to the extent directed by the Authority Executive Director, all of the right, title and interest of the Operator under the orders and subcontracts that cannot be terminated;

(e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authority, to the extent the Authority Executive Director may require, which approval or ratification shall be final for all the purposes of this Section;

(f) Transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Authority Executive Director, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of the Work terminated, and any information and other property which, if this Agreement had been completed, would have been required to be furnished to the Authority to the extent assignable without additional cost to the Operator; and,

(h) Take such action as may be necessary, or as the Authority Executive Director may direct, for the protection and preservation of the property related to this Agreement
which is in the possession of the Operator and in which the Authority has or may acquire an interest.

ARTICLE 44
TERMINATION BY MUTUAL AGREEMENT

This Agreement may be terminated by mutual agreement of the Authority and the Operator. Such termination shall be effective in accordance with a written agreement by the Authority and the Operator. Any other act of termination shall be in accordance with the cancellation, termination for convenience or termination for default provisions contained in Articles 42, 43 and 45.

ARTICLE 45
TERMINATION FOR DEFAULT; STEP-IN RIGHTS

Section 45.1 Default by the Operator.

(a) *Events of Default.* Subject to the provisions of Section 45.1(b) and Section 45.1(c), the Authority Executive Director may terminate the Agreement, in whole or in part, in any one of the following circumstances:

1. The Operator (or HMSI if it has become obligated to perform HMSPR’s obligations pursuant to Section 34.1(b)), materially fails to perform the Work in the manner required by this Agreement;

2. the Operator (or HMSI if it has become obligated to perform HMSPR’s obligations pursuant to Section 34.1(b)) fails to perform any of its material obligations under this Agreement or fails to comply with any material provisions, conditions, term or covenant of this Agreement, any Facility Lease Agreement, any Bareboat Charter, any Transaction Document or any other agreement to which it and the Authority are a party, in accordance with their respective terms; or incurs ten (10) or more Assessments under Section 9 of Appendix B within a one-month period or one hundred (100) or more Assessments under Section 9 of Appendix B in a one-year period;

3. the Operator (or HMSI if it has become obligated to perform HMSPR’s obligations pursuant to Section 34.1(b)) fails to make progress in the performance of the Work under this Agreement so as to materially endanger such performance;

4. any of the Operator or HMSI files for bankruptcy, becomes insolvent, or is unable or otherwise fails to pay or otherwise satisfy, in the ordinary course of business, its financial obligations to its suppliers, subcontractor’s, or employees, or an involuntary bankruptcy proceeding shall be commenced against the Operator or HMSI;
(5) any material representation or warranty made by the Operator or HMSI in this Agreement or any certificate, schedule, instrument or other document delivered by the Operator or HMSI pursuant to this Agreement shall have been inaccurate, false or materially misleading when made;

(6) the Operator or HMSI shall have assigned or transferred this Agreement or any right or interest herein, or there shall have occurred a Change of Control, except as expressly permitted by the Authority or by the terms of this Agreement;

(7) the Operator (or HMSI if it has become obligated to perform HMSPR’s obligations pursuant to Section 34.1(b)) allows any final judgment(s) against it in excess of $1,000,000 in the aggregate arising out of the performance of the Work to go unsatisfied for more than thirty (30) calendar days;

(8) the Operator or HMSI shall have failed, absent a valid dispute, to make payment when due to the Authority under this Agreement or any Transaction Document, or to third parties for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have materially failed to comply with any laws, or governmental rules or regulations or materially failed to comply with the instructions of the Authority consistent with this Agreement;

(9) the Operator or HMSI shall fail to provide an Acceptable Operator Security at least sixty (60) days prior to the expiration or termination of the Acceptable Operator Security then in effect and the Surety shall have failed to pay the moneys to the Authority for deposit to the escrow account referred to in Section 3.7(b), or fails to provide the insurance required under Article 24 or pay the premium therefor;

(10) the Operator (or HMSI if it has become obligated to perform HMSPR’s obligations pursuant to Section 34.1(b)) shall refuse without cause to accept delivery of any Project Asset or shall fail, for reasons outside its control and despite having made diligent efforts, to obtain prior to May 1, 2021 any permit, license or any approval from a Governmental Authority required for the acceptance of delivery of any Project Asset or for the performance of the Work; or

(11) the Operator shall have failed to comply with the Service Quality Standards in the manner specified in Section 11 of Appendix B.

(b) Notice. If the Authority determines that an event of default under this Section has occurred, it shall immediately notify the Operator in writing and provide the Operator with thirty (30) days (five (5) Business Days in the case of a default described in clause (9) above) in which to cure, provided that notwithstanding any other provision to the contrary, a cure period shall not be applicable to (i) a default pursuant to Section 45.1(a)(4), nor (ii) any default if the cure period for such default would end on or after the termination date of the Payment Bond and the default has not been completely cured on the third day preceding the termination date of the Payment Bond. If such default (other than a default covered by the preceding clauses (i) or (ii) of this Section 45.1(b) for which no cure period is applicable) is
incapable of being cured in such period and the Operator diligently commences to cure such
default, then such cure period shall be extended until final cure, provided, however that the total
cure period shall never exceed one hundred twenty (120) days. HMSI shall not have the benefit
of a separate cure period for any default of HMSPR to which HMSI becomes obligated to
remedy pursuant to Section 34.1(b), but HMSI, while acting on behalf of HMSPR, can utilize the
cure period available to HMSPR.

(c) **Termination.** If the Operator fails to cure within the applicable time
period, the Authority may declare the Operator to be in default, proceed to present a draw or
make a claim under the Payment Bond or other Acceptable Operator Security, and terminate this
Agreement in whole or in part. Upon such termination, the Authority shall be entitled to recover
any Losses from the Operator and HMSI resulting from such termination, subject to the
limitation provided in Section 28.5(b), plus the compensation provided under Section 46.2,
provided, however, that the total amount recoverable by the Authority hereunder and thereunder
shall not surpass the aggregate amount of $10,000,000. Any amount due to the Authority under
this Section 45.1(c) that has not been recovered under the Payment Bond shall be paid by HMSI
to the Authority within sixty (60) days from the latter of: (i) the date of termination of this
Agreement; (ii) the date of delivery of all documentation supporting the compensation payable to
the Authority, and (iii) in the case of a dispute regarding the obligation to make such payment,
the date of final resolution of such dispute. Furthermore, upon the termination of this Agreement
due to an Operator Event of Default, Operator and HMSI shall be debarred or suspended for ten
(10) years in accordance with Section 10(a)(15)(c) of the PPP Act.

**Section 45.2 Step-In Rights.**

If the Authority reasonably believes that it needs to take action related to the
Services because an emergency has arisen, a default on the part of the Operator has occurred and
has not been cured within the cure period specified for such default in this Agreement, or the
Operator has materially failed to meet any performance standards set forth in this Agreement
related to safety within a reasonable period of time, the Authority shall deliver written notice
thereof to the Operator. Such notice shall specify (a) the action the Authority wishes to take,
(b) the reason for such action, (c) the date it wishes to commence such action, (d) the time period
which it believes will be necessary for such action, and (e) to the extent practicable, the effect on
the Operator and its obligations under this Agreement during the period such action is being
taken. Following the delivery of such notice or, in the event of an emergency, without prior
notice to the Operator, the Authority may take any action it reasonably believes is necessary to
mitigate such triggering event (“**Required Action**”) and the Operator shall use reasonable efforts
to give all assistance requested by the Authority.

If the Authority takes such Required Action for any reason other than due to the
occurrence of a default on the part of the Operator and the Required Action prevents or delays
the Operator’s performance of any of its obligations under this Agreement, the Operator will be
relieved from performing such obligations and the period of such Required Action will be
deemed to be a Compensation Event.

If the Authority takes such Required Action due to the occurrence of a default on
the part of the Operator and the Required Action prevents or delays the Operator’s performance
of any of its obligations under this Agreement, the Operator will be relieved from performing such obligations and the Authority shall have the right to demand that the Operator reimburse the Authority for all reasonable costs incurred by the Authority in taking such Required Action and may also withhold the amount of any such reimbursements from any payments due or to become due to the Operator.

Section 45.3 Delay Events.

(a) Except to the extent that the occurrence of a Delay Event (as hereinafter defined) is attributable to the Operator, upon the occurrence of a Delay Event, the Operator shall have a period of five (5) days (the “Delay Event Cure Period”), in order to cure any events that, absent the Delay Event, would constitute an Event of Default on the part of the Operator pursuant to Section 45.1(a); provided, that if the Delay Event is not susceptible of being cured within five (5) days the Authority shall grant a reasonable extension of the Delay Event Cure Period not exceeding sixty (60) days.

(b) If one or more Delay Events (as hereinafter defined) occurs and is continuing, then, except to the extent that the occurrence of the Delay Event is attributable to the Operator, the occurrence of one or more of the events of default set forth in Section 45.1(a) shall not constitute a default on the part of the Operator until (i) such Delay Event shall have ceased and (ii) the corresponding Delay Event Cure Period shall have expired.

(c) For the purposes of this Agreement, the following events shall constitute delay events (each, a “Delay Event”):

(i) an event of Force Majeure;

(ii) the discovery of certain unforeseen subsurface conditions;

(iii) the discovery of certain unforeseen migratory patterns of endangered species;

(iv) the discovery of certain unforeseen hazardous environmental conditions;

(v) a Change in Law having a material adverse effect on the Operator’s capacity to perform the Work;

(vi) a failure by the Authority to obtain, or an unreasonable and unjustifiable delay in obtaining, certain governmental approvals that the Authority is required to obtain by deadlines established therefor in this Agreement; and

(vii) certain changes in law that would prevent the Operator from receiving the compensation agreed hereunder.
Section 45.4  Default by the Authority.

(a)  Events of Default. Subject to the provisions of Section 45.4(b) and (c), the Operator may terminate the Agreement, in whole or in part, in any one of the following circumstances:

(i) the Authority fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement, any Facility Lease Agreement, any Bareboat Charter or any other agreement to which it and the Operator are a party, in accordance with its respective terms, including, without limitation, failure to comply within ninety (90) days from the scheduled date with any conditions precedents for the commencement of any phase of this Agreement;

(ii) the Commonwealth fails to appropriate sufficient funds in any fiscal year to allow the Authority to pay the Phase 1 Service Payment or the Phase 2 Fixed Fee, as applicable, and the Authority does not provide evidence that funds are available or will be available to make such payments on the dates such payments would be due hereunder;

(iii) the Authority (A) fails to deposit into the Operating Account the full amount of any Quarterly Deposit Amount within ten (10) days of its due date (as set forth in Section 5.1(c) hereof), (B) fails to make any Monthly Payment within five (5) days from its due date, or, (C) fails to pay any other amounts due under this Agreement within thirty (30) days from its due date, or (D) commits any of the failures indicated in subsections 45.4(iii)(A) and (B) in two (2) consecutive occasions during any Contract Year;

(iv) the Authority files for bankruptcy or becomes subject to a proceeding under Title III of PROMESA, becomes insolvent, or is unable or otherwise fails to pay or otherwise satisfy, in the ordinary course of business, its financial obligations to its suppliers, subcontractor’s, or employees;

(v) any material promise, representation or warranty made by the Authority in this Agreement or any certificate, schedule, instrument or other document delivered by the Authority pursuant to this Agreement shall have been false or materially misleading when made resulting in a Material Adverse Effect;

(vi) the Authority shall have assigned or transferred this Agreement or any right or interest herein, except as expressly permitted by the Operator or by the terms of this Agreement;

(vii) the Authority fails to maintain in full force and effect any material Authorization required to be obtained by it for the performance of the Maritime Transportation Operations, the Services and/or the Work required to be performed under the terms of this Agreement; or

(viii) the Authority fails to maintain its rights over the Project Assets required for the performance of the Maritime Transportation Operations, the Services and/or the Work required to be performed under the terms of this Agreement.
(b) **Notice.** If the Operator determines that an event of default under this Section has occurred, it shall immediately notify the Authority in writing and provide the Authority with thirty (30) days in which to cure. If such default is incapable of being cured in such period and the Authority diligently commences to cure such default within such period the curing period shall be extended until final cure, provided, however that the total cure period shall never exceed one hundred twenty (120) days; provided, further, that no cure period shall be applicable to a default pursuant to Section 45.4(a)(iii) and (iv).

(c) **Termination.** If the Authority fails to cure within the applicable time period, the Operator may declare the Authority to be in default and terminate this Agreement in whole or in part by giving written notice thereof to the Authority specifying the effective date of such termination, which shall occur no less than ninety (90) days after the date of such notice.

(d) **Remedies.** In addition to the termination rights set forth in Section 45.4(c), above, upon the occurrence and during the continuance of an Event of Default by the Authority, the Operator is entitled to: (i) be paid by the Authority for the Phase 1 Service Payment, the Phase 2 Fee, or any other amounts due under this Agreement so long as the Operator shall continue to provide the Services and perform the Work; and (ii) enforce its rights under the account control agreement, and (iii) seek to recover from the Authority the compensation provided in Section 45.4(e) of this Agreement and, without duplication, any other amounts then due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed a debt under Applicable Law. If there is no default on the part of the Operator, a termination of this Agreement pursuant to this Section 45.4 shall be without liability, penalty or further obligation on the account of the Operator except for any amounts then due by the Operator hereunder.

(e) **Termination Fee.** In the event that this Agreement is terminated by reasons of a default on the part of the Authority as contemplated in this Section 45.4, the Authority, as the Operator’s sole remedy, shall pay a termination fee (the “**Termination Fee**”) to the Operator which shall be calculated as follows:

(i) Phase 1 Service Payments or Phase 2 Fixed Fees, as applicable, corresponding to periods prior to the termination date and not previously paid; plus

(ii) any other amounts then due and payable by the Authority to the Operator under this Agreement (for the avoidance of doubt such amounts shall not include any compensation for any Services that would have been performed after the termination date); plus

(iii) the Operator’s documented, direct costs of demobilization including close-out costs and amounts payable to subcontractors for required early termination “settlement costs”; plus

(iv) all termination payments required to be made to the Operator’s employees under Applicable Law or the employees’ employment agreements with the Operator; plus

(v) the Operator’s documented cost of participating in the Authority’s procurement process for the Project up to $750,000; minus
(vi) the fair value, as determined by an independent appraiser mutually selected by both Parties and payable by the Authority, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to or unusable by the Authority.

The Operator acknowledges and agrees that it shall not be entitled to any compensation in excess of the Phase 1 Service Payments or Phase 2 Fixed Fees, as applicable, corresponding to periods prior to termination plus the costs listed above, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of this Agreement.

Any amount due to the Operator under this Section 45.4(e) that is not recovered from the Operating Account shall be paid by the Authority to the Operator within sixty (60) days from the latter of: (i) the date of termination of this Agreement, (ii) the date when all documentation supporting the amount of the Termination Fee is delivered to the Authority, and (iii) in the event of a dispute regarding the obligation to make such payment, from the date such dispute is finally resolved.

(f) Effect of Authority’s Default. No default (including while a cure is pending) on the part of the Authority will operate solely on its own to cause the Operator to be in default and any such default that would otherwise arise solely by virtue of a default by the Authority will be deemed waived until a reasonable time after the Authority’s default is cured.

ARTICLE 46

CONSEQUENCES OF CANCELLATION, TERMINATION OR EXPIRATION OF THE AGREEMENT

Section 46.1 Handback Provisions. At least ninety (90) days or, at the Authority’s election, such shorter period determined by the Authority, prior to the effective date of the cancellation, termination for any or no reason, or expiration of this Agreement, the Authority and the Operator shall implement the Handback Plan. As part of such plan and concurrently with the payment of any amounts due to the Operator for Services provided prior to such cancellation or termination, if any, as a result of such termination (notwithstanding any claims the Authority and the Operator may have against each other), the following provisions shall apply:

(a) the Operator shall, without action whatsoever being necessary on the part of the Authority, well and truly surrender and deliver to the Authority the Authority Provided Vessels, Facilities, and all tangible and intangible personal property (including inventories) located on the Authority Provided Vessels or the Facilities or used in connection with the Maritime Transport Operations in good order, condition and repair (reasonable wear and tear excepted), free and clear of all encumbrances. The Operator shall defend, indemnify and hold harmless the Authority from all loss or damage (including but not limited to claims by third parties) arising from or by virtue of the failure or refusal of the Operator to timely deliver to the Authority any Authority-provided facilities and equipment, vessels, vehicles or other assets. In the event a suit or action is instituted by the Authority, or those claiming by, through or under it, to recover possession of any Authority facilities or equipment, vessels, vehicles or other assets, to collect damage or to enforce any right possessed by the Authority under the terms thereof, the
operator agrees and promises to pay such additional sum as the court may adjudge reasonable as attorney’s fees and costs of collection in said suit or action;

(b) the operator hereby waives any notice now or hereafter required by law with respect to vacating the authority provided vessels and the facilities on the reversion date;

(c) the authority shall, as of the reversion date, assume full responsibility for the maritime transport operations, and as of such date, the operator shall have no liability or responsibility for the provision of the services or the performance of the maritime transport operations occurring after such date;

(d) the operator shall be responsible for all costs, expenses and other amounts for which it is responsible hereunder incurred or arising up to but not including the reversion date, and the authority shall be responsible for all costs, expenses and amounts incurred or arising in connection with the maritime transport operations on and after the reversion date;

(e) the authority shall have the option, by providing notice to the operator, of requiring that the operator assign (to the extent assignable), without warranty or recourse to the operator, all of its right, title and interest in, to and under all or any of the agreements required to operate the maritime transport operations then in effect and all authorizations to the authority or its designee for the remainder of their respective terms; provided, however, that if the authority exercises such option, the right, title and interest of the operator in, to and under such operating agreements and authorizations shall be assigned to the authority or its nominee as of the end date and the operator shall surrender the vessels and facilities to the authority and shall cause all persons claiming under or through the operator to do likewise, and the authority shall assume in writing, pursuant to an assumption agreement reasonably satisfactory to the operator, the operator’s obligations under the operating agreements that arise in respect of, or relate to, any period of time falling on and after the reversion date; provided further that if the authority does not exercise such option, the operator shall take such steps as are necessary to terminate the operating agreements;

(f) the operator, at its sole cost and expense, shall promptly deliver to the authority electronic copies of all records and other documents relating to the service revenues that are in the possession of the operator or its representatives and all other then existing records and information relating to the maritime transport operations, including the vessels and the facilities, as the authority, acting reasonably, may request;

(g) the operator shall execute and deliver to the authority a release or other instrument reasonably required by the authority to evidence such expiration or termination;

(h) the operator shall assist the authority or any entity designated by the authority in such manner as the authority or such designated entity may reasonably require to ensure the orderly transition of control, operation, management, maintenance, repair and collections of the maritime transport operations, and shall, if appropriate and if requested by the authority or such designated entity, take all steps as may be necessary to enforce the provisions of the operating agreement pertaining to the surrender of the maritime transport operations, including the vessels and facilities;
(i) the Authority and the Operator shall make appropriate adjustments, including adjustments relating to any operating agreements assigned to the Authority, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of one hundred eighty (180) days following the Reversion Date; provided, however, that the Authority and the Operator acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the Authority or the Operator a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended;

(j) (i) if this Agreement ends (x) by expiration of the Contract Term, or (y) as a result of a Force Majeure, an Operator’s Event of Default or termination by mutual agreement, the Authority shall have the right to obtain from the Operator, free of charge, or

(ii) if this Agreement ends by any reason other than as set forth in the preceding clause (i),

the Authority shall have the right to purchase from the Operator, for fair market value determined pursuant to a written appraisal (at the Authority’s expense and by an independent third party appraiser selected by both the Authority and the Operator), in each case, a nonexclusive, irrevocable, fully transferable and fully paid up license in respect of any intellectual property developed and owned by the Operator, its contractors, subcontractors, Affiliates or Representatives and used in connection with the operation of the Maritime Transport Operations, to the extent such intellectual property is transferable or licensable.

The Authority and the Operator agree that all subscriptions fees, renewal costs and other costs and expenses payable to a third party related to the transfer and/or license of such intellectual property from the Operator to the Authority shall be on the account of the Authority.

Any such software or intellectual property that is not custom made or custom developed shall be acquired by the Authority on an “as is basis”.

Section 46.2 Re-Procurement. In the event that the Authority terminates this Agreement in whole or in part as provided in Section 45.1 above or cancels this Agreement as contemplated in Article 42, the Authority may procure, upon such terms, and in such manner as the Authority may deem appropriate, services similar to those so terminated or cancelled. The Operator shall be liable to the Authority for costs associated with the termination or cancellation of this Agreement, the procurement of replacement services by the Authority or if no re-procurement is carried out, the costs of conducting the procurement under the Request for Proposals, any excess costs of such similar services, and any increase in the total contract cost as a result of the re-procurement of services from the date of termination to the expiration date of this Agreement; provided that the total amount payable by the Operator hereunder and under Section 45.1(c) shall not exceed $10,000,000 in the aggregate. The Operator shall continue the performance of this Agreement to the extent not terminated or not cancelled under the provisions of this Section and shall continue to provide the Services until the Authority or a new operator
takes over, in which case the Operator shall continue to receive its compensation in accordance with Article 5 hereof. Any payment required to be made by the Operator under this Section 46.2 shall be made within sixty (60) days from the latter of: (i) the date of the termination or cancellation of this Agreement; (ii) the date of delivery of all documentation supporting the compensation payable to the Authority, and (iii) in the case of a dispute regarding the obligation to make such payment, the date of final resolution of such dispute.

Section 46.3 Survival. This Article 46 shall survive the expiration or any earlier termination of this Agreement and the Authority reserves the right to designate any successor third-party operator as the entity that will represent the Authority before the Operator for purposes of the handback provisions set forth in this Article 46.

Section 46.4 Handback Plan. The Operator shall prepare a detailed transition plan setting forth (i) the responsibilities of and actions required to be taken by the Operator and the Authority in order to effectuate the orderly transition of the operation of the Ferry System from the Operator to the Authority or a successor operator, and (ii) the timeline during which each required action must be taken (the “Handback Plan”). The Handback Plan must be updated by the Operator on an annual basis as necessary or appropriate, with such update being subject to the Authority’s approval. The Handback Plan shall include the elements set forth in Appendix KK.

ARTICLE 47

COMPENSATION EVENTS

The Authority shall be required to make a Compensation Event Payment (as defined below) to the Operator upon the occurrence of any of the following events (each, a “Compensation Event”) that does not result in a termination of the Agreement by the Operator:

(a) a breach by the Authority of Applicable Law if such breach has a Materially Adverse Effect on the Operator;

(b) any Change of Law that discriminates specifically against the Operator in a way that has a Materially Adverse Effect on the Operator;

(c) any Modification that has a Materially Adverse Effect on the Operator;

(d) the issuance of any preliminary or permanent injunction or temporary restraining order by a Governmental Authority that has a Materially Adverse Effect on the Authority’s or the Operator’s performance hereunder except where such injunction or order is caused by any act or omission of the Operator;

(e) the requisition of one or more of the Authority-Provided Vessels for use by any United States competent governmental authority;

(f) any violation by the Authority of its obligations under Section 5333(b) of title 49 U.S.C. (commonly known as “Section 13(c)’’);
(g) the disturbance of Operator’s quiet enjoyment, use and possession rights with respect to any Facility as set forth in the corresponding Facility Lease Agreement;

(h) the disapproval by the FTA or the Federal Aviation Administration of the Operator’s use of the Isla Grande Facility as its principal office in Puerto Rico for the activities contemplated by this Agreement; and

(i) the failure by the Authority to provide the number of Authority-Provided Vessels specified in Section 8.1.

For purposes of this Agreement, a “Compensation Event Payment” shall be computed by taking into account actual out of pocket monetary damages suffered by Operator (evidenced to the Authority’s reasonable satisfaction) solely by reason of the occurrence of a Compensation Event. The Compensation Event Payment shall not include any lost profits, but shall include a Management Fee thereon provided such Management Fee is not duplicative of the Management Fee being paid to Operator under Article 5.

It is the intent of the Authority and the Operator that a Compensation Event Payment would be in lieu of any other payment due to the Operator hereunder as a result of such Compensation Event, including any payment due under Section 45.4 arising directly from such Compensation Event. Any Compensation Event from which a Compensation Event Payment is paid to the Operator shall be deemed to have cured any Event of Default by the Authority related to such Compensation Event.

Any Compensation Event Payment that is intended to compensate the Operator for increases in its ongoing operating expenses shall be made as an adjustment to the Phase 2 Fixed Fee. Any Compensation Event Payment that is intended to compensate the Operator for one time monetary damages shall be paid within sixty (60) days from the latter of: (i) the date when the event that gives rise to the Compensation Event Payment occurs, and (ii) the date when the Operator has suffered actual out of pocket monetary damages.

In the event of a dispute concerning the obligation to make a Compensation Event Payment, any payment due shall be made within sixty (60) days after final resolution of such dispute.

ARTICLE 48

MISCELLANEOUS

Section 48.1 Notices and Official Receipt.

All notices or other communications to be delivered in connection with this Agreement shall be in writing in English and shall be deemed to have been properly delivered, given and received (a) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, (b) on the date of successful transmission if sent via email (with return receipt) during normal business hours of the recipient during a Business Day, otherwise on the next Business Day, followed by a mailed copy, or (c) on the date of receipt by the addressee if sent by a nationally recognized overnight courier
or by registered or certified mail, return receipt requested, if received on a Business Day, otherwise on the next Business Day. Such notices or other communications must be sent to each respective Party at the address, email address set forth below (or at such other address, email address as shall be specified by a Party in a notice given in accordance with this Section 48.1).

All correspondence with the Authority shall be marked with the Authority’s contract identification number and shall be sent to the Authority at the addresses set forth below. Notices to the Authority requiring the approval or consent of the Authority shall also comply with the terms of Section 1.16 hereof.

Notices shall be addressed to the Parties as follows:

If to the Authority:

Address for hand delivery or by courier:
Centro Gubernamental Roberto Sánchez Vilella
Torre Sur de Minillas
Piso 16
San Juan, PR 00907

Address for delivery by registered or certified mail:
PO Box 41118
San Juan, PR 00940

Telephone: (787) 497-7740; Ext. 2490
Email address: contratos@atm.pr.gov

If to the Operator:

222 Pearl Street
New Albany, IN 47150
Attention: Mr. Matthew Miller
Email: mmiller@hmsgm.com

If to HMSI:

222 Pearl Street
New Albany, IN 47150
Attention: Mr. Matthew Miller
Email: mmiller@hmsgm.com

Section 48.2 Limitations on Authority Board of Directors Contacts.

The Operator shall not, directly or indirectly, contact the Authority Board of Directors, or other elected officials, regarding this Agreement, unless expressly contemplated or permitted under the terms of this Agreement.
Section 48.3 Severability.

In the event any provision of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect in any manner, the legality of the remaining provisions of this Agreement, and each provision of this Agreement will be and is deemed to be separate and severable from each other provision.

Section 48.4 Interpretation and Jurisdiction.

This Agreement shall be subject to, governed by, and construed and interpreted solely according to the laws of the Commonwealth of Puerto Rico. The Operator and HMSI hereby consents and submits to the exclusive jurisdiction of the appropriate courts of the Commonwealth or of the United States having jurisdiction in the Commonwealth for adjudication of any suit or cause of action arising under or in connection with this Agreement or the Procurement Documents, or the performance of any of the foregoing.

Section 48.5 Amendments.

This Agreement may be amended only by a written instrument duly executed by the Authority and the Operator or their respective successors or assigns.

Section 48.6 Entire Agreement.

This Agreement and other documents executed by the Parties on or after the date hereof, constitutes the entire and integrated agreement between the Parties hereto and supersedes and nullifies all prior proposals, negotiations, representations, understandings and agreements, whether written or oral, with respect to the subject matter hereof other than the Proposal (subject to the provision of Section 1.17).

Section 48.7 No Agency.

Nothing herein shall be deemed to create either a partnership or joint venture between the Parties or convey to either Party, by operation of law or otherwise, any interest in, right to, or ownership of any property of the other Party or of that Party’s Affiliates. Nothing herein shall be deemed to grant a Party an ownership interest in any of the other Party’s assets. Neither Party is an agent of the other Party for any purpose except as provided in Article 36.

Section 48.8 Tolling.

In the event reports, Authorizations, plans, Approvals or the like or other deliverables that are to be given to Operator by the Authority, or a third party not under the control of Operator, are not delivered to Operator within the time periods set forth in this Agreement (or the date it would reasonably have been expected if a time period is not specified), then the term of any actions to be taken by Operator upon receipt of such Authority’s or third party’s deliverables shall toll (to the extent such action cannot be taken solely by reason of the Authority’s or the third party failure to deliver any such deliverable) for the period of time counted from the first date on which the Authority or the third party were required to provide
such deliverables (or the date it would reasonably have been expected if a time period is not specified), until the date that the deliverable is actually received by Operator.

**Section 48.9  No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**Section 48.10  Cooperation.**

Each of the Parties agrees to execute and deliver such further documents and to cooperate in such manner as may be necessary or convenient to implement and give effect to the provisions contained herein.

**Section 48.11  Clauses Required Under Section 10(a)(xiv) of the PPP Act.**

(a)  The breach of this Agreement by the Operator could be sufficient cause for the Authority to claim damages caused to the public treasury;

(b)  If the Operator breaches its obligations under this Agreement and such breach results in the termination thereof, the Operator shall be disqualified from contracting with any other Government Authority for a period of ten (10) years from the final and official termination date of this Agreement.

(c)  The sanctions imposed by the PPP Act shall not exclude any other sanction that could be established by the Parties in this Agreement.

**Section 48.12  Incidental Use.**

Notwithstanding any other provision of this Agreement:

(a)  Any Ancillary Activity that requires FTA’s approval as an Incidental Use shall be subject to approval by FTA in writing prior to the time that the Operator undertakes such Ancillary Activity;

(b)  To the extent that the use of any Project Asset by the Operator constitutes an Incidental Use, the Operator shall:

   (i)  cause such Incidental Use not to interfere with the provision of Public Transportation (including, without limitation, the Services) by the Operator or the Authority or otherwise interfere with the intended purpose of any Project Asset that has received assistance pursuant to 49 USC 5301 *et seq.* (including, without limitation, the Ferry Terminals, the Mooring Facilities, other Facilities, or the Authority-Provided Vessels);
(ii) pay when due any tax (including any excise tax) and any cost of fuel arising from such Incidental Use (and the Operator agrees that the same shall not be reimbursed to the Operator by the Authority); and

(iii) pay to the Authority not less frequently than annually an amount equal to the cost of depreciation and “wear and tear” arising from such Incidental Use, which shall be equal to, subject to any guidance from FTA, the amount of depreciation of such Project Asset attributable to such Incidental Use for the relevant period (as determined by the Operator’s independent auditors).

(c) Pursuant to this Section 48.12(c), the Authority may disallow, suspend or terminate any Incidental Use otherwise permitted by this Agreement with thirty (30) days’ notice in writing from the Authority to the Operator; provided that if such disallowance, suspension or termination is with respect to an Ancillary Activity described in Section 13.1(c)(ii) or with respect to Special Services, in each case to be carried out during Phase 2 such disallowance, suspension or termination shall constitute a Compensation Event; provided further, for clarity, that the suspension or termination of any Incidental Use pursuant to Section 44 or Section 45.1 shall not constitute a Compensation Event.

(d) The Operator represents to the Authority that the Operator’s right hereunder to retain revenues from any Incidental Use permitted by this Agreement had the effect of reducing the amount that the Operator would otherwise have bid as the Phase 2 Fixed Fee in response to the Request for Proposals issued by the Authority by an amount not less than Six Million Dollars ($6,000,000) cumulatively for Phase 2.

(e) Other than for Ancillary Activities approved by FTA as an Incidental Use, the Operator shall not use any Project Assets for any purpose other than the provision of Public Transportation without the expressed written consent of FTA.

(f) The Authority shall not be required to approve any use of Project Assets after the date hereof that would deprive the Authority of satisfactory continuing control thereover for purposes of applicable Federal law.

(g) The Authority and the Operator, acting reasonably, shall substantiate the right of the Operator hereunder to engage in any Ancillary Activity approved by FTA as an Incidental Use, by entering into a lease, sublease, or concession (as applicable) with respect thereto, to the extent that a lease, sublease, or concession for such Ancillary Activity is not assumed by, or assigned to, the Operator pursuant to this Agreement.

Section 48.13 Confidentiality.

(a) Confidential Obligation.

(i) Subject to the remainder of this Section 48.13, each receiving Party shall, and shall cause its Representatives to, (A) keep strictly confidential and take reasonable precautions to protect against disclosure all Confidential Information of the disclosing Party, and (B) use all Confidential Information of the disclosing Party solely for the purposes of performing its obligations under this Agreement and not for any other purpose; provided, that
A. a receiving Party may disclose Confidential Information of
the disclosing Party to those of its Representatives who need to know such information for the
purposes of performing the receiving Party’s obligations under this Agreement if, but only if,
prior to being given access to such Confidential Information, such Representatives are informed
of the confidentiality thereof and the requirements of this Agreement and are obligated to comply
with the requirements of this Agreement; and

B. each Party shall be responsible for any breach of this
Agreement by its Representatives.

(ii) Operator may designate conspicuously any documents or other
materials that it believes contain privileged, trade secret, commercially sensitive or other
information that may be exempted from disclosure in response to a public records request under
applicable public information disclosure requirements by placing “CONFIDENTIAL” in the
header or footer of such page or record affected.

(b) Permitted Disclosures.

(i) Subject to the terms of this Section 48.13, each receiving Party may
disclose Confidential Information of the disclosing Party to a duly authorized Governmental Body
where required to do so by Applicable Law. None of the Parties shall have any liability
whatsoever to the other Party in the event of any unauthorized use or disclosure by a
Governmental Authority of any Confidential Information of another Party to the extent such
disclosure was required by Applicable Law.

(ii) Each Party may disclose Confidential Information of the other
Party to the extent necessary to comply with any subpoena or order of any Commonwealth Court
or other judicial entity having jurisdiction over the receiving Party, or in connection with a
discovery or data request of a party to any proceeding before any of the foregoing.

(c) Duty to Seek Protection. To the extent permitted under Applicable Law:

(i) if a request is made for disclosure of any document or other
materials (A) that have been designated by Operator as “CONFIDENTIAL” or (B) which the
Authority, in exercising reasonable judgment, determines is likely to contain privileged, trade
secret, commercially sensitive or other information of Operator, then the Authority shall notify
Operator if it intends to disclose any such documents in accordance with Applicable Law,
including any applicable public information disclosure requirements;

(ii) in connection with requests or orders to produce Confidential
Information protected by this Agreement in the circumstances provided in Section 48.13(c)(i),
each Party receiving such a request or order (A) shall promptly notify the disclosing Party of the
existence, terms and circumstances of such requirement(s) so that the disclosing Party may seek
an appropriate protective order or waive compliance with the provisions of this Agreement, and
(B) shall, and shall cause its Representatives to, cooperate fully with the disclosing Party in
seeking to limit or prevent such disclosure of such Confidential Information; and
(iii) if a receiving Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 48.13(c)(i) compelled to make disclosure of Confidential Information of a disclosing Party in response to a requirement described in Section 48.13(c)(i) or stand liable for contempt or suffer other penalty, the compelled Person may disclose only that portion of such Confidential Information that it is legally required to disclose and shall exercise its best efforts to obtain reliable assurance that confidential treatment shall be accorded to such Confidential Information.

(d) **Ownership and Return of Information.** Confidential Information shall be and remain the property of the Party disclosing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right to use it in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 48.13.

(e) **Public Information Disclosure Requirements-Related Obligations.**

(i) Operator acknowledges and agrees that any documents or other materials relating to this Agreement in the Authority possession may be considered public information subject to disclosure in accordance with applicable public information disclosure requirements. Operator shall have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under Applicable Law to the Authority within the time period specified in the notice issued by the Authority. Notwithstanding the foregoing, it is the responsibility of Operator to monitor requests for disclosure issued by the Authority and related proceedings and make timely filings. The Authority may make filings of its own concerning possible disclosure; provided, however, that the Authority shall be under no obligation to support Operator’s positions.

A. The Authority shall have no responsibility or obligation for Operator’s failure to respond to or respond timely to any request for disclosure in accordance with the public information disclosure requirements. Other than the obligations of the Authority expressly stated hereunder, the Authority shall not be required, except where required under Applicable Law, to wait for a response before making a disclosure or otherwise taking action under the public information disclosure requirements.

B. Under no other circumstances shall the Authority be responsible or liable to Operator or any other party as a result of disclosing any such documents or materials, including materials marked “CONFIDENTIAL”, where the disclosure is required by Applicable Law or by an order of court.

(ii) Nothing contained in this Section 48.13(e) shall modify or amend requirements and obligations imposed on the Authority by the public information disclosure requirements, and the provisions of the public information disclosure requirements shall control to the extent of a conflict with the procedures under this Agreement or the Authority’s obligations with respect to Confidential Information. The Authority shall not advise a submitting party or Operator as to the nature or content of documents or materials that may be entitled to
protection from disclosure under the public information disclosure requirements, as to the interpretation thereof, or as to relevant definition (e.g., “trade secret”).

(iii) In the event of any proceeding or litigation concerning the disclosure of any documents or other materials in accordance with the public information disclosure requirements to third-parties, the Authority’s sole involvement shall be as a stakeholder retaining the material until otherwise ordered by a Commonwealth Court or other court or authority having jurisdiction. Operator shall be responsible for prosecuting or defending any action, acting on its own behalf, concerning such documents or materials at its sole expense and risk; provided, however, that the Authority may intervene or participate in the litigation in such manner as it deems necessary or desirable.

(f) Personal Information. Notwithstanding anything contained in this Section 48.13 or otherwise in this Agreement to the contrary, the Parties agree that Operator shall not, and shall ensure that its Representatives do not, use or disclose any personal information except as required in the performance of this Agreement or as otherwise directed by the Authority in accordance with Applicable Law or as may be required by Applicable Law.

Section 48.14 Due Date for Payments.

Any payments which may be due between the Parties under this Agreement for which a specific payment period has not been set forth elsewhere herein, shall be deemed to be due within thirty (30) days from the latter of: (i) the receipt of a written notice from the Party claiming such payment, or (ii) in the case of a dispute regarding the obligation to make such payment, from the date such dispute is finally resolved. Any dispute as to the existence of the obligation to make such payment shall be resolved in accordance with Article 33.
IN WITNESS WHEREOF, this Agreement has been executed by the Authority and the Operator through their duly authorized representatives as of the Effective Date.

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: [Signature]
Name: Mara Pérez Torres
Title: Executive Director
Date: October 27, 2020

HMS FERRIES INC.

By: [Signature]
Name: Mathew Miller
Title: President
Date: October 27, 2020

HMS FERRIES – PUERTO RICO, LLC

By: [Signature]
Name: Mathew Miller
Title: President
Date: October 27, 2020
## APPENDICES

TO THE

MARITIME TRANSPORT OPERATIONS AND MAINTENANCE AGREEMENT

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[INTENTIONALLY OMITTED]
SCOPE OF WORK

1. General

1.1 Operator Responsibilities. This Scope of Work describes the responsibilities of the Operator for the daily management and operation of the Maritime Transport System, which includes:

(1) vessel operations;
(2) communications systems operations (internal and external);
(3) provision of fuel and lubricants;
(4) cleaning, maintenance and repair of vessels, equipment and facilities;
(5) support of marketing and customer relations; and,
(6) development of an administrative process to ensure the safe, efficient and accountable provision of the Work.

1.2 Authority Responsibilities. The Authority shall provide the Authority Provided Vessels, the Ferry Terminals, and the other facilities described in Appendix E. The Authority shall be responsible for all policy and planning activities relative to routes, schedules, days and hours of operations, preparation of planning documents, grant applications and related documentation, and other activities relative to overall administration of the Maritime Transportation System. To the extent reasonable and feasible, the Operator shall assist the Authority in this regard. With the exception of the responsibilities described in this Section 1.2, and unless otherwise specified, the Operator is responsible for performing all of the Work described in this Appendix B.

2. Operator Service Levels

2.1 Scheduled Ferry Services.

a) Phase 1. The Operator shall provide the following minimum levels of service during Phase 1 of the Contract Term. Actual departure schedules from all Terminals shall be developed jointly with the Authority.

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1 All capitalized terms not defined herein are used as defined in the Agreement.
### Minimum Phase 2 Service Levels

<table>
<thead>
<tr>
<th>Route</th>
<th>Weekday</th>
<th>Weekend/Holiday</th>
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<tbody>
<tr>
<td><strong>Metro</strong></td>
<td>• 30 minute headways</td>
<td>• 30 minute headways</td>
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<tr>
<td></td>
<td>• 5:45 AM – 10:00 PM</td>
<td>• 8:00 AM – 11:00 PM</td>
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<tr>
<td><strong>Culebra – Ceiba</strong></td>
<td>• 3 round trips per day</td>
<td>• 3 round trips per day</td>
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<tr>
<td>(Passenger-Only)</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Culebra – Ceiba</strong></td>
<td>• 2 round trips (Monday, Tuesday, Thursday),</td>
<td>None</td>
</tr>
<tr>
<td>(Ro-Ro &amp; Passenger)</td>
<td>(small RoPax)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 3 round trips (Wednesday, Friday), (small</td>
<td></td>
</tr>
<tr>
<td></td>
<td>RoPax)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Two fuel trips per week</td>
<td></td>
</tr>
<tr>
<td><strong>Vieques – Ceiba</strong></td>
<td>• 4 round trips per day (large RoPax, Isla</td>
<td>• 4 round trips per day (large RoPax, Isla Bonita)</td>
</tr>
<tr>
<td>(Ro-Ro &amp; Passenger)</td>
<td>Bonita)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 1 round trip per day (small Ropax)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Two fuel trips per week</td>
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</tbody>
</table>

b) Phase 2. The Operator shall provide the following minimum levels of service during Phase 2. Actual departure schedules from all Terminals shall be developed jointly with the Authority prior to the start of Phase 2.
“Small RoPax” refers to vessels with capacities similar to the Santa Maria. “Large RoPax” refers to vessels with capacities similar to Cayo Largo or Isla Bonita.

Any proposed changes to this level of service will need to be approved by the Authority prior to implementation

2.2 Unscheduled Ferry Service. In addition to the scheduled service, the Operator may be required to provide additional Unscheduled Trips in accordance with the provisions of Section 6.3 of the Agreement.

2.3 Continuity of Service and Emergency Circumstances. In the event of a transportation emergency in the Commonwealth pursuant to Article 17 of the Agreement, the Operator shall make every reasonable effort to continue to provide ferry operations. The parties mutually acknowledge that the Operator’s ability to provide ferry service under these circumstances will be impacted by the condition and availability of serviceable docks, fuel, and trained crewmembers as well as by directives from the USCG. The Operator shall deploy vessels in the manner prescribed by the Authority.

3. Regulatory Compliance

3.1 General. The Operator shall comply with all federal, state, Commonwealth and local laws, regulations and ordinances addressing the operation, safety, security, licensing, and certification requirements associated with the operation and maintenance of the Maritime Transport System, or otherwise applicable to the Operator or the Scope of Work, including USCG-required vessel inspection dry dockings. The Authority shall be invited by the Operator to attend, with a minimum of 72 hours prior notice, any and all regulatory and environmental inspections, drills, investigations, etc. The Operator will also bear the cost of complying with new regulations.

3.2 USCG, FCC, and other Federal and International Certifications. The Operator shall maintain all regulatory body certifications required for Subchapter K and Subchapter T small passenger vessels. The Operator is required to make vessels available for all required USCG inspections, drills, and training.

3.3 Security. The Operator shall provide security in accordance with the Authority’s security plan included as Exhibit 1 to this Appendix B. The Operator shall assume the Vessel and Facility Security Officer role and responsibility.

3.4 Drug and Alcohol Testing. The Operator shall provide pre-employment, post-accident, reasonable suspicion, and random drug and alcohol testing of its employees in “safety-sensitive” positions, pursuant to the requirements of the Federal Transit Administration (FTA) 49 C.F.R. Part 40, and United States Coast Guard, as described more particularly in the Agreement. The Operator shall submit to the Authority’s designated DBE officer reports summarizing the drug and alcohol test results from the previous calendar year, by March 1 of each year.
3.5 **Mitigation Measures.** The Operator will comply with all environmental and operational mitigation procedure measures included in the Authority’s Non-Tank Vessel Response Plan included as Exhibit 2 to this Appendix B.

3.6 **ADA Certification and Compliance.** The Operator shall be responsible for compliance with the provisions of the consent decree entered into by the Authority with respect to the Services and included as Exhibit 3 to this Appendix B.

3.7 **Required Reports and Records.** The Operator shall timely prepare and provide reports to the Authority to meet USCG, EPA, DOT, USACOE, CARB, etc. requirements for passenger vessel and terminal operations. The Operator must maintain vessel inspection, drill, and training records and make them available for auditing by the Authority as provided in Article 21.1(g) of the Agreement.

4. **Operations**

The Operator’s responsibilities include all operations, including, but not limited to, passenger notifications, cleaning, preventive maintenance, repair, preservation, and regulatory compliance of the Vessels and Facilities in accordance with the Agreement and this Scope of Work. The Operator shall provide fuel, lube oils, tools, supplies, computers, telephone, communication equipment and utilities as necessary. Utilities include, but are not limited to, trash and recycling collection, electrical power, water, sewage, telephonic connections, and internet connections (if applicable). The Operator shall also provide maintenance labor and supplies, as described in Section 5 of this Scope of Work. The Operator shall ensure all shore side facilities are staffed and maintained as required to support vessel operations per the specified schedule.

4.1 **Vessel Operations.**

a) **Authority-Provided Vessels During Phase 1 and Phase 2.** The Authority shall provide the Operator with the number of Authority Provided Vessels indicated in Section 8.1 of the Agreement. The Operator shall be responsible for the care and custody of those Vessels. It shall be the Authority’s responsibility to have the vessels documented and certified by the USCG prior to delivery to the Operator, and in a condition that is defined in the Standards of Acceptance, the Asset Assessment Plan and repairs affected or scheduled per the jointly developed Rehabilitation Plan. Each vessel, upon delivery, shall be tight, staunch and strong and in every way fit for service, and the Authority shall furnish to the Operator a copy of the vessel’s most recently issued Certificate of Inspection (“COI”), and copies of any existing builder’s, engine warranty, or other equipment warranty. Except as provided in the Agreement, the Authority makes no warranties of any kind, expressed or implied.

b) **Daily and Weekly Inspection.** The Operator shall inspect each vessel daily to ascertain that it is in safe condition, it is equipped as required by all provisions of Applicable Law, and all equipment is in good working order.
The daily pre-trip inspection shall be documented on an Authority approved check list, which is included as Exhibit 4 to this Appendix B. The Operator shall inspect additional items onboard each vessel weekly to ascertain vessel is in compliance with all required federal and local regulations, the requirements of this Agreement, in a seaworthy condition in all respects, and able to carry passengers in the specified ferry routes.

c) **Performance Standards.** The Operator shall ensure that a clean vessel of the appropriate type and capacity, with a qualified crew and in good operating condition, makes each sailing on the contract-specified schedule. The Operator is responsible for maintaining a fully compliant vessel, meeting all local, Government, USCG, FTA, and U.S. federal safety, health, security, and environmental regulations.

4.2 **Equipment and Facilities.**

a) **Unsafe Conditions.** If a vessel or facility has any unsafe condition or is not in compliance with Applicable Laws or regulations, the vessel and facilities shall be taken out of service until brought into compliance. In the event that the Operator is instructed by the Authority (or its designee) or any other regulatory agency to remove any vessel from service due to mechanical and/or safety reasons, the Operator shall make any and all specified corrections and repairs to the equipment and submit the equipment for inspection and testing before it is again placed in service.

b) **Safety Inspections.** The Authority may request that an independent Marine Surveyor annually prepare and submit to the Authority a Safety Compliance Report. The Operator must expeditiously correct any deficiencies noted in the Safety Compliance Report.

c) **Warranties.** The Operator shall be responsible for maintaining all the Authority-Provided equipment including any applicable warranties.

d) **Repair and Replacement Costs.** The Operator shall be liable for the cost of repairing or replacing any physical or mechanical damage to any of the Authority Provided Vessels, Facilities, equipment or materials caused by the Operator’s negligence, failure to provide maintenance in accordance with manufacturer’s recommendations, or failure to provide maintenance in accordance with the approved Safety Management System.

e) **Loss of Useful Life.** The Operator shall be liable for the cost of replacing any equipment damaged beyond use as a result of the Operator’s negligence, failure to provide maintenance in accordance with manufacturer’s recommendations, or failure to provide maintenance in accordance with the approved Safety Management System.

f) **Inventory.** The Authority and the Operator agree to handle inventory review and transfer in accordance with Article 12 of the Agreement.
g) **Alterations.** Unless otherwise provided in the corresponding Boat Charter or Facility Lease Agreement, the Operator shall not have the right to install equipment on any Authority Provided Vessel or at the Facilities or make any significant alterations to any Authority provided equipment without the prior written consent of the Authority, which consent shall not be unreasonably withheld, conditioned or delayed.

h) **Use of Authority-Provided Equipment.** Authority-Provided equipment, including Authority Provided Vessel, may be used only for the transportation of passengers and cargo as provided in the Agreement or in services approved in advance in writing by the Authority. The Operator agrees to use equipment in a careful and proper manner and to comply with all federal, state, Commonwealth, local, or other governmental laws, regulations, requirements, and rules with respect to the use, maintenance, and operation of the equipment subject to the Agreement. The Operator shall not use equipment in any unlawful trade or for any unlawful purpose whatsoever, or in violation of the Agreement. The Operator may not use the Authority provided equipment to train persons who are not working on services under the Agreement.

i) **Liens.** The Authority shall not suffer, create or permit to be imposed upon the Authority Provided Vessel any lien or encumbrance which may interfere with the Operator’s intended use of the Authority Provided Vessel. Neither the Operator nor any of its agents shall suffer, create or permit to be imposed upon the vessels any lien or encumbrance whatsoever, and shall return equipment to the Authority free of any liens, claims or encumbrances resulting from its use of equipment. The Operator agrees to notify any third party furnishing services, supplies or other necessaries to the Operator that neither the Operator nor any of its agents has the right to incur, create, or permit to be imposed on the Authority Provided Vessel any lien whatsoever.

j) **Permits, Charges, Taxes.** The Operator shall be responsible for securing and maintaining licenses, permits, and authorizations necessary for the intended operation.

k) **Repossession.** In the event of termination or expiration of the Agreement, the Operator shall forthwith deliver possession of all Authority-Provided Facilities and equipment, including, vessels and vehicles, operation and maintenance facilities, floats and gangways, terminals and other assets in accordance with Article 46 of the Agreement.

l) **Other Equipment.** The Operator is responsible for providing all equipment needed to complete the performance of the Agreement, which is not otherwise provided by the Authority.
m) **Damage to Vessels and Facilities.** Major physical damage to the exterior, interior or components of the Authority Provided Vessels and Authority Provided Facilities, shall be reported by the Operator to the Authority Managers, by either email and/or phone immediately and no later than 9:00 a.m. the next calendar day.

n) **Moored Vessels.** When not in service, the Operator shall moor vessels for expected weather conditions. All doors, windows, and hatches of vessels shall be closed and secured. Vessel systems including but not limited to, sea-valves, electrical, etc. shall be secured in a proper seaman-like manner. Shore power of correct grounding, voltage, amperage and phasing shall be provided and used.

4.3 **Terminal Operations.**

a) **Generally.** The Operator shall ensure terminal operations are conducted as required to provide safe and efficient loading and unloading of passengers, vehicles, and cargo. Terminal operations include, but are not limited to, vessel fueling, ticket sales, security, and passenger, vehicle/cargo loading, loading potable water, and discharge of sewage, waste oil, and oily (bilge) waste.

b) **Dock and Gangway Inspections.** The Operator shall be required to inspect the docks and gangways, within the Authority-designated security area, at each terminal with regard to safety, function, and appearance each day of service and provide documentation of inspections. No later than September 30 of each year, the Operator shall develop and submit a facility preventive maintenance and cleaning schedule to the Authority in order to obtain the Authority’s approval, which shall require, at a minimum: (i) public areas of all terminals shall be cleaned and all trash removed on a daily basis, (ii) trash shall be removed more frequently during periods of high passenger volumes, and (iii) all restrooms shall be restocked at least twice each day, with more frequent restocking during periods of high use. Once the schedule has been developed and approved, the Operator shall implement the program as scheduled and report to the Authority all maintenance and repair needs. The Operator shall be required to maintain terminal cleaning and maintenance records and make them available for auditing by the Authority as provided in Article 21.1(g) of the Agreement. The Operator shall bear the cost of carrying out all maintenance and repairs included in such schedule.

c) **Ferry Terminals.** The Operator will be required to provide general cleaning and maintenance and documentation of all Authority floats, gangways, and related facilities and equipment in accord with the Authority approved facility preventative maintenance and cleaning schedule required in 4.3.(a) herein. Specifically, the Operator will be required to provide a schedule for cleaning of bathroom facilities,
emptying of overflowing trash receptacles and removal of trash on floors, daily mopping of terminal floors and completion of a “deep clean” on a monthly basis. The Operator shall provide all necessary security in compliance with the MTSA for all Ferry Facilities. The Operator shall avoid, to the extent possible, accidents/incidents and/or breaches of security pursuant to the MTSA. Any accidents/incidents or breaches in security shall be immediately reported to the Authority and other appropriate governmental authorities.

d) Pier 2, Old San Juan Terminal. The Operator shall be responsible for the management, maintenance, and operation of the terminal building and the adjacent plazas up to the top of the stairs to the promenade. The Operator shall also manage the leasing of the retail spaces along the promenade.

e) Cataño Pier and Terminal. The Operator shall be responsible for the management, maintenance, and operation of the terminal building and adjacent plazas, including the landscaped areas between the terminal building and Avenida Las Nereidas. The Operator shall manage the leasing of the retail space in the terminal building. The parking area to the east of the transit center is part of the terminal and shall be available for employee parking.

f) Ceiba Pier and Terminal. The Operator shall be responsible for the management, maintenance, and operation of the terminal building, facilities, and grounds, vehicle queuing, and passenger waiting areas and all passenger and vehicle loading systems, including ramps and gangways. The Operator shall be responsible for leasing or operating the cafeteria in the terminal building.

g) Sardinas Pier and Terminal. The Operator shall be responsible for the maintenance and operation of the terminal building and other facilities at the Sardinas terminal, including maintenance of the plaza between the existing terminal building and the vehicle loading ramp to the north.

h) San Ildefonso Pier. The Operator shall be responsible for the maintenance and operation of the San Ildefonso terminal, while the Sardinas terminal improvements are under construction.

i) Isabel II Pier and Terminal. The Operator shall be responsible for the maintenance and operation of the terminal building, vehicle/cargo loading ramp, passenger operations facility, and grounds of the existing terminal and Isabel II, until improvements are completed at the Mosquito Terminal.

j) Mosquito Pier and Terminal. The Authority shall conduct and complete improvements at the Mosquito terminal during Phase I. The Operator shall be responsible for transferring the operations from the Isabel II terminal to the new Mosquito location including maintenance and operations of the
terminal building, vehicle/cargo loading ramp, passenger operations facility, roadways, and grounds of the renovated facility. The Operator shall also be responsible for the trolley service connecting the main terminal building to the passenger building at the end of the causeway.

k) **Isla Grande Facility.** The Operator shall operate the Isla Grande Facility as a maintenance and logistics base, ferry fueling depot and ferry docking facility, including all buildings, grounds, equipment, and furnishings. The Operator shall be responsible for the provision of all maintenance of the facility, including janitorial work, and the meeting of all OSHA safety requirements at the maintenance facility, including parts storage areas, mechanic work areas, and all other items and equipment used in the maintenance and repair of Authority owned vessels. The Operator may use the Isla Grande Facility to provide commercial maintenance services to private parties; provided, that the Isla Grande Facility must prioritize maintenance and repairs related to the Services over those of any other commercial customer. Any revenue generated by the operation of the Isla Grande Facility shall constitute Ancillary Income.

l) **Terminal Retail Activities.** The Operator will manage the leasing of the retail spaces in the terminal buildings. Any revenue generated by the leasing of such retail spaces ("**Retail Revenue**") shall constitute Ancillary Income. Such retail spaces shall be managed and maintained in accordance with good industry standard for comparable retail facilities.

m) **Parking Facilities.** The Operator shall have responsibility and control over any operation, maintenance, or improvement for the Parking Operations. Any revenues generated by the Operation of the parking facility shall constitute Ancillary Income.

### 4.4 Personnel Management

a) **Training.** The Operator shall provide all crew training necessary to comply with USCG regulations. The Operator shall provide sufficient trained personnel including all management, supervisors, vessel crew, engineers, clerical, customer service representatives, dispatch, and on-board food and beverage service workers. The Operator shall provide all crew training related to vessel operations, including, but not limited to, watch standing, passenger management, life safety, firefighting, environmental protection, and security. The Operations staff is required to receive annual training and familiarization with the Authority Emergency Water Transportation System Management Plan. All terminal staff shall receive the training necessary to perform their assigned duties and comply with all applicable federal, state, and local regulations. The Operator shall compensate employees requiring Transportation Worker Identification Credentials ("**TWIC**") or other licenses or credentials for the cost of obtaining and maintaining their licenses and credentials.
b) **Staffing.** The Operator shall provide vessel staffing levels at least equal to USCG minimum manning requirements listed on each vessel’s Certificate of Inspection.

c) **Supervision.** The Operator shall supervise all crew to ensure that they are courteous to all patrons at all times and respond to patrons’ questions regarding use of the water transit system or connecting systems accurately.

d) **Uniforms, Dress Code, Appearance and Courtesy.** The Operator shall provide and maintain clean uniforms, for all crew and shall enforce an appearance code.

e) **Continuing Education.** The Operator shall provide ongoing training, retraining, and safety education for all vessel operators and crew, maintenance personnel and supervisory personnel in accordance with regulatory agency requirements, e.g., USCG, Federal Departments of Homeland Security and Transportation, and other applicable agencies.

f) **Participation in Emergency Response Planning and Training.** The Operator shall participate in planning and training exercises consistent with the Authority’s guidelines. The Operator shall provide supervisory personnel to assist in exercise planning and include operators, deck hands, maintenance personnel and other appropriate staff as required for all such exercises.

g) **Licensing and Certification.** The Operator shall ensure and verify that all employees are in compliance with all applicable licenses and certifications required for the performance of their duties. This includes ensuring that the vessel crew on each sailing has the credentials specified on each vessel’s USCG-issued Certificate of Inspection (COI) and meets all other USCG regulations. The Operator shall compensate crew members for the cost of obtaining and maintaining merchant mariner credentials and TWIC.

### 4.5 Communication, Dispatching and Notifications Systems

a) **Telephone System, Minimum Requirements.** The Operator shall provide and submit the specifications to the Authority for a telephone system that will provide reliable communications. The Operator shall provide a business telephone system that, at a minimum, provides at least thirty (30) minutes of uninterrupted battery backup for the telephone system in the event of a commercial power failure.

b) **Dispatching System.** The Operator shall utilize a systematic method to schedule vessels and transport passengers. The method shall be capable of accommodating and of integrating services efficiently, which maximize productivity and assure service quality to the levels prescribed in the Agreement. The Operator shall provide an adequate number of persons to
staff the dispatch scheduling functions. These persons shall be responsible for maintaining communication with all vessels in service and for maintaining the daily dispatch log to be developed and used by the Operator. Scheduling and dispatching personnel shall be trained in professional techniques, radio protocol, and in cooperative approaches with crew and passengers.

c) **Safety and Security Incident Notification.** In addition to any other notification required by law or regulation, the Operator shall report incidents affecting the Authority ferry services to the Authority as provided in Article 20 of the Agreement.

d) **Passenger Communication and Notifications.** The Operator will display service messages and real time schedules, information. The Operator shall use one or more of the following methods to provide information to ridership of service announcements: Web-site updates, phone, email and text based messages. The Operator will develop a Passenger Notification Plan which shall be approved by the Authority. The Passenger Notification Plan shall address service disruptions and special announcements.

(i) **Operator Initiated Service Announcements.** The Operator shall immediately initiate a service announcement under the following circumstances: a) when a scheduled arrival or departure is delayed by 10 minutes or more, b) when an incident affects the safety or security of the public, or c) when operations are discontinued for any reason. All other passenger notification will be initiated by the Authority. The Operator shall notify the Authority immediately of any Operator initiated passenger notification.

e) **Service Disruption Ferry Back Up Service.** In the event that the Operator should cease operations or interrupt scheduled operations for any reason, the Operator shall immediately notify the Authority, using the most direct means of communication available. In the event that the Authority expressly instructs the Operator to initiate ferry back-up service, the Operator shall contact the Authority’s contractor for ferry services and communicate the Authority’s instructions. The Operator shall bear no responsibility for the cost of Authority-approved ferry back-up services.

4.6 **Provision of Fuel and Lubricants.** Subject to Section 3.5 of the Agreement, the Operator shall provide all fuel (meeting equipment manufacturer’s specifications) necessary for the operation. Upon the Authority’s request, the Operator shall provide the Authority with specifications of all lubricants and fuel used in the performance of the Work.

The Operator shall be responsible for implementing its plan to reduce fuel usage without compromising the operating schedule, submitted as part of its Proposal.
4.7 Fare Collection.

a) Correct Fare. The Operator shall be responsible for assuring that each passenger pays the correct fare. The Authority will establish the fare structure for the services provided. The Operator will collect and, except as otherwise provided in the Agreement, retain all fare revenue generated from the Authority services. The Operator shall be responsible for fare reconciliation and accounting on a daily basis and to make reasonable efforts to collect data for specific analysis.

b) Fare Instruments. The Operator shall supply all tickets, passes, transfers and other fare instruments. The Operator shall sell tickets as requested by the Authority, and shall provide a reservation system for the Authority determined venues and destinations online through the Authority or an Operator website developed exclusively to provide this service.

c) Fare Program. The Operator may accept transfers and other fare instruments from other transit systems in the Metro Service.

d) Farebox Receipts. Operator shall collect and retain farebox receipts and other revenues from fare instruments.

e) Control and Distribution of Fare Media and Transfers. The Operator shall maintain strict control of all fare media and transfers and maintain sound internal controls over all tickets and monies collected through ticket sales and fare box collections.

f) The Operator will be responsible for the financial reconciliation of all forms of payment attributable to the Services and, with respect to the MTA, only once the new integrated system is installed. Coordination with Puerto Rico Highways and Transportations Authority (PRHTA), Puerto Rico Metropolitan Bus Authority (AMA), and the Authority will be required to set up a third-party reconciliation of the ticketing machines.

4.8 Onboard Services.

a) Food and Beverage Service. The Operator shall have the option of providing food and beverage service on all passenger service trips. Any and all alterations required to be made to any Vessel or Facility in order for the Operator to provide any such food and beverage services must be previously approved in writing by the Authority and any other local or federal entity with jurisdiction.

b) Approval for Third-Party Vendors. The Operator may provide concessions service directly or choose to contract with a third party to provide this service. The Operator shall notify the Authority of the selected third party vendor at least thirty (30) days before awarding a contract. The Operator
is required to ensure that the provisions of this section are compiled with and that any such concession agreements are FTA compliant.

c) **Licensing and Permits.** The Operator shall obtain and maintain all required licenses and permits including obtaining Public Health and Alcoholic Beverage permits, if applicable.

d) **Revenue.** The Operator shall, on a monthly basis, report all concessions revenue and expenses to the Authority.

### 4.9 Vessel Cleaning Schedule.

a) **Interior and Exterior Cleaning and Maintenance.** The Operator shall maintain the exterior and interior cleanliness of all vessels to the highest standards at all times. The Operator shall supply all materials and supplies for this purpose. All gum, litter, newspapers, graffiti, blood borne pathogens, or other foreign materials shall be removed in a professional manner and immediately upon their discovery. Physical damage to the exterior or interior not correctable with diligent cleaning methods, such as tears in the seats or staining, shall be repaired by the Operator. Food service and crew areas must be kept clean and free of debris. Spills and debris that present a safety risk must be cleaned immediately.

Special attention shall be given to the following areas:

- Decks and stairways shall be kept clean and free of debris and spills.
- Interior and exterior seating and tables shall be kept clean and dry.
- Bathrooms shall be kept clean and sanitary.
- Trash cans shall be regularly emptied and trash shall be removed from the vessels and disposed of by the Operator in compliance with Applicable Law. No overflowing trash receptacles should be allowed for over an hour.
- Recyclable materials shall be disposed of in compliance with Applicable Law.

b) **Daily Vessel Cleaning.** All vessels that have been in service shall have the following items performed on a scheduled basis: Vessels shall be kept free of litter and debris to the maximum practicable extent throughout the operating day. Daily vessel cleaning shall, at a minimum, consist of the following:

- Clean seats, benches, and table areas. Keep interior and exterior seating clean and dry.
• Snack bar galley equipment, floor, and surfaces cleaned and sanitized, if applicable.
• Clean inside of all windows.
• Clean and sanitize bathrooms.
• Empty all trash receptacles as needed and at end of day.
• Re-stock schedule and information racks.
• Sweep or vacuum all deck and step areas.
• Any damage to seat upholstery shall be reported immediately upon discovery.
• Crew areas including pilot house, crew room and crew desk, floors and surfaces cleaned.
• Remove any and all graffiti as soon as possible and at least daily.
• Exterior seating and decks cleaned to remove dirt and stains.
• The exterior of the vessel shall be rinsed with fresh water daily at the end of the day.

c) **Weekly Vessel Cleaning.** The following shall be cleaned at least once per week:

• Thorough interior cleaning.
• Clean all bulkheads, panels, windows, seats, decks, stairs, stanchions, and railings.
• Upholstery shall be vacuumed.
• Remove all foreign matter such as gum, grease, dirt, and graffiti from the interior surfaces during the interior cleaning process.
• Soogee and sanitize galley equipment, refrigerators, and appliances.
• Wash and clean the exterior decks and steps.
• Clean overheads and ventilation louvers surfaces.

d) **Bi-weekly Vessel Cleaning.** At least every fourteen (14) calendar days, the vessels shall be completely sooged and cleaned. This shall include, at a minimum:
• Soogee and clean the bulkheads, partitions, stanchions, hand rails, and windows (more often if necessary).

• Wash and clean the passenger seats.

• Soogee and clean exterior surfaces as necessary to maintain appearance.

e) Other Vessel Cleaning.

• Shampoo and vacuum vessel carpets and upholstery once a month and spot clean more frequently as needed.

• Replace HVAC system filters as required, but no less than twice a year.

• Keep vessels free of vermin and insects at all times. The Operator shall exterminate all vermin and insects immediately upon discovery, utilizing safe non-hazardous materials.

f) Blood Borne Pathogens. The Operator shall provide process, tools, equipment, training and supplies necessary for cleaning blood borne pathogens immediately after an event has occurred, in the Facilities or Vessels, or at a maintenance facility, including proper methods for disposal of sharps (e.g., needles).

g) Standby Status. Vessels which have been in standby status for more than five days shall be thoroughly cleaned in the manner described by Section 4.9(b) through Section 4.9(d) of this Appendix B before returning to service.

h) Records. The Operator is required to maintain cleaning records and make them available for auditing by the Authority as per the provision of Article 21.1(g).

i) Environmental. The Operator is required to conduct an ongoing review of existing services and facilities with a view to recommending ways to improve efficiencies, reduce energy consumption, minimize the waste of resources and reduce negative impacts on the environment. The Operator is encouraged to use bio-based or other renewable products. The Operator shall be responsible for implementing its plan to achieve these goals without compromising the operating schedule, submitted as part of its Proposal.
5. **Maintenance and Repair of Vessels, Equipment, and Facilities**

5.1 **General.**

   a) The Operator shall be responsible for all Vessel and Facility Maintenance and Ordinary Repairs as provided in Sections 8.6 and 13.2 of the Agreement.

   b) The Operator shall replace as necessary and maintain gangways, ramps, fenders, and equipment to accommodate safe landing, mooring, access and boarding of the vessels, and in compliance with the Americans with Disabilities Act.

   c) The Operator shall be responsible for the provision of all maintenance of the Ferry Terminals and other Facilities, including janitorial work, and the meeting of all OSHA safety requirements at the maintenance facility, including parts storage areas, mechanic work areas, and all other items and equipment used in the maintenance and repair of Authority-owned vessels.

   d) No later than September 30 of each year, Operator shall submit to the Authority, for its approval, written and/or automated vessel maintenance plans. The Operator provided vessel maintenance plans must comply with manufacturer’s recommendations (including the use of OEM parts and materials and certified personnel) and the following:

      - 49 C.F.R. 18.32(d)(4)
      - FTA Circular 5010.1D, Ch II, Section 3.a and Ch IV, Sections 3.k and m; and
      - FTA Circular 9030.1D, Ch IV, Section 8.c.

   e) The Operator shall provide, and bear the cost of, all labor, supplies, tools and equipment, and such other components, facilities, and services which may be required to fulfill its maintenance responsibilities.

   f) The Operator’s duty and responsibility to maintain all vessels and equipment shall not be delegated to any other person, firm, or corporation except for specialized maintenance and repairs, including dry docking, machinery, HVAC and electronics. If any third party vendor is selected to perform such specialized services, the Operator shall notify the Authority of the selected vendor at least thirty (30) days prior to awarding the contract in the following cases: In Phase 1 when the contract is equal to or exceeds $10,000 or where FTA approval is required, and in Phase 2 when FTA approval is required.

   g) Assets required in connection with the Operator’s responsibilities under this Scope of Work will be maintained in a safe, clean, and operable
condition at all times, and fully in accordance with any manufacturer’s maintenance procedures and specifications; marine industry best practices; and any federal, state, and local requirements, statutes or regulations.

h) The Operator shall adjust the work schedules of its employees as necessary to meet all scheduled services and complete preventive maintenance activities according to the schedule approved by the Authority. Deferring maintenance is prohibited and shall be cause for termination of the Agreement and the Operator shall be responsible for any major maintenance or capital cost required to be incurred as a result of the Operator’s failure to satisfy its maintenance obligations under the Agreement. The Operator shall not defer maintenance for reasons of shortage of maintenance staff or vessels, nor shall Maritime Transport Service be curtailed for the purpose of performing maintenance without prior written consent of the Authority.

i) The Operator is responsible for notifying the Authority immediately of any reportable marine casualty (Form 2692) or marine deficiency (Form 835F or 835V).

j) Reserved.

k) The Authority will be responsible for inspection and maintenance of the terminal marine structures, including pier and wharf structural decks, deck beams, pile caps, and piles as well as structural bulkheads and associated cap beams, whalers, and tie-backs.

5.2 Right of Inspection. The Authority shall have the right to inspect the Authority-provided assets as set forth in the Agreement. This provision shall also apply to any equipment, including leased equipment, used by the Operator for backup service.

5.3 Corrections.

a) Commencement of Correction. The Operator shall correct any non-compliance with its contractual obligations, within twenty-four (24) hours of written notification by the Authority, if the problem can be corrected within such time. If the situation is not correctable within twenty-four (24) hours, then the Operator shall notify the Authority of the date correction shall be accomplished and shall initiate correction activities within twenty-four (24) hours of the Operator’s receipt of the Authority’s initial written notification.

b) Delays. If the Operator a) fails to correct a problem within twenty-four (24) hours after receiving the Authority notification or b) by the date the Operator informed the Authority that correction was to be accomplished, then the Operator shall submit to the Authority i) the reasons for the delay and ii) a new expected completion date for the Authority’s approval. The Authority may accept the new completion date or may, at the Authority’s
discretion, make corrections and shall be entitled to charge the actual cost to the Operator for such corrections. The Operator shall reimburse the Authority for any such costs within 30 days of invoice from the Authority; provided, however, that if the Authority does not receive payment within said period of time, the Authority may deduct these charges from any amount due or that may become due to the Operator under the Agreement.

c) **Repairs.** See, Sections 8.6 and 13.2 of the Agreement

d) **Liability.** Reserved.

e) **Adequate Resources.** The Operator must maintain adequate resources to provide both preventative maintenance services and manage repair work as provided in the Agreement. The Operator shall consult the Authority when resources are not able to cover major repairs.

f) **No Interference.** Except as may be required by law or regulation, maintenance, repairs, and inspections will not interfere with the continuity, timeliness or quality of ferry services at any time.

g) **Reserved.**

h) **Major Repairs.** All expenditures by the Operator for major repairs that are outside the scope of the Agreement, as determined by the Authority in its sole discretion, must be preauthorized by the Authority in writing. The Authority will bear the cost of these repairs.

5.4 **Maintenance Personnel.**

a) Maintenance personnel assigned to work on vessels, facilities and equipment shall have a thorough knowledge all equipment and systems that they are assigned to work on.

b) The Operator shall provide experienced maintenance personnel who are familiar with associated equipment and certified as required by equipment manufacturers to maintain all warranties.

c) The Operator shall provide pro-active personnel management that shall include, but is not limited to, the following:

- Preventive maintenance scheduling and supervision.
- Repair supervision.
- Technical training.
- Such other activities as are necessary to ensure the performance of the Operator maintenance duties and responsibilities.
5.5 Maintenance and Repair Program.

a) Defined. The definition of preventive maintenance shall include scheduled inspections, lubrication, oil change, repair of minor defects, cylinder rebuilds, regularly scheduled activities recommended by equipment manufacturers, and related activities resulting from normal service. Maintenance activities occur prior to failure. Meanwhile, repairs are defined as work required to address loss, damage, or adjustments resulting from a discrete event. The event could be equipment failure due to inadequate maintenance, equipment failure due to use beyond equipment’s service life, or damage due to operator negligence or error.

b) Adoption. At the time of acceptance of each Authority-Provided Vessel, the Operator shall have developed and implemented a formalized preventive maintenance program and repair program for all vessels and equipment in conformance with Original Equipment Manufacture’s (“OEM”) preventive maintenance schedules and any additional maintenance schedule required by the Authority.

c) Documentation. The Operator shall document and submit a Maintenance and Repair Program within thirty (30) days of acceptance of the asset.

d) Sufficiency. At a minimum, the Operator’s Preventive Maintenance Program shall adhere to the OEM’s preventive maintenance schedules and standards of the industry and shall be sufficient so as not to invalidate or lessen warranty coverage of any vessel or associated equipment.

e) Format. The Maintenance and Repair Program shall be provided to the Authority in electronic format.

f) Operations Record. The Operator shall have a means of indicating the types of inspection, maintenance, and lubrication operations to be performed on each vessel and equipment and the dates or hours when these operations are due.

g) Away Periods. The Operator shall adhere to its stated Preventive Maintenance Program when a vessel is assigned away from the Operator’s regular maintenance facility for periods exceeding normal inspection, maintenance, and lubrication intervals. If repairs are expected to keep a vessel out of service for more than one day, the Operator shall notify the Authority and provide a repair plan and schedule for returning the vessel to service.

h) Service Request Documentation. The Operator shall provide, use and maintain an effective system of reporting service requests and repair status. The Operator’s system, which shall be submitted as part of Proponent’s technical proposal shall include but not be limited to written and electronic reports.
i) **Laboratory Analysis.** The Operator shall cause a laboratory oil and/or coolant analysis to be performed on every vessel engine, gear and generator or other system as required by the Authority-approved Preventive Maintenance Program. The analysis program used by the Operator shall be subject to approval by the Authority. The Operator shall keep the results on site for a minimum of five years.

j) **Preventative Maintenance Program Documentation.** The Operator shall maintain records of the date and type of all preventative maintenance, repairs, and services performed. The Operator shall be required to inspect and log with regard to safety, function, and appearance of the vessel prior to getting underway each day of service. The Operator shall be required to provide such logs and documentation of vessels (inspection of systems, interior and exterior of vessel, and cleaning of vessels) to the Authority upon request. In addition, regulatory agencies may be authorized to review the Operator’s service records in accordance with applicable law.

k) **Reporting to the Authority, Maintenance.** The Operator shall prepare, maintain, and regularly provide to the Authority upon request from the Authority (or its designee) records and data relative to vessel, facilities, and equipment indicating all warranty work, preventive maintenance, and repairs performed on each vessel. All such records and reports shall be prepared and maintained in such a manner so as to fulfill any applicable state, Commonwealth or federal requirements, as well as any needs of the Authority to enable it to accurately evaluate the Operator’s maintenance performance and the operating expense associated with vessels, facilities, and equipment. Records of all repairs made and itemization of all expenses shall be submitted to the Authority. The Operator shall prepare maintenance records and reports in a form, and submit them to the Authority according to a schedule, approved by the Authority. Such records and reports shall include, but are not limited to the following:

- Service Reports identifying date and time, problem, and hours of equipment.
- Repair orders for all maintenance inspections, warranty repairs, and other vessel repairs including materials, parts, and labor consumed.
- Oil/coolant analysis reports.
- Monthly summary listing each vessel, machinery hours, hours since last preventive maintenance inspection, type of preventive maintenance inspections conducted during the monthly period, vessel fuel and lubricants consumption, date of last oil analysis, service calls, and vessel year-to-date total hours. This should include an indication of compliance with the service quality standards (Section 8).
• Vessel monthly and year-to-date fuel, urea, and lube oil consumption.

• Vessel fiscal monthly and year-to-date maintenance cost and cost per hour.

• The Operator’s summary of maintenance problems, particularly components with high incidences of in-service failures and steps taken or recommendations to reduce such problems and in-service failures.

5.6 Parts Inventory, Supplies, and Materials.

a) The Operator shall establish and maintain an ongoing spare parts inventory sufficient to minimize service down-time.

b) The Operator shall be responsible for, and during Phase 2, bear the cost of, purchasing, stocking, and supplying consumable materials and parts required for vessel, terminal use, and maintenance. All parts, materials, and supplies used by the Operator on all vessels, facilities, and equipment shall meet or exceed original equipment manufacturers specifications and requirements.

c) Upon termination of the Agreement, the current parts and supplies inventory will be acquired by the Authority at an agreed upon price.

d) The Operator shall prepare an annual inventory report and submit to the Authority no later the July 31 of each year of the Agreement.

6. Customer Relations, Marketing and Media Referrals

6.1 Customer Relations.

a) Ticketing Service. The Operator shall provide window service which must be available at least 98% of advertised operating hours and at least one sales attendant or automated kiosk must be available. The Operator must also provide online ticketing services and the downtime of such online ticketing service cannot exceed 4 hours a month. The ticketing service shall be able to provide refunds and determine ticket expiration.

b) Public Inquiries. During the term of the Agreement, the Operator shall provide live and/or automated customer service procedures to address public inquiries per the approach provided below.

c) Approach. The Operator shall provide to the Authority a proposal, detailing their process, systems, and approach to addressing customer service. The process, tools (such as automated telephone services) must meet the satisfaction of the Authority.
d) **Passenger Surveys.** At the Authority’s request, the Operator shall distribute to the passengers a bi-annual survey of passengers prepared by the Authority that is designed to measure the level of passenger satisfaction with the Operator’s service. The Authority reserves the right to conduct more than two (2) passenger surveys per year at its own expense. The Operator shall cooperate with the Authority in the conduct of such survey(s). The Operator and the Authority shall agree in writing as to the service criteria to be utilized in the survey.

e) **Customer Service and Complaints.** The Operator must implement a program to address customer complaints as required by Article 20 of this Agreement.

### 6.2 Marketing.

a) **Cooperation.** The Operator will be responsible for marketing, advertising and public relations activities relating to the Services. The Operator will be required to cooperate in and support marketing, advertising and public relations efforts with other parties, as directed by the Authority.

b) **Authority Ferry Services Marketing Identity.** The Authority ferry services shall be marketed under the brand developed by the Operator and previously approved in writing by the Authority. The Operator shall not distribute any materials that can be directly or indirectly associated with the Authority without the prior written approval of the Authority. All marketing and public relations materials including but not limited to schedules, dock signs, flyers, posters, premium items, paper tickets, and onboard WIFI splash pages, shall be branded with the Operator logo. No other logo shall be included without the Authority’s prior written authorization. The system’s website should also comply with these dispositions.

c) **Approval of Marketing Materials.** All printed, audio, or visual materials dealing with fares, schedule(s) and policies related to the Maritime Transport Services distributed on board any vessel, terminal or facility must be approved by the Authority. The Operator shall ensure that the Authority provided schedule and system brochures are available to the public on all vessels in service.

d) **Posting.** The Operator shall not post any notices, announcements or other materials in or on equipment, vessels or at ferry terminals unless approved by the Authority. Any posting of third-party marketing materials must follow any guidelines approved by the Authority.

e) **Distribution.** From time to time, the Authority will supply the Operator with marketing materials for distribution on the vessel, facility or to be
provided to riders. The Operator shall distribute such materials on the vessel or facility when asked to do so by the Authority.

f) Website Development. The Operator shall create a website and targeted advertising, which may include print advertising, collateral materials, and digital campaigns. The website must provide, at a minimum, information about schedules, fares, electronic ticketing, directions to terminals, user guides, and details of Authority policies.

6.3 Media Referrals.

a) The Operator shall refer all media requests for information concerning the Authority ferry services to the Authority.

b) Under no circumstances shall the Operator make any contact with the media or offer comment regarding the Authority ferry services without the permission of the Authority.

c) The Authority may direct the Operator to provide remarks to the press, or otherwise support the Authority’s media relations.

7. Administration, Reports, Accounting, and Audits

7.1 Administration.

a) Personnel. The Operator shall employ adequate executive, administrative, supervisory, operational, and maintenance personnel to carry out each of the functions enumerated in this Scope of Work.

b) Compliance with Regulatory Agency Requirements. Work provided under the Agreement shall conform to all the requirements of Federal, State, Commonwealth and/or local regulatory agencies, including Homeland Security, USCG and U.S. Department of Transportation, wherever applicable.

c) Meetings and Reviews. The Operator shall be subject to triennial reviews by the Authority and monthly reviews by the Authority and the project management oversight consultant designated by the FTA. The Operator shall also be required to attend, at its own cost, quarterly meetings with the Authority and FTA, whether in Puerto Rico or Atlanta, Georgia.

d) Permits, Charges, and Taxes. The Operator shall be responsible for securing and maintaining licenses, permits, and authorizations necessary for the intended operation.

7.2 Reporting. The Operator shall provide to the Authority the following reports, or an agreed-upon alternative (and other such reports as mutually agreed to), on the following schedules:
a) Sailings (with departure time), passenger counts, and cargo movement by type, trip and terminal, on a daily, weekly, monthly and annual basis by route. Daily reports shall be maintained in the pilot house for each vessel and shall be available for inspection by the Authority and/or its designees. The weekly passenger report shall be due within twenty (20) days of the conclusion of the reported week. A monthly passenger summary report shall be prepared and submitted to the Authority by the Operator by the 20th day of the month following the reporting month. All reports shall be submitted via e-mail as Excel files. The report formats shall be provided by the Authority to the Operator during the Transition Period.

b) Farebox and concession revenue on a monthly and annual basis by route. The Operator shall provide these reports on or before the 20th day of each month. The report shall provide number of tickets and cargo spaces sold and revenue for each ticket type, purchase method and payment mechanism used. Reports shall be submitted via e-mail as Excel files. The report formats shall be provided by the Authority to the Operator during the Transition Period.

c) Maintenance reports on all Authority Provided Vessels used on a monthly and annual basis. The reports shall list by vessel: (A) the number of maintenance hours required for the performance of each maintenance task, (B) maintenance actions completed in the reporting month, (C) when each action was taken, (D) by whom such action was performed, (E) indicated any adverse or negative conditions found, and (F) note any corrective actions taken and/or recommended. The Operator shall submit these reports via e-mail as Excel files on or before the 20th day of the following month. The report formats shall be provided by the Authority to the Operator during the Transition Period.

d) Vessel operations reports on all Authority Provided Vessels used. The reports shall list by vessel the number of vessel engine hours accumulated that month, contract-to-date total vessel engine hours, fuel consumed and average cost per gallon of diesel for period and year to date. The Operator shall submit these reports via e-mail as Excel files on or before the 20th day of the following month and an annual summary should be prepared and delivered to the Authority within thirty (30) days after the end of each Contract Year. The report formats shall be provided by the Authority to the Operator during the Transition Period.

e) Operating data on a quarterly basis by route, including on-time performance reports. The Operator shall provide these reports by the 20th of the month following the end of the quarter. The report shall be submitted via e-mail as an Excel spreadsheet. The report formats shall be provided by the Authority to the Operator during the Transition Period.
f) Immediate Safety and Security Reportable Incident Report (system wide). The report captures detailed information on the most severe safety and security incidents occurring in the transit environment. A reportable incident is an event that involves a transit vehicle or occurs on transit-controlled property and meets on or more of the following conditions:

1. A fatality (including a suicide or deaths resulting from Other Safety Occurrences not Otherwise Classified), and/or
2. Injuries requiring immediate medical attention away from the scene for one or more persons, and/or
3. Property damage equal to or exceeding $25,000, and/or an evacuation for life safety reasons and/or a collision and/or allision.

Only one form is completed per incident regardless of how many thresholds are met. The Operator shall provide these reports immediately via telephone and e-mail. The report formats shall be provided by the Authority to the Operator during the Transition Period.

g) Safety and Security Monthly Summary Incident Report (system wide). The report captures monthly summary information on less severe security-related and other safety incidents than those reported on the Safety and Security Reportable Incident Report. One form is completed each month summarizing the number of security and other safety incidents that have occurred. The Operator shall submit these reports via e-mail on or before the 20th day of the following month. The report formats shall be provided by the Authority to the Operator during the Transition Period.

h) Preventive Maintenance and cleaning reports would be issued on a monthly basis via e-mail as Excel files on or before the 20th day of the following month and an annual summary should be prepared within thirty (30) days after the end of each Contract Year.

i) Vessel inspection reports are required on a monthly basis including up to date certification and any USCG-835 form issued.

j) Regulatory Reports. The Operator shall provide written reports to the Authority as needed and as reasonably required to meet regulatory agency reporting requirements, including, but not limited to, CARB, DOT, USCG, USACOE, NTD, etc. for vessel and facility operations.

k) Dissemination of Data. The Operator shall not disseminate ridership, farebox, or other data or information to any party without prior written approval from the Authority, except that if such disclosure is otherwise required by law.
7.3 **Accounting and Financial Record Keeping.** Accounting Practices. During the term of the Agreement, the Operator shall maintain its accounting records as they relate to the programs identified in the Agreement consistent with Generally Accepted Accounting Principles.

7.4 **Audits, Annual Fiscal Audit.** The Operator agrees that, upon the Authority’s request, an annual Fiscal Audit of the Operator’s financial books and records shall be completed by the Authority or by an auditor of the Authority’s selection after the close of the fiscal year. Such audits shall be conducted to the extent required to verify the charges and expenses accrued for services provided to the Authority.

7.5 **Issuance of USCG CG-835.** Whenever a CG-835 is issued, the Operator shall notify the Authority and provide a plan for resolving any CG-835 reports that require a vessel to be out of service for more than one day.

8. **Service Quality Standards**

In an effort to ensure that the Operator provides the Authority with high-quality service throughout the contract period, the Authority has established a set of minimum performance standards that the Operator shall meet. Should the Operator’s performance fall below the established standards on any of the measures provided below, the Authority may, at its sole discretion, implement or discontinue all or part of the Assessments described in Section 9 of this Scope of Work or, subject to Section 11 of this Appendix B, declare an event of default under Section 45.1(a)(11) of the Agreement.

The Service Quality Standards set forth below shall not apply during Phase 1. In addition, the Service Quality Standards shall not apply to the extent the service or non-compliance with such Standards is attributable to Force Majeure events or such other events that are outside the reasonable control of, and unforeseeable by, the Operator (or if foreseeable could not be avoided in whole or in part by the exercise of due diligence by the Operator) and that are not attributable to the negligence or intentional misconduct of the Operator, and any other event that is agreed to in writing by the Authority and the Operator.

During Phase 2, the Operator shall maintain service quality records for each standard below and shall make every effort to meet these goals.

The assessments will be invoked when, in the Authority’s judgment, it is necessary to take action, short of terminating the Agreement, to correct inadequate performance by the Operator. The intent of these Standards is to clearly communicate the Authority’s minimum expectations to the Operator. The program of Assessments is designed to fairly compensate the Authority when the Operator fails to provide service meeting such minimum expectations.

Monthly reports should include reference to the following Service Quality Standards metrics:

8.1 **On-Time Performance.**

a) **On-Time Departures.** It is the Authority’s goal that vessels shall depart on time (“on time” means no more than ten (10) minutes late) from any
scheduled stop and shall not leave prior to the scheduled departure time. A minimum of ninety-four percent (94%) of ferry service departures from the published or scheduled time must meet this criterion each month on each route.

b) **Operating Ahead of Schedule (HOT).** No vessel shall leave any time prior to its scheduled departure time.

c) **Missed Trips.** The Operator shall complete ninety-eight percent (98%) of all scheduled trips each month on each route. In the event of an in-service breakdown, crew absence or other related problem, the Operator shall provide adequate means to dispatch in such a fashion as to attempt to not to miss subsequently scheduled trips. Any trip operating thirty (30) minutes or more behind the scheduled time shall be considered a “Missed Trip”.

**8.2 Failure to Implement the Emergency Passenger Notification Plan.** The Operator shall be assessed for failure to provide passengers with visual and spoken safety briefings in both English and Spanish prior to the commencement of a trip in compliance with USCG requirements.

**8.3 Failure to Notify Reportable Accidents and Security Incidents.** The Operator shall be assessed for failure to notify Safety and Security Reportable Incident to the Authority and any other local or federal agency, including the USCG, as set forth in this Scope of Work and as required by the Coast Guard.

**8.4 Maintenance and Cleanliness.**

(a) The Operator shall be assessed for failure to carry out the cleaning and maintenance functions specified in this Scope of Work for all vessels, terminals, and other facilities.

(b) The Operator shall be assessed for failure to complete eighty-five percent (85%) of the preventative maintenance program for vessels, terminals and other facilities within the month scheduled in the agreed upon schedule.

(c) The Operator shall be assessed for failure to complete seventy percent (70%) of the deferred preventative maintenance program for vessels, terminals and other facilities within the following month, unless otherwise agreed in writing between the Operator and Authority.

**8.5 Vessel, Terminals, and Facilities Inspection.** The Operator shall be assessed for failure to comply with the following:

(a) must have completed eighty-five percent (85%) fleet inspection and certification provision per month as required under this Appendix B; and
(b) (i) during the first five (5) years of Phase 2, must have reported no more than two (2) USCG-835F (Facility Inspection Requirements) or USCG-835V (Vessel Inspection Requirements) with a “prior to carrying passengers (PCP)” designation issued deficiencies for each vessel and for each terminal in each Contract Year, and (ii) starting on the sixth (6th) year of Phase 2, must have reported no more than one (1) USCG-835F (Facility Inspection Requirements) or USCG-835V (Vessel Inspection Requirements) with a “prior to carrying passengers (PCP)” designation issued deficiencies for each vessel and for each terminal in each Contract Year.

8.6 Code Compliance. The Operator must pass all building, fire marshal, and other building code compliance official inspections and report no more than one (1) building closures (red tags) due to noncompliant or unsafe conditions in the terminals and other facilities per year.

8.7 Passenger Complaints. The Operator shall maintain each month ninety eight percent (98%) compliance with the requirements of Article 20 of the Agreement.

8.8 Ticketing Services. The Operator shall comply each month one hundred percent (100%) with the requirements of Section 6.1(a) of this Appendix B.

8.9 Passenger Injuries. Within the first three (3) years after the commencement of Phase 1 the Operator and the Authority shall jointly develop and agree in writing upon, the appropriate Service Quality Standard applicable to the number of passenger injuries reported in the vessels or facilities per Contract Year. The Service Quality Standard developed shall consider, among other factors, the history of injuries occurring in the Ferry System during said three (3) year period and the standards applied in other comparable ferry systems. The Standard adopted shall aim to reduce the number of passenger injuries reported to the extent consistent with best practices in comparable ferry systems.

8.10 Passenger Satisfaction.

(a) During Phase 1 the Authority and the Operator shall jointly develop and agree in writing upon the (i) form of, and the metrics that should be measured by, the bi-annual passenger survey that will be utilized by the parties to measure the level of passenger satisfaction with the services provided by the Operator, and (ii) the minimum level of performance that the Operator is expected to achieve on the basis of those metrics (“Minimum Service Level”);

(b) if the results of the survey indicate that the Operator’s performance is below the Minimum Service Level, the Parties shall agree in writing as to the plan to be implemented by the Operator to improve its performance in order to achieve the Minimum Service Level.

9. Assessments for Non-Compliance with Service Quality Standards

The Assessments specified in this Section 9 will be imposed as liquidated damages in the event of specified violations of this Scope of Work by the Operator. The damages to be incurred by the Authority for the specified violations are inherently uncertain difficult to quantify. The
amounts assigned to Assessments are reasonable and are set at levels considered necessary to protect the interests of the Authority.

The Assessments below will only be imposed when the Service Quality Standards specified in Section 8 of this Appendix B are not met, in accordance with the requirements specified in Section 8 and will be capped at Twenty Thousand Dollars ($20,000) per month. Assessments will be imposed on a monthly basis.

a) The Operator shall be assessed by the Authority a total of One Thousand Dollars ($1,000) per each occurrence or failure not to exceed Five Thousand Dollars ($5,000) per month for the following:

- Operating Ahead of Schedule (HOT). Any vessel that departs any time prior to its scheduled departure time. (Section 8.1(b))
- Failure to implement the Emergency Passenger Notification Plan. (Section 8.2)
- Failure to notify reportable accidents and security incidents. (Section 8.3)

b) The Operator shall be assessed by the Authority a total Five Thousand Dollars ($5,000) per month for the following:

- Failure to meet the monthly on-time departure requirement specified in Section 8.1(a) for every route.
- Missed Trips. Failure to maintain the monthly missed trip requirement specified in Section 8.1(c) for every route.

c) The Operator shall be assessed by the Authority a total of Five Hundred Dollars ($500) per occurrence of non-compliance or failure of the following, not to exceed a total of Five Thousand Dollars ($5,000) per month:

- Non-compliance with vessel and terminal appearance and cleanliness requirements as provided in this Appendix B (Section 8.4(a));
- Failure to follow mutually agreed procedures or polices;
- Non-compliance with the Ticketing Service requirements set forth in Section 6.1(a) and 8.8 of this Appendix B; and
- Non-compliance with the Customer Service and Complaints requirements set forth in Article 20 of this Agreement.

d) The Operator shall be assessed by the Authority for failure to adhere to the preventive or scheduled maintenance procedures, including daily checks not completed in accordance with the Authority approved maintenance schedule, as follows:
• Total of Three Thousand Dollars ($3,000) per month if eighty-five percent (85%) of preventive maintenance for the entire ferry system is not performed in the scheduled month. (Section 8.4(b))

• Total of Three Thousand Dollars ($3,000) per month if seventy percent (70%) of the deferred preventive maintenance from the previous month is not completed upon the conclusion of the month subsequent to the scheduled month. (Section 8.4(c))

(e) The Operator shall be assessed by the Authority for failure to adhere to the vessel and terminal inspection requirements, as follows:

• Total of Two Thousand Dollars ($2,000) per occurrence of missing required monthly fleet inspection certificate, with a maximum of Six Thousand Dollars ($6,000) for the month. (Section 8.5(a))

• Total of Two Thousand Five Hundred Dollars ($2,500) per day, with a maximum of Ten Thousand Dollars ($10,000) for the month, that a USCG-835F or USCG-835V is in effect with a “prior to carrying passengers (PCP)” designation to any vessel or terminal. (Section 8.5(b))

(f) The Operator shall be assessed by the Authority Two Thousand Five Hundred Dollars ($2,500) per day of closure, with a maximum of Ten Thousand Dollars ($10,000) per month, for failure to meet the requirement specified in Section 8.6 of this Appendix B.

(g) The Operator shall be assessed by the Authority for failure to comply with the requirement of Section 8.7 of this Appendix B or the minimum level of passenger satisfaction (Section 8.10 of this Appendix B), as follows:

• Five Hundred Dollars ($500) per occurrence, of non-compliance with the requirements of Section 8.7, with a maximum of Five Thousand Dollars ($5,000) per month.

• Ten Thousand Dollars ($10,000) for not meeting the Minimum Service Level of passenger satisfaction required under Section 8.10, as shown in four (4) consecutive bi-annual survey periods.

(h) The Operator shall be assessed by the Authority for exceeding the maximum annual level of allowable passenger injury Five Thousand Dollars ($5,000) for each reported passenger injury in excess of the allowable amount.

10. Changes to Level of Service

THE LEVEL OF SERVICE REQUIRED OF THE OPERATOR SHALL BE AS SPECIFIED BY THE AUTHORITY.
THE AUTHORITY MAY INCREASE, DECREASE, OR OTHERWISE CHANGE THE LEVEL OF SERVICE TO BE PROVIDED REFLECTING RIDERSHIP PATTERNS, SEASONAL FLUCTUATIONS AND EMERGENCY RESPONSE NEEDS. IF THE AUTHORITY INCREASES THE SERVICE ABOVE THE SPECIFIED LEVELS, IT SHALL BE TREATED AS A MODIFICATION PER SECTION 16.2 OF THE AGREEMENT.
11. **Events of Default for Failure to Comply with the Service Quality Standards**

If the Operator fails to comply with the following Service Quality Standards in the manner specified below, the Authority may, in its discretion, declare a default under Section 45.1(a)(11) of the Agreement:

(a) Failure, on and after the second Contract Year in Phase 2, to meet the monthly on-time departure requirement specified in Section 8.1(a) by five percent (5%) or more of such requirement in six (6) or more months in any given Contract Year or in four (4) or more months in a Contract Year for two (2) consecutive Contract Years;

(b) Failure, on and after the second Contract Year in Phase 2, to meet the monthly “missed trip” requirement specified in Section 8.1(c) by five percent (5%) or more of such requirement in six (6) or more months in any given Contract Year or in four (4) or more months in a Contract Year for two (2) consecutive Contract Years;

(c) Failure to comply with any of the following individual Service Quality Standards six (6) or more times per month in three (3) or more months in any given Contract Year:

   (i) Vessel and Terminal appearance and cleanliness as specified in Section 4.9 of this Appendix B.

   (ii) Ticketing service requirements specified in Section 6.1(a) of this Appendix B.

   (iii) Customer service and complaints requirements specified in Article 20 of Appendix B.

(d) Failure to notify reportable accidents and security incidents in four (4) or more times in a Contract Year for two (2) consecutive Contract Years.

(e) Failure to implement the Emergency Passenger Notification Plan in twelve (12) or more times in a Contract Year for two (2) consecutive Contract Years.

(f) Vessels departing any time prior to its scheduled departure time (not to apply when vessel is filled to capacity) occurring twelve (12) or more times in any Contract Year for two (2) consecutive Contract Years.

(g) Failure to comply with preventive maintenance requirement for the entire ferry system specified in Section 8.4(b) and 8.4(c) of Appendix B in six (6) or more months in any Contract Year for two (2) consecutive Contract Years.

(h) Failure to comply with the requirements of Section 8.5(a) of Appendix B in six (6) or more months in a Contract Year for two (2) consecutive Contract Years.

(i) Failure to comply with the requirements of Section 8.5(b) in three (3) consecutive Contract Years.
(j) Failure to meet the Minimum Service Level as reported in the passenger survey in three (3) consecutive Contract Years.

(k) Failure to comply with the maximum allowable passenger injury in three (3) consecutive Contract Years as provided in Section 8.9 of Appendix B.
EXHIBITS TO APPENDIX B

Exhibit 1 – Authority Security Plan
Exhibit 2 – Authority Non-Tank Vessels Response Plan
Exhibit 3 – Authority ADA Consent Decree
Exhibit 4 – Authority Daily Inspection Checklist
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**Notes:**
- Table data represents sample entries.
- For a full dataset, please refer to the original source.

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**Caption:**
- Detailed description of the table's content and significance.
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![Image]

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**Nearest City:**

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**MESSY DETAILS**

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null
(b) A COTP may deny the entry of a ship to a port or terminal under §158.110(b)-if-
(1) The port or terminal does not have a Certificate of Adequacy, as required in §158.135 of this chapter; or
(2) The port or terminal is not in compliance with the requirements of Subpart D of Part 158.

[CGD 88-002, 54 FR 18404, Apr. 28, 1989]

§ 151.09

SOURCE: Sections 151.09 151.25 appear by CGD 75-124a, 48 FR 45709, Oct. 6, 1983, unless otherwise noted.

§ 151.09 Applicability.

(a) Except as provided in paragraph (b) of this section, §§151.09 through 151.25 apply to each ship that-
(1) Is operated under the authority of the United States and engages in international voyages;
(2) Is operated under the authority of the United States and is certified for ocean service;
(3) Is operated under the authority of the United States and is certified for coastwise service beyond three nautical miles from land;
(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in §2.05-10 of this chapter; or
(5) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) Sections 151.09 through 151.25 do not apply to-
(1) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;
(2) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;
(3) A Canadian or U.S. ship being operated exclusively on the internal waters of the United States and Canada; or
(4) Any other ship specifically excluded by MARPOL 73/78.

(3) Sections 151.26 through 151.28 apply to each United States oceangoing ship specified in paragraphs (a) (1) through (a) (4) of this section which is-
(1) An oil tanker of 150 gross tons and above or other ship of 400 gross tons and above; or
(2) A fixed or floating drilling rig or other platform, when not engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources.

(d) Sections 151.26 through 151.28 do not apply to-
(1) The ships specified in paragraph (b) of this section;
(2) Any barge or other ship which is covered or operated in such a manner that no oil in any form can be carried aboard.

NOTE: The term "internal waters" is defined in § 2.05-20 of this chapter.

(c) Section 151.26(b) (5) applies to all vessels subject to the jurisdiction of the United States and operating in Antarctica.


§ 151.10 Control of discharge of oil.

(a) When more than 12 nautical miles from the nearest land, any discharge of oil or oily mixtures into the sea from a ship other than an oil tanker or from machinery space bilges of an oil tanker is prohibited except when all of the following conditions are satisfied-
(1) The oil or oily mixture does not originate from cargo pump room bilges;
(2) The oil or oily mixture is not mixed with oil cargo residues;
(3) The ship is not within a special area;
(4) The ship is proceeding en route;
(5) The oil content of the effluent without dilution is less than 100 parts per million (ppm); and
(6) The ship has in operation oily-water separating equipment, a bilge monitor, bilge alarm, or combination, thereof as required by Part 155 Subpart B of this chapter.

(b) When within 12 nautical miles of the nearest land, any discharge of oil or oily mixtures into the sea from a ship other than an oil tanker or from
machinery space bilges of an oil tanker is prohibited except when all of the following conditions are satisfied:

1. The oil or oily mixture does not originate from cargo pump room bilges;
2. The oil or oily mixture is not mixed with oil cargo residues;
3. The oil content of the effluent without dilution does not exceed 15 ppm;
4. The ship has in operation oily-water separating equipment, a bilge monitor, bilge alarm, or combination thereof as required by Part 155 Subpart B of this chapter; and-
5. The oily-water separating equipment is equipped with a 15 ppm bilge alarm; for U.S. inspected ships, approved under 46 CFR 162.050 and for U.S. uninspected ships and foreign ships, either approved under 46 CFR 162.050 or listed in the current International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) Circular summary of MARPOL 73/78 approved equipment.

NOTE: In the navigable waters of the United States, the Federal Water Pollution Control Act (FWPCA), section 311(b)(3) and 40 CFR Part 110 govern all discharges of oil or oily mixtures.

The cargo related oil residues of an oil tanker, including residues from cargo pump room bilges and all oil residues mixed with oil cargo residues shall not be discharged overboard except as provided for in Part 157 of this chapter.

When more than 12 nautical miles from the nearest land, any discharge of oil or oily mixtures into the sea from a ship other than an oil tanker or from machinery space bilges of an oil tanker that is not proceeding enroute; shall be in accordance with paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

The provisions of paragraphs (a), (b), (c) and (d) of this section do not apply to the discharge of clean or segregated ballast.

The person who is in charge of an oceangoing ship that cannot discharge oil residues into the sea in compliance with paragraphs (a), (b), (c) or (d) of this section shall ensure that those residues are-
1. Retained on board; or
2. Discharged to a reception facility. If the reception facility is in a port or terminal in the United States, each person who is in charge of each oceangoing tanker or any other oceangoing ship of 400 gross tons or more shall notify the port or terminal, at least 24 hours before entering the port or terminal, of-
   i. The estimated time of day the ship could discharge residues and mixtures containing oil;
   ii. The type of residues and mixtures containing oil to be discharged; and
   iii. The volume of residues and mixtures containing oil to be discharged.

NOTE: There are Federal, state, or local laws or regulations that could require a written description of the residues and mixtures containing oil to be discharged. For example, a residue or mixture containing oil might have a flashpoint less than 60° C (140° F) and thus have the characteristic of ignitability under 40 CFR 261.21, which might require a description of the waste for a manifest under 40 CFR Part 262, Subpart B. Occupational safety and health concerns may be covered, as well as environmental ones.

The notice required in this section is in addition to those required by other Federal, state, and local laws and regulations. Affected persons should contact the appropriate Federal, state, or local agency to determine whether other notice and information requirements, including 40 CFR Parts 262 and 263, apply to them.

No discharge into the sea shall contain chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.

This section does not apply to a fixed or floating drilling rig or other platform that is operating under a National Pollutant Discharge Elimination System (NPDES) permit.

Exceptions for emergencies:
(a) Sections 151.10 and 151.13 do not apply to-
   i. The discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea.
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EXHIBIT B - Required Modifications to Ferry Vessels
   B-1  Required Modifications to M.S. Atlantis
   B-2  Required Modifications to M.S. Cayo Norte
   B-3  Required Modifications to M.S. Culebra II
   B-4  Required Modifications to M.S. Fajardo II
   B-5  Required Modifications to M.S. Isleño
   B-7  Required Modifications to M.S. Viejo San Juan
   B-8  Required Modifications to M.S. Vieques II

EXHIBIT C - Required Modifications to Ferry Terminals
   C-1  Agreement between experts as to ferry terminals, dated 7/5/2007
   C-3  Ferry Terminal Facility Accessible Route Report dated 3/4/2007, filed 3/20/2007, as Exhibit to [102], Plaintiffs' Notice #14 of Filing Expert Reports - Accessible Routes at Defendants' Ferry Terminals
   C-8  Old San Juan Ferry Terminal Accessibility Inspection Report dated February 27, 2007, Exhibit to [100], Plaintiffs' Notice #12 of Filing Expert Reports filed 3/10/2007
EXHIBIT A

SUMMARY OF CONSENT DECREE DEADLINES
SUMMARY OF CONSENT DECREE DEADLINES

Effective Date: February 20, 2008

Each Fiscal Year Beginning 2008

¶21. Federal Funding

Within 90 Days after 2/1/2008

¶23. a. Ferry Terminals & Vessels Increased Accessibility - Public Comment

Within 90 Days of Effective Date of Consent Decree

¶17. Designation of ADA Coordinator

20 Days after Each Three Month Anniversary of Consent Decree

¶30. Project Completion and Interim Status Reports from the Defendants

Within 6 Months of Effective Date of Consent Decree

¶15. a. Notification to the Public - Accessibility of Ferry
¶15. b. Notification to the Public - Alternative Formats of Defendants Materials
¶16. ADA Grievance Procedures
¶18. Communications
¶23. b. Ferry Terminals & Vessels Increased Accessibility - Independent Self-evaluation
¶23. c. Ferry Terminals & Vessels Increased Accessibility - Comments from Passengers

Within 12 Months of Effective Date of Consent Decree

¶20. Ferry Terminal Design Standards & Guidelines

Next Vessel Drydock Unless Within 12 Months of Effective Date of Consent Decree

¶23. e. Ferry Terminals & Vessels Increased Accessibility - Modifications to Each Vessel

Within 24 Months of Effective Date of Consent Decree

¶23. f. Ferry Terminals & Vessels Increased Accessibility - Modifications to Ferry Terminals
¶24. a - e. Ferry Terminals & Gangways
Within 60 Months of Effective Date of Consent Decree

¶23. d. Ferry Terminals & Vessels Increased Accessibility - Barrier Removal
EXHIBIT B

REQUIRED MODIFICATIONS TO FERRY VESSELS

B-1  Required Modifications to M.S. Atlantis
B-2  Required Modifications to M.S. Cayo Norte
B-3  Required Modifications to M.S. Culebra II
B-4  Required Modifications to M.S. Fajardo II
B-5  Required Modifications to M.S. Isleño
B-7  Required Modifications to M.S. Viejo San Juan
B-8  Required Modifications to M.S. Vieques II
<table>
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<th>Location</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
<th>Photo Number</th>
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<td>1</td>
<td>Main</td>
<td>Amidships, Port</td>
<td>Vessel salon entry door</td>
<td>Door coaming 1-1/2’ high, with interior ramp slope 1-1/2”/ft and exterior ramp slope 2”/ft, with 3/4” change in level at sliding door 1-3/4” threshold gap</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item retracted based on PRMTA designation of accessible route on port side</td>
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<td>Door has 31” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Item retracted based on PRMTA designation of accessible route on port side</td>
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<tr>
<td>2</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Vessel salon entry door</td>
<td>Door coaming 1-1/4’ high, with interior ramp slope 1-1/2”/ft and exterior ramp slope 1-5/8”/ft, with 3/4” change in level at sliding door 1-3/4” threshold gap</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors on the starboard (passenger loading) side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the starboard side of the vessel to 1/4”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 1:2 bevel. Beers further agrees that the accessible route be extended athwartships at more than one fore and aft location.</td>
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<td>Door has 30-3/4” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Bristol Harbor Group, Inc. has estimated the cost to “replace the door” at the location listed in ref (b) as $5,900. The location in question is the Main Deck, Amidships, Starboard salon entry door. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the door is currently within 1 1/2” of the requirement. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Given your estimate and the relatively small discrepancies in the door measurements, your recommendation noted above is accepted.</td>
<td>288</td>
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<td>3</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Vessel salon entry door</td>
<td>Door coaming 1-5/8” high, with interior ramp slope 1-3/4”/ft and exterior ramp slope 2-1/8”/ft, with 3/4” change in level at sliding door 1-3/4” threshold gap</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item retracted based on PRMTA designation of accessible route on port side</td>
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<td>Door has 30-1/4” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Item retracted based on PRMTA designation of accessible route on port side</td>
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<tr>
<td>4</td>
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<td>Forward, Starboard</td>
<td>Vessel salon entry door</td>
<td>Door coaming 1-1/2” high, with interior ramp slope 1-5/8”/ft and exterior ramp slope 2”/ft, with 3/4” change in level at sliding door 1-3/4” threshold gap</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Items retracted based on PRMTA designation of accessible route from midships door, through passenger salon, and out aft centerline door.</td>
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<td>Compartment</td>
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<td>ADA Code Reference</td>
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</tr>
<tr>
<td>4.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has 31” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Items retracted based on PRMTA designation of accessible route from midships door, through passenger salon, and out aft centerline door.</td>
<td>298</td>
</tr>
<tr>
<td>5</td>
<td>Main</td>
<td>Aft, Centerline</td>
<td>Vessel salon entry door</td>
<td>Door has 31” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Bristol Harbor Group, Inc. has estimated the cost to “replace the door and provide an offset for the door” at the location listed in ref (b) as $6,500. The location in question is the Main Deck, Aft, Centerline salon door. This cost estimate assumes there is adequate space within the interior bulkheads for the replacement and relocation of the door. However, given the tight configuration of the heads to port and starboard of the door, there will most likely not be adequate space to achieve the desired spacing. The final cost will increase exponentially if any bulkhead reconfiguration is required. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the door is currently within 1” of the requirement. In addition, in order to achieve an 18” spacing, it will be necessary to complete structural reconfiguration of the interior bulkhead, which drastically increases the cost. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Upon further review, it appears that, at best, the available offset would be 16-1/4” with a 32” door. As such, given your estimate and the likely detrimental effects on the vessel arrangement, your recommendation noted above is accepted.</td>
<td>294</td>
</tr>
<tr>
<td>5.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 11” offset from interior bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Bristol Harbor Group, Inc. has estimated the cost to “replace the door and provide an offset for the door” at the location listed in ref (b) as $6,500. The location in question is the Main Deck, Aft, Centerline salon door. This cost estimate assumes there is adequate space within the interior bulkheads for the replacement and relocation of the door. However, given the tight configuration of the heads to port and starboard of the door, there will most likely not be adequate space to achieve the desired spacing. The final cost will increase exponentially if any bulkhead reconfiguration is required. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the door is currently within 1” of the requirement. In addition, in order to achieve an 18” spacing, it will be necessary to complete structural reconfiguration of the interior bulkhead, which drastically increases the cost. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Upon further review, it appears that, at best, the available offset would be 16-1/4” with a 32” door. As such, given your estimate and the likely detrimental effects on the vessel arrangement, your recommendation noted above is accepted.</td>
<td>294</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td>6</td>
<td>Main</td>
<td>Outboard, fore and aft</td>
<td>Exterior deck</td>
<td>Distance from house side to side rail is 29-1/4&quot;, insufficient for wheelchair transit. This area is also designated as an emergency &quot;Area of Refuge&quot; and Muster Station for emergency egress</td>
<td>PVAAC 403.5, PVAAC 409.1, 410.2, 410.3</td>
<td>PRMTA agrees to provide two designated wheelchair spaces. With regard to providing 36&quot; wide path of travel, Chapman retracts item based on PRMTA designation of accessible route from midships door, through passenger salon, and out aft centerline door, with Area of Refuge aft.</td>
<td>287, 321</td>
</tr>
<tr>
<td>7</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Sign to be located alongside the door on the latch side, with tactile characters, mounted 48&quot;-60&quot; above the deck</td>
<td>303</td>
</tr>
<tr>
<td>7.01</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Bathroom door has only 46&quot; wide passage in front of door (insufficient maneuvering space)</td>
<td>PVAAC 404.2.4.1</td>
<td>Beers to investigate possible relocation of bulkhead and reconfiguration of doorway to permit maneuvering space for wheelchair to make turn from passageway into toilet space.” Bristol Harbor Group, Inc. has estimated the cost to “relocate a bulkhead and a door in order to permit a wheelchair maneuvering” at the locations listed in ref (b) as ~ $24,000. The locations in question are the Main Deck, Aft, Starboard women’s bathroom door and Main Deck, Aft, Port, men’s bathroom door. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the clear passage is currently within 2&quot; of the minimum space required, and well within the required clear opening requirement. Relocating the bulkhead would require the luggage racks to be reconfigured, as well as significant structural work to move both heads. The only other alternative would be to move the mirrored staircases further aft, removing deck access at the stern of the vessel, which is not a good option. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Given your estimate and the relatively small discrepancies in the maneuvering space measurements, your recommendation noted above is accepted.</td>
<td>284</td>
</tr>
<tr>
<td>7.02</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Toilet is located 22&quot; off bulkhead</td>
<td>PVAAC 604.2</td>
<td>Toilet to be located 16-18&quot; off bulkhead</td>
<td>312</td>
</tr>
<tr>
<td>7.03</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Toilet seat is 16-3/4&quot; above deck</td>
<td>PVAAC 604.4</td>
<td>Toilet seat height to be 17-19&quot; above deck. Beers agrees to accomplish.</td>
<td>312</td>
</tr>
<tr>
<td>7.04</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Grab bar has 3-1/4&quot; gap between bar and bulkhead at rear of toilet and 5-3/4&quot; at side of toilet</td>
<td>PVAAC 604.5, 609.3</td>
<td>Provide grab bars with 1-1/2&quot; gap to bulkhead</td>
<td>312</td>
</tr>
<tr>
<td>7.05</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td>313</td>
</tr>
<tr>
<td>7.06</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Women's Bathroom</td>
<td>Lavatory vanity has 23&quot; knee space</td>
<td>PVAAC 306.3</td>
<td>Provide 27&quot; high knee space</td>
<td>313</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
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</tr>
<tr>
<td>7.07</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory faucets require pinching/grasping</td>
<td>PVAAC 309.4, 606.4</td>
<td>Provide faucets with lever handles that do not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
<td>313</td>
</tr>
<tr>
<td>7.08</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 54&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48&quot; above deck max.</td>
<td>-</td>
</tr>
<tr>
<td>8</td>
<td>Main</td>
<td>Att, Port</td>
<td>Men's Bathroom</td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Sign to be located alongside the door on the latch side, with tactile characters, mounted 48&quot;-60&quot; above the deck</td>
<td>302</td>
</tr>
<tr>
<td>8.01</td>
<td></td>
<td></td>
<td></td>
<td>Bathroom door has only 46&quot; wide passage in front of door (insufficient maneuvering space)</td>
<td>PVAAC 404.2.4.1</td>
<td>Beers to investigate possible relocation of bulkhead and reconfiguration of doorway to permit maneuvering space for wheelchair to make turn from passageway into toilet space. “Bristol Harbor Group, Inc. has estimated the cost to “relocate a bulkhead and a door in order to permit a wheelchair maneuvering” at the locations listed in ref (b) as ~ $24,000. The locations in question are the Main Deck, Att, Starboard women’s bathroom door and Main Deck, Att, Port, men’s bathroom door. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the clear passage is currently within 2&quot; of the minimum space required, and well within the required clear opening requirement. Relocating the bulkhead would require the luggage racks to be reconfigured, as well as significant structural work to move both heads. The only other alternative would be to move the mirrored staircases further aft, removing deck access at the stern of the vessel, which is not a good option. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Given your estimate and the relatively small discrepancies in the maneuvering space measurements, your recommendation noted above is accepted.</td>
<td>309</td>
</tr>
<tr>
<td>8.02</td>
<td></td>
<td></td>
<td></td>
<td>Toilet is located 26&quot; off bulkhead</td>
<td>PVAAC 604.2</td>
<td>Toilet to be located 16-18&quot; off bulkhead</td>
<td>304</td>
</tr>
<tr>
<td>8.03</td>
<td></td>
<td></td>
<td></td>
<td>Grab bar has 3&quot; gap between bar and bulkhead at rear of toilet and 8-3/4&quot; at side of toilet</td>
<td>PVAAC 604.5, 609.3</td>
<td>Provide grab bars with 1-1/2&quot; gap to bulkhead</td>
<td>304</td>
</tr>
<tr>
<td>8.04</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td>310</td>
</tr>
<tr>
<td>8.05</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory vanity has 23&quot; knee space</td>
<td>PVAAC 306.3</td>
<td>Provide 27&quot; high knee space</td>
<td>310</td>
</tr>
<tr>
<td>Item</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>8.06</td>
<td>Fwd/Aft</td>
<td></td>
<td>Lavatory faucets require pinching/grasping</td>
<td>PVAAC 309.4, 606.4</td>
<td>Provide faucets with lever handles that do not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
<td>310</td>
<td></td>
</tr>
<tr>
<td>8.07</td>
<td></td>
<td></td>
<td>Towel dispenser is 57-1/2&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48&quot; above deck max.</td>
<td>307</td>
<td></td>
</tr>
<tr>
<td>8.08</td>
<td></td>
<td></td>
<td>Bottom of mirror is 56&quot; above deck</td>
<td>PVAAC 603.3</td>
<td>Relocate mirror with bottom no more than 40&quot; above deck</td>
<td>307</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Fwd/Aft</td>
<td>Main</td>
<td>Lifejacket donning instructions are mounted 63&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48&quot; above deck max.</td>
<td>334</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>Main</td>
<td>Designated “Handicap” area is for booth seating</td>
<td>ADAAG-R 4.1.3</td>
<td>Provide wheelchair spaces with a minimum footprint of 30” x 48”</td>
<td>297</td>
<td></td>
</tr>
<tr>
<td>10.01</td>
<td></td>
<td>Main</td>
<td>No designated wheelchair spaces</td>
<td>ADAAG-R 4.1.3</td>
<td>Provide 4 conforming wheelchair spaces; vessel has fixed seating for 290 passengers</td>
<td>297</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>Main, Upper</td>
<td>Exterior Stairway, Main Deck to Upper Deck</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>Bristol Harbor Group, Inc. has estimated the cost to &quot;provide stairway with stair treads 11&quot; wide minimum with 7&quot; rise maximum (stair slope 7.6 in/ft maximum)&quot; at the one location noted in ref (b) as $18,000. The location in question is Fwd, Port and Starboard athwartships, Exterior Stairway Main Deck to Upper Deck. Bristol Harbor Group, Inc. believes that the cost above is excessive and that a compliant stairway may not be possible without significantly altering the arrangement of the vessel requiring additional costs and adversely impacting passenger capacity. Given your estimate, the detrimental effects on the vessel arrangement, and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted.</td>
<td>284</td>
<td></td>
</tr>
<tr>
<td>11.01</td>
<td></td>
<td>Main, Upper</td>
<td>Overhead obstruction 71&quot; above second stair tread above Main Deck</td>
<td>PVAAC 307, 403.5.3</td>
<td>PRMTA will install protective padding on structure; Chapman retracts portion of comment regarding minimizing depth of structure.</td>
<td>322, 323</td>
<td></td>
</tr>
<tr>
<td>11.02</td>
<td></td>
<td>Main, Upper</td>
<td>Handrails do not have extension and return at bottom or top landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide top and bottom handrail extension at the top and bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12&quot; minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.</td>
<td>322, 328</td>
<td></td>
</tr>
</tbody>
</table>
### ACCESSIBILITY REPORT

**February 17, 2007**

**Rev. December 23, 2007**

<table>
<thead>
<tr>
<th>Item</th>
<th>Deck</th>
<th>Location (Fwd/Aft)</th>
<th>Compartment (Vehicle) Deck</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
<th>Photo Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Main</td>
<td>Aft</td>
<td>Main (Vehicle) Deck</td>
<td>Loading ramp has excessive slope of approximately 5-1/4”/ft at transition to dock, approximately 7” high (varies with tide condition)</td>
<td>PVAAC 405.2</td>
<td>Items will be retracted pending receipt of details of ADA compliant gangway at each terminal to be used for stern access to the Cayo Norte and Isleno. Gangway is to be fitted with compliant handrails, transition plates at ends, and have a slope not exceeding 1:12. Bristol Harbor Group, Inc. has created a representative sketch of the proposed gangway arrangement. The proposed arrangement meets slope and transition plate requirements. [encl (1)] An ADA compliant gangway will be used, including ADA compliant handrails. BHGI has obtained a quote from a potential manufacturer, and the cost for this item would be about $3,500 (not including shipping to Puerto Rico). The current quote is for a slightly shorter gangway, and will be refined to fit the vessel’s parameters. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Your recommendation noted above is accepted. Please provide confirmation order for the two gangways.</td>
<td>608</td>
</tr>
<tr>
<td>1.01</td>
<td></td>
<td></td>
<td></td>
<td>Loading ramp has slope of approximately 1-1/8”/ft at transition to vessel (varies with tide condition)</td>
<td>PVAAC 405.2</td>
<td>Provide portion of ramp with no more than 1:12 slope (1”/ft), at least 36” wide. See Item 1 above.</td>
<td>608</td>
</tr>
<tr>
<td>1.02</td>
<td></td>
<td></td>
<td></td>
<td>Loading ramp not fitted with handrails</td>
<td>PVAAC 405.8</td>
<td>Provide handrails in way of compliant section of ramp. See Item 1 above.</td>
<td>608</td>
</tr>
<tr>
<td>1.03</td>
<td></td>
<td></td>
<td></td>
<td>Loading ramp not fitted with edge protection</td>
<td>PVAAC 405.9</td>
<td>Provide edge protection in way of compliant section of ramp. See Item 1 above.</td>
<td>608</td>
</tr>
<tr>
<td>1.04</td>
<td></td>
<td></td>
<td></td>
<td>Loading ramp surface has approximately 2-7/8” wide gap at transom hinge</td>
<td>PVAAC 302.3</td>
<td>Provide fitting at gap to reduce openings to no more than 1/2” diameter. See Item 1 above.</td>
<td>608</td>
</tr>
<tr>
<td>2</td>
<td>Main</td>
<td>Aft to Forward</td>
<td>Main (Vehicle) Deck</td>
<td>Vehicle tiedown fittings extend approximately 1-3/4” above deck, pose tripping hazard</td>
<td>PVAAC 303.403.4</td>
<td>In addition to the path of travel demarcation, only the deck tie down fittings adjacent to the path of travel need be painted a contrasting color.</td>
<td>608</td>
</tr>
<tr>
<td>3</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Deckhouse entry door from Main (Vehicle) Deck</td>
<td>Door coaming 4” high, with exterior ramp slope 2-1/8”/ft and interior ramp slope 1”/ft</td>
<td>PVAAC 404.4.1</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation to 1/4”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 1:2 bevel.</td>
<td>639, 641</td>
</tr>
<tr>
<td>3.1</td>
<td></td>
<td></td>
<td></td>
<td>Door has only 3-1/2” offset from bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts comment based on concurrence with Beers that providing 18” offset would require relocation of toilet space bulkhead with attendant relocation of structure and sanitary services.</td>
<td>641</td>
</tr>
</tbody>
</table>
4 Main Deck  Forward, Port and Starboard  Passenger Salon

**Item 4**

<table>
<thead>
<tr>
<th>Location</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fwd/Aft</td>
<td></td>
<td>Bottom of sideshell portlights is 47” above deck; wheelchair passengers cannot see out</td>
<td>PVAAC 404.2.11</td>
<td>Item will be retracted pending receipt of documentation that providing aft-facing wheelchair spaces toward the forward end of the passenger salon will provide line of sight from 43” above the deck at the wheelchair to at least one side shell portlight. Compliant tie-downs are to be furnished in way of the wheelchair spaces. Bristol Harbor Group, Inc. has created a representative sketch for each vessel, based on the original Outboard Profiles, illustrating the effective line of sight from the wheelchair seating areas in the deckhouse. (encl 1 &amp; 2). The wheelchair seating area will be configured so that wheelchairs will face aft, in which case there is a line to the horizon through at least one portlight aft of the seating area. On the M/V Isleño, looking aft ~12’ from the seating area provides a clear line of sight to the horizon though two (2) portlights (see Dwg 06497-900 Rev 0). On the M/V Cayo Norte, looking aft about 7’ from the seating area provides a clear line of sight to the horizon through three (3) portlights (see Dwg 06497-901 Rev 0). Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Provided that compliant tie-downs are furnished in way of the wheelchair spaces (part of M/V Isleño: Item 14 &amp; M/V Cayo Norte: Item 4), your recommendation noted above is accepted.</td>
</tr>
</tbody>
</table>

5 Main, Upper  Forward, Port

**Item 5**

<table>
<thead>
<tr>
<th>Deck to Upper Deck (Primary Egress Route)</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stairway</td>
<td>Stair treads are 9-1/2” wide with 8-1/2” rise (stair slope 11-3/4 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td></td>
</tr>
</tbody>
</table>

Beers to provide cost estimate for reworked stairway. Bristol Harbor Group, Inc. has estimated the cost to “provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum)” and “provide stairway with 36” clearance minimum between handrails” at the one location noted in ref (b) as $6,780. The location in question is Forward, Port, Stairway Main Deck to Upper Deck. Bristol Harbor Group, Inc. believes that the cost above is excessive. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the stairs on the vessel be allowed to remain unaltered, noting that per ref (b), the rails will be modified per item 5.02. Given your estimate and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted. See Item 5 above.

5.01 Stairway has only 30-1/2” clear between handrails

PVAAC 409.2

Stairway has only 30-1/2” clear between handrails

PVAAC 409.2

5.02 Handrails do not have extension and return at bottom landing

ADAAG-R 505.10.3

Provide bottom handrail extension at the bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12" minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.
<table>
<thead>
<tr>
<th>Item</th>
<th>Deck</th>
<th>Location Fwd/Aft</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
<th>Photo Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Upper</td>
<td>Forward, Port</td>
<td>Passenger Salon</td>
<td>Seasick bag dispenser is 56-1/2” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
<td>648</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
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</tr>
<tr>
<td>7</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Women’s Bathroom</td>
<td>Passageway is 42” wide measured perpendicular to door at hinge side</td>
<td>PVAAC 404.2.4.1</td>
<td>Beers to investigate possible relocation of bulkhead and reconfiguration of doorway to permit maneuvering space for wheelchair to make turn from passageway into toilet space. For items 7 and 13, Bristol Harbor Group, Inc investigated the effects of reversing the door swing and of modifying the location of the door in the existing bulkhead(s). Reversing the swing (i.e. latch and hinge sides reversed with door opening outboard) would not appreciably affect the required maneuvering dimensions, and relocation of the doorway in the existing outboard bulkhead would provide negligible improvement to the available maneuvering dimensions while producing an interference with the handsink locations, and in the case of the MV Cayo Norte, would produce an interference with the door swing of the main passenger cabin doors. Bristol Harbor Group, Inc also investigated the combined effect of relocating the door and rotating the entire outboard bulkhead to provide the required maneuvering dimensions. Although such a modification may be able to produce marginally sufficient maneuvering area outboard of the toilet space, it is provided at the expense of reduced dimensions and clear maneuvering space within the toilet space, and would necessitate relocation of the sinks at a minimum. As such, to fully accommodate the required 54” x 48” maneuvering dimensions external to the toilet spaces without sacrificing necessary space within, a complete reconstruction of each toilet space would be required, including relocation of the outboard bulkhead further inboard, and an associated relocation of the inboard bulkhead forming the main deck cargo area. The fore and aft bulkheads would require reconstruction or replacement to suit the new toilet locations, as would the upper deck plate, and all fresh water supply, grey water drain, and sanitary drains, vents, etc. would require relocation. The extent of changes would necessitate re-assessment of the vessel’s lightship characteristics, deadweight survey or inclining test, and may adversely affect the passenger and/or cargo carrying capacity. Total cost to effect such modifications to each toilet space on each vessel might approach $40,000 per space, or $80,000 total on the MV Isleño and $80,000 total on the M/V Cayo Norte. A final option considered is to eliminate the outboard toilet stall in the case of item 7 and to eliminate the outboard urinal stall in the case of item 13 and reconstruct the outboard toilet space bulkhead to provide improved maneuvering dimensions. Although much less invasive than relocating the entire toilet space(s), this alternative leads to a loss of functionality in each space, resulting in the loss of roughly one half of the available toilet facilities. The estimate for such a modification is $10,000 per toilet space, or $20,000 total on the MV Isleño and $20,000 total on the M/V Cayo Norte. The spaces available are a result of the inherent ship-shape curvature of the side shell, necessary cargo area capacity of the main deck, and the vessel arrangements required for passage through to the forward main deck passenger seating area. The locations in question on both vessels are forward (near the aft end of the main deckhouse) port and starboard side, between Main Deck and 01 Deck. Bristol Harbor Group, Inc. believes that the costs above are excessive and that compliant maneuvering spaces leading to the toilet spaces may not be possible without significantly altering the arrangement of the vessel requiring significant expense and adversely impacting the quantity of toilet facilities and cargo deck or passenger capacity. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the bulkheads and toilet space doors in question be allowed to remain unaltered, in light of the potential expense and significant disruption to the vessels’ arrangements and capacity. Given your estimate and the detrimental impact to the vessel arrangement, your recommendation noted above is accepted.</td>
<td>643</td>
</tr>
</tbody>
</table>
### ACCESSIBILITY REPORT

**February 17, 2007**

**Rev. December 23, 2007**

<table>
<thead>
<tr>
<th>Item</th>
<th>Deck</th>
<th>Location Fwd/Aft</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
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</tr>
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<tbody>
<tr>
<td>7.01</td>
<td></td>
<td></td>
<td></td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Sign to be located alongside the door on the latch side, with tactile characters, mounted 48&quot;-60&quot; above the deck</td>
<td>643</td>
</tr>
<tr>
<td>7.02</td>
<td></td>
<td></td>
<td></td>
<td>Door coaming 1-3/16&quot; high, with interior ramp slope 2-3/8&quot;/ft and 1&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48&quot; flat inboard of the doors. The 48&quot; flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation to 1/4&quot;, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4&quot; will be accompanied by a minimum 1:2 bevel.</td>
<td>613, 622</td>
</tr>
<tr>
<td>7.03</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall clear deck space insufficient. Stall measures 47&quot; wide x 56&quot; deep</td>
<td>PVAAC 604.8.1.1</td>
<td>Provide clear deck space 60&quot; wide min measured perpendicular to the side wall, and 56&quot; deep minimum for wall hung water closets and 59&quot; deep minimum for deck mounted water closets measured perpendicular to the rear wall</td>
<td>617</td>
</tr>
<tr>
<td>7.04</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door is not self-closing</td>
<td>PVAAC 604.8.1.2</td>
<td>Provide toilet stall with self-closing door</td>
<td>619</td>
</tr>
<tr>
<td>7.05</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door fitted with small inside latch; requires pinching/ grasping</td>
<td>PVAAC 309.4</td>
<td>Provide door latch that does not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example for guidance.</td>
<td>614</td>
</tr>
<tr>
<td>7.06</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door has no inside or outside handle</td>
<td>PVAAC 404.2.7, 604.8.2.1</td>
<td>Provide inside and outside handle for stall door. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example for guidance.</td>
<td>619, 620</td>
</tr>
<tr>
<td>7.07</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory has 26&quot; knee space</td>
<td>PVAAC 306.3</td>
<td>Provide 27&quot; high knee space</td>
<td>615</td>
</tr>
<tr>
<td>7.08</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td>615</td>
</tr>
<tr>
<td>7.09</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory faucet handles require pinching/grasping</td>
<td>PVAAC 213.3.4, 309.4, 606.4</td>
<td>Provide faucet handles at one lavatory that do not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example for guidance.</td>
<td>615</td>
</tr>
<tr>
<td>7.10</td>
<td></td>
<td></td>
<td></td>
<td>Bottom of mirror is 43&quot; above deck</td>
<td>PVAAC 603.3</td>
<td>Relocate one mirror with bottom no more than 40&quot; above deck</td>
<td>616</td>
</tr>
<tr>
<td>7.11</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 53&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48&quot; above deck max.</td>
<td>619</td>
</tr>
<tr>
<td>8</td>
<td>Main</td>
<td>Forward, Port and Starboard</td>
<td>Passenger Salon</td>
<td>No designated wheelchair spaces</td>
<td>ADAAG-R 4.13 (19)(a), 4.33.1</td>
<td>Provide 4 conforming wheelchair spaces; vessel has fixed seating for 205 passengers</td>
<td>-</td>
</tr>
<tr>
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<tr>
<td>9</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Deckhouse entry door from Main (Vehicle) Deck</td>
<td>Door coaming 6’ high, with exterior ramp slope 3’/ft and interior ramp slope 1’/ft</td>
<td>PVAAC 404.4.1</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation to 1/4”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 1:2 bevel.</td>
<td>635, 636</td>
</tr>
<tr>
<td>9.1</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Deckhouse entry door from Main</td>
<td>Door has only 3-1/2” offset from bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts comment based on concurrence with Beers that providing 18” offset would require relocation of toilet space bulkhead with attendant relocation of structure and sanitary services.</td>
<td>736</td>
</tr>
<tr>
<td>10</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Passenger Salon</td>
<td>Seasick bag dispenser is 56-1/2” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
<td>647</td>
</tr>
<tr>
<td>11</td>
<td>Main, Upper</td>
<td>Forward, Starboard</td>
<td>Stairway, Main Deck to Upper Deck (Primary Egress Route)</td>
<td>Stair treads are 10” wide with 7-1/2” rise (stair slope 10 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on port side</td>
<td>666</td>
</tr>
<tr>
<td>11.01</td>
<td>Main, Upper</td>
<td>Forward, Starboard</td>
<td>Stairway, Main Deck to Upper Deck (Primary Egress Route)</td>
<td>Stairway has only 30-1/2” clear between handrails</td>
<td>PVAAC 409.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on port side</td>
<td>666</td>
</tr>
<tr>
<td>11.02</td>
<td>Main, Upper</td>
<td>Forward, Starboard</td>
<td>Stairway, Main Deck to Upper Deck (Primary Egress Route)</td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide bottom handrail extension at the bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12” minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.</td>
<td>667</td>
</tr>
<tr>
<td>12</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Passenger Salon</td>
<td>Lifejacket donning instructions are mounted 62-1/2” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48” above deck max.</td>
<td>648</td>
</tr>
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</table>
Beers to investigate possible relocation of bulkhead and reconfiguration of doorway to permit maneuvering space for wheelchair to make turn from passageway into toilet space. For items 7 and 13, Bristol Harbor Group, Inc. investigated the effects of reversing the door swing and of modifying the location of the door in the existing bulkhead(s). Reversing the swing (i.e. latch and hinge sides reversed with door opening outboard) would not appreciably affect the required maneuvering dimensions, and relocation of the doorway in the existing outboard bulkhead would provide negligible improvement to the available maneuvering dimensions while producing an interference with the handsink locations, and in the case of the M/V Cayo Norte, would produce an interference with the door swing of the main passenger cabin doors. Bristol Harbor Group, Inc. also investigated the combined effect of relocating the door and rotating the entire outboard bulkhead to provide the required maneuvering dimensions. Although such a modification may be able to produce marginally sufficient maneuvering area outboard of the toilet space, it is provided at the expense of reduced dimensions and clear maneuvering space within the toilet space, and would necessitate relocation of the sinks at a minimum. As such, to fully accommodate the required 54" x 48" maneuvering dimensions external to the toilet spaces without sacrificing necessary space within, a complete reconstruction of each toilet space would be required, including relocation of the outboard bulkhead further inboard, and an associated relocation of the inboard bulkhead forming the main deck cargo area. The fore and aft bulkheads would require reconstruction or replacement to suit the new toilet locations, as would the upper deck plate, and all fresh water supply, grey water drain, and sanitary drains, vents, etc would require relocation. The extent of changes would necessitate re-assessment of the vessel’s lightship characteristics, deadweight survey or inclining test, and may adversely affect passenger and/or cargo carrying capacity. Total cost to effect such modifications to each toilet space on each vessel might approach $40,000 per space, or $80,000 total on the M/V Isleño and $80,000 total on the M/V Cayo Norte. A final option considered is to eliminate the outboard toilet stall in the case of item 7 and to eliminate the outboard urinal stall in the case of item 13 and reconstruct the outboard toilet space bulkhead to provide improved maneuvering dimensions. Although much less invasive than relocating the entire toilet space(s), this alternative leads to a loss of functionality in each space, resulting in the loss of roughly one half of the available toilet facilities. The estimate for such a modification is $10,000 per toilet space, or $20,000 total on the M/V Isleño and $20,000 total on the M/V Cayo Norte. The spaces available are a result of the inherent ship-shape curvature of the side shell, necessary cargo are a capacity of the main deck, and the vessel arrangements required for passage through to the forward main deck passenger seating area. The locations in question on both vessels are forward (near the aft end of the main deckhouse) port and starboard side, between Main Deck and 01 Deck. Bristol Harbor Group, Inc. believes that the costs above are excessive and that compliant maneuvering spaces leading to the toilet spaces may not be possible without significantly altering the arrangement of the vessel requiring significant expense and adversely impacting the quantity of toilet facilities and cargo deck or passenger capacity. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the bulkheads and toilet space doors in question be allowed to remain unaltered, in light of the potential expense and significant disruption to the vessels’ arrangements and capacity. Given your estimate and the detrimental impact to the vessel arrangement, your recommendation noted above is accepted.
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<th>Agreement</th>
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<tr>
<td>13.01</td>
<td></td>
<td></td>
<td></td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Agreed</td>
<td>634</td>
</tr>
<tr>
<td>13.02</td>
<td></td>
<td></td>
<td></td>
<td>Door coaming 1-1/4&quot; high, with interior ramp slope 2-1/2&quot;/ft and 7/8&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>= Agreed modification</td>
<td>626</td>
</tr>
<tr>
<td>13.03</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall clear deck space insufficient. Stall measures 58&quot; wide x 57&quot; deep</td>
<td>PVAAC 604.8.1.1</td>
<td>= Agreed modification</td>
<td>624</td>
</tr>
<tr>
<td>13.04</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door is not self-closing</td>
<td>PVAAC 604.8.1.2</td>
<td>= Agreed modification</td>
<td>632</td>
</tr>
<tr>
<td>13.05</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door fitted with small inside latch; requires pinching/grasping</td>
<td>PVAAC 309.4</td>
<td>= Agreed modification</td>
<td>632</td>
</tr>
<tr>
<td>13.06</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door has no inside or outside handle</td>
<td>PVAAC 404.2.7, 604.8.2.1</td>
<td>= Agreed modification</td>
<td>632</td>
</tr>
<tr>
<td>13.07</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory has 25&quot; knee space</td>
<td>PVAAC 306.3</td>
<td>= Retracted</td>
<td>633</td>
</tr>
<tr>
<td>13.08</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>= Retracted</td>
<td>633</td>
</tr>
<tr>
<td>13.09</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory faucet handles require pinching/grasping</td>
<td>PVAAC 213.3.4, 309.4, 606.4</td>
<td>= Agreed modification</td>
<td>633</td>
</tr>
<tr>
<td>13.10</td>
<td></td>
<td></td>
<td></td>
<td>Bottom of mirror is 43&quot; above deck</td>
<td>PVAAC 603.3</td>
<td>= Retracted</td>
<td>633</td>
</tr>
<tr>
<td>13.11</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 53&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>= Retracted</td>
<td>628</td>
</tr>
<tr>
<td>13.12</td>
<td></td>
<td></td>
<td></td>
<td>Urinal stall is 20&quot; wide</td>
<td>PVAAC 305.3, 605.3</td>
<td>= Retracted</td>
<td>670</td>
</tr>
<tr>
<td>Item</td>
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<tr>
<td>1</td>
<td>Main, 01, 02</td>
<td>N/A</td>
<td>N/A</td>
<td>Vessel has four passenger decks and lacks vertical (elevator) access</td>
<td>PVAAC 206.2.3, PVAAC 407.4</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. As such, vessel would be considered a two-deck vessel, entitled to elevator exemption. The main deck is an Area of Refuge for 40 passengers, and this will be marked as the wheelchair accessible Area of Refuge (see attached scan hpsc21.pdf which is an excerpt from the Emergency Evacuation Plan). Unfortunately, neither the stability letter nor the COI seem to restrict the passengers from the 02 level. However, the Emergency Evacuation Plan limits the number of passengers on the 02 level to 20, but it serves as an Area of Refuge for 179 (see attached scan HPSC22.pdf). I understand that it is restricted to 20 passengers for stability purposes, but regardless, the operator restricts the 02 level passenger capacity to zero, as noted in the previous photos. Vessel has self-imposed passenger restrictions to the 02 level, but we require assurance that such restrictions be removed, it will nullify the retraction of this item.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Main Amidships, Starboard</td>
<td>Vessel entry door at side shell</td>
<td>Door coaming 3-3/8&quot; high, with single ramp slope 1-7/8&quot;/ft</td>
<td>PVAAC 404.4.1</td>
<td>Reconfigure ramps for no more than 1:6 slope (2&quot;/ft)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Main Amidships, Starboard</td>
<td>Passenger loading vestibule</td>
<td>Water cooler spout outlet is 43&quot; above deck</td>
<td>PVAAC 602.4</td>
<td>Provide additional water cooler with spout outlet not more than 36&quot; above deck</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Water cooler does not have access</td>
<td>PVAAC 602.2</td>
<td>Beers will seek alternate location for water cooler. Failing that, water cooler will be removed from vessel.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Main Amidships, Starboard</td>
<td>Door forward from Passenger loading vestibule to Forward Passenger Salon</td>
<td>Door coaming 3-3/8&quot; high, with after ramp slope 1-5/8&quot;/ft and forward ramp slope 1-5/8&quot;/ft, with ¾&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48&quot; flat inboard of the doors on the starboard (passenger loading) side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48&quot; flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the starboard side of the vessel to ¼&quot;, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4&quot; will be accompanied by a minimum 12 bevel. Beers further agrees that the accessible route be extended athwartships at more than one fore and aft location.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Main Forward, Starboard</td>
<td>Unisex Bathroom</td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Sign to be located alongside the door on the latch side, with tactile characters, mounted 48&quot;-60&quot; above the deck</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.01</td>
<td></td>
<td></td>
<td>Bathroom door has only 3-1/2&quot; offset from bathroom bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts comment based on concurrence with Beers that providing 18&quot; offset would require encroachment into salon, with attendant relocation of structure.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.02</td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td></td>
<td></td>
</tr>
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<tr>
<td>5.03</td>
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<td></td>
<td></td>
<td>Soap dispenser is 49-1/2” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate soap dispenser to 48” above deck max.</td>
<td>158</td>
</tr>
<tr>
<td>5.04</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 55” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48” above deck max.</td>
<td>158</td>
</tr>
<tr>
<td>5.05</td>
<td></td>
<td></td>
<td></td>
<td>Grab bar at side of toilet has 3-3/8” gap between bar and bulkhead; grab bar at rear has 6-1/2” gap</td>
<td>PVAAC 604.5, 609.3</td>
<td>Provide grab bars with 1-1/2” gap to bulkhead</td>
<td>155, 159</td>
</tr>
<tr>
<td>5.06</td>
<td></td>
<td></td>
<td></td>
<td>Toilet paper dispenser is 13” in front of toilet</td>
<td>PVAAC 604.7</td>
<td>Relocate dispenser to be 7” min. and 9” max. in front of toilet</td>
<td>154</td>
</tr>
<tr>
<td>5.07</td>
<td></td>
<td></td>
<td></td>
<td>Box structure over lavatory is protruding object, 21” wide, extending 17-3/8” from bulkhead</td>
<td>PVAAC 307, 403.5.3</td>
<td>Relocate box structure or provide protective padding to vertical sides and bottom corner</td>
<td>158</td>
</tr>
<tr>
<td>6</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Forward Passenger Salon</td>
<td>Fire station box protrudes 7” into walkway</td>
<td>PVAAC 307, 403.5.3</td>
<td>Reconfigure/recess fire station to protrude no more than 4”</td>
<td>164</td>
</tr>
<tr>
<td>7</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Forward Passenger Salon</td>
<td>Seasick bag dispenser is 64” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
<td>171</td>
</tr>
<tr>
<td>8</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Forward Passenger Salon</td>
<td>Lifejacket donning instructions are mounted 68” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48” above deck max.</td>
<td>172, 173</td>
</tr>
<tr>
<td>9</td>
<td>Main</td>
<td>Amidships, Centerline</td>
<td>Forward Passenger Salon</td>
<td>Designated wheelchair spaces measure 28-3/4” x 32-1/4”</td>
<td>PVAAC 305.3</td>
<td>Provide wheelchair spaces with a minimum footprint of 30” x 48”</td>
<td>175</td>
</tr>
<tr>
<td>9.01</td>
<td></td>
<td></td>
<td></td>
<td>Designated wheelchair spaces provided for 3 wheelchairs</td>
<td>ADAAAG-R 4.13 (19)(a) 4.33.1</td>
<td>Provide 7 conforming wheelchair spaces; vessel has fixed seating for 577 passengers</td>
<td>175</td>
</tr>
<tr>
<td>9.02</td>
<td></td>
<td></td>
<td></td>
<td>Designated wheelchair spaces are routinely used for baggage stowage</td>
<td>ADAAAG-R 4.13 (19)(a) 4.33.1</td>
<td>Provide signage at designated wheelchair spaces for wheelchair use only as needed</td>
<td>240</td>
</tr>
<tr>
<td>10</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Door aft from Passenger loading vestibule to Aft Passenger Salon</td>
<td>Door coaming 4-3/8” high, with after ramp slope 1-1/4”/ft and forward ramp slope 1-1/4”/ft, with 1” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors on the starboard (passenger loading) side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the starboard side of the vessel to 1/4”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 12 bevel. Beers further agrees that the accessible route be extended athwartships at more than one fore and aft location.</td>
<td>213, 216</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
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<td>Agreed Correction</td>
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<tr>
<td>11</td>
<td>Main</td>
<td>Amidships, Port</td>
<td>Door aft from Forward Passenger Salon to Aft Passenger Salon</td>
<td>Door coaming 3-1/2' high, with after ramp slope 1-3/4'/ft and forward ramp slope 1-7/8'/ft, with 5/8' change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on starboard side</td>
<td>-</td>
</tr>
<tr>
<td>12</td>
<td>Main</td>
<td>Aft, Center</td>
<td>Aft Passenger Salon</td>
<td>Seasick bag dispenser is 65' above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48' above deck max.</td>
<td>218</td>
</tr>
<tr>
<td>13</td>
<td>Main</td>
<td>Aft, Center</td>
<td>Aft Passenger Salon</td>
<td>Television is mounted 68' above deck and protrudes 21' from bulkhead</td>
<td>PVAAC 307.4</td>
<td>Recess the TV into the bulkhead of possible. Otherwise, provide a guardrail or barrier, the leading edge of which is to be located 27' maximum above the finished deck surface</td>
<td>218, 221</td>
</tr>
<tr>
<td>14</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 3-5/8' high, with after ramp slope 2'ft and forward ramp slope 1-7/8'/ft, with 3/4' change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>222, 226, 227</td>
</tr>
<tr>
<td>15</td>
<td>Main</td>
<td>Aft, Port</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 3-5/8' high, with after ramp slope 2'ft and forward ramp slope 1-7/8'/ft, with 3/4' change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on starboard side</td>
<td>220, 232, 235</td>
</tr>
<tr>
<td>16</td>
<td>Upper</td>
<td>Amidships, Starboard</td>
<td>Stair tower</td>
<td>Water cooler spout outlet is 44-1/4' above deck</td>
<td>PVAAC 602.4</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>186-188</td>
</tr>
<tr>
<td>16.01</td>
<td>Upper</td>
<td>Starboard</td>
<td>Stair tower</td>
<td>Water cooler has no knee or toe clearance, and insufficient maneuvering space</td>
<td>PVAAC 305, 306, 602.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>187</td>
</tr>
<tr>
<td>17</td>
<td>Upper</td>
<td>Aft, Starboard</td>
<td>Door from Stair tower to Aft Passenger Salon</td>
<td>Door coaming 3-1/4' high, with after ramp slope 1-3/4'/ft and forward ramp slope 1-1/4'/ft, with 1' change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>188-189</td>
</tr>
<tr>
<td>18</td>
<td>Upper</td>
<td>Aft, Port</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 3' high, with after ramp slope 1-5/8'ft and forward ramp slope 1-5/8'/ft, with 7/8' change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>195</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartmen</td>
<td>Issue</td>
<td>ADA Code Reference</td>
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<td>Photo Number</td>
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</tr>
<tr>
<td>18.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has only 3” offset from exterior bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>196</td>
</tr>
<tr>
<td>19</td>
<td>Upper</td>
<td>Aft, Starboard</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 3’ high, with after ramp slope 1-1/2”/ft and forward ramp slope 1-1/2”/ft, with 3/4” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>-</td>
</tr>
<tr>
<td>20</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Door from Fwd Passenger Salon to Aft Passenger Salon</td>
<td>Door coaming 3’ high, with after ramp slope 1-1/2”/ft and forward ramp slope 1-3/8”/ft, with 7/8” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>191-192</td>
</tr>
<tr>
<td>21</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Fwd end of Aft Passenger Salon</td>
<td>Lifejacket donning instructions are mounted 55-1/2” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>192</td>
</tr>
<tr>
<td>22</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Fwd Passenger Salon</td>
<td>A/C duct protrudes 35” into seating area</td>
<td>PVAAC 307, 403.5.3</td>
<td>Reconfigure/recess A/C duct to eliminate protrusion of more than 4”, or provide fixed padding at corners and warning signage</td>
<td>203</td>
</tr>
<tr>
<td>23</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Aft Passenger Salon</td>
<td>Television is mounted 62” above deck and protrudes 21” from bulkhead</td>
<td>PVAAC 307.4</td>
<td>Recess the TV into the bulkhead of possible. Otherwise, provide a guardrail or barrier, the leading edge of which is to be located 27” maximum above the finished deck surface</td>
<td>204</td>
</tr>
<tr>
<td>24</td>
<td>Upper</td>
<td>Aft, Starboard</td>
<td>Door from Stair Tower to Fwd Passenger Salon</td>
<td>Door coaming 3-3/8” high, with after ramp slope 1-7/8”/ft and forward ramp slope 1-5/8”/ft, with 1-3/4” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>211</td>
</tr>
<tr>
<td>25</td>
<td>Main, 01</td>
<td>Amidships, Starboard</td>
<td>Stairway, Main Deck to 01 Deck</td>
<td>Stair treads are 10-1/2” wide with 7-1/2” rise (stair slope 8.5 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>We have received a quote from a shipyard currently working on the M/V Culebra II, and the estimated cost to “provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum” in the two locations noted in ref (b) is $36,000 excluding the cost of altering the handrails. This is slightly higher than BHGI’s internal estimate and should represent an accurate cost per vessel. The locations in question are Amidships, Starboard Stairway, Main Deck to 01 Deck; and Aft, Centerline Stairway, Main Deck to 01 Deck. The handrail cost is omitted because Bristol Harbor Group, Inc. has recommended accomplishing this task regardless. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially for the Amidships stairs which are currently within 1 in/ft of the requirement. Given your estimate and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted.</td>
<td>180, 186</td>
</tr>
</tbody>
</table>

David S. Chapman, P.E. & Jaime A. Umpierre, P.E.
Survey date: December 11, 2006
<table>
<thead>
<tr>
<th>Item</th>
<th>Deck</th>
<th>Location Fwd/Aft</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
<th>Photo Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.01</td>
<td></td>
<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide bottom handrail extension at the bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12&quot; minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.</td>
<td>180, 186</td>
</tr>
<tr>
<td>26</td>
<td>Main, 01</td>
<td>Aft, Centerline</td>
<td>Stairway, Main Deck to 01 Deck</td>
<td>Stair treads are 10-1/2&quot; wide with 8-1/2&quot; rise (stair slope 10.25 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>We have received a quote from a shipyard currently working on the M/V Culebra II, and the estimated cost to “provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum)” in the two locations noted in ref (b) is $36,000 excluding the cost of altering the handrails. This is slightly higher than BHGI’s internal estimate and should represent an accurate cost per vessel. The locations in question are Amidships, Starboard Stairway, Main Deck to 01 Deck; and Aft, Centerline Stairway, Main Deck to 01 Deck. The handrail cost is omitted because Bristol Harbor Group, Inc. has recommended accomplishing this task regardless. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially for the Amidships stairs which are currently within 1 in/ft of the requirement. Given your estimate and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted.</td>
<td>227, 239</td>
</tr>
<tr>
<td>26.01</td>
<td></td>
<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide bottom handrail extension at the bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12&quot; minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.</td>
<td>227, 239</td>
</tr>
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</tr>
<tr>
<td>1</td>
<td>Main</td>
<td>Aft, Port</td>
<td>Vessel salon door</td>
<td>Door coaming 5' high inside and outside. Portable folding ramp has 4-5/8”/ft slope outside, 4-1/4”/ft slope inside</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors on the port side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the port side of the vessel to ¼”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 1:2 bevel.</td>
<td>414, 443</td>
</tr>
<tr>
<td>1.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has 31-1/2” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Provide 32” minimum clear opening</td>
<td>414</td>
</tr>
<tr>
<td>1.02</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 12” offset from interior bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Beers to provide cost estimate to relocate door opening on tonnage frame for Chapman consideration. Bristol Harbor Group, Inc. has estimated the cost to &quot;provide 18&quot; offset for maneuvering&quot; for the door at the location noted in ref (b) as $3,000. The location in question is the Main Deck, Aft, Port salon door. This cost estimate assumes there is adequate space within the tonnage opening for the relocation of the door. However, given the tight configuration, the current tonnage opening will most likely not have adequate space for the desired movement of the door, in which case, the final cost will increase exponentially. The tonnage opening will have to be moved, requiring a bulkhead in the aft head to be relocated and all sanitary services to be reconfigured. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially given that major structural work that will likely be required in order to obtain the additional 6” that is required to achieve an 18” clearance. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Given your estimate and the detrimental effects on the vessel arrangement, your recommendation noted above is accepted.</td>
<td>414</td>
</tr>
<tr>
<td>2</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Vessel salon door</td>
<td>Door coaming 5-1/2’ high inside and outside. Portable folding ramp has 4-5/8’/ft slope outside, 4-1/4’/ft slope inside</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on port side</td>
<td>408, 410, 443</td>
</tr>
<tr>
<td>2.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has 31-1/2” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on port side</td>
<td>408</td>
</tr>
<tr>
<td>2.02</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 13” offset from interior bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on port side</td>
<td>410</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
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</tr>
<tr>
<td>3</td>
<td>Main</td>
<td>Amidships, Port</td>
<td>Vessel salon door</td>
<td>Door coaming 3” high inside and 4” outside</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors on the port side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the port side of the vessel to 1/4”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 1:2 bevel.</td>
<td>417</td>
</tr>
<tr>
<td>4</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Vessel salon door</td>
<td>Door coaming 3” high inside and 4” outside</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on port side</td>
<td>422</td>
</tr>
<tr>
<td>5</td>
<td>Main</td>
<td>Amidships, Centerline</td>
<td>Vessel salon</td>
<td>Water cooler spout outlet is 41” above deck</td>
<td>PVAAC 602.4</td>
<td>Provide additional water cooler with spout outlet not more than 36” above deck</td>
<td>411</td>
</tr>
<tr>
<td>6</td>
<td>Main</td>
<td>Amidships, Centerline</td>
<td>Vessel salon</td>
<td>Television is mounted 51” above deck and protrudes 21” from bulkhead</td>
<td>PVAAC 307.4</td>
<td>Recess the TV into the bulkhead of possible. Otherwise, provide a guardrail or barrier, the leading edge of which is to be located 27” maximum above the finished deck surface</td>
<td>413</td>
</tr>
<tr>
<td>7</td>
<td>Main</td>
<td>Amidships, Port</td>
<td>Vessel salon</td>
<td>Life jacket donning instructions are mounted 55” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate life jacket donning instructions to 48” above deck max.</td>
<td>416</td>
</tr>
<tr>
<td>8</td>
<td>Main</td>
<td>Forward, Port</td>
<td>Vessel salon</td>
<td>Seasick bag dispenser is 62” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
<td>417</td>
</tr>
<tr>
<td>9</td>
<td>Main</td>
<td>Forward, Centerline</td>
<td>Vessel salon</td>
<td>Television is mounted 55” above deck and protrudes 21” from bulkhead</td>
<td>PVAAC 307.4</td>
<td>Recess the TV into the bulkhead of possible. Otherwise, provide a guardrail or barrier, the leading edge of which is to be located 27” maximum above the finished deck surface</td>
<td>419</td>
</tr>
<tr>
<td>10</td>
<td>Main</td>
<td>Amidships, Port</td>
<td>Vessel salon</td>
<td>Designated “Handicap” area is for booth seating</td>
<td>PVAAC 305.3</td>
<td>Provide wheelchair spaces with a minimum footprint of 30” x 48”</td>
<td>411</td>
</tr>
<tr>
<td>10.01</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Main</td>
<td>Amidships and Forward, Port and Starboard</td>
<td>Vessel salon</td>
<td>Lifejackets are stowed 78” above deck, beyond reach</td>
<td>PVAAC 308.2.1</td>
<td>Provide life jacket stowage for wheelchair users, no more than 48” above deck</td>
<td>421</td>
</tr>
<tr>
<td>12</td>
<td>Main</td>
<td>Aft, Port</td>
<td>Women’s Bathroom</td>
<td>No sign for bathroom</td>
<td>ADAAG-R 4.13 (19)(a), 4.33.1</td>
<td>Provide 4 conforming wheelchair spaces; vessel has fixed seating for 272 passengers</td>
<td>411</td>
</tr>
<tr>
<td>12.01</td>
<td></td>
<td></td>
<td></td>
<td>Bathroom door has only 4” offset from front of lavatory</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts comment based on concurrence with Beers that providing 18” offset would require encroachment into salon, with attendant relocation of structure and all sanitary services.</td>
<td>-</td>
</tr>
<tr>
<td>12.02</td>
<td></td>
<td></td>
<td></td>
<td>Toilet is located 12” off bulkhead</td>
<td>PVAAC 604.2</td>
<td>Toilet to be located 16-18” off bulkhead</td>
<td>428</td>
</tr>
<tr>
<td>12.03</td>
<td></td>
<td></td>
<td></td>
<td>Toilet seat is 19-3/8” above deck</td>
<td>PVAAC 604.4</td>
<td>Toilet seat height to be 17-19” above deck</td>
<td>428</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location Fwd/Aft</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
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</tr>
<tr>
<td>12.04</td>
<td></td>
<td></td>
<td></td>
<td>Toilet paper dispenser is mounted on bulkhead behind toilet, 32&quot; off side bulkhead and 24&quot; above deck</td>
<td>PVAAC 604.7</td>
<td>Relocate dispenser to be 7&quot; min. and 9&quot; max. in front of toilet, on side bulkhead, clear of the grab bar</td>
<td>428</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Grab bar at side of toilet is 21-1/2&quot; off rear bulkhead and 24&quot; long. Grab bar at rear of toilet is 21-1/4&quot; off side bulkhead and 24&quot; long</td>
<td>PVAAC 604.5</td>
<td>Provide sidewall grab bar 42&quot; long (min.), 12&quot; max. from rear wall and extending 54&quot; min. from rear wall. Provide rear wall grab bar 24&quot; long (min.), centered on the toilet. Where space permits, bar shall be 36&quot; long (min.) with the additional length provided on the transfer side of the toilet.</td>
<td>428</td>
</tr>
<tr>
<td>12.06</td>
<td></td>
<td></td>
<td></td>
<td>Grab bar has 1-7/8&quot; gap between bar and bulkhead at rear and side of toilet</td>
<td>PVAAC 609.2</td>
<td>Provide grab bars with 1-1/2&quot; gap to bulkhead</td>
<td>428</td>
</tr>
<tr>
<td>12.07</td>
<td></td>
<td></td>
<td></td>
<td>Grab bars are mounted 49&quot; above deck</td>
<td>PVAAC 609.3</td>
<td>Grab bars shall be mounted 33&quot; min. to 36&quot; in. max. above the finished deck surface.</td>
<td>428</td>
</tr>
<tr>
<td>12.08</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td>426</td>
</tr>
<tr>
<td>12.09</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory faucets require pinching/grasping</td>
<td>PVAAC 309.4, 606.4</td>
<td>Provide faucets with lever handles that do not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (80 lbf). Chapman has furnished example as requested by Beers.</td>
<td>427</td>
</tr>
<tr>
<td>12.10</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 56&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48&quot; above deck max.</td>
<td>429</td>
</tr>
<tr>
<td>13.01</td>
<td>Att</td>
<td>Starboard</td>
<td>Men's Bathroom</td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Sign to be located alongside the door on the latch side, with tactile characters, mounted 48&quot;-60&quot; above the deck</td>
<td>432</td>
</tr>
<tr>
<td>13.02</td>
<td></td>
<td></td>
<td></td>
<td>Toilet is located 11&quot; off bulkhead</td>
<td>PVAAC 604.2</td>
<td>Toilet to be located 16-18&quot; off bulkhead</td>
<td>434</td>
</tr>
<tr>
<td>13.03</td>
<td></td>
<td></td>
<td></td>
<td>Toilet seat is 19-1/2&quot; above deck</td>
<td>PVAAC 604.4</td>
<td>Toilet seat height to be 17-19&quot; above deck</td>
<td>433</td>
</tr>
<tr>
<td>13.04</td>
<td></td>
<td></td>
<td></td>
<td>Toilet paper dispenser is mounted on bulkhead behind toilet, 36&quot; off side bulkhead and 25&quot; above deck</td>
<td>PVAAC 604.7</td>
<td>Relocate dispenser to be 7&quot; min. and 9&quot; max. in front of toilet, on side bulkhead, clear of the grab bar</td>
<td>434</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Grab bar at side of toilet is 21-1/2&quot; off rear bulkhead and 24&quot; long. Grab bar at rear of toilet is 24&quot; off side bulkhead and 24&quot; long</td>
<td>PVAAC 604.5</td>
<td>Provide sidewall grab bar 42&quot; long (min.), 12&quot; max. from rear wall and extending 54&quot; min. from rear wall. Provide rear wall grab bar 24&quot; long (min.), centered on the toilet. Where space permits, bar shall be 36&quot; long (min.) with the additional length provided on the transfer side of the toilet.</td>
<td>434</td>
</tr>
<tr>
<td>13.05</td>
<td></td>
<td></td>
<td></td>
<td>Grab bar has 1-7/8&quot; gap between bar and bulkhead at rear and side of toilet</td>
<td>PVAAC 609.2</td>
<td>Provide grab bars with 1-1/2&quot; gap to bulkhead</td>
<td>434</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
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<tr>
<td>13.06</td>
<td></td>
<td></td>
<td></td>
<td>Grab bars are mounted 46&quot; above deck</td>
<td>PVAAC 609.3</td>
<td>Grab bars shall be mounted 33&quot; min. to 36&quot; in. max. above the finished deck surface.</td>
<td>434</td>
</tr>
<tr>
<td>13.07</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td>435</td>
</tr>
<tr>
<td>13.08</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory faucets require pinching/grasping</td>
<td>PVAAC 309.4, 606.4</td>
<td>Provide faucets with lever handles that do not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
<td>435</td>
</tr>
<tr>
<td>14</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Passenger Salon</td>
<td>Fire extinguisher protrudes 5-1/2&quot; off bulkhead into walkway</td>
<td>PVAAC 307, 403.5.3</td>
<td>Fire extinguisher to be remounted so as not to extend more than 27&quot; above the finished deck.</td>
<td>439</td>
</tr>
<tr>
<td>15</td>
<td>Main</td>
<td>Aft, Port</td>
<td>Passenger Salon</td>
<td>Fire extinguisher protrudes 5-1/2&quot; off bulkhead into walkway</td>
<td>PVAAC 307, 403.5.3</td>
<td>Fire extinguisher to be remounted so as not to extend more than 27&quot; above the finished deck.</td>
<td>414</td>
</tr>
<tr>
<td>16</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Passenger Salon</td>
<td>Seasick bag dispenser is 59&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48&quot; above deck max.</td>
<td>439</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
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<tr>
<td>17</td>
<td>Main, Upper</td>
<td>Aft, Port and Starboard athwartships</td>
<td>Exterior Stairway, Main Deck to Upper Deck</td>
<td>Stair treads are 9-1/4” wide with 8-1/4” rise (stair slope 11-7/8 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>Provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum)</td>
<td>409</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Beers to investigate single stairway further aft than existing mirror-image athwartship stairs, meeting slope criteria and providing adequate maneuvering space in way of head doors. * The data available to BHGI indicates that the M/V Fajardo II is equipped with a single athwartship stairway on centerline aft, as opposed to the mirror-image port and starboard stairway as indicated in ref (b), which I believe is the arrangement on the M/V Atlantis. Nonetheless, to meet the slope requirement of item 17 would necessitate removal of the existing stair, modification to the upper deck structure to accommodate the revised location and size of the deck cutout, and fabrication and installation of a new stair at reduced slope. The overall length of the stairway would grow athwartship by approximately 4'-6&quot;, impeding the clear access route to the port aft cabin door. Based on quotes developed for similar work proposed on other vessels in the fleet, the estimated cost to &quot;provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum)&quot; at or near the one existing location is $20,000 excluding the cost of new handrails and enclosing the risers with light gauge sheet metal which will be accomplished regardless. The location in question is Aft, on Centerline, Main Deck to 01 Deck. Bristol Harbor Group, Inc. believes that the cost above is excessive, and impeding clear access and egress routes to accommodate reduced stair slope presents a regulatory violation resulting in an increase in liability for the operator. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the stairs on the vessel be allowed to remain unaltered, noting that the handrails will be modified per items 25.01 and 26.01 for the M/V Culebra II, and items 26.01 and 27.01 for the M/V Vieques II. You are correct that the M/V Fajardo II is equipped with a single athwartship stairway on centerline aft, as opposed to the mirror-image port and starboard stairway as indicated in ref (b). Given your estimate, the detrimental effects on the vessel arrangement, and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted.</td>
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<tr>
<td>17.01</td>
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<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom or top landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide top and bottom handrail extension at the top and bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12” minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight. See Item 17 above.</td>
<td>441, 444</td>
</tr>
</tbody>
</table>
## Item Deck Location Fwd/Aft Compartment Issue ADA Code Reference Agreed Correction Photo Number

<table>
<thead>
<tr>
<th>Item</th>
<th>Location</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
<th>Photo Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.02</td>
<td></td>
<td></td>
<td>Protruding object: Underside of inclined ladder</td>
<td>PVAAC 307.4</td>
<td>Provide guardrail or other barrier for protruding object located lower than 80&quot; above deck. See Item 17 above.</td>
<td>409</td>
</tr>
<tr>
<td>17.03</td>
<td></td>
<td></td>
<td>Stairway has open risers</td>
<td>ADAAG-R 504.3</td>
<td>Provide closed risers; suggest fitting sheet metal at bottom of stair stringers</td>
<td>409</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location Fwd/Aft</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
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</tr>
<tr>
<td>1</td>
<td>Main</td>
<td>Aft</td>
<td>Main (Vehicle) Deck</td>
<td>Loading ramp has slope of 5-1/4&quot;/ft at transition to dock, approximately 7&quot; high (varies with tide condition)</td>
<td>PVAAC 405.2</td>
<td>Items will be retracted pending receipt of details of ADA compliant gangway at each terminal to be used for stem access to the Cayo Norte and Islero. Gangway is to be fitted with compliant handrails, transition plates at ends, and have a slope not exceeding 1:12. Bristol Harbor Group, Inc. has created a representative sketch of the proposed gangway arrangement. The proposed arrangement meets slope and transition plate requirements. [encl (1)] An ADA compliant gangway will be used, including ADA compliant handrails. BHGI has obtained a quote from a potential manufacturer, and the cost for this item would be about $3,500 (not including shipping to Puerto Rico). The current quote is for a slightly shorter gangway, and will be refined to fit the vessel's parameters. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted.</td>
</tr>
<tr>
<td>1.01</td>
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<tr>
<td>1.02</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PVAAC 405.2</td>
<td>Provide portion of ramp with no more than 1:12 slope (1&quot;/ft), at least 36&quot; wide. See Item 1 above.</td>
</tr>
<tr>
<td>1.03</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PVAAC 405.8</td>
<td>Provide handrails in way of compliant section of ramp. See Item 1 above.</td>
</tr>
<tr>
<td>1.04</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PVAAC 405.9</td>
<td>Provide edge protection in way of compliant section of ramp. See Item 1 above.</td>
</tr>
<tr>
<td>2</td>
<td>Main</td>
<td>Aft to Forward</td>
<td>Main (Vehicle) Deck</td>
<td>Loading ramp surface has 2-7/8&quot; wide gap at transom hinge</td>
<td>PVAAC 302.3</td>
<td>Provide fitting at gap to reduce openings to no more than ½&quot; diameter. See Item 1 above.</td>
</tr>
<tr>
<td>2.01</td>
<td></td>
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<td></td>
<td>PVAAC 303, 403.4</td>
<td>Provide demarcation of passenger walkway from stern ramp to deckhouse, at least 36&quot; wide. Provide flush deck fittings (preferred) or paint fittings with contrasting color (bright orange) In addition to the path of travel demarcation, only the deck tie down fittings adjacent to the path of travel need be painted a contrasting color.</td>
</tr>
</tbody>
</table>
### Deckhouse Entry Door from Main (Vehicle) Deck

**Problem:**
- Door coaming 4-1/4" high, with exterior ramp slope 2-1/4"/ft and interior ramp slope 2-3/4"/ft, with 1-1/2" change in level at threshold

**ADA Code Reference:**
- PVAAC 404.4.1

**Correction:**
- Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48" flat inboard of the doors on the port side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48" flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the port side of the vessel to 1/2", but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4" will be accompanied by a minimum 1:2 bevel. Beers further agrees that the accessible route be extended athwartships within the passenger salon and to the starboard (Men's) head.

**Photo Numbers:**
- 458, 462

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**Item:**
- 3

**Deck:**
- Main

**Location/Fwd/Aft:**
- Forward, Port

**Compartment:**
- Deckhouse entry door from Main (Vehicle) Deck

**Door has only 6” offset from bulkhead**

**ADA Code Reference:**
- PVAAC 404.2.4.1

**Chapman retracts comment based on concurrence with Beers that providing 18” offset would cut off clear access to stairway (See photo 462).**

**Photo Numbers:**
- 462

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**Item:**
- 3.1

**Door is inaccessible during transit due to vehicles parked alongside**

**ADA Code Reference:**
- PVAAC 206.2.8

**Item will be retracted pending receipt of documentation of the practice and rationale for exclusion of passengers from the vehicle deck during transit as a safety precaution.**

**Bristol Harbor Group, Inc. has received a letter from PRMTA, encl (1), stating: “It is standard safety precaution on the cargo vessel the M/V Isleño, that all passengers are restricted from the vehicle and cargo deck once the vessel is underway.” Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that item 3.2 above be retracted.**

**Based upon your assertion, your recommendation noted above is accepted. Please provide the rationale for exclusion of passengers from the vehicle deck during transit as a safety precaution.**

**Photo Numbers:**
- 730
<table>
<thead>
<tr>
<th>Item</th>
<th>Deck</th>
<th>Port</th>
<th>Location</th>
<th>Pathway in way of stairway</th>
<th>Stairway treads are 10&quot; wide with 7 1/2&quot; rise (stair slope 10 in/ft)</th>
<th>Stairway treads are only 33 1/2&quot; wide, with 29&quot; clear between handrails</th>
<th>Case 3:05-cv-01185-ADC   Document 320-1    Filed 06/03/10   Page 32 of 158</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Main</td>
<td>Forward</td>
<td>Port Path of travel from entry door to passenger salon</td>
<td>33 1/2&quot; wide</td>
<td>PVAAC-403.4</td>
<td>PVAAC-409.2, ADAAG-R210.1, 504</td>
<td>PVAAC-409.2</td>
</tr>
<tr>
<td>5</td>
<td>Main, Upper</td>
<td>Forward</td>
<td>Port Stairway, Main Deck to Upper Deck (Primary Egress Route)</td>
<td>7 1/2&quot; rise (stair slope 10 in/ft)</td>
<td>See Item 5 above.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
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</tr>
<tr>
<td>5.02</td>
<td></td>
<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>See Item 5 above.</td>
<td>462</td>
</tr>
<tr>
<td>5.03</td>
<td></td>
<td></td>
<td></td>
<td>Handrails are 31&quot; above stair nosing</td>
<td>PVAAC 409.2, ADAAG-R 504.5</td>
<td>Provide handrails with top of gripping surfaces 34&quot; minimum and 38&quot; maximum vertically above stair nosings</td>
<td>462</td>
</tr>
<tr>
<td>6</td>
<td>Upper</td>
<td>Forward, Port</td>
<td>Door at top of stairway from Main Deck</td>
<td>Door coaming 4&quot; high with no ramps</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item is retracted. Chapman concurs with Beers that existing coaming arrangement is suitable for ambulatory passenger.</td>
<td>725, 727</td>
</tr>
</tbody>
</table>
### Item Deck Location Compartment Issue ADA Code Reference Agreed Correction

| 7  | Main  | Forward, Port | Women's Bathroom | Passageway is 39" wide measured perpendicular to door at hinge side | PVAAC 404.2.4.1 | Beers to investigate possible relocation of bulkhead and reconfiguration of doorway to permit maneuvering space for wheelchair to make turn from passageway into toilet space. For items 7 and 13, Bristol Harbor Group, Inc investigated the effects of reversing the door swing and of modifying the location of the door in the existing bulkhead(s). Reversing the swing (i.e. latch and hinge sides reversed with door opening outboard) would not appreciably affect the required maneuvering dimensions, and relocation of the doorway in the existing outboard bulkhead would provide negligible improvement to the available maneuvering dimensions while producing an interference with the handsink locations, and in the case of the M/V Cayo Norte, would produce an interference with the door swing of the main passenger cabin doors. Bristol Harbor Group, Inc also investigated the combined effect of relocating the door and rotating the entire outboard bulkhead to provide the required maneuvering dimensions. Although such a modification may be able to produce marginally sufficient maneuvering area outboard of the toilet space, it is provided at the expense of reduced dimensions and clear maneuvering space within the toilet space, and would necessitate relocation of the sinks at a minimum. As such, to fully accommodate the required 54" x 48" maneuvering dimensions external to the toilet spaces without sacrificing necessary space within, a complete reconstruction of each toilet space would be required, including relocation of the outboard bulkhead further inboard, and an associated relocation of the inboard bulkhead forming the main deck cargo area. The fore and aft bulkheads would require reconstruction or replacement to suit the new toilet locations, as would the upper deck plate, and all fresh water supply, grey water drain, and sanitary drains, vents, etc would require relocation. The extent of changes would necessitate re-assessment of the vessel's lightship characteristics, deadweight survey or inclining test, and may adversely affect passenger and/or cargo carrying capacity. Total cost to effect such modifications to each toilet space on each vessel might approach $40,000 per space, or $80,000 total on the M/V Isleño and $80,000 total on the M/V Cayo Norte. A final option considered is to eliminate the outboard toilet stall in the case of item 7 and to eliminate the outboard urinal stall in the case of item 13 and reconstruct the outboard toilet space bulkhead to provide improved maneuvering dimensions. Although much less invasive than relocating the entire toilet space(s), this alternative leads to a loss of functionality in each space, resulting in the loss of roughly one half of the available toilet facilities. The estimate for such a modification is $10,000 per toilet space, or $20,000 total on the M/V Isleño and $20,000 total on the M/V Cayo Norte. The spaces available are a result of the inherent ship-shape curvature of the side shell, necessary cargo are a capacity of the main deck, and the vessel arrangements required for passage through to the forward main deck passenger seating area. The locations in question on both vessels are forward (near the aft end of the main deckhouse) port and starboard side, between Main Deck and 01 Deck. Bristol Harbor Group, Inc. believes that the costs above are excessive and that compliant maneuvering spaces leading to the toilet spaces may not be possible without significantly altering the arrangement of the vessel requiring significant expense and adversely impacting the quantity of toilet facilities and cargo deck or passenger capacity. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the bulkheads and toilet space doors in question be allowed to remain unaltered, in light of the potential expense and significant disruption to the vessels' arrangements and capacity. Given your estimate and the detrimental impact to the vessel arrangement, your recommendation noted above is accepted. | = Accepted | Photo Number 722 |
Puerto Rico Ports Authority  
M.S. ISLEÑO

ACCESSIBILITY REPORT  
February 16, 2007  
Rev. December 23, 2007

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<th>Item</th>
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<th>Agreed Correction</th>
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<tbody>
<tr>
<td>7.01</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall clear deck space insufficient. Stall measures 48&quot; wide x 59&quot; deep.</td>
<td>PVAAC 604.8.1.1</td>
<td>Provide clear deck space 60&quot; wide min measured perpendicular to the side wall, and 56&quot; deep minimum for wall hung water closets and 59&quot; deep minimum for deck mounted water closets measured perpendicular to the rear wall.</td>
<td>469</td>
<td></td>
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<tr>
<td>7.02</td>
<td></td>
<td></td>
<td></td>
<td>Grab bar at side of toilet is 42&quot; long but does not extend to 54&quot; from rear bulkhead. Grab bar behind toilet is 24&quot; long with space for 36&quot; grab bar.</td>
<td>PVAAC 604.5, 609.3</td>
<td>Relocate sidewall grab bar to extend 54&quot; min. from rear wall. Provide rear wall grab bar 36&quot; long (min.) with the additional length provided on the transfer side of the toilet. Grab bars shall be mounted in a horizontal position, 33&quot; min. to 36&quot; in. max. above the finished deck surface.</td>
<td>469</td>
<td></td>
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<tr>
<td>7.03</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door is not self-closing.</td>
<td>PVAAC 604.8.1.2</td>
<td>Provide toilet stall with self-closing door.</td>
<td>471</td>
<td></td>
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<tr>
<td>7.04</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door fitted with small inside latch; requires pinching/grasping.</td>
<td>PVAAC 309.4</td>
<td>Provide door latch that does not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
<td>471</td>
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<td>7.05</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door fitted with small outside handle; requires pinching/grasping.</td>
<td>PVAAC 309.4</td>
<td>Provide door latch that does not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
<td>475</td>
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<td>7.06</td>
<td></td>
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<td>Toilet stall door has no inside handle.</td>
<td>PVAAC 404.2.7, 604.8.2.1</td>
<td>Provide inside handle for stall door.</td>
<td>471</td>
<td></td>
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<tr>
<td>7.07</td>
<td></td>
<td></td>
<td></td>
<td>Toilet seat is 19-1/2&quot; above deck.</td>
<td>PVAAC 604.4</td>
<td>Toilet seat height to be 17-19&quot; above deck.</td>
<td>469</td>
<td></td>
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<tr>
<td>7.08</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated.</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain.</td>
<td>472</td>
<td></td>
</tr>
<tr>
<td>7.09</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory faucet handles require pinching/grasping.</td>
<td>PVAAC 213.3.4, 309.4, 606.4</td>
<td>Provide faucet handles at one lavatory that do not require pinching/grasping. Provide door latch that does not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
<td>472</td>
<td></td>
</tr>
<tr>
<td>7.10</td>
<td></td>
<td></td>
<td></td>
<td>Bottom of mirror is 51-7/8&quot; above deck.</td>
<td>PVAAC 603.3</td>
<td>Relocate one mirror with bottom no more than 40&quot; above deck.</td>
<td>473</td>
<td></td>
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<tr>
<td>7.11</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 55&quot; above deck.</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48&quot; above deck max.</td>
<td>473</td>
<td></td>
</tr>
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</table>

8 Main Forward, Port and Starboard Passenger Salon  
Designated wheelchair spaces measure 30" x 41-3/4" (D-ring spacing)  
PVAAC 305.3  
Provide wheelchair spaces with a minimum footprint of 30" x 48".  
718, 720, 721
<table>
<thead>
<tr>
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<tr>
<td>9</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Deckhouse entry door from Main (Vehicle) Deck</td>
<td>Door coaming 7-1/2&quot; high, with exterior ramp slope 4-3/4/ft and interior ramp slope 3-1/2/ft, with 5/8&quot; change in level at threshold</td>
<td>PVAAC 404.4.1</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>687, 688</td>
</tr>
<tr>
<td>9.1</td>
<td></td>
<td></td>
<td></td>
<td>Door has only 6&quot; offset from bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>688</td>
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<tr>
<td>9.2</td>
<td></td>
<td></td>
<td></td>
<td>Door is inaccessible during transit due to vehicles parked alongside</td>
<td>PVAAC 206.2.8</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>688</td>
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<tr>
<td>10</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Path of travel from entry door to passenger salon</td>
<td>Pathway in way of stairway 33-1/2&quot; wide</td>
<td>PVAAC 403.4</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>688</td>
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<tr>
<td>11</td>
<td>Main, Upper</td>
<td>Forward, Starboard</td>
<td>Stairway, Main Deck to Upper Deck (Primary Egress Route)</td>
<td>Stair treads are 10&quot; wide with 7-1/2&quot; rise (stair slope 10 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>688</td>
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<tr>
<td>11.01</td>
<td></td>
<td></td>
<td></td>
<td>Stairway treads are only 33&quot; wide, with 29&quot; clear between handrails</td>
<td>PVAAC 409.2</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>693</td>
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<tr>
<td>11.02</td>
<td></td>
<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>688</td>
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<tr>
<td>11.03</td>
<td></td>
<td></td>
<td></td>
<td>Handrails are 31&quot; above stair nosing</td>
<td>ADAAG 409.2, ADAAG-R 504.5</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>688</td>
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<tr>
<td>12</td>
<td>Upper</td>
<td>Forward, Starboard</td>
<td>Door at top of stairway from Main Deck</td>
<td>Door coaming 4&quot; high with no ramps</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Items to be retracted based on PRMTA designation of accessible route on port side</td>
<td>-</td>
</tr>
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### Item Deck Location Fwd/Aft Compartment Issue ADA Code Reference Agreed Correction

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</thead>
<tbody>
<tr>
<td>13</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Men's Bathroom</td>
<td>Passageway is 36” wide measured perpendicular to door at hinge side</td>
<td>PVAAC 404.2.4.1</td>
<td>Beers to investigate possible relocation of bulkhead and reconfiguration of doorway to permit maneuvering space for wheelchair to make turn from passageway into toilet space. For items 7 and 13, Bristol Harbor Group, Inc. investigated the effects of reversing the door swing and of modifying the location of the door in the existing bulkhead(s). Reversing the swing (i.e. latch and hinge sides reversed with door opening outboard) would not appreciably affect the required maneuvering dimensions, and relocation of the doorway in the existing outboard bulkhead would provide negligible improvement to the available maneuvering dimensions while producing an interference with the handsink locations, and in the case of the M/V Cayo Norte, would produce an interference with the door swing of the main passenger cabin doors. Bristol Harbor Group, Inc. also investigated the combined effect of relocating the door and rotating the entire outboard bulkhead to provide the required maneuvering dimensions. Although such a modification may be able to produce marginally sufficient maneuvering area outboard of the toilet space, it is provided at the expense of reduced dimensions and clear maneuvering space within the toilet space, and would necessitate relocation of the sinks at a minimum. As such, to fully accommodate the required 54” x 48” maneuvering dimensions external to the toilet spaces without sacrificing necessary space within, a complete reconstruction of each toilet space would be required, including relocation of the outboard bulkhead further inboard, and an associated relocation of the inboard bulkhead forming the main deck cargo area. The fore and aft bulkheads would require reconstruction or replacement to suit the new toilet locations, as would the upper deck plate, and all fresh water supply, grey water drain, and sanitary drains, vents, etc would require relocation. The extent of changes would necessitate re-assessment of the vessel’s lightship characteristics, deadweight survey or inclining test, and may adversely affect passenger and/or cargo carrying capacity. Total cost to effect such modifications to each toilet space on each vessel might approach $40,000 per space, or $80,000 total on the M/V Isleño and $80,000 total on the M/V Cayo Norte. A final option considered is to eliminate the outboard toilet stall in the case of item 7 and to eliminate the outboard urinal stall in the case of item 13 and reconstruct the outboard toilet space bulkhead to provide improved maneuvering dimensions. Although much less invasive than relocating the entire toilet space(s), this alternative leads to a loss of functionality in each space, resulting in the loss of roughly one half of the available toilet facilities. The estimate for such a modification is $10,000 per toilet space, or $20,000 total on the M/V Isleño and $20,000 total on the M/V Cayo Norte. The spaces available are a result of the inherent ship-shape curvature of the side shell, necessary cargo are a capacity of the main deck, and the vessel arrangements required for passage through to the forward main deck passenger seating area. The locations in question on both vessels are forward (near the aft end of the main deckhouse) port and starboard side, between Main Deck and 01 Deck. Bristol Harbor Group, Inc. believes that the costs above are excessive and that compliant maneuvering spaces leading to the toilet spaces may not be possible without significantly altering the arrangement of the vessel requiring significant expense and adversely impacting the quantity of toilet facilities and cargo dock or passenger capacity. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the bulkheads and toilet space doors in question be allowed to remain unaltered, in light of the potential expense and significant disruption to the vessels’ arrangements and capacity. Given your estimate and the detrimental impact to the vessel arrangement, your recommendation noted above is accepted.</td>
</tr>
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<td>--------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>13.01</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall clear deck space insufficient. Stall measures 48&quot; wide x 59&quot; deep</td>
<td>PVAAC 604.8.1.1</td>
<td>Provide clear deck space 60&quot; wide min measured perpendicular to the side wall, and 56&quot; deep minimum for wall hung water closets and 59&quot; deep minimum for deck mounted water closets measured perpendicular to the rear wall</td>
</tr>
<tr>
<td>13.02</td>
<td></td>
<td></td>
<td></td>
<td>Grab bar at side of toilet is 42&quot; long but does not extend to 54&quot; from rear bulkhead. Grab bar behind toilet is 24&quot; long with space for 36&quot; grab bar.</td>
<td>PVAAC 604.5, 609.3</td>
<td>Relocate sidewall grab bar to extend 54&quot; min. from rear wall. Provide rear wall grab bar 36&quot; long (min.) with the additional length provided on the transfer side of the toilet. Grab bars shall be mounted in a horizontal position, 33&quot; min. to 36&quot; in. max. above the finished deck surface.</td>
</tr>
<tr>
<td>13.03</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door is not self-closing</td>
<td>PVAAC 604.8.1.2</td>
<td>Provide toilet stall with self-closing door</td>
</tr>
<tr>
<td>13.04</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door fitted with small inside latch; requires pinching/grasping</td>
<td>PVAAC 309.4</td>
<td>Provide door latch that does not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
</tr>
<tr>
<td>13.05</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door fitted with small outside handle; requires pinching/grasping</td>
<td>PVAAC 309.4</td>
<td>Provide door handle that does not require pinching/grasping. Hand-operated controls and fixtures are to be operable with one clenched fist, without tight grasping, pinching, or twisting of the wrist, and with a force that does not exceed 5 pounds of force (lbf). Chapman has furnished example as requested by Beers.</td>
</tr>
<tr>
<td>13.06</td>
<td></td>
<td></td>
<td></td>
<td>Toilet stall door has no inside handle</td>
<td>PVAAC 404.2.7, 604.8.2.1</td>
<td>Provide inside handle for stall door</td>
</tr>
<tr>
<td>13.07</td>
<td></td>
<td></td>
<td></td>
<td>Urinal rim is 27&quot; above deck</td>
<td>PVAAC 605.2</td>
<td>Urinal will be removed as part of toilet space conversion to single accessible toilet.</td>
</tr>
<tr>
<td>13.08</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
</tr>
<tr>
<td>13.09</td>
<td></td>
<td></td>
<td></td>
<td>Bottom of mirror is 51&quot; above deck</td>
<td>PVAAC 603.3</td>
<td>Relocate one mirror with bottom no more than 40&quot; above deck</td>
</tr>
<tr>
<td>13.10</td>
<td></td>
<td></td>
<td></td>
<td>Lavatory has 24&quot; knee space</td>
<td>PVAAC 306.3</td>
<td>Provide 27&quot; high knee space</td>
</tr>
<tr>
<td>13.11</td>
<td></td>
<td></td>
<td></td>
<td>Towel dispenser is 55&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate towel dispenser to 48&quot; above deck max.</td>
</tr>
</tbody>
</table>
### Item 14: Main Deck Forward, Port and Starboard Passenger Salon

**Issue**: Bottom of sideshell portlights is 48-1/2" above deck; wheelchair passengers cannot see out

**ADA Code Reference**: PVAAC 404.2.11

**Agreed Correction**: Item will be retracted pending receipt of documentation that providing aft-facing wheelchair spaces toward the forward end of the passenger salon will provide line of sight from 43" above the deck at the wheelchair to at least one side shell portlight. Compliant tie-downs are to be furnished in way of the wheelchair spaces. 

Bristol Harbor Group, Inc. has created a representative sketch for each vessel, based on the original Outboard Profiles, illustrating the effective line of sight from the wheelchair seating areas in the deckhouse. [encl (1) & (2)] The wheelchair seating area will be configured so that wheelchairs will face aft, in which case there is a line to the horizon through at least one portlight aft of the seating area. On the M/V Isleño, looking aft ~12' from the seating area provides a clear line of sight to the horizon through two (2) portlights (see Dwg 06497-900 Rev 0). On the M/V Cayo Norte, looking aft about 7' from the seating area provides a clear line of sight to the horizon through three (3) portlights (see Dwg 06497-901 Rev 0). Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Provided that compliant tie-downs are furnished in way of the wheelchair spaces (part of M/V Isleño: Item 14 & M/V Cayo Norte: Item 4), your recommendation noted above is accepted.

**Photo Number**: 700
## ACCESSIBILITY REPORT

**Puerto Rico Ports Authority**  
**M.S. VIEJO SAN JUAN**  
February 18, 2007  
Rev. December 23, 2007

### Item Deck Location Compartment Issue ADA Code Reference Agreed Correction = Accepted = Retracted = Agreed modification Photo Number

<table>
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<tbody>
<tr>
<td>1</td>
<td>Main</td>
<td>Aft, Centerline</td>
<td>Passenger Salon</td>
<td>Designated wheelchair spaces measure 30” x 27” (Support railing spacing)</td>
<td>PVAAC 305.3</td>
<td>Provide wheelchair spaces with a minimum footprint of 30” x 48”</td>
</tr>
<tr>
<td>2</td>
<td>Main</td>
<td>Port and Starboard</td>
<td>Passenger Salon</td>
<td>Fore/aft aisles 26-1/2” wide Portside and 27” Starboard</td>
<td>PVAAC 403.4</td>
<td>Chapman retracts comment, concurring with Beers that it would greatly reduce the passenger carrying capacity of the vessel, and is not necessary because the wheelchair spaces are accessible from the port and starboard doors without using the aisles.</td>
</tr>
<tr>
<td>3</td>
<td>Main</td>
<td>Port and Starboard</td>
<td>Passenger Salon</td>
<td>Fire extinguisher protrudes 7” off bulkhead into walkway</td>
<td>PVAAC 307, 403.5.3</td>
<td>Fire extinguisher to be remounted so as not to extend more than 27” above the finished deck.</td>
</tr>
<tr>
<td>4</td>
<td>Main</td>
<td>Forward, Port and Starboard</td>
<td>Passenger Salon</td>
<td>Overhead obstruction 74-3/4” in way of pipe rail at top of stanchions; encroaches into pathway</td>
<td>PVAAC 307, 403.5.3</td>
<td>PVAAC criteria calls for 80” headroom. Maximize clearance/ provide protective padding and coloring</td>
</tr>
<tr>
<td>5</td>
<td>Main</td>
<td>Forward</td>
<td>Passenger Salon</td>
<td>Seasick bag dispenser is 65” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
</tr>
<tr>
<td>6</td>
<td>Main</td>
<td>Forward</td>
<td>Passenger Salon</td>
<td>Lifejacket donning instructions are mounted 57” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48” above deck max.</td>
</tr>
<tr>
<td>7</td>
<td>Main</td>
<td>Aft</td>
<td>Passenger Salon</td>
<td>Seasick bag dispenser is 65” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
</tr>
<tr>
<td>8</td>
<td>Main</td>
<td>Aft</td>
<td>Passenger Salon</td>
<td>Lifejacket donning instructions are mounted 53” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48” above deck max.</td>
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## ACCESSIBILITY REPORT

**February 12, 2007**

**Rev. December 23, 2007**

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Main, 01, 02</td>
<td>N/A</td>
<td>N/A</td>
<td>Vessel has four passenger decks and lacks vertical (elevator) access</td>
<td>PVAAC 206.2.3 PVAAC 407.4</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. As such, vessel would be considered a two-deck vessel, entitled to elevator exemption. The main deck is an Area of Refuge for 40 passengers, and this will be marked as the wheelchair accessible Area of Refuge (see attached scan hpsc21.pdf which is an excerpt from the Emergency Evacuation Plan). Unfortunately, neither the stability letter nor the COI seem to restrict the passengers from the 02 level. However, the Emergency Evacuation Plan limits the number of passengers on the 02 level to 20, but it serves as an Area of Refuge for 179 (see attached scan HPSC22.pdf). I understand that it is restricted to 20 passengers for stability purposes, but regardless, the operator restricts the 02 level passenger capacity to zero, as noted in the previous photos. Vessel has self-imposed passenger restrictions to the 02 level, but we require assurance that should such restrictions be removed, it will nullify the retraction of this item.</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Vessel entry door at side shell</td>
<td>Door coaming 6-5/8&quot; high, with single ramp slope 3-5/8&quot;/ft</td>
<td>PVAAC 404.4.1</td>
<td>Reconfigure ramps for no more than 1:6 slope (2&quot;/ft)</td>
<td>349</td>
</tr>
<tr>
<td>3</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Passenger loading vestibule</td>
<td>Water cooler spout outlet is 43&quot; above deck</td>
<td>PVAAC 602.4</td>
<td>Provide additional water cooler with spout outlet not more than 36&quot; above deck</td>
<td>349</td>
</tr>
<tr>
<td>3.01</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Passenger loading vestibule</td>
<td>Water cooler does not have access</td>
<td>PVAAC 602.2</td>
<td>Beers will seek alternate location for water cooler. Failing that, water cooler will be removed from vessel.</td>
<td>349</td>
</tr>
<tr>
<td>4</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Door forward from Passenger loading vestibule to Forward Passenger Salon</td>
<td>Door coaming 2-3/4&quot; high, with after ramp slope 1-1/4&quot;/ft and forward ramp slope 1-1/2&quot;/ft, with 7/8&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48&quot; flat inboard of the doors on the starboard (passenger loading) side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48&quot; flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the starboard side of the vessel to 1/4&quot;, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4&quot; will be accompanied by a minimum 12 bevel. Beers further agrees that the accessible route be extended athwartships at more than one fore and aft location.</td>
<td>348</td>
</tr>
<tr>
<td>5</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td>Unisex Bathroom</td>
<td>Sign located on door, without tactile characters</td>
<td>ADAAG-R 216.2, 703.2.7</td>
<td>Sign to be located alongside the door on the latch side, with tactile characters, mounted 48&quot;-60&quot; above the deck</td>
<td>357</td>
</tr>
<tr>
<td>5.01</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td></td>
<td>Bathroom door has only 4-1/2&quot; offset from bathroom bulkhead</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts comment based on concurrence with Beers that providing 18&quot; offset would require encroachment into salon, with attendant relocation of structure.</td>
<td>367</td>
</tr>
<tr>
<td>5.02</td>
<td>Main</td>
<td>Forward, Starboard</td>
<td></td>
<td>Lavatory hot water supply and drain are not insulated</td>
<td>PVAAC 606.6</td>
<td>Insulate hot water supply and drain</td>
<td>367</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
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<tr>
<td>5.03</td>
<td>Main</td>
<td>Fwd/Aft</td>
<td>Forward Passenger Salon</td>
<td>Grab bar at rear of toilet has 1-7/8&quot; gap between bar and bulkhead</td>
<td>PVAAC 604.5, 609.3</td>
<td>Provide grab bar with 1-1/2&quot; gap to bulkhead</td>
<td>365</td>
</tr>
<tr>
<td>6</td>
<td>Main</td>
<td>Amidships, Centerline</td>
<td>Forward Passenger Salon</td>
<td>Lifejacket donning instructions are mounted approximately 68&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48&quot; above deck max.</td>
<td>378</td>
</tr>
<tr>
<td>7</td>
<td>Main</td>
<td>Amidships, Centerline</td>
<td>Forward Passenger Salon</td>
<td>Designated wheelchair spaces measure 31&quot; deep</td>
<td>PVAAC 305.3</td>
<td>Provide wheelchair spaces with a minimum footprint of 30&quot; x 48&quot;</td>
<td>371</td>
</tr>
<tr>
<td>7.01</td>
<td>Main</td>
<td>Amidships, Centerline</td>
<td>Forward Passenger Salon</td>
<td>Designated wheelchair spaces provided for 3 wheelchairs</td>
<td>ADAAG-R 4.1.3 (19)(a) 3.33.1</td>
<td>Provide 7 conforming wheelchair spaces; vessel has fixed seating for 577 passengers</td>
<td>371</td>
</tr>
<tr>
<td>8</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Door aft from Passenger loading vestibule to Aft Passenger Salon</td>
<td>Door coaming 4&quot; high, with after ramp slope 2-1/8&quot;/ft and forward ramp slope 1-1/8&quot;/ft, with 3/4&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48&quot; flat inboard of the doors on the starboard (passenger loading) side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48&quot; flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the starboard side of the vessel to 1/8&quot;, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4&quot; will be accompanied by a minimum 1 1/2 bevel. Beers further agrees that the accessible route be extended athwartships at more than one fore and aft location.</td>
<td>347</td>
</tr>
<tr>
<td>9</td>
<td>Main</td>
<td>Amidships, Port</td>
<td>Door aft from Forward Passenger Salon to Aft Passenger Salon</td>
<td>Door coaming 3&quot; high, with after ramp slope 1-5/8&quot;/ft and forward ramp slope 1-3/8&quot;/ft, with 3/4&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on starboard side</td>
<td>343, 346</td>
</tr>
<tr>
<td>9.1</td>
<td>Main</td>
<td>Fwd/Aft</td>
<td>Forward Passenger Salon</td>
<td>Door has 30-3/4&quot; clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Bristol Harbor Group, Inc. has estimated the cost to “provide 32” minimum clear opening” for the doors at the two locations noted in ref (b) as $7,940. The locations in question are Main Deck, Amidships, Port; and Main Deck, Aft, Starboard. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the Main Deck, Amidships, Port door is currently within 1 1/2&quot; of the requirement; and the Main Deck, Aft, Starboard door is currently within 1/2&quot; of the requirement. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the existing doors be allowed to remain unless they are replaced for any other reason. Given your estimate and the relatively small discrepancies in the door measurements, your recommendation noted above is accepted.</td>
<td>343</td>
</tr>
</tbody>
</table>
### ACCESSIBILITY REPORT
February 12, 2007  
Rev. December 23, 2007

<table>
<thead>
<tr>
<th>Item</th>
<th>Deck</th>
<th>Location</th>
<th>Compartment</th>
<th>Issue</th>
<th>ADA Code Reference</th>
<th>Agreed Correction</th>
<th>Photo Number</th>
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<tr>
<td>9.2</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 11” offset from interior seating</td>
<td>PVAAC 404.2.4.1</td>
<td>Ref(b) states the following regarding the items in question: Items 9.2 and 15.02, BHMD /PRMTA to provide Mr. Chapman with documentation “of filling the vessel over the past 12 months (number of times vessel sailed at capacity and number of sailings)”. Bristol Harbor Group, Inc. has received a letter from PRMTA, encl (1), stating: “The passenger ferry M/V Vieques II sails regularly on weekday mornings from Vieques Island to Fajardo and weekday evenings from Fajardo to Vieques. On weekends she sails between Fajardo and Culebra Island. On these voyages she is usually loaded to capacity.” Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Based upon your assertion, your recommendation noted above is accepted. Please provide documentation of the actual filling the vessel over the past 12 months (number of times vessel sailed at capacity and number of sailings) as requested.</td>
<td>343</td>
</tr>
<tr>
<td>10</td>
<td>Main</td>
<td>Aft, Center</td>
<td>Aft Passenger Salon</td>
<td>Seasick bag dispenser is approximately 60” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate seasick bag dispenser to 48” above deck max.</td>
<td>340</td>
</tr>
<tr>
<td>11</td>
<td>Main</td>
<td>Aft, Center</td>
<td>Aft Passenger Salon</td>
<td>Lifejacket donning instructions are mounted approximately 62” above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48” above deck max.</td>
<td>340</td>
</tr>
<tr>
<td>12</td>
<td>Main</td>
<td>Aft, Center</td>
<td>Aft Passenger Salon</td>
<td>Television is mounted approximately 67” above deck and protrudes 21” from bulkhead</td>
<td>PVAAC 307.4</td>
<td>Recess the TV into the bulkhead of possible. Otherwise, provide a guardrail or barrier, the leading edge of which is to be located 27” maximum above the finished deck surface</td>
<td>344</td>
</tr>
<tr>
<td>13</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Aft Passenger Salon</td>
<td>A/C duct protrudes approximately 35” into seating area</td>
<td>PVAAC 307, 403.5.3</td>
<td>Reconfigure/recess A/C duct to eliminate protrusion of more than 4”, or provide fixed padding at corners and warning signage</td>
<td>341</td>
</tr>
<tr>
<td>14</td>
<td>Main</td>
<td>Aft, Port</td>
<td>Aft Passenger Salon</td>
<td>A/C duct protrudes approximately 35” into seating area</td>
<td>PVAAC 307, 403.5.3</td>
<td>Reconfigure/recess A/C duct to eliminate protrusion of more than 4”, or provide fixed padding at corners and warning signage</td>
<td>340</td>
</tr>
<tr>
<td>15</td>
<td>Main</td>
<td>Aft, Starboard</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 7-3/4” high, with after ramp slope 4-1/2”/ft and forward ramp slope 4-1/4”/ft, with 1” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Per Beers report, PRMTA will revise the ramps to allow for no more than 1:12 slope and to add a 48” flat inboard of the doors on the starboard (passenger loading) side of the vessel while designating these doors as the wheelchair accessible route by way of signs and employee direction. The 48” flat alleviates the need for the automatic door openers (PVAAC 404.4.2). Additionally, PRMTA will attempt to limit the change in elevation on the starboard side of the vessel to ¼”, but if the existing doors will not accommodate this limitation, PRMTA will reduce the change as much as possible. Additionally, Beers agrees that any change in threshold elevation greater than 1/4” will be accompanied by a minimum 12 bevel. Beers further agrees that the accessible route be extended athwartships at more than one fore and aft location.</td>
<td>338</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location Fwd/Aft</td>
<td>Compartment</td>
<td>Issue</td>
<td>ADA Code Reference</td>
<td>Agreed Correction</td>
<td>Photo Number</td>
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</tr>
<tr>
<td>15.01</td>
<td>Main</td>
<td>Fwd</td>
<td>Main Deck, Amidships, Port</td>
<td>Door has 31-1/4” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Bristol Harbor Group, Inc. has estimated the cost to “provide 32” minimum clear opening” for the doors at the two locations noted in ref (b) as $7,940. The locations in question are Main Deck, Amidships, Port; and Main Deck, Aft, Starboard. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially as the Main Deck, Amidships, Port door is currently within 1 ¼” of the requirement; and the Main Deck, Aft, Starboard door is currently within ¾” of the requirement. Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that the existing doors be allowed to remain unless they are replaced for any other reason. Given your estimate and the relatively small discrepancies in the door measurements, your recommendation noted above is accepted.</td>
<td></td>
</tr>
<tr>
<td>15.02</td>
<td>Main</td>
<td>Fwd</td>
<td>Main Deck, Aft, Starboard</td>
<td>Door has approximately 5” offset from interior seating</td>
<td>PVAAC 404.2.4.1</td>
<td>Ref (b) states the following regarding the items in question: Items 9.2 and 15.02, BHMD/PRMTA to provide Mr. Chapman with documentation “of filling the vessel over the past 12 months (number of times vessel sailed at capacity and number of sailings)”. Bristol Harbor Group, Inc. has received a letter from PRMTA, enc1 (1), stating: “The passenger ferry MV Vieques II sails regularly on weekday mornings from Vieques Island to Fajardo and weekday evenings from Fajardo to Vieques. On weekends she sails between Fajardo and Culebra Island. On these voyages she is usually loaded to capacity.” Therefore, Puerto Rico Maritime Transportation Authority respectfully requests that items above be retracted. Based upon your assertion, your recommendation noted above is accepted. Please provide documentation of the actual filling the vessel over the past 12 months (number of times vessel sailed at capacity and number of sailings) as requested.</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Main</td>
<td>Aft</td>
<td>Passenger Salon to weather deck aft</td>
<td>Door coaming 7-1/4” high, with after ramp slope 4-1/4”/ft and forward ramp slope 3-5/8”/ft, with 1” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on starboard side</td>
<td></td>
</tr>
<tr>
<td>16.01</td>
<td>Main</td>
<td>Aft</td>
<td>Passenger Salon to weather deck aft</td>
<td>Door has 30-3/4” clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on starboard side</td>
<td></td>
</tr>
<tr>
<td>16.02</td>
<td>Main</td>
<td>Aft</td>
<td>Passenger Salon to weather deck aft</td>
<td>Door has approximately 5” offset from interior seating</td>
<td>PVAAC 404.2.4.1</td>
<td>Chapman retracts item based on PRMTA designation of accessible route on starboard side</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Upper</td>
<td>Aft</td>
<td>Door from Stair tower to Forward Passenger Salon</td>
<td>Door coaming 3” high, with after ramp slope 1-5/8”/ft and forward ramp slope 1-5/8”, with 3/4” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Upper</td>
<td>Aft</td>
<td>Door from Stair tower to Aft Passenger Salon</td>
<td>Door coaming 4” high, with after ramp slope 2-1/8”/ft, with 1” change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td></td>
</tr>
<tr>
<td>Item</td>
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<tr>
<td>19</td>
<td>Upper</td>
<td>Aft, Starboard</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 2-3/4&quot; high, with no after ramp, forward ramp slope 1-1/8%/ft, with 2-3/4&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>373, 374</td>
</tr>
<tr>
<td>19.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has 31&quot; clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>374</td>
</tr>
<tr>
<td>19.02</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 4&quot; offset from exterior railing, 10&quot; offset from interior seating</td>
<td>PVAAC 404.2.4.1</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>373</td>
</tr>
<tr>
<td>20</td>
<td>Upper</td>
<td>Aft, Port</td>
<td>Door from Aft Passenger Salon to weather deck aft</td>
<td>Door coaming 3' high, with no after ramp, forward ramp slope 1-3/8%/ft, with 2-3/4&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>375, 376, 380</td>
</tr>
<tr>
<td>20.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has 31&quot; clear opening</td>
<td>PVAAC 404.2.3</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>380</td>
</tr>
<tr>
<td>20.02</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 4&quot; offset from exterior bulkhead, 11&quot; offset from interior seating</td>
<td>PVAAC 404.2.4.1</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>375</td>
</tr>
<tr>
<td>21</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Door from Fwd Passenger Salon to Aft Passenger Salon</td>
<td>Door coaming 3' high, with after ramp slope 1-5/8%/ft and forward ramp slope 1-3/8%/ft, with 7/8&quot; change in level at threshold</td>
<td>PVAAC 404.4.1, 303.2</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>381</td>
</tr>
<tr>
<td>21.01</td>
<td></td>
<td></td>
<td></td>
<td>Door has approximately 2&quot; offset from interior seating</td>
<td>PVAAC 404.2.4.1</td>
<td>Item will be retracted pending receipt of documentation that 02 level (Upper Deck) is off-limits to passengers. See Item 1.</td>
<td>381</td>
</tr>
<tr>
<td>22</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Aft Passenger Salon</td>
<td>Television is mounted 62&quot; above deck and protrudes 21&quot; from bulkhead</td>
<td>PVAAC 307.4</td>
<td>Recess the TV into the bulkhead of possible. Otherwise, provide a guardrail or barrier, the leading edge of which is to be located 27&quot; maximum above the finished deck surface</td>
<td>378</td>
</tr>
<tr>
<td>23</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Fwd end of Aft Passenger Salon</td>
<td>Lifejacket donning instructions are mounted approximately 55-1/2&quot; above deck</td>
<td>PVAAC 308.2.1</td>
<td>Relocate lifejacket donning instructions to 48&quot; above deck max.</td>
<td>378</td>
</tr>
<tr>
<td>24</td>
<td>Upper</td>
<td>Amidships, Port</td>
<td>Aft Passenger Salon</td>
<td>A/C duct protrudes 35&quot; into seating area</td>
<td>PVAAC 307, 403.5.3</td>
<td>Reconfigure/recess A/C duct to eliminate protrusion of more than 4&quot;, or provide fixed padding at corners and warning signage</td>
<td>380</td>
</tr>
<tr>
<td>25</td>
<td>Upper</td>
<td>Amidships, Starboard</td>
<td>Aft Passenger Salon</td>
<td>A/C duct protrudes 35&quot; into seating area</td>
<td>PVAAC 307, 403.5.3</td>
<td>Reconfigure/recess A/C duct to eliminate protrusion of more than 4&quot;, or provide fixed padding at corners and warning signage</td>
<td>379</td>
</tr>
<tr>
<td>Item</td>
<td>Deck</td>
<td>Location</td>
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</tr>
<tr>
<td>26</td>
<td>Main</td>
<td>Amidships, Starboard</td>
<td>Stairway, Main Deck to 01 Deck</td>
<td>Stair treads are 10-1/2&quot; wide with 7-1/2&quot; rise (stair slope 8.5 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>We have received a quote from a shipyard currently working on the M/V Culebra II, and the estimated cost to “provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum)” in the two locations noted in ref (b) is $36,000 excluding the cost of altering the handrails. This is slightly higher than BHGI's internal estimate and should represent an accurate cost per vessel. The locations in question are Amidships, Starboard Stairway, Main Deck to 01 Deck; and Aft, Centerline Stairway, Main Deck to 01 Deck. The handrail cost is omitted because Bristol Harbor Group, Inc. has recommended accomplishing this task regardless. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially for the Amidships stairs which are currently within 1 in/ft of the requirement. Given your estimate and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted.</td>
<td>390</td>
</tr>
<tr>
<td>26.01</td>
<td></td>
<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide bottom handrail extension at the bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12” minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.</td>
<td>390</td>
</tr>
<tr>
<td>27</td>
<td>Main</td>
<td>Aft, Centerline</td>
<td>Stairway, Main Deck to 01 Deck</td>
<td>Stair treads are 10-1/2&quot; wide with 8-1/2&quot; rise (stair slope 10.25 in/ft)</td>
<td>PVAAC 409.2, ADAAG-R 210.1, 504</td>
<td>We have received a quote from a shipyard currently working on the M/V Culebra II, and the estimated cost to “provide stairway with stair treads 11” wide minimum with 7” rise maximum (stair slope 7.6 in/ft maximum)” in the two locations noted in ref (b) is $36,000 excluding the cost of altering the handrails. This is slightly higher than BHGI's internal estimate and should represent an accurate cost per vessel. The locations in question are Amidships, Starboard Stairway, Main Deck to 01 Deck; and Aft, Centerline Stairway, Main Deck to 01 Deck. The handrail cost is omitted because Bristol Harbor Group, Inc. has recommended accomplishing this task regardless. Bristol Harbor Group, Inc. believes that the cost above is excessive, especially for the Amidships stairs which are currently within 1 in/ft of the requirement. Given your estimate and the fact that the recommended stairway reconfiguration is not an essential component for wheelchair users, your recommendation noted above is accepted.</td>
<td>388</td>
</tr>
<tr>
<td>27.01</td>
<td></td>
<td></td>
<td></td>
<td>Handrails do not have extension and return at bottom landing</td>
<td>ADAAG-R 505.10.3</td>
<td>Provide bottom handrail extension at the bottom of the stair flight. Handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing and an additional 12” minimum horizontally at a height equal to that of the sloping portion of the handrail as measured above the stair nosings. Such extension shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight.</td>
<td>388</td>
</tr>
</tbody>
</table>
EXHIBIT C

REQUIRED MODIFICATIONS
TO FERRY TERMINALS

C-1 Agreement between experts as to ferry terminals, dated 7/5/2007
C-3 Ferry Terminal Facility Accessible Route Report dated 3/4/2007, filed 3/20/2007, as Exhibit to [102], Plaintiffs' Notice #14 of Filing Expert Reports - Accessible Routes at Defendants' Ferry Terminals
C-8 Old San Juan Ferry Terminal Accessibility Inspection Report dated February 27, 2007, Exhibit to [100], Plaintiffs' Notice #12 of Filing Expert Reports filed 3/10/2007
On June 28, 2007 the ADA specialists for the plaintiff and defendant in the above case, meet at the office of LMC & Associates, engineering consultants for Maritime Transportation Authority (PRMTA), to discuss and technically agree on the acceptance and objection expressed in the defendant response letter of June 15, 2007 related to the Terminals. For this meeting the plaintiff representative was Mr. Jaime A. Umpierre, PE and the defendant representative was Mr. Arturo Santiago Rivera, AIT. Mr Carlos Escobar, PE served as mediator and representative of PRMTA.

Both specialists discussed the following items:

### Cataño Ferry Terminal

<table>
<thead>
<tr>
<th>Deficiencies</th>
<th>Plaintiff Requirement</th>
<th>Defendant Argument</th>
<th>Technical Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item #5.01 - Coin slot is 54” above ground.</td>
<td>Provide for coin slot and volume control no higher than 48” above ground.</td>
<td>Telephone booth allows a parallel approach with a maximum high side reach of 54 inches by a person using a wheelchair (ADAAG 4.31.2, ADAAG 4.31.3 and ADAAG 4.2.6). The knee height of telephone booth lateral panels shall be 27 inches high or below (Fig. 44(a)).</td>
<td>Plaintiff Specialist agreed on the parallel approach argument. If the approach is side (parallel), we must assure that an area of 30’x48” for maneuvering in front of the phone booth is available (ADA 4.31.2). However, the lateral panels shall meet the 27” knee height. Defendant will replace phone booth complying with ADA because of the damage or absence of the telephone equipment. Current booth heights are in compliance as argument and base on illustration of Fig. 44(a) of the ADAAG.</td>
</tr>
<tr>
<td>Item #5.02 - Volume control is 54” above the ground.</td>
<td>Provide at least one telephone with at least 27” knee height under phone shelf</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item #5.03 - Telephone shelf has 26” knee height</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item #2.1 to #2.16, inclusive, and Item #3.1 to #3.14, inclusive – Men’s Toilet Room and Women’s Toilet Room Accessibility</td>
<td>Both toilet rooms have to be modified for accessibility compliance.</td>
<td>Defendant will accomplish this finding with exceptions. An alteration to the men’s and women’s toilet rooms will decrease or has the effect of decreasing accessibility or usability of the facility below the requirements</td>
<td>Plaintiff Specialist agreed on Defendant argument. Additionally a design for new facilities terminal building was completed. PRMTA bid and awarded the construction for the new building.</td>
</tr>
<tr>
<td>Deficiencies</td>
<td>Plaintiff Requirement</td>
<td>Defendant Argument</td>
<td>Technical Agreement</td>
</tr>
<tr>
<td>--------------</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>for new construction at the time of alteration. In these rooms is technically unachievable to comply since it will require major structural reconfiguration of the areas and excessive expenses to implement. This facility will be demolished and relocated to a new terminal facility. PRMTA will agree the modification of at least one unisex toilet room in compliance with ADAAG 4.1.6(e) and ADAAG 4.22 located in the same area as existing toilet facilities (ADAAG 4.1.6(e)).</td>
<td></td>
</tr>
</tbody>
</table>

**Culebra Ferry Terminal**

<table>
<thead>
<tr>
<th>Deficiencies</th>
<th>Plaintiff Requirement</th>
<th>Defendant Argument</th>
<th>Technical Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item #4 to #4.05, inclusive, Accessible route - Terminal building to pier leading to Vehicle Ferry landing</td>
<td>Made modifications to stairs steps and handrails.</td>
<td>Plaza facility between terminal building and vehicle ferry landing area is not part of PRMTA terminal facilities operations. The identified deficiencies require the demolition, alteration and construction of an area in the plaza which will not provide accessibility for a</td>
<td>Plaintiff specialist does not agree on Defendant argument. Plaintiff specialist statement is that PRMA is responsible on providing an accessible route from the Cargo ferry loading/unloading area to the terminal facility. PRMTA will evaluate to provide an accessible route at the maximum extent feasible provided under ADAAG 4.1.6.</td>
</tr>
<tr>
<td>Deficiencies</td>
<td>Plaintiff Requirement</td>
<td>Defendant Argument</td>
<td>Technical Agreement</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------</td>
<td>--------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Item #1 - For total of 84 parking spaces, 3 spaces is designated accessible.</td>
<td>Provide at least four accessible parking spaces, including at least one van accessible space.</td>
<td>The terminal facility only provides around 10 parking spaces for public use at the front right side of the terminal. The require amount of parking spaces by ADAAG 4.1.2(5)(a) for these 10 parking spaces in a particular lot is one and PRMTA have three accessible designated spaces. PRMTA will provide two accessible parking spaces, with both 96&quot; wide and a 96&quot; aisle in compliance with ADA. Item #1.05 refers to a curb ramp and not a ramp. This curb ramp is located in an access route and walking path. Providing 2&quot; curb will interrupt the access route.</td>
<td>Plaintiff Specialist agreed on Defendant argument. Specialist requested to provide proper signage per ADA to at least one of the accessible parking for vans.</td>
</tr>
<tr>
<td>Item #1.02 - No van accessible parking spaces are provided.</td>
<td>At least one van-accessible space is required ... Suggest combining the third designated space ... Provide ramps with 2&quot; minimum curb, railing, or projecting surface to prevent people from falling off.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item #1.05 - Access ramps have drop-off with no 2&quot; minimum curb, railing or projecting surface to prevent people from falling off.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item #10.01 - Coin slot is 54&quot; above ground.</td>
<td>Provide for coin slot and volume control no higher than 48&quot; above ground.</td>
<td>Telephone booth allows a parallel approach with a maximum high side reach of 54 inches by a</td>
<td>Plaintiff Specialist agreed on Defendant argument. If the approach is side (parallel), we must assure that an area of 30&quot;x48&quot; for</td>
</tr>
<tr>
<td>Item #10.02 - Volume</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Hato Rey Ferry Terminal

Defendant Specialist agreed on Plaintiff requirements.

### Old San Juan (Pier 2) Ferry Terminal

Defendant Specialist agreed on Plaintiff requirements.

### Vieques Ferry Terminal

<table>
<thead>
<tr>
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<th>Technical Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>control is 54&quot; above the ground.</td>
<td></td>
<td>person using a wheelchair (ADAAG 4.31.2, ADAAG 4.31.3, ADAAG 4.2.6, and Fig. 44(a)).</td>
<td>maneuvering in front of the phone booth is available (ADA 4.31.2).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<th>Defendant Argument</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Item #1 and #1.1, as well item #1.3 to #1.6, inclusive, and Item #1 to #1.06, inclusive, - Parking</td>
<td>Modified and do accessible the parking spaces at enclosed area.</td>
<td>The area referenced by Plaintiff on the deficiencies is an area used for loading and unloading of merchandise and provisions of the terminal administrative operations. This area is closed for the public and only accessed by terminal administrator or supervisor. Accessible parking spaces are located at ferry’s boarding area limited to employee’s or special conditions. This facility does not provide public parking areas.</td>
<td>Plaintiff Specialist agreed on Defendant argument. Defendant notes that the existing designated parking spaces will be actualized.</td>
</tr>
</tbody>
</table>
The items discussed on the meeting of June 28, 2007 are the ones in which total disagreement of the defendant related to the plaintiff report was recorded. The technical understandings described above are the final agreements of the arguments of both specialists, which agree and sign this letter for compliance with court statement.

Respectfully,

Carlos M. Escobar B., P.E.
Project Manager
LMG & Associates, PSC
Date: July 01/07

Jaime A. Umphreys, P.E.
Plaintiff ADA Specialist
Date: 7/15/07

Arturo Santiago-Rivera, A/IT
Defendant ADA Specialist
Date: 07-4-07
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBILITY ROUTE SUMMARY REPORT
March 10, 2007

The following SUMMARY REPORT supplements the FERRY TERMINAL FACILITY ACCESSIBILITY ROUTE REPORT dated March 4, 2007, Report JAU/DSC 070304.

**Cataño Terminal** has an accessible sidewalk from the terminal entrance to the sidewalk and street adjoining the terminal. The observed exterior accessible route issues involving sidewalks, streets, and (non-ferry) public transportation were access issues in getting to accessible parking and the amount and placement of accessible parking. The facility has four designated accessible car spaces and no van spaces. ADAAG calls for a total of seven accessible spaces, at least one of which is to be van accessible. The closest parking space to the terminal entrance is not one of the designated accessible spaces, and none of the designated spaces had demarked access aisles as required by ADAAG. Finally, the ramp serving one of the designated spaces had over twice the allowable slope.

**Culebra Terminal** has no curbs separating it from the street. The pavement is flat but at the time of the inspection, access to the street was impeded by a line of parked cars (Photo #20 below). It appeared that the area in way of the designated accessible parking space would have the future entrance, which was walled off by a construction site fence at the time of the inspection. Access was possible at the far end of the site, in way of the vehicle ferry loading ramp, but it did not meet ADAAG standards as described in the details below. There were no sidewalks at the terminal/street interface, and no indication of bus stops or other public transportation facilities. Access from a taxi cab would be constrained by the parked cars as described above.

Note that the foot passengers for the vehicular ferry walk down the same ramp that the vehicles use. Also, the terminal/street interface at the Culebra Terminal lacks detectable warnings, but the site is still essentially a construction zone and it is unclear what the finished construction will contain. Per ADAAG 4.29.5 [Detectable Warnings at
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE SUMMARY REPORT
March 10, 2007

Hazardous Vehicular Areas] If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915 mm) wide, complying with 4.29.2.

Fajardo Terminal has an accessible sidewalk from the terminal entrance to the sidewalk and street adjoining the terminal. The observed exterior accessible route issues involving sidewalks, streets, and (non-ferry) public transportation were access issues in crossing the street and getting to the ticket booths. Curb ramps to the street in front of the terminal building do not line up with curb ramps on the opposite side of the street in front of the ticket booth building. Demarked crosswalks do not line up with curb ramps. The route from the ticket booth side of the street to the ticket booths themselves are not accessible due to excessive cross slopes of the pavement, open grating in the pavement, and narrow aisles and lack of maneuvering space for a wheelchair user to even get to the ticket booth. The terminal facility has three undersized designated accessible car spaces and no van spaces. ADAAG calls for a total of four accessible spaces, at least one of which is to be van accessible. None of the designated spaces had demarked access aisles as required by ADAAG. Finally, the ramps serving the designated spaces have excessive slopes and lack handrails.

Hato Rey Terminal has an accessible sidewalk from the terminal entrance to the sidewalk and street adjoining the terminal. The observed exterior accessible route issues involving sidewalks, streets, and (non-ferry) public transportation were access issues in getting to the bus loading area (deficient ramp, Report Item #7) and to the drop-off area in front of the terminal (deficient ramp, Report Item #8).

Old San Juan Terminal has an accessible ramp and sidewalk from the terminal entrance to the sidewalk and street adjoining the terminal. There were no observed exterior accessible route issues involving sidewalks, streets, and (non-ferry) public transportation.

Vieques Terminal has no accessible routes into or out of its terminal building. The doors on the street side open to a patio with non-compliant ramps to the sidewalk. The doors to the opposite (ferry pier) side of the terminal are non-compliant themselves (double leaf doors, too narrow) and open onto a landing with two steps down to grade. There is another terminal door between the pierside doors and the street-side doors which opens to the parking lot, but the ramp to the lot level is non-compliant. There is a non-compliant curb ramp in the sidewalk in front of the terminal, and there are access issues in getting to the ticket booth in the front of the terminal. Each of these items is detailed in the report.
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

Background

This report addresses accessible routes at each of the inspected ferry terminal facilities at which the PRPA offers public transportation programs and services. Congress in 1990 made the following findings with respect access by the disabled to transportation:

(3) discrimination against individuals with disabilities persists in such critical areas as . . . transportation, . . . and access to public services;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;


Because individuals with disabilities rely on public transportation to a far greater extent than non disabled individuals, simply being able to access public transportation is of great significance to the ability of individuals with mobility disabilities to integrate into “mainstream society”. Today, almost seventeen years after Congress enacted the ADA, significant problems persist. See, 2004 Harris Survey of Americans with Disabilities, Chap. 6, Transportation, pp.71-75 (Judicially Noticed by [52] the 3-10-2006, Order Taking Judicial Notice).

Appendix A to 49 C.F.R. Part 37, titled “Standards for Accessible Transportation Facilities” (ADAAG) contains requirements pertaining to accessible routes within the boundary of a facility (e.g. accessible parking, and accessible passenger loading zones) and to areas outside the facility boundaries (e.g., public transportation stops, and public streets or sidewalks to the accessible building entrance they serve). ADAAG §§ 4.3 (Accessible Routes) and 4.14 (Entrances)

Section 4.3, of ADAAG titled “Accessible Routes” provides, in pertinent part, that:

(1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

ADAAG § 4.3.2(1)-(3)
Puerto Rico Ports Authority  
FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT  
March 4, 2007

Section 4.14 of ADAAG titled “entrances” provides, in pertinent part:
Entrances required to be accessible by 4.1 shall be part of an accessible route complying with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.  
ADAAG § 4.14.1

The ADA Accessibility Guidelines (ADAAG) define Accessible Route as follows:  
A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

In the detailed accounting below, please refer to the respective Ferry Terminal Accessibility Report for the Item Numbers and Photos.

The Ferry Terminal Facilities

CATAÑO FERRY TERMINAL

This facility lacks the following accessible routes required by ADAAG §§ 4.3 & 4.14 to public transportation stops, public streets, and sidewalks to the accessible building entrance they serve:

<table>
<thead>
<tr>
<th>REF. ITEM No.</th>
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<th>ADAAG REFERENCE SECTION</th>
<th>REFERENCE PHOTO</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking Lot</td>
<td>Facility has 300 parking spaces, only four of which are designated accessible</td>
<td>4.6.1; 4.1.2(5)(a)</td>
<td>031, 035, 043</td>
<td>Provide at least seven accessible spaces, including at least one van accessible space</td>
</tr>
<tr>
<td>1.1</td>
<td>No van accessible parking spaces are provided</td>
<td>4.1.2(5)(b)</td>
<td>031, 035, 043</td>
<td>At least one van-accessible space is required, with a minimum width of 192” (96” for the van and a 96” aisle). Demark the 96” wide access aisle.</td>
</tr>
<tr>
<td>1.2</td>
<td>Accessible parking space is not closest parking spot to terminal entrance</td>
<td>4.6.1</td>
<td>042</td>
<td>Designate closest parking space as accessible</td>
</tr>
<tr>
<td>1.5</td>
<td>Access aisles are not demarked for the car and van spaces</td>
<td>4.6.3</td>
<td>031, 035</td>
<td>Provide demarking of access aisles, 60” wide for cars and 96” wide for vans</td>
</tr>
</tbody>
</table>

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey dates: December 11-13, 2007
Report JAU/DSC 070304
Page 2 of 16
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

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<tbody>
<tr>
<td>1.6</td>
<td>Curb ramp has slope of 2-1/8&quot;/ft</td>
<td>4.8.2</td>
<td>043</td>
<td>Provide ramp that does not exceed 1&quot;/ft slope</td>
</tr>
</tbody>
</table>

In addition this facility lacks accessible routes to the following accessible spaces or elements within the building or facility:

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Men's Room</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>Maneuvering space at entry way is 18&quot; long by 39&quot; wide, then requires a 90-degree turn into a space 32&quot; long by 35-1/2&quot; wide, then requires another 90-degree turn into the Men's Room through a 27&quot; wide open doorway</td>
<td>4.3.3; 4.13.5</td>
<td>049, 052, 053</td>
<td>Provide space for a U-turn with a 42&quot; wide passage into a 48&quot; wide passage, and then a 42&quot; wide passage, in compliance with ADAAG 4.3.3 Fig. 7b. Provide door with clear opening at least 36&quot; wide.</td>
</tr>
<tr>
<td>2.5</td>
<td>The rest room has two equally sized toilet stalls, both 54-1/2&quot; deep and 32-3/4&quot; wide.</td>
<td>4.17.3</td>
<td>056, 062</td>
<td>Provide at least one toilet stall which measures at least 60&quot; wide and 59&quot; deep (56&quot; deep with wall-mounted toilet)</td>
</tr>
<tr>
<td>2.7</td>
<td>Stall door opens IN to the stall, leaving insufficient maneuvering space, and does not comply with standard stall arrangement</td>
<td>4.17.5</td>
<td>056, 062</td>
<td>Door should open out from the stall</td>
</tr>
<tr>
<td>2.8</td>
<td>Stall door is 22-1/4&quot; wide</td>
<td>4.17.5; 4.13</td>
<td>056, 062</td>
<td>Provide at least one stall with a door 32&quot; wide</td>
</tr>
<tr>
<td>Women's Room</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Maneuvering space at entry way is 32&quot; long by 35-1/2&quot; wide, then requires a 90-degree turn into the Women's Room through a 27&quot; wide open doorway</td>
<td>4.3.3; 4.13.5</td>
<td>067, 068</td>
<td>A 90 degree turn can be made from a 36&quot; wide passage into another 36&quot; passage if the depth of each leg is a minimum of 48&quot; on the inside dimensions of the turn. Provide door with clear opening at least 36&quot; wide.</td>
</tr>
<tr>
<td>3.2</td>
<td>Floor slope is 1:8 (13%) (1-1/2&quot;/ft)</td>
<td>4.3.7</td>
<td>071</td>
<td>Correct running slope of accessible route to not more than 1:20</td>
</tr>
<tr>
<td>3.6</td>
<td>The rest room has two equally sized toilet stalls, both 54&quot; deep and 33&quot; wide.</td>
<td>4.17.3</td>
<td>074, 076</td>
<td>Provide at least one toilet stall which measures at least 60&quot; wide and 59&quot; deep (56&quot; deep with wall-mounted toilet)</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

3.7 Stall door opens IN to the stall, leaving insufficient maneuvering space, and does not comply with standard stall arrangement
4.17.5 074, 076 Door should open out from the stall

3.8 Stall door is 23” wide
4.17.5; 4.13 074, 076 Provide at least one stall with a door 32” wide

Public Telephone
5.03 Telephone shelf has 26” knee height
4.31.2 086 Provide at least one telephone with at least 27” knee height under phone shelf

CULEBRA FERRY TERMINAL, CULEBRA, PR

This facility lacks the following accessible routes required by ADAAG §§ 4.3 & 4.14 to public transportation stops, public streets, and sidewalks to the accessible building entrance they serve:

<table>
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</thead>
<tbody>
<tr>
<td>Parking Lot</td>
<td>Accessible parking space is not closest parking spot to terminal entrance</td>
<td>4.6.2 019</td>
<td>Rearrange parking spaces as necessary and designate closest parking space as accessible</td>
<td></td>
</tr>
<tr>
<td>1.01</td>
<td>No van accessible parking spaces are provided</td>
<td>4.1.2(5)(b) 018</td>
<td>At least one van-accessible space is required, with a minimum width of 192” (96” for the van and a 96” aisle). Demark the 96” wide access aisle.</td>
<td></td>
</tr>
<tr>
<td>Accessible Route – Terminal Building to Vehicle Ferry loading ramp</td>
<td>Walkway from Terminal Building to Vehicle Ferry loading ramp (where foot passengers are embarked and disembarked) has cross slope of 2.5%</td>
<td>4.3.7 024</td>
<td>Provide and demark walkway from Terminal Building to Vehicle Ferry loading ramp (where foot passengers are embarked and disembarked) with cross slope of 2% maximum (1:50)</td>
<td></td>
</tr>
<tr>
<td>3.01</td>
<td>Ramp down to ferry landing has slope of 1-1/2”/ft</td>
<td>4.8.2 042</td>
<td>Provide ramp with running slope not exceeding 1”/ft</td>
<td></td>
</tr>
<tr>
<td>3.02</td>
<td>Ramp at transition from approach to ferry landing down to adjacent pier has slope of 1-1/2”/ft and cross slope of 1-1/4”/ft (10%, 1:10)</td>
<td>4.3.7; 4.8.2 042</td>
<td>Provide ramp with running slope not exceeding 1”/ft and cross slope of 2% maximum (1:50)</td>
<td></td>
</tr>
</tbody>
</table>
### Puerto Rico Ports Authority

**FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT**

March 4, 2007

<table>
<thead>
<tr>
<th>3.03</th>
<th>Ramp at transition from approach to ferry landing down to adjacent pier has no handrails</th>
<th>4.8.5</th>
<th>013, 028, 042</th>
<th>Provide handrails on each side of walkway complying with ADAAG 4.8.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.04</td>
<td>Ramp at transition from approach to ferry landing down to adjacent pier has drop off to pier of 5&quot; with no edge protection</td>
<td>4.8.7</td>
<td>028</td>
<td>Provide a minimum 2&quot; curb, a wall, railings, or projecting surface to prevent people from falling off</td>
</tr>
<tr>
<td>3.05</td>
<td>Walkway adjoins vehicular way (for ferry loading) with no separation by curbs, railings, or other elements between the pedestrian areas and vehicular areas.</td>
<td>4.29.5</td>
<td>042</td>
<td>Provide a continuous detectable warning at least 36&quot; wide complying with ADAAG 4.29.2</td>
</tr>
</tbody>
</table>

#### Accessible Route – Terminal Building plaza to pier leading to Vehicle Ferry landing

| 4 | Step risers vary from 6" high to 6.5" high | 4.9.2 | 030, 031, 067 | Provide risers with uniform height |
| 4.01 | Step treads vary in width from 12" to 13" | 4.9.2 | 030, 031 | Provide treads with uniform width (minimum 11" wide) |
| 4.02 | Top tread has slope of 1-3/8"/ft | 4.9.6 | 030, 031 | Provide top tread with slope of 2% maximum (1:50) |
| 4.03 | Handrails are not fitted with horizontal extensions at top and bottom of the stairs | 4.9.4(2) | 030, 031 | Provide handrail extensions that extend at least 12" beyond the top riser and at least 12" plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal |
| 4.04 | Outside diameter of handrail is 1-7/8" | 4.9.4; 4.26.2 | 030, 031 | Provide handrails with outside diameter between 1-1/4" and 1-1/2" |
| 4.05 | Clearance between handrail and wall is greater than 1-1/2" | 4.9.4(3) | 032 | Provide handrails with clearance between wall and handrail equal to 1-1/2" |

#### U.S. Customs office in Terminal Building

| 7 | Exterior door to U.S. Customs Office is 30" wide | 4.1.3(7)(b); 4.13.5 | 066, 088 | Provide doorway with minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop |

#### Terminal Building exterior door to passenger ferry dock

| 9 | Threshold has unbeveled, ¾" vertical step | 4.13.8 | 061 | Provide threshold no higher than ½" in height beveled at 1:2 or less |
Puerto Rico Ports Authority  
FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT  
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| Accessible Route – Terminal Building to Passenger Ferry loading ramp |  |
|---|---|---|---|---|
| 10 | Walkway to loading ramp has ¾” vertical step | 4.3.8; 4.5.2 | 060 | Provide walkway with changes in level no greater than ½” |
| 11 | Leading edge of passenger loading ramp (interface with concrete pier) has vertical step of ¾” | 4.3.8 | 4.5.2 | 060 | Provide vertical step not more that ¼” high (1/2” if edge has bevel with maximum slope of 1:2) |
| 11.01 | Ramp slope measures 2”/ft | 4.8.2 | 075 | Provide ramp with running slope not exceeding 1”/ft |
| 11.02 | Ramp has rise of 50” for single run | 4.8.2 | 075 | Provide ramp with rise of 30” maximum for any run |
| 11.03 | Width between handrails is 34-1/4” | 4.8.3 | 075 | Provide ramp with minimum 36” width between handrails |
| 11.04 | Landing at top of ramp is 42” wide (in way of ramp width) and 52” long | 4.8.3 | 063 | Provide landing at least 60” long |
| 11.05 | Handrails are 40-1/4” high | 4.8.5 | 075 | Provide handrails with top of rail between 34” and 38” above the ramp surface |
| 11.06 | Handrail diameter is 1-3/4” | 4.8.5 | 073 | Provide handrails between 1-1/4” and 1-1/2” diameter |
| 11.07 | Ends of handrail are not extended | 4.8.5 | 073 | Provide at least 12” extension of handrail at bottom of ramp, parallel to the ground or level surface |

| Ferry Gangway at top of ferry loading ramp |  |
|---|---|---|---|---|
| 12 | Ends of handrail are not extended | 4.8.5 | 073 | Provide at least 12” extension of handrail at vessel end of ramp, parallel to the deck |
| 12.01 | Handrails are 39-1/4” high | 4.8.5 | 073 | Provide handrails with top of rail between 34” and 38” above the ramp surface |
| 12.02 | Transition from gangway to vessel has varying width gap exceeding ½” and has vertical step of 1” | 4.3.8; 4.5.2 | 074 | Provide hinged transition plate for gangway to vessel deck to eliminate horizontal gap at transition and reduce vertical step to not more that ¼” (1/2” if edge has bevel with maximum slope of 1:2) (1/2” if edge has bevel with maximum slope of 1:2) |

In addition this facility lacks accessible routes to the following accessible spaces or elements within the building or facility:

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey dates: December 11-13, 2007
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

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<tr>
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<tbody>
<tr>
<td>Terminal Building interior ramp</td>
<td>5 Ramp slope at entry door is 1-3/8”/ft, 1-3/8”/ft between handrails, and 1-3/4”/ft at the bottom of the ramp</td>
<td>4.8.2 079, 081, 094</td>
<td>Provide ramp with running slope not exceeding 1”/ft</td>
</tr>
<tr>
<td></td>
<td>5.01 Outside diameter of handrail is 1-7/8”</td>
<td>4.9.4; 4.26.2 076</td>
<td>Provide handrails with outside diameter between 1-1/4” and 1-1/2”</td>
</tr>
<tr>
<td></td>
<td>5.02 Handrails are not fitted with horizontal extensions at top and bottom of the stairs</td>
<td>4.9.4(2) 078</td>
<td>Provide handrail extensions that extend at least 12” beyond the top riser and at least 12” plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal</td>
</tr>
<tr>
<td></td>
<td>5.03 Clearance between handrail and wall is 1”</td>
<td>4.9.4(3) 076</td>
<td>Provide handrails with clearance between wall and handrail equal to 1-1/2”</td>
</tr>
<tr>
<td>Restroom door alcove</td>
<td>6 Door is offset approximately 11” from back wall of alcove</td>
<td>4.13.6 060</td>
<td>Provide offset of at least 12” for maneuvering</td>
</tr>
<tr>
<td>U.S. Customs office in Terminal Building</td>
<td>7.01 Interior door to U.S. Customs Office is 30” wide</td>
<td>4.1.3(7)(b); 4.13.5 089, 090</td>
<td>Provide doorway with minimum clear opening of 32” with the door open 90 degrees, measured between the face of the door and the opposite stop</td>
</tr>
</tbody>
</table>

FAJARDO FERRY TERMINAL FACILITY (FFBT), PUERTO REAL, FAJARDO, PR

This facility lacks the following accessible routes required by ADAAG §§ 4.3 & 4.14 to public transportation stops, public streets, and sidewalks to the accessible building entrance they serve:
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

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<tr>
<th>REF. ITEM No.</th>
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<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking Lot</td>
<td>For a total of 84 parking spaces, 3 spaces are designated accessible</td>
<td>4.1.2(5)(a)</td>
<td>804</td>
<td>Provide at least four accessible parking spaces, including at least one van accessible space</td>
</tr>
<tr>
<td>1.01</td>
<td>There are 3 designated accessible parking spaces, measuring 140” wide, 149” wide, and 120” wide, followed by a 116” wide non-designated space.</td>
<td>4.6.3; 4.1.2(5)(a)</td>
<td>804</td>
<td>Minimum car space width is 96”, plus a 60” wide aisle, which may be shared with an adjacent car space. The first two designated car spaces total 289” wide; suggest demarking a 60” wide aisle between the first two spaces.</td>
</tr>
<tr>
<td>1.02</td>
<td>No van accessible parking spaces are provided</td>
<td>4.1.2(5)(b)</td>
<td>804</td>
<td>At least one van-accessible space is required, with a minimum width of 192” (96” for the van and a 96” aisle). Suggest combining the third designated space (120” wide) with the fourth (non-designated) space (116” wide) for a total width of 236”, satisfying the 196” wide minimum van accessible space width requirement. Demark the 96” wide access aisle. Designate the next adjacent space as a car accessible space, sharing the van access aisle, and satisfying the requirement for a total of 4 accessible spaces</td>
</tr>
<tr>
<td>1.04</td>
<td>Access ramps have slopes of 1-1/8”/ft and 1-1/4”/ft respectively</td>
<td>4.8.2</td>
<td>804</td>
<td>Provide ramps that do not exceed 1”/ft slope; align them with demarked aisles</td>
</tr>
<tr>
<td>1.05</td>
<td>Access ramps have drop-off, with no 2” minimum curb, railing, or projecting surface to prevent people from falling off</td>
<td>4.8.7</td>
<td>804</td>
<td>Provide ramps with 2” minimum curb, railing, or projecting surface to prevent people from falling off</td>
</tr>
</tbody>
</table>

**Accessible Routes**

| 3             | Accessible route from ticket office and parking area to terminal does not coincide with route for general public: ramps exceed maximum slope permitted, routes not demarked on pavement. | 4.3.2 (1); 4.3.3; 4.3.6; 4.3.7; 4.3.10; 4.5.2; 4.8. | 10.0 | Provide accessible route from ticket box office to passenger’s terminal. Ramps crossing street shall coincide and be part of the accessible route. An aisle as part of the accessible route shall be 36” wide minimum, demarked with the international handicapped blue paint. |
Ticket Box Office

| Ticket purchase lines have insufficient maneuvering space in way of ticket window counters for wheelchairs. Pathway widths are (from street) 33", 31", 32", 35", and 35". The width at the turn (at ticket counter) is 45-1/2". |
|----|----|----|----|----|----|
| 8  | 10.3.1; 4.3.3 | 794, 796 | Where an accessible route makes a U-turn around an obstacle less than 48" wide, pathway width must be at least 42" on the approaches and 48" in the turn. |

8.01 Pathway widths are (from street) 33", 31", 32", 35", and 35".

| Pathway widths are (from street) 33", 31", 32", 35", and 35". |
|----|----|
| 4.3.3 | 788 |

Provide pathways at least 36" wide, exclusive of maneuvering space requirements.

8.02 Accessible route transits grating with openings 7-1/4" long by 1-1/2" wide; longer dimension is parallel to path of travel.

| Accessible route transits grating with openings 7-1/4" long by 1-1/2" wide; longer dimension is parallel to path of travel |
|----|----|
| 4.5.4 | 790 |

Provide grating with smallest dimension of opening no more than ½", with larger dimension of opening perpendicular to path of travel.

In addition this facility lacks accessible routes to the following accessible spaces or elements within the building or facility:

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Restrooms South End: (Men’s #1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.01</td>
<td>Two stalls of the same dimensions: 24 &quot; wide, 58 &quot; long. Sufficient clear floor space is not provided. No doors for privacy, no signage provided, no grab bars provided.</td>
<td>4.17.1; 4.17.2; 4.17.3; 4.17.5; 4.30; 4.17.6; 4.26</td>
<td>4.0</td>
<td>Rearrange restroom layout. Provide only one toilet stall, eliminating the other. The accessible toilet stall shall comply with ADAAG 4.17. Provide accessibility signage per ADAAG 4.30. Provide door with a privacy latch. Minimum stall depth shall be 56&quot;.</td>
</tr>
<tr>
<td>2.02</td>
<td>No doors provided. The clear opening is 24&quot; wide</td>
<td>4.13.5; 4.13.9</td>
<td>6.0 &amp; 7.0</td>
<td>Provide privacy door with latch. The minimum clear opening width shall be 32&quot;. Provide accessible signage on front of door.</td>
</tr>
<tr>
<td>2.05</td>
<td>There are two lavatories with knee clearance of 26 &quot;.</td>
<td>4.19.2</td>
<td>2.0</td>
<td>Remove front cover of counter top, this will increase the clearance to the minimum requirement of 29&quot;. Install protective insulation and cover for the pipes.</td>
</tr>
<tr>
<td>2.07</td>
<td>Door clear opening width is 27&quot;</td>
<td>4.13.5</td>
<td>1.0</td>
<td>Provide door with a minimum clear opening width of 32&quot;.</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

| Water Cooler – North End | 5.01 | Fountain # 2: knee clearance of 25” | 4.15.5 | - | Provide at least one water cooler ADA compliant, with knee clear space of 27” minimum above floor.
|--------------------------|------|-------------------------------------|--------|---|--------------------------------------------------|
| Restroom North End (Men’s # 2) | 8.01 | Latch side approach aisle is 41 inches wide | 4.17.5 ; 4.13.5 | 771 | Provide stall approach aisle minimum 42 inches wide
| | 8.02 | Stall door clear opening is 31 inches | 4.17.5 ; 4.13.5 | 765 | Provide stall door with minimum 32 inch clear opening
| | 8.04 | Stall measures 36 inches wide, 59 inches deep, with wall-hung toilet | 4.17.3 | 766 | Provide stall with inside measurement of at least 60 inches wide by 56 inches deep (59 inches if floor mounted toilet)

HATO REY FERRY TERMINAL

This facility lacks the following accessible routes required by ADAAG §§ 4.3 & 4.14 to public transportation stops, public streets, and sidewalks to the accessible building entrance they serve:

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Ferry Pier Facility</td>
<td>Fixed pier has varying slope, from 7/8”/ft to 1-5/8”/ft</td>
<td>4.8.2</td>
<td>882</td>
<td>Provide fixed pier with slope not more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>4</td>
<td>Fixed pier has varying cross slope, from 0.6% to 2.3%</td>
<td>4.8.2</td>
<td>882</td>
<td>Provide fixed pier with cross slope not more than 2% (1:50)</td>
</tr>
<tr>
<td>4.1</td>
<td>Fixed sloping pier handrails are not continuous</td>
<td>4.8.5(4)</td>
<td>884, 885</td>
<td>Provide continuous handrails at both sides of pier</td>
</tr>
<tr>
<td>4.2</td>
<td>Upper surface of fixed sloping pier handrails is 41-3/4” high</td>
<td>4.8.5(5)</td>
<td>884, 885</td>
<td>Provide handrails with upper surface no higher than 34” – 38” at both sides of pier</td>
</tr>
<tr>
<td>4.3</td>
<td>Gripping surface of fixed sloping pier handrails is 2” wide (1” x 2” rectangular section)</td>
<td>4.8.5; 4.26.2</td>
<td>885</td>
<td>Provide handrails with gripping surface 1-1/4” – 1-1/2” wide</td>
</tr>
<tr>
<td>4.4</td>
<td>Articulated pier handrails are 46-1/2” high</td>
<td>4.8.5(5)</td>
<td>884, 885</td>
<td>Provide handrails with upper surface no higher than 34” – 38” at both sides of pier</td>
</tr>
<tr>
<td>4.5</td>
<td>Articulated pier handrails are 2” in diameter</td>
<td>4.8.5; 4.26.2</td>
<td>885</td>
<td>Provide handrails with 1-1/4” – 1-1/2” diameter</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
March 4, 2007

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<tr>
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</thead>
<tbody>
<tr>
<td>4.7</td>
<td>Platform at base of articulated pier has hinge cover with 1&quot; vertical step</td>
<td>4.3.8, 4.5.2</td>
<td>888</td>
<td>Provide vertical step not more than ¼&quot; high (1/2&quot; if edge has bevel with maximum slope of 1:2)</td>
</tr>
</tbody>
</table>

Parking Lot

| 6             | “Van Accessible” signs in addition to the sign with the symbol of accessibility for the four van- accessible spaces have not been provided; sign for first space is missing | 4.6.4, 901-903          |                  | Provide “Van Accessible” sign in addition to the sign with the symbol of accessibility for the four van- accessible spaces; replace missing sign for first space |

| 6.1           | Access aisles are not demarked for the car and van spaces                                     | 4.6.3, 901-903, 908     |                  | Provide demarking of access aisles, 60” wide for cars and 96” wide for vans |

Bus Loading Area

| 7             | Bus stop ramps have slopes of 1-1/4”/ft and 1-1/8”/ft                                          | 4.8.2, 896              |                  | Provide ramps that do not exceed 1”/ft slope |

Curb Ramp

| 8             | Ramp has slope of 1-1/8”/ft                                                                     | 4.7.2, 4.8.2            | 898             | Provide ramp with slope not more than 1”/ft (1:12) |

In addition this facility lacks accessible routes to the following accessible spaces or elements within the building or facility:

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</thead>
<tbody>
<tr>
<td>Men’s Room</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>Maneuvering space at entry way is 32-1/2” long by 49” wide, then requires a 90-degree turn into the Men’s Room through a 33-1/2” wide open doorway</td>
<td>4.3.3, 839, 847</td>
<td></td>
<td>A 90 degree turn can be made from a 36” wide passage into another 36” passage if the depth of each leg is a minimum of 48” on the inside dimensions of the turn. Provide doorway opening at least 36” wide.</td>
</tr>
<tr>
<td>2.6</td>
<td>Stall door has insufficient maneuvering space, and does not comply with standard stall arrangement</td>
<td>4.17.5, 850</td>
<td></td>
<td>Re-hinge stall door to opposite side. Stile to be 4” wide maximum.</td>
</tr>
<tr>
<td>2.12</td>
<td>Clear floor space in front of urinal is 25-1/2” wide</td>
<td>4.18.3, 853</td>
<td></td>
<td>Provide clear floor space in front of urinal at least 30” wide and 48” deep</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority

FERRY TERMINAL FACILITY ACCESSIBLE ROUTE REPORT
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Women's Room

| 3.1 | Maneuvering space at entry way is 32-1/2" long by 45" wide, then requires a 90-degree turn into the Women's Room through a 34-1/2" wide open doorway | 4.3.3 | 858, 872 | A 90 degree turn can be made from a 36" wide passage into another 36" passage if the depth of each leg is a minimum of 48" on the inside dimensions of the turn. Provide doorway opening at least 36" wide, and extend length of entry passageway to at least 48".

| 3.6 | Toilet stall interior is 54-1/2" wide and 64" deep | 4.17.3 | 868 | Provide stall with interior 60" wide and at least 59" deep (56" for wall-mounted toilet)

| 3.8 | Stall door has insufficient maneuvering space, and does not comply with standard stall arrangement | 4.17.5 | 866 | Re-hinge stall door to opposite side. Stile to be 4" wide maximum.

OLD SAN JUAN FERRY TERMINAL

This facility lacks accessible routes to the following accessible spaces or elements within the building or facility:

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</thead>
<tbody>
<tr>
<td><strong>Men's Room</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 2.4           | Toilet stall interior is 43-1/2" wide and 72-1/2" deep | 4.17.3 | 943 | Provide stall with interior 60" wide and at least 59" deep (56" for wall-mounted toilet)
| 2.5           | Stall door opens IN to the stall, leaving insufficient maneuvering space, and does not comply with standard stall arrangement | 4.17.5 | 947 | Door should open out from the stall

| **Women's Room** | | | | |
| 3.2           | A total of six stalls are installed, one of which is oversized, with grab bars, intended to comply with ADAAG 4.17.3. None of the remaining stalls have been fitted with an outward swinging, self closing door and parallel grab bars. | 4.22.4 | 961 | Where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36" wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided.
VEQUE FERRY TERMINAL

This facility lacks the following accessible routes required by ADAAG §§ 4.3 & 4.14 to public transportation stops, public streets, and sidewalks to the accessible building entrance they serve:

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</tr>
</thead>
<tbody>
<tr>
<td>Parking Lot</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>There are 2 designated accessible parking spaces, both measuring 131&quot; wide</td>
<td>4.6.3; 4.1.2(5)(a)</td>
<td>520, 521</td>
<td>Minimum car space width is 96&quot;, plus a 60&quot; wide aisle (156&quot; total). The pavement on the street-side parking space extends approximately 25&quot; beyond the demarked area to the rolling gate, for a total of approximately 156&quot; from the ramp to the gate. Suggest demarking a 60&quot; wide aisle on the street side of the ramp to satisfy the overall width requirement for the first parking space.</td>
</tr>
<tr>
<td>1.1</td>
<td>No van accessible parking space is provided</td>
<td>4.6.3; 4.1.2(5)(b)</td>
<td>521</td>
<td>At least one van-accessible space is required, with a minimum width of 192&quot; (96&quot; for the van and a 96&quot; aisle). Suggest combining the water-side designated space (131&quot; wide) with the adjacent (non-designated) space (approximately 89&quot; wide) for a total width of approximately 220&quot;, satisfying the 196&quot; wide minimum van accessible space width requirement. Demark the 96&quot; wide access aisle.</td>
</tr>
<tr>
<td>1.3</td>
<td>Access ramp has a slope of 1-1/8'/ft</td>
<td>4.8.2</td>
<td>522</td>
<td>Provide ramp that does not exceed 1'/ft slope</td>
</tr>
<tr>
<td>1.4</td>
<td>Access ramp has a cross slope of 2.7%</td>
<td>4.8.6</td>
<td>522</td>
<td>Provide cross slope of no more than 2% (1:50)</td>
</tr>
<tr>
<td>1.5</td>
<td>Access ramp has rise of 7&quot; and 120&quot; run with no handrails</td>
<td>4.8.5</td>
<td>522</td>
<td>For ramps with a rise greater than 6&quot; and/or a run greater than 72&quot;, provide handrails on both sides complying with ADAAG 4.8.5</td>
</tr>
<tr>
<td>1.6</td>
<td>Access ramp has damaged concrete at base with 7/8&quot; vertical step</td>
<td>4.3.8 4.5.2</td>
<td>526</td>
<td>Provide vertical step not more that ¼&quot; high (1/2&quot; if edge has bevel with maximum slope of 1:2)</td>
</tr>
</tbody>
</table>
In addition, this facility lacks accessible routes to the following accessible spaces or elements within the building or facility:

<table>
<thead>
<tr>
<th>REF. ITEM No.</th>
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<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Door width is 31-7/8&quot;</td>
<td>4.13.5</td>
<td>529</td>
<td>Provide door with 32&quot; clear opening when door is opened 90 degrees</td>
</tr>
<tr>
<td>2.2</td>
<td>Door exterior threshold has 1-7/8&quot;/ft slope</td>
<td>4.13.8, 4.8.2</td>
<td>529</td>
<td>Provide threshold with slope no more than 1&quot;/ft (1:12)</td>
</tr>
<tr>
<td>2.6</td>
<td>Interior door maneuvering space is constrained by the lavatory, which is 32-1/2&quot; from the door and extends 14&quot; into the door maneuvering area. Electric hand dryer is 5-1/2&quot; from the door and extends 4-1/2&quot; into the door maneuvering area. Overall interior dimension of Men's Room is 61&quot; wide by 9'-5&quot; long.</td>
<td>4.13.6</td>
<td>530, 533</td>
<td>Provide clear floor area in front of door not less than 48&quot; long from the door and the full door width</td>
</tr>
</tbody>
</table>

**Women's Room**

<table>
<thead>
<tr>
<th>REF. ITEM No.</th>
<th>ELEMENTS / SPACES / COMMENTS</th>
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<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Door width is 31-1/4&quot;</td>
<td>4.13.5</td>
<td>541</td>
<td>Provide door with 32&quot; clear opening when door is opened 90 degrees</td>
</tr>
<tr>
<td>3.2</td>
<td>Door exterior threshold has 1-7/8&quot;/ft slope</td>
<td>4.13.8, 4.8.2</td>
<td>537</td>
<td>Provide threshold with slope no more than 1&quot;/ft (1:12)</td>
</tr>
<tr>
<td>3.6</td>
<td>Interior door maneuvering space is constrained by the lavatory, which is approximately 32&quot; from the door and extends 6&quot; into the door maneuvering area. Overall interior dimension of Women's Room is 62&quot; wide by 9'-8&quot; long.</td>
<td>4.13.6</td>
<td>541</td>
<td>Provide clear floor area in front of door not less than 48&quot; long from the door and the full door width</td>
</tr>
</tbody>
</table>

**Terminal Building exterior door to parking lot**

<table>
<thead>
<tr>
<th>REF. ITEM No.</th>
<th>ELEMENTS / SPACES / COMMENTS</th>
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<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Door exterior threshold has 1-3/4&quot;/ft slope</td>
<td>4.13.8, 4.8.2</td>
<td>528</td>
<td>Provide threshold with slope no more than 1&quot;/ft (1:12)</td>
</tr>
</tbody>
</table>

**Patio at front of Terminal Building**

<table>
<thead>
<tr>
<th>REF. ITEM No.</th>
<th>ELEMENTS / SPACES / COMMENTS</th>
<th>ADAAG REFERENCE SECTION</th>
<th>REFERENCE PHOTO</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Ramp to sidewalk (straight out front door) has slope of 1-3/8&quot;/ft</td>
<td>4.8.2</td>
<td>568</td>
<td>Provide ramp with slope not more than 1&quot;/ft (1:12)</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Code References</td>
<td>Code Numbers</td>
<td>Notes</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
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</tr>
<tr>
<td>8.01</td>
<td>Base of ramp to sidewalk has broken concrete, 3/8” vertical step</td>
<td>4.3.8; 4.5.2</td>
<td>568</td>
<td>Provide vertical step not more that ¼” high (1/2” if edge has bevel with maximum slope of 1:2)</td>
</tr>
<tr>
<td>8.02</td>
<td>Ramp to ticket booths at side of front door has slope of 1-1/8”/ft</td>
<td>4.8.2</td>
<td>569, 571</td>
<td>Provide ramp with slope not more than 1”/ft (1:12)</td>
</tr>
<tr>
<td></td>
<td>Ticket Booth at Terminal Building front exterior</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.01</td>
<td>Ticket purchase line has insufficient maneuvering space in way of ticket window counters for wheelchairs. Pathway (from street) width is 30”. The width at the turn (at ticket counter) is also 30”</td>
<td>10.3.1; 4.3.3</td>
<td>570</td>
<td>Where an accessible route makes a U-turn around an obstacle less than 48” wide, pathway width must be at least 42” on the approaches and 48” in the turn.</td>
</tr>
<tr>
<td>9.02</td>
<td>Ticket purchase line aisle width is 30”</td>
<td>4.3.3</td>
<td>570</td>
<td>Provide aisle at least 36” wide, exclusive of maneuvering space requirements</td>
</tr>
<tr>
<td>9.03</td>
<td>Pavement ramp from ticket window toward vessel pier has slope of 1-3/8”/ft with a cross slope of 3%</td>
<td>4.8.2</td>
<td>570, 572</td>
<td>Provide ramp with slope not more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>Curb Ramp</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Ramp has slope of 1-7/8”/ft</td>
<td>4.7.2; 4.8.2</td>
<td>576, 577</td>
<td>Provide ramp with slope not more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>Terminal Building exterior door to ferry dock</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Threshold has unbeveled, 2” vertical step</td>
<td>4.13.8</td>
<td>586</td>
<td>Provide threshold no higher than ½” in height beveled at 1:2 or less</td>
</tr>
<tr>
<td>11.01</td>
<td>Double doors have leaves with 30-1/2” clear opening</td>
<td>4.13.4</td>
<td>584</td>
<td>At least one of the two leaves of the double door is to have a clear opening of at least 32”</td>
</tr>
<tr>
<td>11.02</td>
<td>Steps outside door landing have risers of 6” and 7”</td>
<td>4.9.2</td>
<td>583, 584</td>
<td>Provide steps with uniform riser height and tread width</td>
</tr>
<tr>
<td>11.03</td>
<td>Steps outside door landing have no handrails</td>
<td>4.9.4</td>
<td>583, 584</td>
<td>Provide handrails complying with ADAAG 4.9.4 on both sides of steps</td>
</tr>
<tr>
<td>Accessible Route – Terminal Building to Ferry Pier</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>None of the routes into or out of the Terminal Building satisfy ADAAG requirements. The route commonly used by non-disabled passengers to go from the Terminal Building to the ferries has two steps (6-7” high) and no ramp.</td>
<td>4.3.2(1); 4.3.2(2)</td>
<td>-</td>
<td>Provide an accessible route, with directional signage complying with ADAAG 4.30 if that route is not the one commonly used by non-disabled passengers</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Code</td>
<td>Number</td>
<td>Note</td>
</tr>
<tr>
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<td>-----------------------------------------------------------------------------</td>
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<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>14</td>
<td>Ends of handrail at bottom of ramp are not extended</td>
<td>4.8.5</td>
<td>593</td>
<td>Provide at least 12&quot; extension of handrail at bottom of ramp, parallel to the ground or level surface</td>
</tr>
<tr>
<td>14.01</td>
<td>Ramp slope measures 2-1/8&quot;/ft from ground for first 8 feet of run, then 1-1/4&quot;/ft for next 25 ft of its 33-ft run.</td>
<td>4.8.2</td>
<td>593</td>
<td>Provide ramp with running slope not exceeding 1/&quot;ft</td>
</tr>
<tr>
<td>14.02</td>
<td>Ramp has rise of 41-1/2&quot; for single run</td>
<td>4.8.2</td>
<td>593</td>
<td>Provide ramp with rise of 30&quot; maximum for any run</td>
</tr>
<tr>
<td>14.03</td>
<td>Lower run of passenger loading ramp has vertical step of 7/8&quot; at lower landing</td>
<td>4.3.8</td>
<td>4.5.2</td>
<td>593</td>
</tr>
<tr>
<td>14.04</td>
<td>Cross slope of lower landing is 2.8%</td>
<td>4.8.4</td>
<td>602</td>
<td>Provide cross slope of no more than 2% (1:50)</td>
</tr>
<tr>
<td>14.05</td>
<td>Lower landing has clear area of 42-1/4&quot; by 93-3/4&quot;, with a length of 46&quot;</td>
<td>4.8.4(2)</td>
<td>602</td>
<td>Provide landing with a length of at least 60&quot;</td>
</tr>
<tr>
<td>14.06</td>
<td>Upper run of passenger loading ramp has vertical step of 5/8&quot; at upper landing</td>
<td>4.3.8</td>
<td>4.5.2</td>
<td>602</td>
</tr>
<tr>
<td>14.07</td>
<td>Upper landing has a length of 46&quot;</td>
<td>4.8.4(2)</td>
<td>509</td>
<td>Provide landing with a length of at least 60&quot;</td>
</tr>
<tr>
<td>14.08</td>
<td>Handrails are 42&quot; high</td>
<td>4.8.5</td>
<td>509, 593</td>
<td>Provide handrails with top of rail between 34&quot; and 38&quot; above the ramp surface</td>
</tr>
<tr>
<td>14.09</td>
<td>Handrail diameter is 2&quot;</td>
<td>4.8.5</td>
<td>509, 593</td>
<td>Provide handrails between 1-1/4&quot; and 1-1/2&quot; diameter</td>
</tr>
</tbody>
</table>

**Ferry Loading Ramp Gangway**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Number</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Ends of handrail are not extended</td>
<td>4.8.5</td>
<td>509</td>
<td>Provide at least 12&quot; extension of handrail at vessel end of ramp, parallel to the deck</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority

Cataño Ferry Terminal

ACCESSIBILITY INSPECTION REPORT
February 28, 2007

An Accessibility Survey of the Puerto Rico Ports Authority Cataño Ferry Terminal was conducted at Cataño, Puerto Rico on December 13, 2006, with the following persons in attendance:

Pedro E. Ruiz
Pedro E. Ruiz Law Offices, PSC.
Attorney for Defendant, PUERTO RICO PORTS AUTHORITY

Carlos Escobar
Engineering Consultant to PUERTO RICO PORTS AUTHORITY, Defendant

Arturo Santiago Rivera
AIT, for PUERTO RICO PORTS AUTHORITY, Defendant

Gregg Beers
Naval Architect engaged by Pedro E. Ruiz Law Offices, PSC for Defendant

Lorenzo Palomares
LORENZO J. PALOMARES STARBUCK, PSC, ESQ, ATTORNEYS & COUNSELORS AT LAW Attorney for Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC. and EDUARDO UMPIERRE

David S. Chapman, P.E.
Naval Architect engaged by Law Offices of William D. Tucker for Plaintiff

The Cataño Ferry Terminal is located in Cataño, PR, owned, operated and administered by the Puerto Rico Ports Authority (PRPA), a government agency. It is a waypoint of the inter-San Juan Harbor passenger ferry, which calls at Old San Juan (and formerly Hato Rey as well). This is a 30 year old facility that underwent a major modification 13 years ago, with a single-story terminal building with 12,000 ft² of floor area. The site has 300 parking spaces. The terminal building is located on a pier with passenger loading ramp facilities on either side, consisting of a pair of short fixed ramps connected to articulated sections leading up to hydraulically-operated platforms which can be raised or lowered to match the ferry freeboard. Hinged gangways are attached to the side of the platform.

This report covers the terminal parking, restrooms, telephones, and interior seating areas. The report shows the findings and deficiencies of the terminal, supported by photographs taken the date of the inspection, and includes recommendations for improving the accessibility of the terminal facility. The terminal has significant compliance deficiencies, rendering it inaccessible to the disabled. The primary deficiency is non-compliant toilet facilities. This is of particular concern since the vessel rest rooms are closed to the public. Details and recommendations may be found in the table below.

The purpose of this inspection is to conduct a facility survey for compliance with Title II of the Americans with Disabilities Act, 28 CFR Part 36, as published by the US Department of Justice, and based on the standards established by ICC/ANSI A117.1. The ferry terminal at issue here is subject to the general prohibitions against disability discrimination in effect since 1973, as contained in Section 504 of The Rehabilitation
Puerto Rico Ports Authority
Cataño Ferry Terminal
Cataño, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 28, 2007


Compliance with the ADA and its implementing regulations is a condition of compliance with § 504. 49 CFR § 27.19. The only difference between the two statutes is that Section 504 is applicable only if the program or activity in question receives Federal financial assistance. With that exception, the Rehabilitation Act is otherwise similar in substance to the ADA, and "cases interpreting either are applicable and interchangeable." Allison v. Department of Corrections, 94 F.3d 494, 497 (8th cir.1996).

The terminal must conform to generally accepted standards of accessibility in order to comply with Section 504 and the ADA. (See, for example, ADA Sec. 229(b) ("the regulations issued under this section and Section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with Section 504 of this Act.")
## ACCESSIBILITY INSPECTION REPORT
February 28, 2007

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<tbody>
<tr>
<td>1</td>
<td>Parking</td>
<td>Facility has 300 parking spaces, only four of which are designated accessible</td>
<td>4.6.1; 4.1.2(5)(a) 031, 035, 043</td>
<td>Provide at least seven accessible spaces, including at least one van accessible space</td>
</tr>
<tr>
<td>1.1</td>
<td>No van accessible parking spaces are provided</td>
<td>4.1.2(5)(b) 031, 035, 043</td>
<td>At least one van-accessible space is required, with a minimum width of 192&quot; (96&quot; for the van and a 96&quot; aisle). Demark the 96&quot; wide access aisle.</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Accessible parking space is not closest parking spot to terminal entrance</td>
<td>4.6.1 042</td>
<td>Designate closest parking space as accessible</td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td>Accessible parking spaces are not designated as reserved by signs with the symbol of accessibility, located so that they cannot be obscured by a car parked in the space</td>
<td>4.6.4; 4.30.7 031, 035, 043</td>
<td>Provide signage to designate accessible parking spaces as reserved by signs with the symbol of accessibility, located so that they cannot be obscured by a car parked in the space</td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>“Van Accessible” signs in addition to the sign with the symbol of accessibility for the van-accessible space(s)</td>
<td>4.6.4</td>
<td>Provide “Van Accessible” sign in addition to the sign with the symbol of accessibility</td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>Access aisles are not demarked for the car and van spaces</td>
<td>4.6.3 031, 035</td>
<td>Provide demarking of access aisles, 60&quot; wide for cars and 96&quot; wide for vans</td>
<td></td>
</tr>
<tr>
<td>1.6</td>
<td>Curb ramp has slope of 2-1/8&quot;/ft</td>
<td>4.8.2 043</td>
<td>Provide ramp that does not exceed 1&quot;/ft slope</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Men’s Room</td>
<td>Sign at entrance doorway is 70-1/4&quot; above the floor, and not mounted at hinge side of door</td>
<td>4.30.6 050</td>
<td>Mount sign centered 60&quot; above the ground at latch side of door</td>
</tr>
<tr>
<td>2.1</td>
<td>Maneuvering space at entry way is 18&quot; long by 39&quot; wide, then requires a 90-degree turn into a space 32&quot; long by 35-1/2&quot; wide, then requires another 90-degree turn into the Women’s Room through a 27&quot; wide open doorway</td>
<td>4.3.3; 4.13.5 049, 052, 053</td>
<td>Provide space for a U-turn with a 42&quot; wide passage into a 48&quot; wide passage, and then a 42&quot; wide passage, in compliance with ADAAG 4.3.3 Fig. 7b. Provide door with clear opening at least 36&quot; wide.</td>
<td></td>
</tr>
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</table>
Puerto Rico Ports Authority

ACCESSIBILITY INSPECTION REPORT
February 28, 2007

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<tbody>
<tr>
<td>2.2</td>
<td>Lavatory supply and drain piping is not insulated</td>
<td>4.19.4</td>
<td>054</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Lavatory faucet handle requires pinching/grasping</td>
<td>4.19.5; 4.27.4</td>
<td>054</td>
<td>Provide faucet handles that do not require pinching/grasping</td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>Bottom of mirror reflecting surface is 46&quot; above the floor</td>
<td>4.19.6</td>
<td>054</td>
<td>Mount mirror with bottom of reflective surface not more than 40&quot; above the floor</td>
<td></td>
</tr>
<tr>
<td>2.5</td>
<td>The rest room has two equally sized toilet stalls, both 54-1/2&quot; deep and 32-3/4&quot; wide.</td>
<td>4.17.3</td>
<td>056, 062</td>
<td>Provide at least one toilet stall which measures at least 60&quot; wide and 59&quot; deep (56&quot; deep with wall-mounted toilet)</td>
<td></td>
</tr>
<tr>
<td>2.7</td>
<td>Stall door opens IN to the stall, leaving insufficient maneuvering space, and does not comply with standard stall arrangement</td>
<td>4.17.5</td>
<td>056, 062</td>
<td>Door should open out from the stall</td>
<td></td>
</tr>
<tr>
<td>2.8</td>
<td>Stall door is 22-1/4&quot; wide</td>
<td>4.17.5; 4.13</td>
<td>056, 062</td>
<td>Provide at least one stall with a door 32&quot; wide</td>
<td></td>
</tr>
<tr>
<td>2.9</td>
<td>Toilet stall has no grab bars</td>
<td>4.16.4, 4.26</td>
<td>056, 059</td>
<td>Provide a 36&quot; minimum length horizontal grab bar behind the water closet mounted at a height of 36&quot; and extending a minimum of 12&quot; beyond the center of the water closet toward the side wall and a minimum of 24&quot; toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42&quot; long, on the side wall adjacent to the water closet mounted at a height between 33&quot; and 36&quot; and extending from 12&quot; from the rear wall to a minimum of 54&quot; from the rear wall.</td>
<td></td>
</tr>
<tr>
<td>2.10</td>
<td>Top of toilet seat is 15-1/2&quot; above the floor</td>
<td>4.17.2; 4.16.3</td>
<td>056, 062</td>
<td>Provide toilet seat 17&quot;-19&quot; above the floor</td>
<td></td>
</tr>
<tr>
<td>2.11</td>
<td>Toilet is centered 14&quot; off the wall</td>
<td>4.17.2</td>
<td>056, 062</td>
<td>Toilet is to be 18&quot; off the wall</td>
<td></td>
</tr>
<tr>
<td>ITEM No.</td>
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</tr>
<tr>
<td>2.12</td>
<td>Stall door has no exterior handle</td>
<td>4.17.5</td>
<td>056, 059</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
<td></td>
</tr>
<tr>
<td>2.13</td>
<td>Stall door interior latch and pull require pinching/grasping</td>
<td>4.13.9</td>
<td>-</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
<td></td>
</tr>
<tr>
<td>2.14</td>
<td>Stall door is not fitted with inside closer or spring hinges</td>
<td>A4.17.5</td>
<td>-</td>
<td>To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.</td>
<td></td>
</tr>
<tr>
<td>2.15</td>
<td>Urinals are mounted with rims 22” and 23” above the floor</td>
<td>4.18.2</td>
<td>055</td>
<td>Mount at least one urinal with rim a maximum of 17” above the floor</td>
<td></td>
</tr>
<tr>
<td>2.16</td>
<td>Urinal flush controls are 51-1/2” above the floor</td>
<td>4.18.4</td>
<td>055</td>
<td>Mount urinal flush controls no more than 48” above the floor</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Women’s Room</td>
<td>Sign at entrance doorway is 70-1/4” above the floor, and not mounted at hinge side of door</td>
<td>4.30.6</td>
<td>084</td>
<td>Mount sign centered 60” above the ground at latch side of door</td>
</tr>
<tr>
<td>3.1</td>
<td>Maneuvering space at entry way is 32” long by 35-1/2” wide, then requires a 90-degree turn into the Women's Room through a 27” wide open doorway</td>
<td>4.3.3; 4.13.5</td>
<td>067, 068</td>
<td>A 90 degree turn can be made from a 36” wide passage into another 36” passage if the depth of each leg is a minimum of 48” on the inside dimensions of the turn. Provide door with clear opening at least 36” wide.</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Floor slope is 1:8 (13%) (1-1/2”/ft)</td>
<td>4.3.7</td>
<td>071</td>
<td>Correct running slope of accessible route to not more than 1:20</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Lavatory supply and drain piping is not insulated</td>
<td>4.19.4</td>
<td>069</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Lavatory faucet handles require pinching/grasping</td>
<td>4.19.5; 4.27.4</td>
<td>070</td>
<td>Provide faucet handles for at least one lavatory that do not require pinching/grasping</td>
<td></td>
</tr>
<tr>
<td>3.5</td>
<td>Bottom of mirror reflecting surface is 45” above the floor</td>
<td>4.19.6</td>
<td>070</td>
<td>Mount mirror with bottom of reflective surface not more than 40” above the floor</td>
<td></td>
</tr>
</tbody>
</table>
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<tbody>
<tr>
<td>3.6</td>
<td></td>
<td>The rest room has two equally sized toilet stalls, both 54” deep and 33” wide.</td>
<td>4.17.3</td>
<td>074, 076</td>
<td>Provide at least one toilet stall which measures at least 60” wide and 59” deep (56” deep with wall-mounted toilet)</td>
</tr>
<tr>
<td>3.7</td>
<td></td>
<td>Stall door opens IN to the stall, leaving insufficient maneuvering space, and does not comply with standard stall arrangement</td>
<td>4.17.5</td>
<td>074, 076</td>
<td>Door should open out from the stall</td>
</tr>
<tr>
<td>3.8</td>
<td></td>
<td>Stall door is 23” wide</td>
<td>4.17.5; 4.13</td>
<td>074, 076</td>
<td>Provide at least one stall with a door 32” wide</td>
</tr>
<tr>
<td>3.9</td>
<td></td>
<td>Toilet stall has no grab bars</td>
<td>4.16.4, 4.26</td>
<td>075, 077</td>
<td>Provide a 36” minimum length horizontal grab bar behind the water closet mounted at a height of 36” and extending a minimum of 12” beyond the center of the water closet toward the side wall and a minimum of 24” toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42” long, on the side wall adjacent to the water closet mounted at a height between 33” and 36” and extending from 12” from the rear wall to a minimum of 54” from the rear wall.</td>
</tr>
<tr>
<td>3.10</td>
<td></td>
<td>Top of toilet seat is 16” above the floor</td>
<td>4.17.2; 4.16.3</td>
<td>074, 076</td>
<td>Provide toilet seat 17”-19” above the floor</td>
</tr>
<tr>
<td>3.11</td>
<td></td>
<td>Toilet is centered 14” off the wall</td>
<td>4.17.2</td>
<td>075, 076</td>
<td>Toilet is to be 18” off the wall</td>
</tr>
<tr>
<td>3.12</td>
<td></td>
<td>Stall door has no exterior handle</td>
<td>4.17.5</td>
<td>074, 076</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td>3.13</td>
<td></td>
<td>Stall door interior latch and pull require pinching/grasping</td>
<td>4.13.9</td>
<td>-</td>
<td>Provide door hardware that does not require pinching or grasping to operate.</td>
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## Puerto Rico Ports Authority

### Cataño Ferry Terminal

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<tr>
<td>3.14</td>
<td>Stall door is not fitted with inside closer or spring hinges</td>
<td>A4.17.5</td>
<td>-</td>
<td>To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Assembly Areas</td>
<td>The terminal does not identify accessible wheelchair locations or accessible seating area.</td>
<td>4.33.1; 4.30</td>
<td>024</td>
<td>Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per ADAAG 4.30</td>
</tr>
<tr>
<td>5</td>
<td>Public Telephones</td>
<td>Cord from lower telephone to handset is 28&quot; long</td>
<td>4.31.8</td>
<td>086</td>
<td>Provide cord at least 29&quot; long</td>
</tr>
<tr>
<td>5.01</td>
<td>Coin slot is 54” above the ground</td>
<td>4.31.3; 4.2.5</td>
<td>086</td>
<td>Provide for coin slot no higher than 48” above the ground</td>
<td></td>
</tr>
<tr>
<td>5.02</td>
<td>Volume control is 54” above the ground</td>
<td>4.31.3; 4.2.5</td>
<td>086</td>
<td>Provide for volume control no higher than 48” above the ground</td>
<td></td>
</tr>
<tr>
<td>5.03</td>
<td>Telephone shelf has 26” knee height</td>
<td>4.31.2</td>
<td>086</td>
<td>Provide at least one telephone with at least 27” knee height under phone shelf</td>
<td></td>
</tr>
</tbody>
</table>
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Cataño Ferry Terminal

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Photo # 046

Photo # 030

Photo # 088

Photo # 031

Photo # 024

Photo # 035

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06

Report No. JAU-DSC070228 2-28-07

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Cataño Ferry Terminal

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Photo # 054
Photo # 059

Photo # 055
Photo # 062

Photo # 056
Photo # 067

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
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Photo # 076

Photo # 077

Photo # 084

Photo # 086

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Culebra Ferry Terminal

ACCESSIBILITY INSPECTION REPORT

February 24, 2007

An Accessibility Survey of the Puerto Rico Ports Authority Culebra Ferry Terminal was conducted at Culebra, Puerto Rico on December 11, 2006, with the following persons in attendance:

Miguel Ortiz
Port Authority Operations, Assistant to Director, PUERTO RICO PORTS AUTHORITY, Defendant

Pedro E. Ruiz
Pedro E. Ruiz Law Offices, PSC. Attorney for Defendant, PUERTO RICO PORTS AUTHORITY

Carlos Escobar
Engineering Consultant to PUERTO RICO PORTS AUTHORITY, Defendant

Arturo Santiago Rivera
AIT, for PUERTO RICO PORTS AUTHORITY, Defendant

Lorenzo Palomares
LORENZO J. PALOMARES STARBUCK, PSC, ESQ. ATTORNEYS & COUNSELORS AT LAW Attorney for Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC. and EDUARDO UMPIERRE

Jaime A. Umpierre, P.E.
Mechanical Engineer engaged by Law Offices of William D. Tucker for Plaintiff

David S. Chapman, P.E.
Naval Architect engaged by Law Offices of William D. Tucker for Plaintiff

The Culebra Ferry Terminal is located in Culebra, PR, owned, operated and administered by the Puerto Rico Ports Authority (PRPA), a government agency. The terminal serves as the Culebra island port for passengers and cargo vessels bound for the Puerto Rico mainland port of Fajardo, and for the municipality island of Vieques. This is a 28 years old facility whose last major modification was commenced 2 years ago and is nearing completion. The single-story terminal building, still under construction, has 1,200 ft² of floor area. The site has 24 parking spaces, one of which is designated accessible. Passenger ferries dock at the pier on which the terminal building is located, and vehicle ferries dock at the opposite end of the site, separated from the terminal building by a plaza with outside tables, seating, and a broad staircase down to the water.

This report covers parking area, ramps, accessible routes, ticket box office area, and the passenger loading facility. Due to the status of construction, this report does not cover restrooms, entrances, exit gates, phone booths, snack bar, water fountains, vending machines, and interior seating areas. The rest rooms were locked and unavailable for inspection (PRPA officials advised that they did not have keys available). The main (waiting) room was empty (no seating or any other fixtures) as was the future snack bar area and the US Customs office. With regard to entrances and exit gates, the area in front of the main building, including the detached ticket booth, was ringed by a construction fence with wood and chicken wire gates.
The report shows the findings and deficiencies of the terminal, supported by photographs taken the date of the inspection, and includes recommendations for improving the accessibility of the terminal facility. The terminal has numerous and significant compliance deficiencies, rendering it inaccessible to the disabled. Deficiencies include numerous excessive ramp slopes, deficient door widths, non-compliant handrails, and a non-compliant ferry ganway. Especially striking is the number and magnitude of deficiencies with the main terminal building which is still under construction. Details and recommendations may be found in the table below.


Compliance with the ADA and its implementing regulations is a condition of compliance with § 504. 49 CFR § 27.19. The only difference between the two statutes is that Section 504 is applicable only if the program or activity in question receives Federal financial assistance. With that exception, the Rehabilitation Act is otherwise similar in substance to the ADA, and "cases interpreting either are applicable and interchangeable." Allison v. Department of Corrections, 94 F.3d 494, 497 (8th cir.1996).

The terminal must conform to generally accepted standards of accessibility in order to comply with Section 504 and the ADA. (See, for example, ADA Sec. 229(b) ("the regulations issued under this section and Section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with Section 504 of this Act."))
Puerto Rico Ports Authority

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<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Parking</td>
<td>Accessible parking space is not closest parking spot to terminal entrance</td>
<td>4.6.2</td>
<td>019</td>
<td>Rearrange parking spaces as necessary and designate closest parking space as accessible</td>
</tr>
<tr>
<td>1.01</td>
<td>No van accessible parking spaces are provided</td>
<td>4.1.2(5)(b)</td>
<td>018</td>
<td>At least one van-accessible space is required, with a minimum width of 192” (96” for the van and a 96” aisle). Demark the 96” wide access aisle.</td>
<td></td>
</tr>
<tr>
<td>1.02</td>
<td>No “Van Accessible” sign located below vertical sign with International Symbol of Accessibility</td>
<td>4.6.4</td>
<td>018</td>
<td>Provide “Van Accessible” sign located below vertical sign with International Symbol of Accessibility</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Ticket Counter</td>
<td>Ticket counter is located 39” above pavement</td>
<td>7.2(2)</td>
<td>046</td>
<td>Provide counter not higher than 36” high and 36” wide (minimum)</td>
</tr>
<tr>
<td>3</td>
<td>Accessible Route – Terminal Building to Vehicle Ferry loading ramp</td>
<td>Walkway from Terminal Building to Vehicle Ferry loading ramp (where foot passengers are embarked and disembarked) has cross slope of 2.5%</td>
<td>4.3.7</td>
<td>024</td>
<td>Provide and demark walkway from Terminal Building to Vehicle Ferry loading ramp (where foot passengers are embarked and disembarked) with cross slope of 2% maximum (1:50)</td>
</tr>
<tr>
<td>3.01</td>
<td>Ramp down to ferry landing has slope of 1-1/2”/ft</td>
<td>4.8.2</td>
<td>042</td>
<td>Provide ramp with running slope not exceeding 1”/ft</td>
<td></td>
</tr>
<tr>
<td>3.02</td>
<td>Ramp at transition from approach to ferry landing down to adjacent pier has slope of 1-1/2”/ft and cross slope of 1-1/4”/ft (10%, 1:10)</td>
<td>4.3.7; 4.8.2</td>
<td>042</td>
<td>Provide ramp with running slope not exceeding 1”/ft and cross slope of 2% maximum (1:50)</td>
<td></td>
</tr>
<tr>
<td>3.03</td>
<td>Ramp at transition from approach to ferry landing down to adjacent pier has no handrails</td>
<td>4.8.5</td>
<td>013, 028, 042</td>
<td>Provide handrails on each side of walkway complying with ADAAG 4.8.5</td>
<td></td>
</tr>
<tr>
<td>3.04</td>
<td>Ramp at transition from approach to ferry landing down to adjacent pier has drop off to pier of 5” with no edge protection</td>
<td>4.8.7</td>
<td>028</td>
<td>Provide a minimum 2” curb, a wall, railings, or projecting surface to prevent people from falling off</td>
<td></td>
</tr>
<tr>
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<td>---------</td>
<td>--------------</td>
</tr>
<tr>
<td>3.05</td>
<td></td>
<td>Walkway adjoins vehicular way (for ferry loading) with no separation by curbs, railings, or other elements between the pedestrian areas and vehicular areas.</td>
<td>4.29.5</td>
<td>042</td>
<td>Provide a continuous detectable warning at least 36” wide complying with ADAAG 4.29.2</td>
</tr>
<tr>
<td>3.06</td>
<td></td>
<td>There is no signage directing foot passengers from Terminal Building to foot passenger loading facility for the vehicle ferry</td>
<td>4.1.2; 4.30</td>
<td>-</td>
<td>Provide signage complying with ADAAG 4.30 directing foot passengers from Terminal Building to foot passenger loading facility for the vehicle ferry</td>
</tr>
<tr>
<td>4</td>
<td>Accessible Route – Terminal Building plaza to pier leading to Vehicle Ferry landing</td>
<td>Step risers vary from 6” high to 6.5” high</td>
<td>4.9.2</td>
<td>030, 031, 067</td>
<td>Provide risers with uniform height</td>
</tr>
<tr>
<td>4.01</td>
<td></td>
<td>Step treads vary in width from 12” to 13”</td>
<td>4.9.2</td>
<td>030, 031</td>
<td>Provide treads with uniform width (minimum 11” wide)</td>
</tr>
<tr>
<td>4.02</td>
<td></td>
<td>Top tread has slope of 1-3/8”/ft</td>
<td>4.9.6</td>
<td>030, 031</td>
<td>Provide top tread with slope of 2% maximum (1:50)</td>
</tr>
<tr>
<td>4.03</td>
<td></td>
<td>Handrails are not fitted with horizontal extensions at top and bottom of the stairs</td>
<td>4.9.4(2)</td>
<td>030, 031</td>
<td>Provide handrail extensions that extend at least 12” beyond the top riser and at least 12” plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal</td>
</tr>
<tr>
<td>4.04</td>
<td></td>
<td>Outside diameter of handrail is 1-7/8”</td>
<td>4.9.4; 4.26.2</td>
<td>030, 031</td>
<td>Provide handrails with outside diameter between 1-1/4” and 1-1/2”</td>
</tr>
<tr>
<td>4.05</td>
<td></td>
<td>Clearance between handrail and wall is greater than 1-1/2”</td>
<td>4.9.4(3)</td>
<td>032</td>
<td>Provide handrails with clearance between wall and handrail equal to 1-1/2”</td>
</tr>
<tr>
<td>5</td>
<td>Terminal Building interior ramp</td>
<td>Ramp slope at entry door is 1-3/8”/ft, 1-3/8”/ft between handrails, and 1-3/4”/ft at the bottom of the ramp</td>
<td>4.8.2</td>
<td>079, 081, 094</td>
<td>Provide ramp with running slope not exceeding 1”/ft</td>
</tr>
</tbody>
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<tr>
<td>5.01</td>
<td>Outside diameter of handrail is 1-7/8&quot;</td>
<td>4.9.4; 4.26.2</td>
<td>076</td>
<td>Provide handrails with outside diameter between 1-1/4&quot; and 1-1/2&quot;</td>
</tr>
<tr>
<td>5.02</td>
<td>Handrails are not fitted with horizontal extensions at top and bottom of the stairs</td>
<td>4.9.4(2)</td>
<td>078</td>
<td>Provide handrail extensions that extend at least 12&quot; beyond the top riser and at least 12&quot; plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal</td>
</tr>
<tr>
<td>5.03</td>
<td>Clearance between handrail and wall is 1&quot;</td>
<td>4.9.4(3)</td>
<td>076</td>
<td>Provide handrails with clearance between wall and handrail equal to 1-1/2&quot;</td>
</tr>
<tr>
<td>6</td>
<td>Restroom door alcove</td>
<td>Door is offset approximately 11&quot; from back wall of alcove</td>
<td>4.13.6</td>
<td>060</td>
</tr>
<tr>
<td>7</td>
<td>U.S. Customs office in Terminal Building</td>
<td>Exterior door to U.S. Customs Office is 30&quot; wide</td>
<td>4.1.3(7)(b); 4.13.5</td>
<td>066, 088</td>
</tr>
<tr>
<td>7.01</td>
<td>Interior door to U.S. Customs Office is 30&quot; wide</td>
<td>4.1.3(7)(b); 4.13.5</td>
<td>089, 090</td>
<td>Provide doorway with minimum clear opening of 32&quot; with the door open 90 degrees, measured between the face of the door and the opposite stop</td>
</tr>
<tr>
<td>8</td>
<td>Alarms</td>
<td>No visual and audible fire/emergency alarms observed in general seating area</td>
<td>4.28</td>
<td>082, 083</td>
</tr>
<tr>
<td>9</td>
<td>Terminal Building exterior door to passenger ferry dock</td>
<td>Threshold has unbeveled, ¾&quot; vertical step</td>
<td>4.13.8</td>
<td>061</td>
</tr>
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<td>-------------------------</td>
</tr>
<tr>
<td>10</td>
<td>Accessible Route – Terminal Building to Passenger Ferry loading ramp</td>
<td>Walkway to loading ramp has ¾&quot; vertical step</td>
<td>4.3.8; 4.5.2</td>
<td>060</td>
</tr>
<tr>
<td>11</td>
<td>Ferry Loading Ramp</td>
<td>Leading edge of passenger loading ramp (interface with concrete pier) has vertical step of ¾&quot;</td>
<td>4.3.8; 4.5.2</td>
<td>060</td>
</tr>
<tr>
<td>11.01</td>
<td></td>
<td>Ramp slope measures 2&quot;/ft</td>
<td>4.8.2</td>
<td>075</td>
</tr>
<tr>
<td>11.02</td>
<td></td>
<td>Ramp has rise of 50&quot; for single run</td>
<td>4.8.2</td>
<td>075</td>
</tr>
<tr>
<td>11.03</td>
<td></td>
<td>Width between handrails is 34-1/4&quot;</td>
<td>4.8.3</td>
<td>075</td>
</tr>
<tr>
<td>11.04</td>
<td></td>
<td>Landing at top of ramp is 42&quot; wide (in way of ramp width) and 52&quot; long</td>
<td>4.8.3</td>
<td>063</td>
</tr>
<tr>
<td>11.05</td>
<td></td>
<td>Handrails are 40-1/4&quot; high</td>
<td>4.8.5</td>
<td>075</td>
</tr>
<tr>
<td>11.06</td>
<td></td>
<td>Handrail diameter is 1-3/4&quot;</td>
<td>4.8.5</td>
<td>073</td>
</tr>
<tr>
<td>11.07</td>
<td></td>
<td>Ends of handrail are not extended</td>
<td>4.8.5</td>
<td>073</td>
</tr>
<tr>
<td>12</td>
<td>Ferry Gangway at top of ferry loading ramp</td>
<td>Ends of handrail are not extended</td>
<td>4.8.5</td>
<td>073</td>
</tr>
<tr>
<td>12.01</td>
<td></td>
<td>Handrails are 39-1/4&quot; high</td>
<td>4.8.5</td>
<td>073</td>
</tr>
<tr>
<td>12.02</td>
<td></td>
<td>Transition from gangway to vessel has varying width gap exceeding ½&quot; and has vertical step of 1&quot;</td>
<td>4.3.8; 4.5.2</td>
<td>074</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority  
Culebra Ferry Terminal  
Culebra, Puerto Rico

ACCESSIBILITY INSPECTION REPORT  
February 24, 2007

Photo # 013

Photo # 018

Photo # 019

Photo # 024

Photo # 028

Photo # 030

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.  
Survey date: 12-11-06  
Report No. JAU-DSC070224 2-24-07
Puerto Rico Ports Authority
Culebra Ferry Terminal
Culebra, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 24, 2007

Photo # 031

Photo # 046

Photo # 032

Photo # 060

Photo # 042

Photo # 061

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-11-06
Puerto Rico Ports Authority

Culebra Ferry Terminal

ACCESSIBILITY INSPECTION REPORT
February 24, 2007

Photo # 063

Photo # 066

Photo # 067

Photo # 073

Photo # 074

Photo # 075

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-11-06

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Culebra Ferry Terminal

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Photo # 076

Photo # 079

Photo # 081

Photo # 082

Photo # 083

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
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Culebra Ferry Terminal

ACCESSIBILITY INSPECTION REPORT
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Photo # 088

Photo # 090

Photo # 089

Photo # 094

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-11-06

Report No. JAU-DSC070224 2-24-07

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Puerto Rico Ports Authority
Terminal de Lanchas de Fajardo, Puerto Real Fajardo, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 23, 2007

An Accessibility Survey of the Puerto Rico Ports Authority Fajardo Ferry Boat Terminal was conducted at Fajardo, Puerto Rico on December 11, 2006, with the following persons in attendance:

Carlos Escobar Engineering Consultant to PUERTO RICO PORTS AUTHORITY, Defendant
Arturo Santiago Rivera AIT, for PUERTO RICO PORTS AUTHORITY, Defendant
Lorenzo Palomares LORENZO J. PALOMARES STARBUCK, PSC, ESQ, ATTORNEYS & COUNSELORS AT LAW Attorney for Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC. and EDUARDO UMPIERRE
Jaime A. Umpierre, P.E. Mechanical Engineer engaged by Law Offices of William D. Tucker for Plaintiff
David S. Chapman, P.E. Naval Architect engaged by Law Offices of William D. Tucker for Plaintiff

The Fajardo Ferry Boat Terminal facility (FFBT) is located in Puerto Real, Fajardo, PR, owned, operated and administrated by the Puerto Rico Ports Authority (PRPA), a government agency. This is a 28 years old facility whose last major modification was accomplished 15 years ago. It has 8,300 ft² of floor area, and serves as the homeport for passengers and cargo vessels for the municipality islands of Vieques and Culebra.

This report covers entrances, restrooms, exit gates, phone booths, cafeteria, water fountains, vending machines, seating areas, parking area, ramps, accessible routes and ticket box office area. The report shows the findings and deficiencies of the terminal, supported by photographs taken the date of the inspection, and includes recommendations for improving the accessibility of the building. The terminal has numerous and significant compliance deficiencies, rendering it inaccessible to the disabled. Details and recommendations may be found in the table below.


Compliance with the ADA and its implementing regulations is a condition of compliance with § 504. 49 CFR § 27.19. The only difference between the two statutes is that Section 504 is applicable only if the program or activity in question receives
Federal financial assistance. With that exception, the Rehabilitation Act is otherwise similar in substance to the ADA, and "cases interpreting either are applicable and interchangeable." Allison v. Department of Corrections, 94 F.3d 494, 497 (8th cir.1996).

The terminal must conform to generally accepted standards of accessibility in order to comply with Section 504 and the ADA. (See, for example, ADA Sec. 229(b) ("the regulations issued under this section and Section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with Section 504 of this Act."))
<table>
<thead>
<tr>
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<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.01</td>
<td>There are 3 designated</td>
<td>accessible parking spaces, measuring 140” wide, 149” wide, and 120” wide,</td>
<td>N</td>
<td>4.6.3;</td>
<td>Minimum car space width is 96”, plus a 60” wide aisle, which may be shared with</td>
</tr>
<tr>
<td></td>
<td>parking spaces,</td>
<td>followed by a 116” wide non-designated space.</td>
<td></td>
<td>4.1.2(5)(a)</td>
<td>an adjacent car space. The first two designated car spaces total 289” wide;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>suggest demarking a 60” wide aisle between the first two spaces.</td>
</tr>
<tr>
<td>1.02</td>
<td>No van accessible</td>
<td>parking spaces are provided</td>
<td>N</td>
<td>4.1.2(5)(b)</td>
<td>At least one van-accessible space is required, with a minimum width of 192”</td>
</tr>
<tr>
<td></td>
<td>parking spaces</td>
<td></td>
<td></td>
<td></td>
<td>(96” for the van and a 96” aisle). Suggest combining the third designated</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>space (120” wide) with the fourth (non-designated) space (116” wide) for a</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>total width of 236”, satisfying the 196” wide minimum van accessible space</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>width requirement. Demark the 96” wide access aisle. Designate the next</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adjacent space as a car accessible space, sharing the van access aisle, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>satisfying the requirement for a total of 4 accessible spaces</td>
</tr>
<tr>
<td>1.02</td>
<td>No vertical signage is</td>
<td>provided for the first two spaces</td>
<td>N</td>
<td>4.6.3</td>
<td>Provide vertical signage for each accessible space</td>
</tr>
<tr>
<td></td>
<td>provided for the first</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.04</td>
<td>Access ramps have slopes</td>
<td>1-1/8”/ft and 1-1/4”/ft respectively</td>
<td>N</td>
<td>4.8.2</td>
<td>Provide ramps that do not exceed 1”/ft slope; align them with demarked aisles</td>
</tr>
<tr>
<td>1.05</td>
<td>Access ramps have drop-off,</td>
<td>with no 2” minimum curb, railing, or projecting surface to prevent people from falling off</td>
<td>N</td>
<td>4.8.7</td>
<td>Provide ramps with 2” minimum curb, railing, or projecting surface to prevent people from falling off</td>
</tr>
</tbody>
</table>
## ACCESSIBILITY INSPECTION REPORT
February 23, 2007

<table>
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</tr>
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<tbody>
<tr>
<td>2</td>
<td>Restrooms South End: (Men's #1)</td>
<td>Not ADA compliance: not accessible, no signage provided. Women's bathrooms were not inspected</td>
<td>N</td>
<td>4.3.3; 4.17; 4.13; 4.2.5; 4.2.6; 4.27; 4.18; 4.19</td>
<td>Terminal shall provide at least one accessible restroom, identified with the international accessible signage.</td>
</tr>
<tr>
<td>2.01</td>
<td>Toilet Stalls (Two in Bathroom #1)</td>
<td>Two stalls of the same dimensions: 24&quot; wide, 58&quot; long. Clear floor space is not provided. No doors for privacy, No signage provided, no grab bars provided.</td>
<td>N</td>
<td>4.17.1; 4.17.2; 4.17.3; 4.17.5; 4.30; 4.17.6; 4.26</td>
<td>Rearrangement of restroom layout. Provide only one toilet stall, eliminating the other. The accessible toilet stall shall comply with section 4.17. Provide accessibility signage per section 4.30. Provide door with a privacy latch. Minimum depth shall be 56”.</td>
</tr>
<tr>
<td>2.02</td>
<td>Accessible Route</td>
<td>Width of 40.5&quot;. There is a steel column with a forward projection of 9&quot; in route to stall located at the end of the restroom.</td>
<td>Y</td>
<td>4.3.3</td>
<td>6.0 &amp; 7.0 N/A</td>
</tr>
<tr>
<td>2.03</td>
<td>Accessible Entrance</td>
<td>No doors provided. The clear opening entrance is of 24&quot; wide</td>
<td>N</td>
<td>4.13.5; 4.13.9</td>
<td>Provide privacy door with latch. The minimum clear opening width shall be of 32”. Provide accessible signage in front of door.</td>
</tr>
<tr>
<td>2.04</td>
<td>Toilets</td>
<td>@ 17” from finish floor; flusher is 25” above floor.</td>
<td>Y</td>
<td>4.16.3</td>
<td>6.0 &amp; 7.0 Ok.</td>
</tr>
<tr>
<td>2.05</td>
<td>Grab bars</td>
<td>None provided.</td>
<td>N</td>
<td>4.17.6 ; 4.26.2</td>
<td>Provide grab bars after layout rearrangement. Follow guidelines of sections 4.17.6 and 4.26.</td>
</tr>
<tr>
<td>2.06</td>
<td>Toilet Paper Dispenser</td>
<td>@ 25.5” high from finish floor; Reach is at 10” from toilet’s edge.</td>
<td>N</td>
<td>ICC/ANSI A117.1-1998 section 604.7</td>
<td>Reach shall be 7 to 9 inches.</td>
</tr>
</tbody>
</table>
## ACCESSIBILITY INSPECTION REPORT
February 23, 2007

### ITEM No.
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</table>

2.07 Urinals
- There are two urinals. One has a forward projection of 16” and the other has 12”. Rim @ 27” above finish floor. Flush operator is at 53” above floor.
- N 4.18.2; 4.18.3; 4.2.4; 4.18.4 and 4.27.4
- 3.0
- Reinstalled the urinal with a projection of 16” at a maximum height 17” above floor. Flushing operator shall be @ 44” max above floor.

2.08 Lavatories (Sink)
- There are two lavatories, @ 33” above floor with a clearance of 26”.
- N 4.19.2
- 2.0
- Remove front cover of counter top, this will increase the clearance to or over the minimum requirement of 29”. Install a protective plate under pipes.

2.09 Soap Dispenser
- Located at 43” from finish floor.
- Y 4.27; 4.2.5
- 2.0
- Ok.

2.10 Hand Dryer
- Operator at 47” high from finish floor.
- Y 4.27; 4.2.5; 4.2.6
- 5.0
- Ok.

2.11 Lighting Switch
- @ 30” above floor.
- Y 4.2.5; 4.2.6
- Not available
- Ok.

2.12 Paper Towel Dispenser
- Not provided.
- N/A 4.16.6
- N/A
- N/A

2.13 Baby Changing Station
- Closed at 52” and open at 36” high from the finish floor.
- N 4.27; 4.2.5
- 1.0
- At closed the station shall be at 48” from finish floor allowing at least 27” high of space below the open position.

2.14 Mirror
- Not applicable
- N/A 4.19.6
- N/A
- N/A

2.15 Accessible Entrances
- Door clear opening width of 27”
- N 4.13.5
- 1.0
- Expand the entrance for a minimum clear opening width of 32”.

3 Accessible Routes
- Accessible route from ticket office and parking area to terminal does not coincide with route for general public: ramps exceeds maximum slope permitted, routes not demarked on ground floor.
- N 4.3.2 (1); 4.3.3; 4.3.6; 4.3.7; 4.3.10; 4.5.2; 4.8.
- 10.0
- Provide accessible route from ticket box office to passenger’s terminal. Ramps crossing street shall coincide and be part of the accessible route. An aisle as part of the accessible route shall be 36” wide minimum, demarked with the international handicapped blue paint.
<table>
<thead>
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<tbody>
<tr>
<td>4</td>
<td>Assembly Areas</td>
<td>The terminal does not provide accessible wheelchair locations or accessible seating area.</td>
<td>N</td>
<td>4.32.1; 4.30</td>
<td>Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per section 4.30.</td>
</tr>
<tr>
<td>5</td>
<td>Exit Gates:</td>
<td>The terminal have a total of six gates, Distributed in three sets of two, two sets are at east end and one at west end.</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.01</td>
<td>Gate 1-1</td>
<td>Clear accessible path and opening of 55”; 2”handrails @ 38” above floor. Identified with the international symbol of accessibility.</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.02</td>
<td>Gate 1-2</td>
<td>Clear accessible opening of 55” This gate is adjacent to gate 1-1. Is not required to be ADA compliance.</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.03</td>
<td>Gate 2-1</td>
<td>Clear accessible opening of 55”. Identified with the international symbol of accessibility. Grab bars are not available</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.04</td>
<td>Gate 2-2</td>
<td>Clear accessible opening of 55”. Adjacent to gate 2-1.</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.05</td>
<td>Gate 3-1</td>
<td>Clear accessible opening of 57.5”. Identified with the international symbol of accessibility. Grab bars are not available.</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td>Ok.</td>
</tr>
</tbody>
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# ACCESSIBILITY INSPECTION REPORT

Fajardo, Puerto Rico

February 23, 2007

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<tr>
<td>5.06</td>
<td>Gate 3-2 Clear accessible opening of 57.5&quot;. Adjacent to gate 3-1.</td>
<td>Y</td>
<td>4.3; 4.5; 4.4</td>
<td></td>
<td></td>
<td>Ok.</td>
</tr>
<tr>
<td>6</td>
<td>Water Coolers: There are a total of four water coolers. Only one in compliance.</td>
<td>N</td>
<td>4.15.1</td>
<td>1.0</td>
<td></td>
<td>There shall be at least two in compliance.</td>
</tr>
<tr>
<td>6.01</td>
<td>South End There are two. Fountain #1 is accessible, with a forward projection of 19&quot;, operator is at 36&quot; above floor, knee clearance is at 26&quot;.</td>
<td>Y</td>
<td>4.15.1; 4.15.2; 4.15.3; 4.15.5</td>
<td>1.0</td>
<td></td>
<td>Ok.</td>
</tr>
<tr>
<td>6.02</td>
<td>North End There are two. Fountain #1 (out of service): forward projection of 20&quot;, operator is at 38&quot; above floor, knee clearance is at 31&quot;. Fountain #2: forward projection of 13.5&quot;, operator @ 35&quot; above floor, knee clearance of 25&quot;, push mechanism is out of service.</td>
<td>N</td>
<td>4.15.1; 4.15.2; 4.15.3; 4.15.5</td>
<td></td>
<td>Not available</td>
<td>Provide at least one water cooler ADA compliant. Spout shall be at a max. height of 36&quot;, knee clear space of 27&quot; minimum above floor, with a front or side (close to front edge) mounted control.</td>
</tr>
<tr>
<td>7</td>
<td>Vending Machines: Two on the south-west end.</td>
<td>N</td>
<td>5.8; 4.2.5; 4.2.6</td>
<td>777</td>
<td></td>
<td>For forward reach it shall be lowered to 48&quot; (max. height above finish floor). For side reach 54&quot;.</td>
</tr>
<tr>
<td>7.01</td>
<td>Chips Paying unit @ 45&quot; above floor.</td>
<td>Y</td>
<td>5.8; 4.2.5; 4.2.6</td>
<td></td>
<td></td>
<td>Not available</td>
</tr>
<tr>
<td>7.02</td>
<td>Beverage Paying unit @ 55&quot; above floor.</td>
<td>N</td>
<td>5.8; 4.2.5; 4.2.6</td>
<td></td>
<td></td>
<td>Not available</td>
</tr>
<tr>
<td>8</td>
<td>Cafeteria Top of counter @ 42&quot; above finish floor.</td>
<td>N</td>
<td>5.2</td>
<td></td>
<td></td>
<td>Not available</td>
</tr>
</tbody>
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### ACCESSIBILITY INSPECTION REPORT

**February 23, 2007**

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<tbody>
<tr>
<td>9</td>
<td>Restroom North End (Mens # 2)</td>
<td>Two Toilet Stalls in Bathroom #2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.01</td>
<td>Accessible Route</td>
<td>Latch side approach aisle is 41 inches wide</td>
<td>N</td>
<td>4.17.5 ; 4.13.5</td>
<td>771</td>
<td>Provide stall approach aisle minimum 42 inches wide</td>
</tr>
<tr>
<td>9.02</td>
<td>Accessible Entrance</td>
<td>Stall door clear opening is 31 inches</td>
<td>N</td>
<td>4.17.5 ; 4.13.5</td>
<td>765</td>
<td>Provide stall door with minimum 32 inch clear opening</td>
</tr>
<tr>
<td>9.03</td>
<td>Stall door handle is too small; requires pinching or grasping to operate. There is no handle on inside of door</td>
<td></td>
<td>N</td>
<td>4.13.9</td>
<td>765, 757</td>
<td>Provide stall door handles, inside and out, that do not require pinching or grasping to operate</td>
</tr>
<tr>
<td>9.04</td>
<td>Stall size and arrangement</td>
<td>Stall measures 36 inches wide, 59 inches deep, with wall-hung toilet</td>
<td>N</td>
<td>4.17.3</td>
<td>766</td>
<td>Provide stall with inside measurement of at least 60 inches wide by 56 inches deep (59 inches if floor mounted toilet)</td>
</tr>
<tr>
<td>9.05</td>
<td>Toilets</td>
<td>Wall-mounted, 17-1/2 inches off wall, with seat 19 inches above floor</td>
<td>Y</td>
<td>4.22.4 ; 4.23.4 ; 4.16.3</td>
<td>766</td>
<td>OK [within ½ inch of off-wall dimension]</td>
</tr>
<tr>
<td>9.06</td>
<td>Grab bars</td>
<td>No grab bar provided at rear of toilet,</td>
<td>N</td>
<td>4.17.6</td>
<td>766</td>
<td>Provide grab bar at rear of toilet, 36 inches long, mounted 33-36 inches above the floor, starting 6 inches off wall closest to toilet</td>
</tr>
<tr>
<td>9.07</td>
<td>Toilet Paper Dispenser</td>
<td>Mounted 42 inches above floor, 25 inches from rear wall</td>
<td>N</td>
<td>4.16.6</td>
<td>766</td>
<td>Mount toilet paper dispenser below and not interfering with the grab bar, not more than 36 inches from the rear wall, and at least 19 inches from the floor</td>
</tr>
<tr>
<td>9.08</td>
<td>Urinals</td>
<td>Urinal rim is 25 inches above the floor</td>
<td>N</td>
<td>4.22.5 ; 4.23.5</td>
<td>762</td>
<td>Mount urinal so that rim is 17 inches above the floor</td>
</tr>
<tr>
<td>9.09</td>
<td>Lavatories (Sink)</td>
<td>Lavatory rim is 37 inches above the floor</td>
<td>N</td>
<td>4.19.2</td>
<td>772</td>
<td>Mount lavatory so that rim is no more than 34 inches above the floor, with at least 29 inches knee clearance from the floor to the bottom of the apron</td>
</tr>
</tbody>
</table>

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-11-06
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<tr>
<td>9.10</td>
<td>Lavatory hot water supply and drain pipes are not insulated</td>
<td>N</td>
<td>4.19.4</td>
<td>770</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
<td></td>
</tr>
<tr>
<td>9.11</td>
<td>Soap Dispenser</td>
<td>Y</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.12</td>
<td>Hand Dryer</td>
<td>Y</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.14</td>
<td>Lighting Switch</td>
<td>Light switch is located 57 inches above the floor</td>
<td>N</td>
<td>4.27.3</td>
<td>772</td>
<td>Relocate switch to no more than 48 inches above the floor</td>
</tr>
<tr>
<td>9.15</td>
<td>Paper Towel Dispenser</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.16</td>
<td>Baby Changing Station</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.17</td>
<td>Mirror</td>
<td>Bottom edge of mirror over accessible lavatory is 52 inches above the floor</td>
<td>N</td>
<td>4.22.6</td>
<td>772</td>
<td>Mount mirror so that bottom edge of reflective surface is no more than 40 inches above the floor</td>
</tr>
<tr>
<td>9.18</td>
<td>Accessible Entrances</td>
<td>Entry door has 33 inch clear opening</td>
<td>Y</td>
<td>4.13.5</td>
<td>773, 776</td>
<td>OK</td>
</tr>
<tr>
<td>10</td>
<td>Public Telephones</td>
<td>Cord from lower telephone to handset is 25-1/2&quot; long</td>
<td>N</td>
<td>4.31.8</td>
<td>749</td>
<td>Provide cord at least 29&quot; long</td>
</tr>
<tr>
<td>10.01</td>
<td>Coin slot is 49-1/2&quot; above the ground</td>
<td>N</td>
<td>4.2.5</td>
<td>749</td>
<td>Provide for coin slot no higher than 48&quot; above the ground</td>
<td></td>
</tr>
<tr>
<td>10.02</td>
<td>Volume control is 56&quot; above the ground</td>
<td>N</td>
<td>4.2.5</td>
<td>749</td>
<td>Provide for volume control no higher than 48&quot; above the ground</td>
<td></td>
</tr>
<tr>
<td>10.03</td>
<td>No interior public text telephone observed</td>
<td>N</td>
<td>4.1.3 (17)(c); 4.30.7(3); 4.1.3 (16); 4.30.1; 4.30.7</td>
<td>-</td>
<td>-</td>
<td>Provide at least one public text telephone with TDD signage and directional signs</td>
</tr>
</tbody>
</table>
## Accessible Inspection Report

**Puerto Rico Ports Authority**

**Terminal de Lanchas de Fajardo**  
Fajardo, Puerto Rico

**Puerto Real**

**ACCESSIBILITY INSPECTION REPORT**  
February 23, 2007

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>ITEM</th>
<th>COMMENTS</th>
<th>COMPLY? (Y/N)</th>
<th>REFERENCE SECTION</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.04</td>
<td></td>
<td>No shelf and electrical outlet provided for use with a portable text telephone</td>
<td>N</td>
<td>4.1.3(17)(d); 4.31.9(2)</td>
<td>Provide shelf and electrical outlet provided for use with a portable text telephone</td>
</tr>
<tr>
<td>11</td>
<td>Ticket Box Office</td>
<td>Ticket purchase lines have insufficient maneuvering space in way of ticket window counters for wheelchairs. Pathway widths are (from street) 33’, 31”, 32”, 35”, and 35”. The width at the turn (at ticket counter) is 45-1/2”</td>
<td>N</td>
<td>10.3.1; 4.3.3</td>
<td>794, 796 Where an accessible route makes a U-turn around an obstacle less than 48” wide, pathway width must be at least 42” on the approaches and 48” in the turn.</td>
</tr>
<tr>
<td>11.01</td>
<td></td>
<td>Pathway widths are (from street) 33’, 31”, 32”, 35”, and 35”.</td>
<td>N</td>
<td>4.3.3</td>
<td>788 Provide pathways at least 36” wide, exclusive of maneuvering space requirements</td>
</tr>
<tr>
<td>11.02</td>
<td></td>
<td>Accessible route transits grating with openings 7-1/4” long by 1-1/2” wide; longer dimension is parallel to path of travel</td>
<td>N</td>
<td>4.5.4</td>
<td>790 Provide grating with smallest dimension of opening no more than ½”, with larger dimension of opening perpendicular to path of travel</td>
</tr>
<tr>
<td>11.03</td>
<td></td>
<td>Ferry schedule holder is 57” above the ground</td>
<td>N</td>
<td>4.2.5</td>
<td>795 Remount ferry schedule holder not more than 48” above the ground</td>
</tr>
<tr>
<td>12</td>
<td>Alarms</td>
<td>No visual and audible fire/emergency alarms in general seating area or in restrooms</td>
<td>N</td>
<td>4.28</td>
<td>- Provide visual and audible fire/emergency alarms in general seating area and in restrooms</td>
</tr>
</tbody>
</table>

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.

Survey date: 12-11-06

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Item 2-j
Entrance not accessible
§ 4.13.5

Item 2-c
Knee clearance of 26”
§ 4.19.2

Item 2-b
Urinals not accessible
§ 4.18.2 to .4; 4.2.4; 4.27.4

Item 2-h
Out of reach
§ 4.27; 4.2.5

Water Cooler south end

Picture 1.0

Picture 2.0

Picture 3.0
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Terminal de Lanchas de Fajardo, Puerto Real
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Picture 4.0

Picture 5.0

47"

40.5"

Picture 6.0

Picture 7.0

58"

Items 2-a; 2-a.3, .4 & .5
§ 4.17; 4.13.5 & .9;
ANSI 604 7

Picture 8.0

Picture 9.0

Item 4
No handicap designated seating area
§ 4.30; 4.32.1

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Item 3
Accessible route not in compliance
§ 4.3; 4.5.2; 4.8

EXHIBIT C-6 Required modifications to FAJARDO TERMINAL
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Photo # 749

Photo # 766

Photo # 757

Photo # 770

Photo # 762

Photo # 771

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Photo # 772

Photo # 777

Photo # 773

Photo # 788

Photo # 776

Photo # 790

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Photo # 794

Photo # 796

Photo # 795

Photo # 804
An Accessibility Survey of the Puerto Rico Ports Authority Hato Rey Ferry Terminal was conducted at Hato Rey, Puerto Rico on December 13, 2006, with the following persons in attendance:

Pedro E. Ruiz Law Offices, PSC. Attorney for Defendant, PUERTO RICO PORTS AUTHORITY

Carlos Escobar Engineering Consultant to PUERTO RICO PORTS AUTHORITY, Defendant

Arturo Santiago Rivera AIT, for PUERTO RICO PORTS AUTHORITY, Defendant

Gregg Beers Naval Architect engaged by Pedro E. Ruiz Law Offices, PSC for Defendant

Lorenzo Palomares LORENZO J. PALOMARES STARBUCK, PSC, ESQ, ATTORNEYS & COUNSELORS AT LAW Attorney for Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC. and EDUARDO UMPIERRE

David S. Chapman, P.E. Naval Architect engaged by Law Offices of William D. Tucker for Plaintiff

The Hato Rey Ferry Terminal is located in Hato Rey, PR, owned, operated, and administrated by the Puerto Rico Ports Authority (PRPA), a government agency. The terminal is currently out of service. It was built to serve as a waypoint for the inter-San Juan Harbor passenger ferry, which continues to call at Old San Juan Pier 2 as well as at Cataño. This is an 18 year old facility with a single-story terminal building with 43,500 ft² of floor area. The site has 253 parking spaces, nine of which are designated accessible. The terminal building is located at the head of two piers (Pier A – Cataño, Pier B – San Juan), which are fitted with canopies. A common head of the pier has two perpendicular fixed sloping piers which have articulated sections leading down to hydraulically-operated platforms which can be raised or lowered to match the ferry freeboard. Hinged gangways are attached to either side of the platform.

This report covers the parking area, ramps, accessible routes, ticket box office, restrooms, interior seating areas, and the passenger loading facility.

The report shows the findings and deficiencies of the terminal, supported by photographs taken the date of the inspection, and includes recommendations for improving the accessibility of the terminal facility. The terminal has significant compliance deficiencies, rendering it inaccessible to the disabled. Primary deficiencies include non-compliant toilet facilities and ferry gangways. Details and recommendations may be found in the table below.

The purpose of this inspection is to conduct a facility survey for compliance with Title II of the Americans with Disabilities Act, 28 CFR Part 36, as published by the US Department of Justice, and based on the standards established by ICC/ANSI A117.1. The ferry terminal at issue here is subject to the general prohibitions against disability

Compliance with the ADA and its implementing regulations is a condition of compliance with § 504. 49 CFR § 27.19. The only difference between the two statutes is that Section 504 is applicable only if the program or activity in question receives Federal financial assistance. With that exception, the Rehabilitation Act is otherwise similar in substance to the ADA, and "cases interpreting either are applicable and interchangeable." Allison v. Department of Corrections, 94 F.3d 494, 497 (8th cir.1996).

The terminal must conform to generally accepted standards of accessibility in order to comply with Section 504 and the ADA. (See, for example, ADA Sec. 229(b) ("the regulations issued under this section and Section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with Section 504 of this Act."))
<table>
<thead>
<tr>
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<th>PHOTO</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ticket Booth</td>
<td>Counter height is 43-1/2&quot; above the pavement</td>
<td>7.2(2)</td>
<td>827, 830</td>
<td>Provide counter not higher than 36&quot; high and 36&quot; wide (minimum)</td>
</tr>
<tr>
<td>2</td>
<td>Men's Room</td>
<td>No sign at entrance doorway</td>
<td>4.30.6</td>
<td>838</td>
<td>Mount sign centered 60&quot; above the ground</td>
</tr>
<tr>
<td>2.1</td>
<td>Maneuvering space at entry</td>
<td>Maneuvering space at entry way is 32-1/2&quot; long by</td>
<td>4.3.3</td>
<td>839, 847</td>
<td>A 90 degree turn can be made from a 36&quot; wide passage into another 36&quot; passage if the depth of each leg is a minimum of 48&quot; on the inside dimensions of the turn. Provide doorway opening at least 36&quot; wide.</td>
</tr>
<tr>
<td></td>
<td>way is 32-1/2&quot; long by 49&quot; wide, then requires a 90-degree turn into the Men's Room through a 33-1/2&quot; wide open doorway</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>Lavatory supply and drain</td>
<td>Lavatory supply and drain piping is not insulated</td>
<td>4.19.4</td>
<td>843</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
</tr>
<tr>
<td></td>
<td>piping is not insulated</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Paper towel dispenser is</td>
<td>Paper towel dispenser is mounted 49&quot; above the</td>
<td>4.27.3</td>
<td>856</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
</tr>
<tr>
<td></td>
<td>mounted 49&quot; above the floor</td>
<td>floor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>Bottom of mirror reflecting</td>
<td>Bottom of mirror reflecting surface is 45&quot; above</td>
<td>4.19.6</td>
<td>843</td>
<td>Mount mirror with bottom of reflective surface not more than 40&quot; above the floor</td>
</tr>
<tr>
<td></td>
<td>surface is 45&quot; above the</td>
<td>floor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.5</td>
<td>Toilet stall interior is</td>
<td>Toilet stall interior is 54-1/2&quot; wide and 64&quot; deep</td>
<td>4.17.3</td>
<td>850</td>
<td>Provide stall with interior 60&quot; wide and at least 59&quot; deep (56&quot; for wall-mounted toilet)</td>
</tr>
<tr>
<td></td>
<td>54-1/2&quot; wide and 64&quot; deep</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.6</td>
<td>Stall door has insufficient</td>
<td>Stall door has insufficient maneuvering space, and</td>
<td>4.17.5</td>
<td>850</td>
<td>Re-hinge stall door to opposite side. Stile to be 4&quot; wide maximum.</td>
</tr>
<tr>
<td></td>
<td>maneuvering space, and does not comply with standard stall arrangement</td>
<td>does not comply with standard stall arrangement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.7</td>
<td>Stall door exterior handle</td>
<td>Stall door exterior handle requires pinching/grasping</td>
<td>4.13.9</td>
<td>849</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td></td>
<td>requires pinching/grasping</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8</td>
<td>Stall door interior latch</td>
<td>Stall door interior latch requires pinching/grasping</td>
<td>4.13.9</td>
<td>851</td>
<td>Provide door hardware that does not require pinching or grasping to operate.</td>
</tr>
<tr>
<td></td>
<td>requires pinching/grasping</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9</td>
<td>Stall door is not fitted</td>
<td>Stall door is not fitted with inside pull, closer, or spring hinges</td>
<td>A4.17.5</td>
<td>851</td>
<td>To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.</td>
</tr>
<tr>
<td>ITEM No.</td>
<td>ITEM</td>
<td>COMMENTS</td>
<td>ADAAG REFERENCE SECTION</td>
<td>RECOMMENDATIONS</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
<td>----------</td>
<td>-------------------------</td>
<td>-----------------</td>
<td></td>
</tr>
<tr>
<td>2.10</td>
<td>Stall door interior coat hook is 65” above the floor</td>
<td>4.27.3</td>
<td>851</td>
<td>Relocate coat hook to no more than 48 inches above the floor</td>
<td></td>
</tr>
<tr>
<td>2.11</td>
<td>Toilet has grab bar on wall side extending 38” from the rear wall and a grab bar mounted behind the toilet on the rear wall extending 26” off the side wall.</td>
<td>4.16.4, 4.26</td>
<td>852</td>
<td>Provide a 36” minimum length horizontal grab bar behind the water closet mounted at a height between 33” and 36” and extending a minimum of 12” beyond the center of the water closet toward the side wall and a minimum of 24” toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42” long, on the side wall adjacent to the water closet mounted at a height between 33” and 36” and extending from 12” from the rear wall to a minimum of 54” from the rear wall.</td>
<td></td>
</tr>
<tr>
<td>2.12</td>
<td>Clear floor space in front of urinal is 25-1/2” wide</td>
<td>4.18.3</td>
<td>853</td>
<td>Provide clear floor space in front of urinal at least 30” wide and 48” deep</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Women’s Room</td>
<td>No sign at entrance doorway</td>
<td>4.30.6</td>
<td>858</td>
<td>Mount sign centered 60” above the ground</td>
</tr>
<tr>
<td>3.1</td>
<td>Maneuvering space at entry way is 32-1/2” long by 45” wide, then requires a 90-degree turn into the Women’s Room through a 34-1/2” wide open doorway</td>
<td>4.3.3</td>
<td>858, 872</td>
<td>A 90 degree turn can be made from a 36” wide passage into another 36” passage if the depth of each leg is a minimum of 48” on the inside dimensions of the turn. Provide doorway opening at least 36” wide, and extend length of entry passageway to at least 48”.</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Lavatory supply and drain piping is not insulated</td>
<td>4.19.4</td>
<td>862</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Lavatory rim is 34-1/2” above the floor</td>
<td>4.19.2</td>
<td>862</td>
<td>Mount lavatory so that rim is no more than 34” above the floor</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Paper towel dispenser is mounted 49” above the floor</td>
<td>4.27.3</td>
<td>863</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
<td></td>
</tr>
</tbody>
</table>
### ACCESSIBILITY INSPECTION REPORT

**February 26, 2007**

<table>
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<tr>
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<tr>
<td>3.5</td>
<td>Bottom of mirror reflecting surface is 45” above the floor</td>
<td>4.19.6</td>
<td>862</td>
<td>Mount mirror with bottom of reflective surface not more than 40” above the floor</td>
<td></td>
</tr>
<tr>
<td>3.6</td>
<td>Toilet stall interior is 54-1/2” wide and 64” deep</td>
<td>4.17.3</td>
<td>868</td>
<td>Provide stall with interior 60” wide and at least 59” deep (56” for wall-mounted toilet)</td>
<td></td>
</tr>
<tr>
<td>3.7</td>
<td>Toilet flush control is on narrow side of toilet</td>
<td>4.16.5; 4.27.4</td>
<td>867</td>
<td>Provide toilet flush control on wide side of toilet</td>
<td></td>
</tr>
<tr>
<td>3.8</td>
<td>Stall door has insufficient maneuvering space, and does not comply with standard stall arrangement</td>
<td>4.17.5</td>
<td>866</td>
<td>Re-hinge stall door to opposite side. Stile to be 4” wide maximum.</td>
<td></td>
</tr>
<tr>
<td>3.9</td>
<td>Stall door exterior handle requires pinching/grasping</td>
<td>4.13.9</td>
<td>866</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
<td></td>
</tr>
<tr>
<td>3.10</td>
<td>Stall door interior latch requires pinching/grasping</td>
<td>4.13.9</td>
<td>869</td>
<td>Provide door hardware that does not require pinching or grasping to operate.</td>
<td></td>
</tr>
<tr>
<td>3.11</td>
<td>Stall door is not fitted with inside pull, closer, or spring hinges</td>
<td>A4.17.5</td>
<td>869</td>
<td>To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.</td>
<td></td>
</tr>
<tr>
<td>3.12</td>
<td>Stall door interior coat hook is 65” above the floor</td>
<td>4.27.3</td>
<td>869</td>
<td>Relocate coat hook to no more than 48 inches above the floor</td>
<td></td>
</tr>
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Jaime A. Umpierre, P.E. & David S. Chapman, P.E.  
Survey date: 12-13-06
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<tr>
<td>3.13</td>
<td>Toilet</td>
<td>Toilet has grab bar on wall side extending 38&quot; from the rear wall and a grab bar mounted behind the toilet on the rear wall extending 26&quot; off the side wall.</td>
<td>4.16.4, 4.26</td>
<td>867</td>
<td>Provide a 36&quot; minimum length horizontal grab bar behind the water closet mounted at a height between 33&quot; and 36&quot; and extending a minimum of 12&quot; beyond the center of the water closet toward the side wall and a minimum of 24&quot; toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42&quot; long, on the side wall adjacent to the water closet mounted at a height between 33&quot; and 36&quot; and extending from 12&quot; from the rear wall to a minimum of 54&quot; from the rear wall.</td>
</tr>
<tr>
<td>4</td>
<td>Ferry Pier Facility</td>
<td>Fixed pier has varying slope, from 7/8&quot;/ft to 1-5/8&quot;/ft</td>
<td>4.8.2</td>
<td>882</td>
<td>Provide fixed pier with slope not more than 1&quot;/ft (1:12)</td>
</tr>
<tr>
<td>4.1</td>
<td>Fixed pier</td>
<td>Fixed pier has varying cross slope, from 0.6% to 2.3%</td>
<td>4.8.2</td>
<td>882</td>
<td>Provide fixed pier with cross slope not more than 2% (1:50)</td>
</tr>
<tr>
<td>4.2</td>
<td>Fixed sloping pier handrails</td>
<td>Fixed sloping pier handrails are not continuous</td>
<td>4.8.5(4)</td>
<td>884, 885</td>
<td>Provide continuous handrails at both sides of pier</td>
</tr>
<tr>
<td>4.3</td>
<td>Upper surface of fixed sloping pier handrails</td>
<td>Upper surface of fixed sloping pier handrails is 41-3/4&quot; high</td>
<td>4.8.5(5)</td>
<td>884, 885</td>
<td>Provide handrails with upper surface no higher than 34&quot; – 38&quot; at both sides of pier</td>
</tr>
<tr>
<td>4.4</td>
<td>Gripping surface of fixed sloping pier handrails</td>
<td>Gripping surface of fixed sloping pier handrails is 2&quot; wide (1&quot; x 2&quot; rectangular section)</td>
<td>4.8.5; 4.26.2</td>
<td>885</td>
<td>Provide handrails with gripping surface 1-1/4&quot; – 1-1/2&quot; wide</td>
</tr>
<tr>
<td>4.5</td>
<td>Articulated pier handrails</td>
<td>Articulated pier handrails are 46-1/2&quot; high</td>
<td>4.8.5(5)</td>
<td>884, 885</td>
<td>Provide handrails with upper surface no higher than 34&quot; – 38&quot; at both sides of pier</td>
</tr>
<tr>
<td>4.6</td>
<td>Articulated pier handrails</td>
<td>Articulated pier handrails are 2&quot; in diameter</td>
<td>4.8.5; 4.26.2</td>
<td>885</td>
<td>Provide handrails with 1-1/4&quot; – 1-1/2&quot; diameter</td>
</tr>
<tr>
<td>4.7</td>
<td>Platform at base of articulated pier</td>
<td>Platform at base of articulated pier has hinge cover with 1&quot; vertical step</td>
<td>4.3.8</td>
<td>4.5.2</td>
<td>Provide vertical step not more that 1/4&quot; high (1/2&quot; if edge has bevel with maximum slope of 1:2)</td>
</tr>
<tr>
<td>ITEM No.</td>
<td>ITEM</td>
<td>COMMENTS</td>
<td>ADAAG REFERENCE SECTION</td>
<td>REFERENCE PHOTO</td>
<td>RECOMMENDATIONS</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>-------------------------</td>
<td>-----------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5</td>
<td>Assembly Areas</td>
<td>The terminal does not identify accessible wheelchair locations or accessible seating area.</td>
<td>4.33.1; 4.30</td>
<td>834, 837</td>
<td>Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per ADAAG 4.30</td>
</tr>
<tr>
<td>6</td>
<td>Parking</td>
<td>“Van Accessible” signs in addition to the sign with the symbol of accessibility for the four van-accessible spaces have not been provided; sign for first space is missing</td>
<td>4.6.4</td>
<td>901-903</td>
<td>Provide “Van Accessible” sign in addition to the sign with the symbol of accessibility for the four van-accessible spaces; replace missing sign for first space</td>
</tr>
<tr>
<td>6.1</td>
<td>Access aisles</td>
<td>Access aisles are not demarked for the car and van spaces</td>
<td>4.6.3</td>
<td>901-903, 908</td>
<td>Provide demarking of access aisles, 60” wide for cars and 96” wide for vans</td>
</tr>
<tr>
<td>7</td>
<td>Bus Loading Area</td>
<td>Bus stop ramps have slopes of 1-1/4”/ft and 1-1/8”/ft</td>
<td>4.8.2</td>
<td>896</td>
<td>Provide ramps that do not exceed 1”/ft slope</td>
</tr>
<tr>
<td>8</td>
<td>Curb Ramp</td>
<td>Ramp has slope of 1-1/8”/ft</td>
<td>4.7.2; 4.8.2</td>
<td>898</td>
<td>Provide ramp with slope not more than 1”/ft (1:12)</td>
</tr>
</tbody>
</table>
Puerto Rico Ports Authority

Hato Rey Ferry Terminal

ACCESSIBILITY INSPECTION REPORT
February 26, 2007

Photo # 900

Photo # 827

Photo # 830

Photo # 834

Photo # 837

Photo # 838

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06

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Hato Rey Ferry Terminal
Hato Rey, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
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Photo # 839

Photo # 843

Photo # 847

Photo # 849

Photo # 850

Photo # 851

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06
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Hato Rey Ferry Terminal
Hato Rey, Puerto Rico

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Photo # 852

Photo # 853

Photo # 856

Photo # 858

Photo # 862

Photo # 863

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06

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Puerto Rico Ports Authority

Hato Rey Ferry Terminal

ACCESSIBILITY INSPECTION REPORT

February 26, 2007

Photo # 884

Photo # 885

Photo # 888

Photo # 896

Photo # 898

Photo # 901

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06
Puerto Rico Ports Authority
Hato Rey Ferry Terminal
Hato Rey, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 26, 2007

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06
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Puerto Rico Ports Authority
Old San Juan Ferry Terminal
Pier 2, San Juan, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 27, 2007

An Accessibility Survey of the Puerto Rico Ports Authority Old San Juan Ferry Terminal was conducted at Pier 2, San Juan, Puerto Rico on December 13, 2006, with the following persons in attendance:

Pedro E. Ruiz  Pedero E. Ruiz Law Offices, PSC. 
            Attorney for Defendant, PUERTO RICO PORTS AUTHORITY
Carlos Escobar Engineering Consultant to PUERTO RICO PORTS AUTHORITY, Defendant
Arturo Santiago Rivera AIT, for PUERTO RICO PORTS AUTHORITY, Defendant
Gregg Beers Naval Architect engaged by Pedro E. Ruiz Law Offices, PSC for Defendant
Lorenzo Palomares LORENZO J. PALOMARES STARBUCK, PSC, ESQ, ATTORNEYS & COUNSELORS AT LAW Attorney for Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC. and EDUARDO UMPIERRE
David S. Chapman, P.E. Naval Architect engaged by Law Offices of William D. Tucker for Plaintiff

The Old San Juan Ferry Terminal is located at Pier 2, San Juan, PR, owned, operated and administrated by the Puerto Rico Ports Authority (PRPA), a government agency. It is the home base of the inter-San Juan Harbor passenger ferry, which calls at Cataño (and formerly Hato Rey as well). This is a 26 year old facility that underwent a major modification 8 years ago, with a single-story terminal building with 16,800 ft² of floor area. The site has no parking spaces. The terminal building is located on a pier with passenger loading ramp facilities on either side, consisting of a pair of short fixed ramps connected to articulated sections leading up to hydraulically-operated platforms which can be raised or lowered to match the ferry freeboard. Hinged gangways are attached to the side of the platform.

This report covers the ticket box office, restrooms, telephones, interior seating areas, and the passenger loading facility.

The report shows the findings and deficiencies of the terminal, supported by photographs taken the date of the inspection, and includes recommendations for improving the accessibility of the terminal facility. The terminal has significant compliance deficiencies, rendering it inaccessible to the disabled. The primary deficiency is non-compliant toilet facilities. This is of particular concern since the vessel rest rooms are closed to the public. Details and recommendations may be found in the table below.

The purpose of this inspection is to conduct a facility survey for compliance with Title II of the Americans with Disabilities Act, 28 CFR Part 36, as published by the US Department of Justice, and based on the standards established by ICC/ANSI A117.1. The ferry terminal at issue here is subject to the general prohibitions against disability

Compliance with the ADA and its implementing regulations is a condition of compliance with § 504. 49 CFR § 27.19. The only difference between the two statutes is that Section 504 is applicable only if the program or activity in question receives Federal financial assistance. With that exception, the Rehabilitation Act is otherwise similar in substance to the ADA, and "cases interpreting either are applicable and interchangeable." Allison v. Department of Corrections, 94 F.3d 494, 497 (8th cir.1996).

The terminal must conform to generally accepted standards of accessibility in order to comply with Section 504 and the ADA. (See, for example, ADA Sec. 229(b) ("the regulations issued under this section and Section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with Section 504 of this Act."))
<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>ITEM</th>
<th>COMMENTS</th>
<th>ADAAAG REFERENCE SECTION</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ticket Booth</td>
<td>Counter height is 47&quot; above the floor</td>
<td>7.2(2)</td>
<td>Provide counter not higher than 36&quot; high and 36&quot; wide (minimum)</td>
</tr>
<tr>
<td>2</td>
<td>Men’s Room</td>
<td>Vanity has no knee space</td>
<td>4.19.2</td>
<td>Provide knee space under lavatory at least 29&quot; high</td>
</tr>
<tr>
<td>2.1</td>
<td>Electric hand dryer</td>
<td>Electric hand dryer is mounted 52&quot;</td>
<td>4.27.3</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>above the floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>Top of toilet seat</td>
<td>Top of toilet seat is 15-1/2&quot; above</td>
<td>4.17.2; 4.16.3</td>
<td>Provide toilet seat 17&quot;-19&quot; above the floor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>the floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Toilet stall</td>
<td>Toilet is centered 22&quot; off the wall</td>
<td>4.17.2</td>
<td>Toilet is to be 18&quot; off the wall</td>
</tr>
<tr>
<td>2.4</td>
<td>Stall door</td>
<td>Stall door interior                43-1/2&quot; wide and 72-1/2&quot; deep</td>
<td>4.17.3</td>
<td>Provide stall with interior 60&quot; wide and at least 59&quot; deep (56&quot; for wall-mounted toilet)</td>
</tr>
<tr>
<td></td>
<td>Stall door</td>
<td>Stall door opens IN to the stall,</td>
<td>4.17.5</td>
<td>Door should open out from the stall</td>
</tr>
<tr>
<td></td>
<td>Stall door</td>
<td>leaving insufficient maneuvering</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stall door</td>
<td>space, and does not comply with</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stall door</td>
<td>standard stall arrangement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Women’s Room</td>
<td>Lavatory supply and drain piping is</td>
<td>4.19.4</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
</tr>
<tr>
<td>3.1</td>
<td>Electric hand dryer</td>
<td>Electric hand dryer is mounted 52&quot;</td>
<td>4.27.3</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>above the floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ITEM No.</td>
<td>ITEM</td>
<td>COMMENTS</td>
<td>ADAAG REFERENCE SECTION</td>
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</tr>
<tr>
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<td>------</td>
<td>----------</td>
<td>--------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>3.2</td>
<td>A total of six stalls are installed, one of which is oversized, with grab bars, intended to comply with ADAAG 4.17.3. None of the remaining stalls have been fitted with an outward swinging, self closing door and parallel grab bars.</td>
<td>4.22.4</td>
<td>961</td>
<td>Where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36” wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided.</td>
</tr>
<tr>
<td>3.3</td>
<td>Top of toilet seat is 15-1/2” above the floor</td>
<td>4.17.2; 4.16.3</td>
<td>965</td>
<td>Provide toilet seat 17”-19” above the floor</td>
</tr>
<tr>
<td>3.4</td>
<td>Toilet is centered 20” off the wall</td>
<td>4.17.2</td>
<td>965</td>
<td>Toilet is to be 18” off the wall</td>
</tr>
<tr>
<td>3.5</td>
<td>Stall door exterior handle requires pinching/grasping</td>
<td>4.13.9</td>
<td>-</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td>3.6</td>
<td>Stall door interior latch and pull require pinching/grasping</td>
<td>4.13.9</td>
<td>962</td>
<td>Provide door hardware that does not require pinching or grasping to operate.</td>
</tr>
<tr>
<td>3.7</td>
<td>Stall door is not fitted with inside closer or spring hinges</td>
<td>A4.17.5</td>
<td>962</td>
<td>To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.</td>
</tr>
<tr>
<td>4</td>
<td>Assembly Areas</td>
<td>The terminal does not identify accessible wheelchair locations or accessible seating area.</td>
<td>4.33.1; 4.30</td>
<td>925</td>
</tr>
<tr>
<td>5</td>
<td>Public Telephones</td>
<td>Cord from lower telephone to handset is 26” long</td>
<td>4.31.8</td>
<td>968</td>
</tr>
<tr>
<td>5.01</td>
<td>Coin slot is 57-1/2” above the ground</td>
<td>4.2.5</td>
<td>968</td>
<td>Provide for coin slot no higher than 48” above the ground</td>
</tr>
<tr>
<td>ITEM No.</td>
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<td>COMMENTS</td>
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<tr>
<td>---------</td>
<td>-------------------------------</td>
<td>----------------------------------------------------</td>
<td>-------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>5.02</td>
<td>No interior public text telephone observed</td>
<td>4.1.3 (17)(c); 4.30.7(3); 4.1.3 (16); 4.30.1; 4.30.7</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>5.03</td>
<td>No electrical outlet provided for use with a portable text telephone</td>
<td>4.1.3(17)(d); 4.31.9(2)</td>
<td>968</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Ferry Pier Facility</td>
<td>Platform at top of articulated ramp has hinge cover with 5/8&quot; vertical step</td>
<td>4.3.8; 4.5.2</td>
<td>975, 980</td>
</tr>
</tbody>
</table>
Old San Juan Ferry Terminal
Pier 2, San Juan, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 27, 2007

Photo # 911

Photo # 941

Photo # 922

Photo # 943

Photo # 925

Photo # 947

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06

Report No. JAU-DSC070227 2-27-07

EXHIBIT C-8 Required modifications to OLD SAN JUAN TERMINAL Page 6
Puerto Rico Ports Authority
Old San Juan Ferry Terminal                                      Pier 2, San Juan, Puerto Rico

ACCESSIBILITY INSPECTION REPORT
February 27, 2007

Photo # 968

Photo # 970

Photo # 975

Photo # 980

Photo # 984

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-13-06

Report JAU/DSC 070227
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ACCESSIBILITY INSPECTION REPORT
February 25, 2007

An Accessibility Survey of the Puerto Rico Ports Authority Vieques Ferry Terminal was conducted at Vieques, Puerto Rico on December 12, 2006, with the following persons in attendance:

Migel Ortiz Port Authority Operations, Assistant to Director, PUERTO RICO PORTS AUTHORITY, Defendant
Ileana Rivera Torres Pedro E. Ruiz Law Offices, PSC Attorney for Defendant, PUERTO RICO PORTS AUTHORITY
Carlos Escobar Engineering Consultant to PUERTO RICO PORTS AUTHORITY, Defendant
Arturo Santiago Rivera AIT, for PUERTO RICO PORTS AUTHORITY, Defendant
Gregg Beers Naval Architect engaged by Pedro E. Ruiz Law Offices, PSC for Defendant
Jaime A. Umpierre, P.E. Mechanical Engineer engaged by Law Offices of William D. Tucker for Plaintiff
David S. Chapman, P.E. Naval Architect engaged by Law Offices of William D. Tucker for Plaintiff

The Vieques Ferry Terminal is located in Vieques, PR, owned, operated and administrated by the Puerto Rico Ports Authority (PRPA), a government agency. The terminal serves as the Vieques island port for passengers and cargo vessels bound for the Puerto Rico mainland port of Fajardo, and for the municipality island of Culebra. This is a 39 year old facility whose last major modification was one years ago. The single-story terminal building has 1,200 ft² of floor area. The site has 33 parking spaces, two of which are designated accessible. The terminal building is located at the head of a long, broad pier, which is fitted with a canopy and open air seating. Passenger ferries dock toward the far end of the pier and vehicle ferries dock toward the head of the pier, closer to the terminal building.

This report covers the parking area, ramps, accessible routes, ticket box office area, restrooms, entrances, exits, interior seating areas and vending machines, and the passenger loading facility.

The report shows the findings and deficiencies of the terminal, supported by photographs taken the date of the inspection, and includes recommendations for improving the accessibility of the terminal facility. The terminal has numerous and significant compliance deficiencies, rendering it inaccessible to the disabled. For instance, none of the routes into or out of the terminal building satisfy accessibility (ADAAG) requirements. Deficiencies include numerous excessive ramp slopes, deficient door and pathway widths, non-compliant handrails, a non-compliant ferry gangway, and deficient toilet facilities. Details and recommendations may be found in the table below.

Compliance with the ADA and its implementing regulations is a condition of compliance with § 504. 49 CFR § 27.19. The only difference between the two statutes is that Section 504 is applicable only if the program or activity in question receives Federal financial assistance. With that exception, the Rehabilitation Act is otherwise similar in substance to the ADA, and "cases interpreting either are applicable and interchangeable." Allison v. Department of Corrections, 94 F.3d 494, 497 (8th cir.1996).

The terminal must conform to generally accepted standards of accessibility in order to comply with Section 504 and the ADA. (See, for example, ADA Sec. 229(b) ("the regulations issued under this section and Section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with Section 504 of this Act."))
### Puerto Rico Ports Authority

#### Vieques Ferry Terminal

**ACCESSIBILITY INSPECTION REPORT**

**February 25, 2007**

<table>
<thead>
<tr>
<th>ITEM No.</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Parking</td>
<td>There are 2 designated accessible parking spaces, both measuring 131” wide</td>
<td>4.6.3; 4.1.2(5)(a)</td>
<td>520, 521</td>
<td>Minimum car space width is 96”, plus a 60” wide aisle (156” total). The pavement on the street-side parking space extends approximately 25” beyond the demarked area to the rolling gate, for a total of approximately 156” from the ramp to the gate. Suggest demarking a 60” wide aisle on the street side of the ramp to satisfy the overall width requirement for the first parking space.</td>
</tr>
<tr>
<td>1.01</td>
<td>No van accessible parking space is provided</td>
<td>4.6.3; 4.1.2(5)(b)</td>
<td>521</td>
<td>At least one van-accessible space is required, with a minimum width of 192” (96” for the van and a 96” aisle). Suggest combining the water-side designated space (131” wide) with the adjacent (non-designated) space (approximately 89” wide) for a total width of approximately 220”, satisfying the 196” wide minimum van accessible space width requirement. Demark the 96” wide access aisle.</td>
<td></td>
</tr>
<tr>
<td>1.02</td>
<td>No vertical signage is provided for the two spaces</td>
<td>4.6.4</td>
<td>520, 521</td>
<td>Provide vertical signage for each accessible space, with a “Van Accessible” sign in addition to the sign with the symbol of accessibility</td>
<td></td>
</tr>
<tr>
<td>1.02</td>
<td>Access ramp has a slope of 1-1/8”/ft</td>
<td>4.8.2</td>
<td>522</td>
<td>Provide ramp that does not exceed 1”/ft slope</td>
<td></td>
</tr>
<tr>
<td>1.04</td>
<td>Access ramp has a cross slope of 2.7%</td>
<td>4.8.6</td>
<td>522</td>
<td>Provide cross slope of no more than 2% (1:50)</td>
<td></td>
</tr>
<tr>
<td>1.05</td>
<td>Access ramp has rise of 7” and 120” run with no handrails</td>
<td>4.8.5</td>
<td>522</td>
<td>For ramps with a rise greater than 6” and/or a run greater than 72”, provide handrails on both sides complying with ADAAG 4.8.5</td>
<td></td>
</tr>
<tr>
<td>1.06</td>
<td>Access ramp has damaged concrete at base with 7/8” vertical step</td>
<td>4.3.8; 4.5.2</td>
<td>526</td>
<td>Provide vertical step not more that ¼” high (1/2” if edge has bevel with maximum slope of 1:2)</td>
<td></td>
</tr>
</tbody>
</table>

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Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-12-06

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## ACCESSIBILITY INSPECTION REPORT

**February 25, 2007**

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<thead>
<tr>
<th>ITEM No.</th>
<th>ITEM</th>
<th>COMMENTS</th>
<th>ADAAG REFERENCE SECTION</th>
<th>REFERENCE PHOTO</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Men's Room</td>
<td>Sign located on door, 54-3/8” above ground</td>
<td>4.30.6</td>
<td>535</td>
<td>Mount sign centered 60” above the ground, to the latch side of the door</td>
</tr>
<tr>
<td>2.01</td>
<td>Door width is 31-7/8”</td>
<td></td>
<td>4.13.5</td>
<td>529</td>
<td>Provide door with 32” clear opening when door is opened 90 degrees</td>
</tr>
<tr>
<td>2.02</td>
<td>Door exterior threshold has 1-7/8”/ft slope</td>
<td></td>
<td>4.13.8, 4.8.2</td>
<td>529</td>
<td>Provide threshold with slope no more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>2.03</td>
<td>Door knobs require pinching/grasping</td>
<td></td>
<td>4.13.9</td>
<td>534</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td>2.04</td>
<td>Door latch requires pinching/grasping</td>
<td></td>
<td>4.13.9</td>
<td>534</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td>2.05</td>
<td>Door latch is located 49” above the floor</td>
<td></td>
<td>4.27.3</td>
<td>534</td>
<td>Relocate latch to no more than 48” above the floor</td>
</tr>
<tr>
<td>2.06</td>
<td>Interior door maneuvering space is constrained by the lavatory, which is 32-1/2” from the door and extends 14” into the door maneuvering area. Electric hand dryer is 5-1/2” from the door and extends 4-1/2” into the door maneuvering area. Overall interior dimension of Men's Room is 61” wide by 9'-5” long.</td>
<td>4.13.6</td>
<td>530, 533</td>
<td>Provide clear floor area in front of door not less than 48” long from the door and the full door width</td>
<td></td>
</tr>
<tr>
<td>2.07</td>
<td>Lavatory is 36” high, with 33” knee room</td>
<td></td>
<td>4.19.2</td>
<td>533</td>
<td>Mount lavatory so that rim is no more than 34 inches above the floor, with at least 29 inches knee clearance from the floor to the bottom of the apron</td>
</tr>
<tr>
<td>2.08</td>
<td>Lavatory supply and drain piping is not insulated</td>
<td></td>
<td>4.19.4</td>
<td>533</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
</tr>
<tr>
<td>2.09</td>
<td>Soap dispenser is mounted 50” above the floor</td>
<td></td>
<td>4.27.3</td>
<td>531</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
</tr>
<tr>
<td>2.10</td>
<td>Paper towel dispenser is mounted 50” above the floor</td>
<td></td>
<td>4.27.3</td>
<td>532</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
</tr>
</tbody>
</table>
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Vieques Ferry Terminal

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<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>2.11</td>
<td>Toilet</td>
<td>is located 30” off the wall</td>
<td>4.17.3</td>
<td>531</td>
<td>Locate toilet 18” off side wall</td>
</tr>
<tr>
<td>2.12</td>
<td>Toilet</td>
<td>has grab bar on wall side, 1” diameter, sloping from 46” to 36” above the floor, and extending 35” from the rear wall. A free standing grab rail, 34-1/2” high with a 1-3/4” diameter, is mounted to the floor on the opposite side of the toilet, 47-5/8” off the side wall (17-5/8” from the toilet centerline), preventing side transfer from a wheelchair to the toilet. A grab bar is mounted behind the toilet on the rear wall, 49-1/2” above the floor, and extending from 21” to 44-1/2” off the side wall.</td>
<td>4.16.4, 4.26</td>
<td>531</td>
<td>Provide a 36” minimum length horizontal grab bar behind the water closet mounted at a height between 33” and 36” and extending a minimum of 12” beyond the center of the water closet toward the side wall and a minimum of 24” toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42” long, on the side wall adjacent to the water closet mounted at a height between 33” and 36” and extending from 12” from the rear wall to a minimum of 54” from the rear wall.</td>
</tr>
<tr>
<td>3</td>
<td>Women’s Room</td>
<td>Sign located on door, 63-1/2” above ground</td>
<td>4.30.6</td>
<td>536</td>
<td>Mount sign centered 60” above the ground, to the latch side of the door</td>
</tr>
<tr>
<td>3.1</td>
<td>Door</td>
<td>width is 31-1/4”</td>
<td>4.13.5</td>
<td>541</td>
<td>Provide door with 32” clear opening when door is opened 90 degrees</td>
</tr>
<tr>
<td>3.2</td>
<td>Door exterior threshold</td>
<td>has 1-7/8”/ft slope</td>
<td>4.13.8, 4.8.2</td>
<td>537</td>
<td>Provide threshold with slope no more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>3.3</td>
<td>Door knobs</td>
<td>require pinching/grasping</td>
<td>4.13.9</td>
<td>537</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td>3.4</td>
<td>Door latch</td>
<td>requires pinching/grasping</td>
<td>4.13.9</td>
<td>528</td>
<td>Provide door hardware that does not require pinching or grasping to operate</td>
</tr>
<tr>
<td>3.5</td>
<td>Door latch</td>
<td>is located 49” above the floor</td>
<td>4.27.3</td>
<td>528</td>
<td>Relocate latch to no more than 48” above the floor</td>
</tr>
<tr>
<td>ITEM No.</td>
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<td>-----------------</td>
</tr>
<tr>
<td>3.6</td>
<td>Interior door maneuvering space is constrained by the lavatory, which is approximately 32” from the door and extends 6” into the door maneuvering area. Overall interior dimension of Women’s Room is 62” wide by 9’-8” long.</td>
<td>4.13.6</td>
<td>541</td>
<td>Provide clear floor area in front of door not less than 48” long from the door and the full door width</td>
<td></td>
</tr>
<tr>
<td>3.7</td>
<td>Lavatory is 37” high, with 32” knee room</td>
<td>4.19.2</td>
<td>539</td>
<td>Mount lavatory so that rim is no more than 34 inches above the floor, with at least 29 inches knee clearance from the floor to the bottom of the apron</td>
<td></td>
</tr>
<tr>
<td>3.8</td>
<td>Lavatory supply and drain piping is not insulated</td>
<td>4.19.4</td>
<td>544</td>
<td>Insulate lavatory hot water supply and drain pipes</td>
<td></td>
</tr>
<tr>
<td>3.9</td>
<td>Soap dispenser is mounted 53” above the floor</td>
<td>4.27.3</td>
<td>541</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
<td></td>
</tr>
<tr>
<td>3.10</td>
<td>Paper towel dispenser is mounted 53” above the floor</td>
<td>4.27.3</td>
<td>541</td>
<td>Relocate dispenser to no more than 48 inches above the floor</td>
<td></td>
</tr>
<tr>
<td>3.11</td>
<td>Toilet is located 30” off the wall</td>
<td>4.17.3</td>
<td>540</td>
<td>Locate toilet 18” off side wall</td>
<td></td>
</tr>
<tr>
<td>3.12</td>
<td>Toilet has grab bar on wall side, 1” diameter, sloping from 46” to 37” above the floor, and extending 37” from the rear wall. A free standing grab rail, 31” high with a 1-3/4” diameter, is mounted to the floor on the opposite side of the toilet, 46-1/2” off the side wall (16-1/2” from the toilet centerline), preventing side transfer from a wheelchair to the toilet. A grab bar is mounted behind the toilet on the rear wall, 41” above the floor, and extending from 19-1/2” to 43-1/4” off the side wall.</td>
<td>4.16.4, 4.26</td>
<td>540</td>
<td>Provide a 36” minimum length horizontal grab bar behind the water closet mounted at a height between 33” and 36” and extending a minimum of 12” beyond the center of the water closet toward the side wall and a minimum of 24” toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42” long, on the side wall adjacent to the water closet mounted at a height between 33” and 36” and extending from 12” from the rear wall to a minimum of 54” from the rear wall.</td>
<td></td>
</tr>
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<td>-----------------</td>
</tr>
<tr>
<td>4</td>
<td>Terminal Building exterior door to parking lot</td>
<td>Door exterior threshold has 1-3/4&quot;/ft slope</td>
<td>4.13.8, 4.8.2</td>
<td>528</td>
<td>Provide threshold with slope no more than 1&quot;/ft (1:12)</td>
</tr>
<tr>
<td>5</td>
<td>Vending machines</td>
<td>Snack machine dollar bill slot is 52-1/2” above floor</td>
<td>5.8; 4.2.5</td>
<td>554, 562</td>
<td>Provide vending machine with front reach no higher than 48”</td>
</tr>
<tr>
<td>5.01</td>
<td>Beverage machine dollar bill slot is 53” above floor</td>
<td>5.8; 4.2.5</td>
<td>554, 563</td>
<td>Provide vending machine with front reach no higher than 48”</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Assembly Areas</td>
<td>The terminal does not identify accessible wheelchair locations or accessible seating area.</td>
<td>4.33.1; 4.30</td>
<td>556, 557, 558, 567</td>
<td>Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per section 4.30.</td>
</tr>
<tr>
<td>7</td>
<td>Terminal Building exterior door to street</td>
<td>Threshold has unbeveled, 1-3/8&quot; vertical step</td>
<td>4.13.8</td>
<td>567, 568</td>
<td>Provide threshold no higher than ½” in height beveled at 1:2 or less</td>
</tr>
<tr>
<td>8</td>
<td>Patio at front of Terminal Building</td>
<td>Ramp to sidewalk (straight out front door) has slope of 1-3/8”/ft</td>
<td>4.8.2</td>
<td>568</td>
<td>Provide ramp with slope not more than 1&quot;/ft (1:12)</td>
</tr>
<tr>
<td>8.01</td>
<td>Base of ramp to sidewalk has broken concrete, 3/8’ vertical step</td>
<td>4.3.8</td>
<td>568</td>
<td>Provide vertical step not more that ¼” high (1/2&quot; if edge has bevel with maximum slope of 1:2)</td>
<td></td>
</tr>
<tr>
<td>8.02</td>
<td>Ramp to ticket booths at side of front door has slope of 1-1/8’/ft</td>
<td>4.8.2</td>
<td>569, 571</td>
<td>Provide ramp with slope not more than 1&quot;/ft (1:12)</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Ticket Booth at Terminal Building front exterior</td>
<td>Counter heights are 47” above the pavement</td>
<td>7.2(2)</td>
<td>573</td>
<td>Provide counter not higher than 36” high and 36” wide (minimum)</td>
</tr>
<tr>
<td>9.01</td>
<td>Ticket purchase line has insufficient maneuvering space in way of ticket window counters for wheelchairs. Pathway (from street) width is 30”. The width at the turn (at ticket counter) is also 30”</td>
<td>10.3.1; 4.3.3</td>
<td>570</td>
<td>Where an accessible route makes a U-turn around an obstacle less than 48” wide, pathway width must be at least 42” on the approaches and 48” in the turn.</td>
<td></td>
</tr>
<tr>
<td>9.02</td>
<td>Ticket purchase line aisle width is 30”</td>
<td>4.3.3</td>
<td>570</td>
<td>Provide aisle at least 36” wide, exclusive of maneuvering space requirements</td>
<td></td>
</tr>
</tbody>
</table>
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<tbody>
<tr>
<td>9.03</td>
<td>9.03</td>
<td>Pavement ramp from ticket window toward vessel pier has slope of 1-3/8”/ft with a cross slope of 3%</td>
<td>4.8.2</td>
<td>570, 572</td>
<td>Provide ramp with slope not more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>9.04</td>
<td>9.04</td>
<td>Rate sign is mounted 50” above the pavement</td>
<td>4.2.5</td>
<td>573</td>
<td>Mount rate sign no more than 48” above pavement</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
<td>Curb Ramp Ramp has slope of 1-7/8”/ft</td>
<td>4.7.2; 4.8.2</td>
<td>576, 577</td>
<td>Provide ramp with slope not more than 1”/ft (1:12)</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
<td>Terminal Building exterior door to ferry dock</td>
<td>Threshold has unbeveled, 2” vertical step</td>
<td>4.13.8</td>
<td>586</td>
</tr>
<tr>
<td>11.01</td>
<td>11.01</td>
<td>Double doors have leaves with 30-1/2” clear opening</td>
<td>4.13.4</td>
<td>584</td>
<td>At least one of the two leaves of the double door is to have a clear opening of at least 32”</td>
</tr>
<tr>
<td>11.02</td>
<td>11.02</td>
<td>Steps outside door landing have risers of 6” and 7”</td>
<td>4.9.2</td>
<td>583, 584</td>
<td>Provide steps with uniform riser height and tread width</td>
</tr>
<tr>
<td>11.03</td>
<td>11.03</td>
<td>Steps outside door landing have no handrails</td>
<td>4.9.4</td>
<td>583, 584</td>
<td>Provide handrails complying with ADAAG 4.9.4 on both sides of steps</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
<td>Accessible Route – Terminal Building to Ferry Pier</td>
<td>None of the routes into or out of the Terminal Building satisfy ADAAG requirements. The route commonly used by non-disabled passengers to go from the Terminal Building to the ferries has two steps (6-7” high) and no ramp.</td>
<td>4.3.2(1); 4.3.2(2)</td>
<td>-</td>
</tr>
<tr>
<td>13</td>
<td>13</td>
<td>Alarms No visual and audible fire/emergency alarms in general seating area or in restrooms</td>
<td>4.28</td>
<td>-</td>
<td>Provide visual and audible fire/emergency alarms in general seating area and in restrooms</td>
</tr>
<tr>
<td>14</td>
<td>14</td>
<td>Ferry Loading Ramp Ends of handrail at bottom of ramp are not extended</td>
<td>4.8.5</td>
<td>593</td>
<td>Provide at least 12” extension of handrail at bottom of ramp, parallel to the ground or level surface</td>
</tr>
<tr>
<td>14.01</td>
<td>14.01</td>
<td>Ramp slope measures 2-1/8”/ft from ground for first 8 feet of run, then 1-1/4”/ft for next 25 ft of its 33-ft run.</td>
<td>4.8.2</td>
<td>593</td>
<td>Provide ramp with running slope not exceeding 1”/ft</td>
</tr>
</tbody>
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</thead>
<tbody>
<tr>
<td>14.02</td>
<td></td>
<td>Ramp has rise of 41-1/2&quot; for single run</td>
<td>4.8.2</td>
<td>593</td>
<td>Provide ramp with rise of 30&quot; maximum for any run</td>
</tr>
<tr>
<td>14.03</td>
<td></td>
<td>Lower run of passenger loading ramp has vertical step of 7/8&quot; at lower landing</td>
<td>4.3.8</td>
<td>593</td>
<td>Provide vertical step not more than ¼&quot; high (1/2&quot; if edge has bevel with maximum slope of 1:2)</td>
</tr>
<tr>
<td>14.04</td>
<td></td>
<td>Cross slope of lower landing is 2.8%</td>
<td>4.8.4</td>
<td>602</td>
<td>Provide cross slope of no more than 2% (1:50)</td>
</tr>
<tr>
<td>14.05</td>
<td></td>
<td>Lower landing has clear area of 42-1/4&quot; by 93-3/4&quot;, with a length of 46&quot;</td>
<td>4.8.4(2)</td>
<td>602</td>
<td>Provide landing with a length of at least 60&quot;</td>
</tr>
<tr>
<td>14.06</td>
<td></td>
<td>Upper run of passenger loading ramp has vertical step of 5/8&quot; at upper landing</td>
<td>4.3.8</td>
<td>602</td>
<td>Provide vertical step not more than ¼&quot; high (1/2&quot; if edge has bevel with maximum slope of 1:2)</td>
</tr>
<tr>
<td>14.07</td>
<td></td>
<td>Upper landing has a length of 46&quot;</td>
<td>4.8.4(2)</td>
<td>509</td>
<td>Provide landing with a length of at least 60&quot;</td>
</tr>
<tr>
<td>14.08</td>
<td></td>
<td>Handrails are 42&quot; high</td>
<td>4.8.5</td>
<td>509, 593</td>
<td>Provide handrails with top of rail between 34&quot; and 38&quot; above the ramp surface</td>
</tr>
<tr>
<td>14.09</td>
<td></td>
<td>Handrail diameter is 2&quot;</td>
<td>4.8.5</td>
<td>509, 593</td>
<td>Provide handrails between 1-1/4&quot; and 1-1/2&quot; diameter</td>
</tr>
<tr>
<td>15</td>
<td>Ferry Loading Ramp Gangway</td>
<td>Ends of handrail are not extended</td>
<td>4.8.5</td>
<td>509</td>
<td>Provide at least 12&quot; extension of handrail at vessel end of ramp, parallel to the deck</td>
</tr>
</tbody>
</table>
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Vieques Ferry Terminal

Vieques, Puerto Rico

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Photo # 512

Photo # 520

Photo # 585

Photo # 521

Photo # 509

Photo # 522

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-12-06

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Photo # 526

Photo # 530

Photo # 528

Photo # 531

Photo # 529

Photo # 532

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
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Photo # 533

Photo # 534

Photo # 535

Photo # 536

Photo # 537

Photo # 539

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Photo # 540

Photo # 556

Photo # 541

Photo # 557

Photo # 554

Photo # 558

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Photo # 562

Photo # 563

Photo # 567

Photo # 568

Photo # 569

Photo # 570

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Photo # 571

Photo # 572

Photo # 573

Photo # 576

Photo # 577

Photo # 583

Jaime A. Umpierre, P.E. & David S. Chapman, P.E.
Survey date: 12-12-06

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June 15, 2007

Mr. David Chapman

c/o William D. Tucker, P.A.

PMB 188

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Enzio Ramirez, Esq.

PR Maritime Transportation Authority

Fajardo, P.R.

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PBS&J Caribe Engineering, PSC

San Juan, P.R. 00921

Case: 3:05-cv-01185-ADC Document 102 Filed 03/10/2007

Project: Ferry Terminal Facility Accessible Route Report-March 04, 2007


(c) Jaime A. Umpiére, P.E. & David S. Chapman, P.E.’s survey report JAU/DSC 070224 dated February 24, 2007 and entitled “ACCESSIBILITY INSPECTION REPORT”


Dear Mr. Chapman,

Cataño Ferry Terminal

The following is a list of items in ref (a) and (b) that the Puerto Rico Maritime Transportation Authority (PRMTA) agrees to accomplish between the dates set forth by the court for the subject terminal.
Item #

1. Provide at least seven accessible spaces, including at least one van accessible space.
1.1 At least one van-accessible space is required either a minimum width of 192" (96" for the van and 96" aisle). Demark the 96" wide access aisle.
1.2 Designate closest parking space as accessible.
1.5 Provide demarking of access aisles, 60" wide for cars and 96" wide for vans.
1.6 Provide ramp that does not exceed 1'/ft slope.
5.03 Provide at least one telephone with at least 27" knee height under phone shelf.

Additionally, PRMTA will accomplish Items #2.1 to #2.16, inclusive, and items #3.1 to #3.14, inclusive, in ref (a) and (b) with exceptions. An alteration to the men and women toilet rooms will decrease or has the effect of decreasing accessibility or usability of the facility below the requirements for new construction at the time of alteration. In these rooms is technically unachievable to comply since it will require major structural reconfiguration of the areas and excessive expenses to implement. PRMTA will agree the installation of at least one unisex toilet room in compliance with ADAAG 4.1.6 and ADAAG 4.22 located in the same area as existing toilet facilities.

Similarly, the following is a list of items in ref (b) that the PRMTA agrees to accomplish between the dates set forth by the court for the subject terminal.

Item #

1.3 Provide signage to designate accessible parking spaces as reserved by signs with the symbol of accessibility, located so that they cannot be obscured by a car parked in the space.
1.4 Provide “Van Accessible” sign in addition to the sign with the symbol of accessibility.
2. Mount sign centered 60” above the ground at latch side of door.
3. Mount sign centered 60” above the ground at latch side of door.
4. Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per ADAAG 4.30.
5. Provide cord at least 29” long.

Items #5.01 to #5.03, inclusive, require “Provide ... no higher than 48" above the ground”. These items comply with ADAAG 4.31.2, ADAAG 4.31.3 and ADAAG 4.2.5, ADAAG 4.2.6. The clear floor space at telephone allows a parallel approach with a maximum high side reach of 54” by a person using a wheelchair. These items will not be accomplished.

With these three items removed from the total and the agreement of one unisex toilet room for Items #2.1 to #2.16 and items #3.1 to #3.14, the aforementioned accepted items that PRMTA is essentially accepting represent 60% of the remaining items listed in ref (a) and (b).

**Culebra Ferry Terminal**

The following is a list of items in ref (a) and (c) that the Puerto Rico Maritime Transportation Authority (PRMTA) agrees to accomplish between the dates set forth by the court for the subject terminal.

Item #

1. Rearrange parking spaces as necessary and designate closest parking space as accessible.
1.01 At least one van-accessible space is required either a minimum width of 192" (96" for the van and 96" aisle). Demark the 96" wide access aisle.

3 Provide and demark walkway from Terminal Building to Vehicle Ferry loading ramp (where foot passengers are embarked and disembarked) with cross slope of 2% maximum (1:50).

3.01 Provide ramp with running slope not exceeding 1"/ft.
3.02 Provide ramp with running slope not exceeding 1"/ft and cross slope of 2% maximum (1:50).

3.03 Provide handrails on each side of walkway complying with ADAAG 4.8.5.

3.04 Provide a minimum 2" curb, a wall, railing, or projecting surface to prevent people from falling off.

3.05 Provide a continuous detectable warning at least 36" wide complying with ADAAG 4.29.2.

7 Provide doorway with minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

9 Provide threshold no higher than ½" in height beveled at 1:2 or less.

10 Provide walkway with changes in level no greater than ½".

11 Provide vertical step not more than ½" high (1/2" if edge has bevel with maximum slope 1:2).

11.01 Provide ramp with running slope not exceeding 1"/ft.
11.02 Provide ramp with rise of 30" maximum for any run.
11.03 Provide ramp with minimum 36" width between handrails.
11.04 Provide landing at least 60" long.
11.05 Provide handrails with top of rail between 34" and 38" above the ramp surface.
11.06 Provide handrails between 1-1/4" and 1-1/2" diameter.
11.07 Provide at least 12" extension of handrails at bottom of ramp, parallel to the ground or level surface.

12 Provide at least 12" extension of handrail at vessel end of ramp, parallel to the deck.
12.01 Provide handrails with top of rail between 34" and 38" above the ramp surface.
12.02 Provide hinged transition plate for gangway to vessel deck to eliminate horizontal gap at transition and reduce vertical step to not more than ¼" (1/2" if edge has bevel with maximum slope of 1:2) (1/2" if edge has bevel with maximum slope of 1:2).

5 Provide ramp with running slope not exceeding 1"/ft.
5.01 Provide handrails with outside diameter between 1-1/4" and 1-1/2".

5.02 Provide handrail extensions that extend at least 12" beyond the top riser and at least 12" plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal.

5.03 Provide handrails with clearance between wall and handrail equal to 1-1/2".

6 Provide offset of at least 12" for maneuvering.

7.01 Provide doorway with minimum clear opening of 32" with the door open 90 degrees, measured between the face of the door and the opposite stop.

Items #4 to #4.05, inclusive, refer to a plaza facility adjacent to the Ferry Terminal Facility. The reference area is not part of the Terminal Facilities rented and operated by the PRMTA. These items will not be accomplished.
Similarly, the following is a list of items in ref (c) that the PRMTA agrees to accomplish between the dates set forth by the court for the subject terminal.

**Item #**

1.02 Provide "Van Accessible" sign located below vertical sign with International Symbol of Accessibility.

2. Provide counter not higher than 36" high and 36" wide (minimum).

3.06 Provide signage complying with ADAAG 4.30 directing foot passengers from Terminal Building to foot passenger-loading facility for the vehicle ferry.

8. Provide visual and audible fire/emergency alarms in general seating area (and in restrooms if not provided).

With items #4 to #4.05 removed from the total, the aforementioned accepted items that PRMTA is essentially accepting represent 84% of the remaining items listed in ref (a) and (c).

**Fajardo Ferry Terminal**

The following is a list of items in ref (a) and (d) that the Puerto Rico Maritime Transportation Authority (PRMTA) agrees to accomplish between the dates set forth by the court for the subject terminal.

**Item #**

1.01 Minimum car space width is 96", plus 60" wide aisle, which may be shaped with adjacent car space. The first two designated car spaces total 289" wide; suggest demarking a 60" wide aisle between the first two spaces.

1.04 Provide ramps that do not exceed 1/"ft slope; align them with demarked aisles.

3. Provide accessible route from ticket box office to passenger's terminal. Ramps crossing street shall coincide and be part of the accessible route shall be 36" wide minimum, demarked with the international handicapped blue paint.

8. Where an accessible route makes a U-turn around an obstacle less than 48' wide, pathway width must be at least 42" on the approaches and 48" in the turn.

8.01 Provide pathways at least 36" wide, exclusive of maneuvering space requirements.

8.02 Provide grating with smallest dimension of opening no more than ½" with larger dimension of opening perpendicular to path of travel.

2.01 Rearrange restroom layout. Provide only one toilet stall eliminating the other. The accessible toilet stall shall comply with ADAAG 4.17. Provide accessibility signage per ADAAG 4.30. Provide door with a privacy latch. Minimum stall depth shall be 56".

2.02 Provide privacy door with latch. The minimum clear opening width shall be 32". Provide accessible signage on front of door.

2.05 Remove front cover of counter top; this will increase the clearance to the minimum requirement of 29". Install protective insulation and cover for the pipes.

2.07 Provide door with a minimum clear opening width of 32".

5.01 Provide at least one water cooler ADA compliant, with knee clear space of 27" minimum above floor.

8.01 Provide stall approach aisle minimum 42 inches wide.

8.02 Provide stall door with minimum 32 inch clear opening.

8.04 Provide stall with inside measurement of at least 60 inches wide by 56 inches deep (59 inches if floor mounted toilet).
Item #1 requires "Provide at least four accessible parking spaces..." based on 84 parking spaces. This facility only provides 10 parking spaces for public use at the right front side of the terminal. They require amount of parking spaces by ADAAG 4.1.2(5)(a) for these 10 parking spaces in a particular lot is one and PRMTA have three accessible designated spaces. This item will not be accomplished.

Item #1.02 require "...Suggest combining the third designated space (120" wide) with the fourth (non-designated) space (116")...". PRMTA will accomplish this item, in ref (a) and (d), with exceptions. As described for item #1 above, PRMTA will only have to provide one accessible space. PRMTA agrees to provide two accessible parking spaces, with both 96" wide and a 96” aisle.

Item #1.05 require "Provide ramps with 2” minimum curb...". This item refers to a curb ramp in a sidewalk adjacent to parking lot. This is an access route and walking path. Provide a 2” curb will interrupt the access route. This item will not be accomplished.

Similarly, the following is a list of items in ref (d) that the PRMTA agrees to accomplish between the dates set forth by the court for the subject terminal.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.03</td>
<td>Provide vertical signage for each accessible space.</td>
</tr>
<tr>
<td>2</td>
<td>Terminal shall provide at least one accessible restroom, identified with the international accessible signage.</td>
</tr>
<tr>
<td>2.02</td>
<td>N/A.</td>
</tr>
<tr>
<td>2.03</td>
<td>Provide privacy door with latch. The minimum clear opening width shall be 32&quot;. Provide accessible signage in front of door.</td>
</tr>
<tr>
<td>2.04</td>
<td>Ok.</td>
</tr>
<tr>
<td>2.05</td>
<td>Provide grab bars after layout rearrangement. Follow guidelines of sections 4.17.6 and 4.26.</td>
</tr>
<tr>
<td>2.06</td>
<td>Reach shall be 7 to 9 inches.</td>
</tr>
<tr>
<td>2.07</td>
<td>Reinstalled the urinal with a projection of 16&quot; at a maximum height 17&quot; above floor. Flushing operator shall be @ 44” max above floor.</td>
</tr>
<tr>
<td>2.08</td>
<td>Remove front cover of counter top; this will increase the clearance to or over the minimum requirement of 29”. Install a protective plate under pipes.</td>
</tr>
<tr>
<td>2.09</td>
<td>Ok.</td>
</tr>
<tr>
<td>2.10</td>
<td>Ok.</td>
</tr>
<tr>
<td>2.11</td>
<td>Ok.</td>
</tr>
<tr>
<td>2.12</td>
<td>N/A.</td>
</tr>
<tr>
<td>2.13</td>
<td>At closed the station shall be at 48” from finish floor allowing at least 27” high of space below the open position.</td>
</tr>
<tr>
<td>2.14</td>
<td>N/A.</td>
</tr>
<tr>
<td>2.15</td>
<td>Expand the entrance for a minimum clear opening width of 32”.</td>
</tr>
<tr>
<td>4</td>
<td>Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per section 4.30.</td>
</tr>
<tr>
<td>5</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.01</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.02</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.03</td>
<td>Ok.</td>
</tr>
<tr>
<td>5.04</td>
<td>Ok.</td>
</tr>
</tbody>
</table>
5.05  Ok.
5.06  Ok.
6  There shall be at least two in compliance.
6.01  Ok.
6.02  Provide at least one water cooler ADA compliant. Spout shall be at a max height 36”, knee clear space of 27” minimum above floor, with a front or side (close to front edge) mounted control.
7  For forward reach, it shall be lowered to 48” (max. height above finish floor). For side reach 54”.
7.01  Ok.
7.02  Forward reach it shall be lowered to 48” (max. height above finish floor). For side reach 54”.
8  Reinstalled top counter at a maximum of 34” above finish floor.
9  
9.01  Provide stall approach aisle minimum 42 inches wide.
9.02  Provide stall door with minimum 32 inch clear opening.
9.03  Provide stall door handles, inside and out, that do not require pinching or grasping to operate.
9.04  Provide stall with inside measurement of at least 60 inches wide by 56 inches deep (59 inches if floor mounted toilet).
9.05  Ok [within 1/2 inch of off-wall dimension].
9.06  Provide grab bar at rear of toilet, 36 inches long, mounted 33-36 inches above the floor, starting 6 inches off wall closest to toilet.
9.07  Mount toilet paper dispenser below and not interfering with the grab bar, not more than 36 inches from the rear wall and at least 19 inches from the floor.
9.08  Mount urinal so that rim is 17 inches above the floor.
9.09  Mount lavatory so that rim is no more than 34 inches above the floor, with at least 29 inches knee clearance from the floor to the bottom of the apron.
9.10  Insulate lavatory hot water supply and drain pipes.
9.11  
9.12  
9.14  Relocate switch to no more than 48 inches above the floor.
9.15  
9.16  
9.17  Mount mirror so that bottom edge of reflective surface is no more than 40 inches above the floor.
9.18  Ok.
10  Provide cord at least 29” long.
10.03  Provide at least one public text telephone with TDD signage and directional signs.
10.04  Provide shelf and electrical outlet provided for use with a portable text telephone.
11  Where an accessible route makes a U-turn around an obstacle less than 48” wide, pathway width must be at least 42” on the approaches and 48” in the turn.
11.01  Provide pathways at least 36” wide, exclusive of maneuvering space requirements.
11.02  Provide grating with smallest dimension of opening no more than ½” with larger dimension of opening perpendicular to path of travel.
11.03  Remount ferry schedule holder not more than 48” above the ground.
12  Provide visual and audible fire/emergency alarms in general seating area and in restrooms.
NOTE: Items left in blank did not have any notes on the Comments or Recommendations columns.

Items #10.01 and #10.02 require "Provide ... no higher than 48" above the ground". These items comply with ADAAG 4.31.2, ADAAG 4.31.3 and ADAAG 4.2.5, ADAAG 4.2.6. The clear floor space at telephone allows a parallel approach with a maximum high side reach of 54" by a person using a wheelchair. These items will not be accomplished.

With these two items removed from the total, PRMTA agreement for item #1.02 and items #1 and #1.05 removed from the total, the aforementioned accepted items that PRMTA is essentially accepting represent 94% of the remaining items listed in ref (a) and (d).

**Hato Rey Ferry Terminal**

The following is a list of items in ref (a) and (e) that the Puerto Rico Maritime Transportation Authority (PRMTA) agrees to accomplish between the dates set forth by the court for the subject terminal.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Provide fixed pier with slope not more than 1&quot;/ft (1:12).</td>
</tr>
<tr>
<td>4.1</td>
<td>Provide fixed pier with cross slope not more than 2% (1:50).</td>
</tr>
<tr>
<td>4.2</td>
<td>Provide continuous handrails at both sides of pier.</td>
</tr>
<tr>
<td>4.3</td>
<td>Provide handrails with upper surface no higher than 34&quot;=38&quot; at both sides of pier.</td>
</tr>
<tr>
<td>4.4</td>
<td>Provide handrails with gripping surface 1-1/4&quot;-1-1/2&quot; wide.</td>
</tr>
<tr>
<td>4.5</td>
<td>Provide handrails with upper surface no higher than 34&quot;-38&quot; at both sides of pier.</td>
</tr>
<tr>
<td>4.6</td>
<td>Provide handrails with 1-1/4&quot;-1-1/2&quot; diameter.</td>
</tr>
<tr>
<td>4.7</td>
<td>Provide vertical step not more than 1/2&quot; high (1/2&quot; if edge has bevel with maximum slope of 1:2).</td>
</tr>
<tr>
<td>6</td>
<td>Provide &quot;Van Accessible&quot; sign in addition to the sign with the symbol of accessibility for the four van-accessible spaces; replace missing sign for first space.</td>
</tr>
<tr>
<td>6.1</td>
<td>Provide demarking of access aisles, 60&quot; wide for cars and 96&quot; wide for vans.</td>
</tr>
<tr>
<td>7</td>
<td>Provide ramps that do not exceed 1&quot;/ft slope.</td>
</tr>
<tr>
<td>8</td>
<td>Provide ramp with slope not more than 1&quot;/ft (1:12).</td>
</tr>
<tr>
<td>2.1</td>
<td>A 90 degree turn can be made from 36&quot; wide passage if the depth of each leg is a minimum of 48&quot; on the inside dimensions of the turn. Provide doorway opening at least 36&quot; wide.</td>
</tr>
<tr>
<td>2.6</td>
<td>Re-hinge stall door to opposite side. Stile to be 4&quot; wide maximum.</td>
</tr>
<tr>
<td>2.12</td>
<td>Provide clear floor space in front of urinal at least 30&quot; wide and 48&quot; deep.</td>
</tr>
<tr>
<td>3.1</td>
<td>A 90 degree turn can be made from 36&quot; wide passage if the depth of each leg is a minimum of 48&quot; on the inside dimensions of the turn. Provide doorway opening at least 36&quot; wide, and extend length of entry passageway to at least 48&quot;.</td>
</tr>
<tr>
<td>3.6</td>
<td>Provide stall with interior 60&quot; wide and at least 59&quot; deep (56&quot; for wall-mounted toilet).</td>
</tr>
<tr>
<td>3.8</td>
<td>Re-hinge stall door to opposite side. Stile to be 4&quot; wide maximum.</td>
</tr>
</tbody>
</table>

Similarly, the following is a list of items in ref (e) that the PRMTA agrees to accomplish between the dates set forth by the court for the subject terminal.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Provide counter not higher than 36&quot; high and 36&quot; wide (minimum).</td>
</tr>
</tbody>
</table>
2. Mount sign centered 60" above the ground.
2.2 Insulate lavatory hot water supply and drain pipes.
2.3 Relocate dispenser to no more than 48 inches above the floor.
2.4 Mount mirror with bottom of reflective surface not more than 40" above the floor.
2.5 Provide stall with interior 60” wide and at least 59” deep (56” for wall-mounted toilet).
2.7 Provide door hardware that does not require pinching or grasping to operate.
2.8 Provide door hardware that does not require pinching or grasping to operate.
2.9 To make easier for wheelchair users to close toilet stall door, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

2.10 Relocate coat hook to no more than 48 inches above floor.
2.11 Provide a 36” minimum length horizontal grab bar behind the water closet mounted at a height between 33” and 38” and extending a minimum of 12” beyond the center of the water closet toward the side wall and a minimum of 24” toward the open side for either a left or right side approach. Provide a horizontal grab bar at least 42” long, on the sidewall adjacent to the water closet mounted at a height between 33” and 36” and extending from 12” from the rear wall to a minimum of 54” from the rear wall.

3. Mount sign centered 60” above the ground.
3.2 Insulate lavatory hot water supply and drain pipes.
3.3 Mount lavatory so that rim is no more than 34” above the floor.
3.4 Relocate dispenser to no more than 48 inches above the floor.
3.5 Mount mirror with bottom of reflective surface not more than 40” above the floor.
3.7 Provide toilet flush control on wide side of toilet.
3.9 Provide door hardware that does not require pinching or grasping to operate.
3.10 Provide door hardware that does not require pinching or grasping to operate.
3.11 To make easier for wheelchair users to close toilet stall door, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

3.12 Relocate coat hook to no more than 48 inches above floor.
3.13 Provide a 36” minimum length horizontal grab bar behind the water closet mounted at a height between 33” and 38” and extending a minimum of 12” beyond the center of the water closet toward the side wall and a minimum of 24” toward the open side for either a left or right side approach. Provide a horizontal grab bar at least 42” long, on the sidewall adjacent to the water closet mounted at a height between 33” and 36” and extending from 12” from the rear wall to a minimum of 54” from the rear wall.

The aforementioned accepted items that PRMTA is essentially accepting represent 100% of the items listed in ref (a) and (e).

Old San Juan (Pier 2) Ferry Terminal

The following is a list of items in ref (a) and (f) that the Puerto Rico Maritime Transportation Authority (PRMTA) agrees to accomplish between the dates set forth by the court for the subject terminal.

Item #
2.4 Provide stall with interior 60" wide and at least 59" deep (56" for wall-mounted toilet).
2.5 Door should open out from the stall.
3.2 Where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36" wide with an outward swinging, self-closing door and parallel grab bars complying with fig. 30(d) and 4.26 shall be provided.

Similarly, the following is a list of items in ref (f) that the PRMTA agrees to accomplish between the dates set forth by the court for the subject terminal.

Item #
1. Provide counter not higher than 36" high and 36" wide (minimum).
2. Provide knee space under lavatory at least 29" high.
2.1 Relocate dispenser to no more than 48 inches above the floor.
2.2 Provide toilet seat 17"-19" above floor.
2.3 Toilet is to be 18" off the wall.
2.6 Provide door hardware that does not require pinching or grasping to operate.
2.7 Provide door hardware that does not require pinching or grasping to operate.
2.8 To make easier for wheelchair users to close toilet stall door, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.
3. Insulate lavatory hot water supply and drain pipes.
3.1 Relocate dispenser to no more than 48 inches above the floor.
3.3 Provide toilet seat 17"-19" above floor.
3.4 Toilet is to be 18" off wall.
3.5 Provide door hardware that does not require pinching or grasping to operate.
3.6 Provide door hardware that does not require pinching or grasping to operate.
3.7 To make easier for wheelchair users to close toilet stall door, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.
4. Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per ADAAG 4.30.
5. Provide cord at least 29" long.
5.01 Provide for coin slot no higher than 48" above the ground.
5.02 Provide at least one public text telephone with TDD signage and directional signs.
5.03 Provide electrical outlet for use with a portable text telephone.
6. Provide vertical step not more that ¼" high (1/2" if edge has bevel with maximum slope of 1:2).

The aforementioned accepted items that PRMTA is essentially accepting represent 100% of the items listed in ref (a) and (f).

Vieques Ferry Terminal

The following is a list of items in ref (a) and (g) that the Puerto Rico Maritime Transportation Authority (PRMTA) agrees to accomplish between the dates set forth by the court for the subject terminal.

Item #
provide door with 32” clear opening when door is opened 90 degrees.

2.2 Provide threshold with slope no more than 1”/ft (1:12).

2.6 Provide clear floor area in front of door not less than 48” long from the door and the full door width.

3.1 Provide door with 32” clear opening when door is opened 90 degrees.

3.2 Provide threshold with slope no more than 1”/ft (1:12).

3.6 Provide clear floor area in front of door not less than 48” long from the door and the full door width.

4 Provide threshold with slope no more than 1”/ft (1:12).

8 Provide ramp with slope no more than 1”/ft (1:12).

8.01 Provide vertical step not more that ¼” high (1/2” if edge has bevel with maximum slope of 1:2).

8.02 Provide ramp with slope not more than 1”/ft (1:12).

9.01 Where an accessible route makes a U-turn around an obstacle less than 48” wide, pathway width must be at least 42” on the approaches and 48” in the turn.

9.02 Provide aisle at least 36” wide, exclusive of maneuvering space requirements.

9.03 Provide ramp with slope not more than 1”/ft (1:12).

10 Provide ramp with slope not more than 1”/ft (1:12).

11 Provide threshold no higher than ½” in height beveled at 1:12 or less.

11.01 At least one of the two leaves of the double door is to have a clear opening of at least 32”.

11.02 Provide steps with uniform riser height and tread width.

11.03 Provide handrails complying with ADAAG 4.9.4 on both sides of steps.

12 Provide an accessible route, with directional signage complying with ADAAG 4.30 if that route is not the one commonly used by non-disabled passengers.

14 Provide at least 12” extension of handrail at bottom of ramp, parallel to the ground or level surface.

14.01 Provide ramp with running slope not exceeding 1”/ft.

14.02 Provide ramp with rise of 30” maximum for any run.

14.03 Provide vertical step not more that ¼” high (1/2” if edge has bevel with maximum slope of 1:2).

14.04 Provide cross slope of no more than 2% (1:50).

14.05 Provide landing with a length of at least 60”.

14.06 Provide vertical step not more that ¼” high (1/2” if edge has bevel with maximum slope of 1:2).

14.07 Provide landing with a length of at least 60”.

14.08 Provide handrails with top of rail between 34” and 38” above than ramp surface.

14.09 Provide handrails between 1-1/4” and 1-1/2” diameter.

15 Provide at least 12” extension of handrail at vessel end of ramp, parallel to the deck.

Item #1 and #1.1 as well item #1.3 to #1.6, inclusive, refers to a parking lot that is used by PRMTA for loading/unloading area. This terminal facility does not have parking area for public use. These items will not be accomplished.

Similarly, the following is a list of items in ref (g) that the PRMTA agrees to accomplish between the dates set forth by the court for the subject terminal.

Item #

2 Mount sign centered 60” above the ground, to the latch side of the door.
2.01 Provide door with 32" clear opening when door is opened 90 degrees.
2.02 Provide threshold with slope no more than 1"/ft (1:12).
2.03 Provide door hardware that does not require pinching or grasping to operate.
2.04 Provide door hardware that does not require pinching or grasping to operate.
2.05 Relocate latch to no more than 48" above floor.
2.06 Provide clear floor area in front of door not less than 48" long from the door and the full door width.
2.07 Mount lavatory so that rim is no more than 34 inches above the floor, with at least 29 inches knee clearance from the floor to the bottom of the apron.
2.08 Insulate lavatory hot water supply and drain pipes.
2.09 Relocate dispenser to no more than 48 inches above the floor.
2.10 Relocate dispenser to no more than 48 inches above the floor.
2.11 Locate toilet 18" off side wall.
2.12 Provide a 36" minimum length horizontal grab bar behind the water closet mounted at a height between 33" and 38" and extending a minimum of 12" beyond the center of the water closet toward the side wall and a minimum of 24" toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42" long, on the sidewall adjacent to the water closet mounted at a height between 33" and 36" and extending from 12" from the rear wall to a minimum of 54" from the rear wall.
3.01 Provide door hardware that does not require pinching or grasping to operate.
3.02 Provide door hardware that does not require pinching or grasping to operate.
3.03 Relocate latch to no more than 48" above the floor.
3.04 Mount lavatory so that rim is no more than 34 inches above the floor, with at least 29 inches knee clearance from the floor to the bottom of the apron.
3.05 Insulate lavatory hot water supply and drain pipes.
3.06 Relocate dispenser to no more than 48 inches above the floor.
3.07 Locate toilet 18" off side wall.
3.08 Provide a 36" minimum length horizontal grab bar behind the water closet mounted at a height between 33" and 38" and extending a minimum of 12" beyond the center of the water closet toward the side wall and a minimum of 24" toward the open side for either a left or right side approach. Provide a horizontal grab bar, at least 42" long, on the sidewall adjacent to the water closet mounted at a height between 33" and 36" and extending from 12" from the rear wall to a minimum of 54" from the rear wall.
5.01 Provide vending machine with front reach no higher than 48".
6.01 Provide vending machine with front reach no higher than 48".
6. Provide at least 5% of the total occupancy, not less than one, per area. Each seat shall be identified and with the international signage per ADAAG 4.30.
7. Provide threshold no higher than ½" in height beveled at 1:12 or less.
9.03 Provide counter not higher than 36" high and 36" wide (minimum).
9.04 Mount rate sign no more than 48" above pavement.
13. Provide visual and audible fire/emergency alarms in general seating area and in restrooms.

Item #1 to #1.06, inclusive, refers to a parking lot that is used by PRMTA as a loading/unloading area. This terminal facility does not have parking area for public use. These items will not be accomplished.
With these items removed from the total and item #1 and #1.1 as well item #1.3 to #1.6, inclusive, removed from the total, the aforementioned accepted items that PRMTA is essentially accepting represent 89% of the remaining items listed in ref (a) and (g).

The acceptance of the majority of the items listed in ref (a), ref (b), ref (e), ref (d), ref (e), ref (f) and ref (g) by PRMTA is reasonable given that the majority of the facilities have more than 30 years old and no major modifications and/or alterations has been made to the respective structures facilities. Some of these terminal facilities operations will be relocated in a near future to new facilities in full compliance with the accessibility guidelines under the ADAAG. Thus, PRMTA’s efforts described above should be sufficient to satisfy its more general obligations under the law.

Respectfully,

LUIS M. CARRILLO & Associates

Carlos M. Escobar, P.E.
Project Manager
# Daily Preventive Maintenance Vessel Checklist

**Lista de Verificación Diaria de Embarcaciones de Mantenimiento Preventivo**

<table>
<thead>
<tr>
<th>Vessel/Embarcación:</th>
<th>Date/Fecha:</th>
<th>Hour/Hora:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>A.M.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Capitán de Embarcaciones/Captain of Vessels:</th>
<th>Route/Ruta:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CA-SJU</td>
</tr>
<tr>
<td></td>
<td>SJU-CA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pilot House Navigation Vital Equipment/Equipo Vital Esencial en Timonera</th>
<th>Condition/Condición</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good/Buena</td>
<td>Replace/Reemplazar</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Navigation Lights/Luces de Navegación</th>
<th>Emergency Lights (Flashlights)/Luces de Emergencia (Linternas)</th>
<th>Radar/Radar</th>
<th>Public Address System/Sistema de Megafonía</th>
<th>VHF Radio/Radio VHF</th>
</tr>
</thead>
<tbody>
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</table>

<table>
<thead>
<tr>
<th>Propulsion Controls/Controles de Propulsión</th>
<th>Condition/Condición</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good/Buena</td>
<td>Replace/Reemplazar</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Steering Controls/Controles de Dirección</th>
<th>Internal Radios/Radios Internos</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Equipment/Equipo Anti-Incendios</th>
<th>Condition/Condición</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good/Buena</td>
<td>Replace/Reemplazar</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Stations/Estaciones de Incendio</th>
<th>Fire Extinguishers/Extintores</th>
<th>Fire Axe/Hacha Incendio</th>
<th>Fire Panel/Panel de Incendio</th>
<th>Codes (if any)/Códigos (si alguno)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Life Saving Devices/Dispositivos Salvavidas</th>
<th>Condition/Condición</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good/Buena</td>
<td>Replace/Reemplazar</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Life Jackets/Chalecos Salvavidas</th>
<th>Recovery System/Sistema de Recuperación</th>
<th>Ring Buoys/Boyas Anulares</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Vital Equipment/Equipo Esencial</th>
<th>Condition/Condición</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good/Buena</td>
<td>Replace/Reemplazar</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Air Conditioning/Aire Condicionado</th>
<th>Hatches/Escotillas</th>
<th>Watertight Doors/Puertas Herméticas</th>
<th>Bilge Level &amp; Cleanliness/Niveles de Sentina &amp; Limpieza</th>
<th>Emergency Lightning/Luces de Emergencia</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

| BOC Box 41118 San Juan P.R. 00940-1118
<p>| (787) 497-7740 ext. 2490 • <a href="mailto:info@atm.pr.gov">info@atm.pr.gov</a> |</p>
<table>
<thead>
<tr>
<th>Vessel Items/Elementos de la Embarcación</th>
<th>Expiration Date/Fechas de Expiración</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Number/Número Oficial</td>
<td></td>
</tr>
<tr>
<td>Red Flares/Bengalas Rojas</td>
<td></td>
</tr>
<tr>
<td>Orange Flares/Bengalas Anaranjadas</td>
<td></td>
</tr>
<tr>
<td>Port Life Rafts/Balsas Salvavidas de Babor</td>
<td></td>
</tr>
<tr>
<td>Port Life Raft’s Hydrostatic/</td>
<td></td>
</tr>
<tr>
<td>Hidrostático Balsas Salvavidas de Babor</td>
<td></td>
</tr>
<tr>
<td>Starboard Life Rafts/Balsas Salvavidas de Estribor</td>
<td></td>
</tr>
<tr>
<td>Starboard Life Raft’s Hydrostatic/</td>
<td></td>
</tr>
<tr>
<td>Hidrostático Balsas Salvavidas de Estribor</td>
<td></td>
</tr>
<tr>
<td>First Aid Kit/Kit de Primeros Auxilios</td>
<td></td>
</tr>
<tr>
<td>CO2 (6 months)/CO2 (6 meses)</td>
<td></td>
</tr>
<tr>
<td>Fire Extinguishers/Extintores</td>
<td></td>
</tr>
<tr>
<td>Dry-Dock/Varado</td>
<td></td>
</tr>
<tr>
<td>Certificate of Inspection/Certificado de Inspección</td>
<td></td>
</tr>
<tr>
<td>Certificate of Documentation/Certificado de Documentación</td>
<td></td>
</tr>
<tr>
<td>FCC</td>
<td></td>
</tr>
<tr>
<td>FCC Station License (Bridge to Bridge)/</td>
<td></td>
</tr>
<tr>
<td>FCC Licencia de Estación (Puente a Puente)</td>
<td></td>
</tr>
<tr>
<td>FCC Safety Radiotelephony Certificate/</td>
<td></td>
</tr>
<tr>
<td>FCC Certificado de Seguridad Radiotelefónica</td>
<td></td>
</tr>
<tr>
<td>EPIRB</td>
<td></td>
</tr>
<tr>
<td>EPIRB NOAA</td>
<td></td>
</tr>
<tr>
<td>EPIRB Hydrostatic/EPIRB Hidrostático</td>
<td></td>
</tr>
<tr>
<td>Ring Buoy Battery/Batería de Boya Anular</td>
<td></td>
</tr>
<tr>
<td>Passenger Vessel Association/Asociación de Embarcaciones de Pasajero</td>
<td></td>
</tr>
</tbody>
</table>

Comments/Comentarios:
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

Signatures/Firmas

Vessel Maintenance Supervisor/Supervisor de Mantenimiento de Embarcaciones:

Capitán de Embarcaciones/Captain of Vessels:
Daily Engine Room Daily Checklist
Lista de Verificación Diaria del Cuarto de Máquina

Vessel/Embarcación:

Start of Shift/Comienzo Jornada: Hour/Hora: ☐ A.M. ☐ P.M.

Date/Fecha:

Captain of Vessels/Capitán de Embarcaciones:

Engineer/Maquinista:

Route/Ruta: ☐ CA-SJU ☐ SJU-CA

<table>
<thead>
<tr>
<th>Time/Tiempo</th>
<th>Engines/Motores</th>
<th>Generators/Generadores</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>01</td>
<td>02</td>
</tr>
</tbody>
</table>

Start of Shift/Comienzo Jornada

End of Shift/Final Jornada

Total Runned Hours/Total Horas Corridas

ENGINE START-UP/ENCENDIDO DE Motores

<table>
<thead>
<tr>
<th>GENERATOR 01/GENERADOR 01</th>
<th>GENERATOR 02/GENERADOR 02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Oil Pressure/Presión Aceite Motor</td>
<td>Engine Oil Pressure/Presión Aceite Motor</td>
</tr>
<tr>
<td>Engine RPM/RPM Motor</td>
<td>Engine RPM/RPM Motor</td>
</tr>
<tr>
<td>Coolant Level/Nivel Refrigerante</td>
<td>Coolant Level/Nivel Refrigerante</td>
</tr>
<tr>
<td>H</td>
<td>M</td>
</tr>
</tbody>
</table>

Engine Temperature/Temporatura Motor

Oil Level/Nivel Aceite Motor

Transmission Oil Level/Nivel Aceite Transmisión

Added Oil/Aceite Añadido

<table>
<thead>
<tr>
<th>PARAMETER/PARAMETRO/PARÁMETRO</th>
<th>MOTORES/ENGINES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>01</td>
</tr>
</tbody>
</table>

Engine RPM/RPM Motor

Coolant Level/Nivel Refrigerante

Engine Oil Level/Nivel Aceite Motor

Added Oil/Aceite Añadido

Transmission Oil Level/Nivel Aceite Transmisión

Added Oil/Aceite Añadido

<table>
<thead>
<tr>
<th>Engine Start/Comienzo Motores</th>
<th>Loading/%/% Descarga</th>
<th>Engine Temp. (F°)/Temp. Motor (F°)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine RPM +/- RPM Motor +/-</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>(%)</td>
<td>(F°)</td>
<td>(F°)</td>
</tr>
</tbody>
</table>

Engine Oil Press. (psig)/Presión Aceite Motor (psig)

Transmission Temp. (F°)/Temp. Transmisión (F°)

Transmission Press. (psig)/Presión Transmisión (psig)

<table>
<thead>
<tr>
<th>Engine RPM/ RPM Motor</th>
<th>Engine Temp. (F°)/Temp. Motor (F°)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Oil Press. (psig)/Presión Aceite Motor (psig)</td>
<td>(psig)</td>
</tr>
<tr>
<td>Transmission Temp. (F°)/Temp. Transmisión (F°)</td>
<td>(F°)</td>
</tr>
<tr>
<td>Transmission Press. (psig)/Presión Transmisión (psig)</td>
<td>(psig)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15 Minutes/15 Minutos</th>
<th>Engine RPM/ RPM Motor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Temp. (F°)/Temp. Motor (F°)</td>
<td>(F°)</td>
</tr>
<tr>
<td>Engine Oil Press. (psig)/Presión Aceite Motor (psig)</td>
<td>(psig)</td>
</tr>
<tr>
<td>Transmission Temp. (F°)/Temp. Transmisión (F°)</td>
<td>(F°)</td>
</tr>
<tr>
<td>Transmission Press. (psig)/Presión Transmisión (psig)</td>
<td>(psig)</td>
</tr>
<tr>
<td>Generator in Use During Trip</td>
<td>Port/Babor</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Engine Temp. (F°)() Temp. Motor (F°)</td>
<td></td>
</tr>
<tr>
<td>Engine Oil Press. (psig)() Presión Aceite Motor (psig)</td>
<td></td>
</tr>
<tr>
<td>Amperes/Ampereos</td>
<td></td>
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<tr>
<td>Volts/Volto</td>
<td></td>
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<tr>
<td>Hertz/Hertzios</td>
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</tr>
</tbody>
</table>

**Trip No./Viaje Núm.__________ / Departure Time/Hora de Salida: ___________________ □ A.M. □ P.M.**

<table>
<thead>
<tr>
<th>15 Minutes/15 Minutos</th>
<th>Engine RPM + RPM Motor +</th>
<th>Loading%/% Descarga</th>
<th>%</th>
<th>%</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Temp. (F°)() Temp. Motor (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
</tr>
<tr>
<td>Engine Oil Press. (psig)() Presión Aceite Motor (psig)</td>
<td>(psig)</td>
<td>(psig)</td>
<td>(psig)</td>
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<td>(psig)</td>
<td>(psig)</td>
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<tr>
<td>Transmission Temp. (F°)() Temp. Transmisión (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
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<tr>
<td>Transmission Press. (psig)() Presión Transmisión (psig)</td>
<td>(psig)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>30 Minutes/30 Minutos</th>
<th>Engine RPM + RPM Motor +</th>
<th>Loading%/% Descarga</th>
<th>%</th>
<th>%</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Temp. (F°)() Temp. Motor (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
</tr>
<tr>
<td>Engine Oil Press. (psig)() Presión Aceite Motor (psig)</td>
<td>(psig)</td>
<td>(psig)</td>
<td>(psig)</td>
<td>(psig)</td>
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<td>(psig)</td>
</tr>
<tr>
<td>Transmission Temp. (F°)() Temp. Transmisión (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
</tr>
<tr>
<td>Transmission Press. (psig)() Presión Transmisión (psig)</td>
<td>(psig)</td>
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</table>

<table>
<thead>
<tr>
<th>45 Minutes/45 Minutos</th>
<th>Engine RPM + RPM Motor +</th>
<th>Loading%/% Descarga</th>
<th>%</th>
<th>%</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Temp. (F°)() Temp. Motor (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
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</tr>
<tr>
<td>Engine Oil Press. (psig)() Presión Aceite Motor (psig)</td>
<td>(psig)</td>
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</tr>
<tr>
<td>Transmission Temp. (F°)() Temp. Transmisión (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
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<td>Transmission Press. (psig)() Presión Transmisión (psig)</td>
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<td>(psig)</td>
</tr>
</tbody>
</table>
## Trip No./Viaje Núm. __________ / Departure Time/Hora de Salida: __________

<table>
<thead>
<tr>
<th>Trip No./Viaje Núm. __________ / Departure Time/Hora de Salida: __________</th>
<th>A.M.</th>
<th>P.M.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>15 Minutes/15 Minutos</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Engine RPM / RPM Motor</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Temp. Motor (°F)</strong></td>
<td>(°F)</td>
<td>(°F)</td>
</tr>
<tr>
<td><strong>Engine Oil Press. (psig)</strong></td>
<td>(psig)</td>
<td>(psig)</td>
</tr>
<tr>
<td><strong>Transmission Temp. (°F)</strong></td>
<td>(°F)</td>
<td>(°F)</td>
</tr>
<tr>
<td><strong>Transmission Press. (psig)</strong></td>
<td>(psig)</td>
<td>(psig)</td>
</tr>
<tr>
<td><strong>30 Minutes/30 Minutos</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Engine RPM / RPM Motor</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Temp. Motor (°F)</strong></td>
<td>(°F)</td>
<td>(°F)</td>
</tr>
<tr>
<td><strong>Engine Oil Press. (psig)</strong></td>
<td>(psig)</td>
<td>(psig)</td>
</tr>
<tr>
<td><strong>Transmission Temp. (°F)</strong></td>
<td>(°F)</td>
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<tr>
<td><strong>Transmission Press. (psig)</strong></td>
<td>(psig)</td>
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</tr>
<tr>
<td><strong>45 Minutes/45 Minutos</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Engine RPM / RPM Motor</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Temp. Motor (°F)</strong></td>
<td>(°F)</td>
<td>(°F)</td>
</tr>
<tr>
<td><strong>Engine Oil Press. (psig)</strong></td>
<td>(psig)</td>
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</tr>
<tr>
<td><strong>Transmission Temp. (°F)</strong></td>
<td>(°F)</td>
<td>(°F)</td>
</tr>
<tr>
<td><strong>Transmission Press. (psig)</strong></td>
<td>(psig)</td>
<td>(psig)</td>
</tr>
</tbody>
</table>
Comments/Comentarios:

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

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Note/Nota: Please evaluate general areas for signs of unusual noises, vibrations and/or fumes. All parts removed from conducted repairs must be removed from the place and the area be properly degreases and clean. All spills must be removed from the floor and cleaned. Favor de evaluar las áreas generales por signos de ruidos inusuales, vibraciones y/o gases. Toda pieza removida por reparaciones realizadas deberán ser removidas del lugar y el área deberá estar adecuadamente desengrasada y limpia. Todo derrame deberá ser removido del suelo y limpiado.

| Vessel Daily On Board Fuel & Oil Management/ Control Diario de Combustible & Aceite A Bordo de la Embarcación |
|-----------------------------------------------------|-------------------------------------------------|-----------------------------------------------|
| FUEL ACTIVITY: ACTIVIDAD DE COMBUSTIBLE | LOC. TIME/ TIEMPO LOC. | USED OIL/ ACEITE USADO |
| Fuel Before Start-Up/ Combustible Antes Encendido | Gals. | Oil Gallons On Board/ Galones Aceite Abordo |
| Dispensed Fuel/ Combustible Despachado | Gals. | Used Oil Added/ Aceite Usado Añadido |
| Total Fuel On Board/ Total Combustible Abordo | Gals. | Total Used Oil On Board/ Total Aceite Usado Abordo |

Engineer/Maquinista

Note/Nota: The Engineer who signs takes responsibility for the vessel on the basis of damages, flaws and/or operational conditions in which the vessel is found at the moment of acceptance. Conduct an inspection to complete satisfaction before taking the vessel to safeguard responsibility. If there are doubts about the vessel’s condition, before signing, first notify the Captain of Vessels and Supervisor of Maritime Transportation on duty. Respectfully request theCaptain of Vessels to perform the corresponding entry in the vessel's official logbook and to exercise the right of not accepting the vessel until the indicated condition is corrected. If the signature corresponds to the Engineer who signed the vessel’s start-up in the morning or after a considerable period after the vessel had been powered down, please sign the form after performing a detailed inspection. The Engineer who powers down the vessel after operation has concluded will enter his signature only and write down the relevant notes in the comments. El Maquinista quien firma asume responsabilidad de la embarcación a base de daños, desperfectos y/o condiciones operacionales en que se encuentra la embarcación al momento de aceptarla. Conduzca una inspección a su entera satisfacción previo a asumir la embarcación para salvaguardar su responsabilidad. De tener dudas sobre la condición de la embarcación, previo a firmar, notifíquelas primero de la condición existente al Capitán de Embarcaciones y al Supervisor de Transportación Marítima en turno. Solicítele respetuosamente al Capitán de Embarcaciones que realice la entrada correspondiente en la bitácora oficial de la embarcación y ejerza su derecho de no aceptar la embarcación tanto no sea corregido la condición señalada. Si la firma corresponde al Maquinista quien realizó el encendido de la embarcación en la mañana o luego de un periodo de tiempo considerable de estar la embarcación apagada, favor de firmar la forma luego de realizar la inspección detallada de la misma. El Maquinista quien apague la embarcación al finalizar las operaciones entrará su firma solamente y realizará las anotaciones pertinentes en los comentarios.
Daily Engine Room Daily Checklist
Lista de Verificación Diaria del Cuarto de Máquina

**Vessel/Embarcación:**

**Start of Shift/Comienzo Jornada:**

**Hour/Hora:**

**A.M.**  **P.M.**

**Date/Fecha:**

**Captain of Vessels/Capitán de Embarcaciones:**

**Engineer/Maquinista:**

**Route/Ruta:**  

- [ ] F-V  
- [ ] V-F  
- [ ] F-C  
- [ ] C-F  
- [ ] V-C  
- [ ] C-V

**Time/Tiempo**

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<tr>
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<th>02</th>
<th>03</th>
<th>04</th>
<th>01</th>
<th>02</th>
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<tbody>
<tr>
<td><strong>Start of Shift/Comienzo Jornada</strong></td>
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<td><strong>End of Shift/Final Jornada</strong></td>
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<td><strong>Total Runned Hours/Total Horas Corridas</strong></td>
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**ENGINE START-UP/ENCENDIDO DE MOTORES**

<table>
<thead>
<tr>
<th>GENERATOR 01/GENERADOR 01</th>
<th>GENERATOR 02/GENERADOR 02</th>
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</thead>
<tbody>
<tr>
<td><strong>Engine Oil Pressure/Presión Aceite Motor</strong></td>
<td><strong>Engine Oil Pressure/Presión Aceite Motor</strong></td>
</tr>
<tr>
<td><strong>Engine RPM/RPM Motor</strong></td>
<td><strong>Engine RPM/RPM Motor</strong></td>
</tr>
<tr>
<td><strong>Engine Temperature/Temperatura Motor</strong></td>
<td><strong>Engine Temperature/Temperatura Motor</strong></td>
</tr>
<tr>
<td><strong>Coolant Level/Nivel Refrigerante</strong></td>
<td><strong>Coolant Level/Nivel Refrigerante</strong></td>
</tr>
<tr>
<td><strong>Engine Oil Level/Nivel Aceite Motor</strong></td>
<td><strong>Engine Oil Level/Nivel Aceite Motor</strong></td>
</tr>
<tr>
<td><strong>Oil Level/Nivel Aceite Motor</strong></td>
<td><strong>Oil Level/Nivel Aceite Motor</strong></td>
</tr>
<tr>
<td><strong>Added Oil/Aceite Añadido</strong></td>
<td><strong>Added Oil/Aceite Añadido</strong></td>
</tr>
<tr>
<td><strong>Transmission Temp./Temp. Transmisión</strong></td>
<td><strong>Transmission Temp./Temp. Transmisión</strong></td>
</tr>
<tr>
<td><strong>Transmission Oil Level/Nivel Aceite Transmisión</strong></td>
<td><strong>Transmission Oil Level/Nivel Aceite Transmisión</strong></td>
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</tbody>
</table>

**PARAMETER/PARÁMETRO/PARÁMETRO/AMETER**

<table>
<thead>
<tr>
<th>MOTORES/ENGINES</th>
</tr>
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<tbody>
<tr>
<td>01</td>
</tr>
</tbody>
</table>

**Engine RPM/RPM Motor**

**Coolant Level/Nivel Refrigerante**

**Engine Oil Level/Nivel Aceite Motor**

**Added Oil/Aceite Añadido**

**Transmission Oil Level/Nivel Aceite Transmisión**

**Added Oil/Aceite Añadido**

**Engine Start/Comienzo Motores**

**15 Minutes/15 Minutos**

**Engine RPM/RPM Motor**

**Engine Temp./Temp. Motor**

**Engine Oil Press. (psig)/Presión Aceite Motor (psig)**

**Transmission Temp./Temp. Transmisión**

**Transmission Press. (psig)/Presión Transmisión (psig)**
<table>
<thead>
<tr>
<th>Generator in Use During Trip / Generador en Uso Durante el Viaje</th>
<th>Port / Babor</th>
<th>Starboard / Estribor</th>
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</thead>
<tbody>
<tr>
<td>Engine Temp. (°F) / Temp. Motor (°F)</td>
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<tr>
<td>Engine Oil Press. (psig) / Presión Aceite Motor (psig)</td>
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<tr>
<td>Amperes / Amperios</td>
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<tr>
<td>Watts / Voltios</td>
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<tr>
<td>Hertz / Hertzios</td>
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</table>

<table>
<thead>
<tr>
<th>Trip No. / Viaje Núm. / Departure Time / Hora de Salida</th>
<th>□ A.M. □ P.M.</th>
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<thead>
<tr>
<th>15 Minutes / 15 Minutos</th>
<th>Engine RPM / RPM Motor</th>
<th>Loading % / % Descarga</th>
<th>%</th>
<th>%</th>
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<tbody>
<tr>
<td>Engine Temp. (°F) / Temp. Motor (°F)</td>
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<tr>
<td>Engine Oil Press. (psig) / Presión Aceite Motor (psig)</td>
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<tr>
<td>Transmission Temp. (°F) / Temp. Transmisión (°F)</td>
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<tr>
<td>Transmission Press. (psig) / Presión Transmisión (psig)</td>
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<table>
<thead>
<tr>
<th>30 Minutes / 30 Minutos</th>
<th>Engine RPM / RPM Motor</th>
<th>Engine Temp. (°F) / Temp. Motor (°F)</th>
<th>Engine Oil Press. (psig) / Presión Aceite Motor (psig)</th>
<th>Transmission Temp. (°F) / Temp. Transmisión (°F)</th>
<th>Transmission Press. (psig) / Presión Transmisión (psig)</th>
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<table>
<thead>
<tr>
<th>45 Minutes / 45 Minutos</th>
<th>Engine RPM / RPM Motor</th>
<th>Engine Temp. (°F) / Temp. Motor (°F)</th>
<th>Engine Oil Press. (psig) / Presión Aceite Motor (psig)</th>
<th>Transmission Temp. (°F) / Temp. Transmisión (°F)</th>
<th>Transmission Press. (psig) / Presión Transmisión (psig)</th>
<th>%</th>
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<tr>
<td>Trip No./Viaje Núm.</td>
<td>Departure Time/Hora de Salida</td>
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<tr>
<td>15 Minutes/15 Minutos</td>
<td>30 Minutes/30 minutos</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Engine RPM +/ RPM Motor</th>
<th>Loading%/ % Descarga</th>
<th>%</th>
<th>%</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engine Temp. (F°)</td>
<td>Temp. Motor (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
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<tr>
<td>Engine Oil Press. (psig)</td>
<td>Presión Aceite Motor (psig)</td>
<td>(psig)</td>
<td>(psig)</td>
<td>(psig)</td>
<td>(psig)</td>
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<tr>
<td>Transmission Temp. (F°)</td>
<td>Temp. Transmisión (F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
<td>(F°)</td>
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<tr>
<td>Transmission Press. (psig)</td>
<td>Presión Transmisión (psig)</td>
<td>(psig)</td>
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<td>(psig)</td>
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</tbody>
</table>

| Engine RPM/ RPM Motor | Engine Temp. (F°) | Temp. Motor (F°) | (F°) | (F°) | (F°) | (F°) |
| Engine Oil Press. (psig) | Presión Aceite Motor (psig) | (psig) | (psig) | (psig) | (psig) |
| Transmission Temp. (F°) | Temp. Transmisión (F°) | (F°) | (F°) | (F°) | (F°) |
| Transmission Press. (psig) | Presión Transmisión (psig) | (psig) | (psig) | (psig) | (psig) |

| Engine RPM/ RPM Motor | Engine Temp. (F°) | Temp. Motor (F°) | (F°) | (F°) | (F°) | (F°) |
| Engine Oil Press. (psig) | Presión Aceite Motor (psig) | (psig) | (psig) | (psig) | (psig) |
| Transmission Temp. (F°) | Temp. Transmisión (F°) | (F°) | (F°) | (F°) | (F°) |
| Transmission Press. (psig) | Presión Transmisión (psig) | (psig) | (psig) | (psig) | (psig) |
Note/Nota: Please evaluate general areas for signs of unusual noises, vibrations and/or fumes. All parts removed from conducted repairs must be removed from the place and the area be properly degreases and clean. All spills must be removed from the floor and cleaned.

<table>
<thead>
<tr>
<th>FUEL ACTIVITY/</th>
<th>LOC. TIME/</th>
<th>USED OIL/</th>
<th>LOC. TIME/</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dispensed Fuel/Combustible Despachado</td>
<td>Gals.</td>
<td>Used Oil Added/Aceite Usado Añadido</td>
<td>Gals.</td>
</tr>
<tr>
<td>Total Fuel On Board/Total Combustible Abordo</td>
<td>Gals.</td>
<td>Total Used Oil On Board/Total Aceite Usado Abordo</td>
<td>Gals.</td>
</tr>
</tbody>
</table>

Engineer/Maquinista

Note/Nota: The Engineer who signs takes responsibility for the vessel on the basis of damages, flaws and/or operational conditions in which the vessel is found at the moment of acceptance. Conduct an inspection to complete satisfaction before taking the vessel to safeguard responsibility. If there are doubts about the vessel's condition, before signing, first notify the Captain of Vessels and Supervisor of Maritime Transportation on duty. Respectfully request the Captain of Vessels to perform the corresponding entry in the vessel's official logbook and to exercise the right of not accepting the vessel until the indicated condition is corrected. If the signature corresponds to the Engineer who signed the vessel's start-up in the morning or after a considerable period after the vessel had been powered down, please sign the form after performing a detailed inspection. The Engineer who powers down the vessel after operation has concluded will enter his signature only and write down the relevant notes in the comments.
# Daily Preventive Maintenance Vessel Checklist

**Lista de Verificación Diaria de Embarcaciones de Mantenimiento Preventivo**

<table>
<thead>
<tr>
<th>Header</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
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<tbody>
<tr>
<td><strong>Vessel/Embarcación:</strong></td>
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<tr>
<td><strong>Date/Fecha:</strong></td>
<td><strong>Hour/Hora:</strong></td>
<td>[ ] A.M.</td>
<td>[ ] P.M.</td>
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<tr>
<td><strong>Capitán de Embarcaciones/Captain of Vessels:</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Route/Ruta:</strong></td>
<td></td>
<td>[ ] C-V</td>
<td>[ ] V-C</td>
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<tr>
<td><strong>Pilot House Navigation Vital Equipment/Equipo Vital Esencial en Timonera</strong></td>
<td><strong>Condition/Condición</strong></td>
<td><strong>Good/Buena</strong></td>
<td><strong>Replace/Reemplazar</strong></td>
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<tr>
<td>Luces de Navegación/Navigation Lights</td>
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</tr>
<tr>
<td>Luces de Emergencia (Linternas)/Emergency Lights (Flashlights)</td>
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<tr>
<td>Radar/Radar</td>
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<tr>
<td>Sistema de Megafonía/Public Address System</td>
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<tr>
<td>Radio VHF/VHF Radio</td>
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<tr>
<td><strong>Propulsion Controls/Controles de Propulsión</strong></td>
<td><strong>Condition/Condición</strong></td>
<td><strong>Good/Buena</strong></td>
<td><strong>Replace/Reemplazar</strong></td>
</tr>
<tr>
<td>Controles de Dirección/Steering Controls</td>
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<tr>
<td>Radios Internos/Internal Radios</td>
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<tr>
<td><strong>Fire Equipment/Equipo Anti-Incendios</strong></td>
<td><strong>Condition/Condición</strong></td>
<td><strong>Good/Buena</strong></td>
<td><strong>Replace/Reemplazar</strong></td>
</tr>
<tr>
<td>Fire Stations/Estaciones de Incendio</td>
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<tr>
<td>Fire Extinguishers/Extintores</td>
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<tr>
<td>Fire Axe/Hacha Incendio</td>
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<td>Fire Panel/Panel de Incendio</td>
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<td>Codes (if any)/Códigos (si alguno)</td>
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<td><strong>Life Saving Devices/Dispositivos Salvavidas</strong></td>
<td><strong>Condition/Condición</strong></td>
<td><strong>Good/Buena</strong></td>
<td><strong>Replace/Reemplazar</strong></td>
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<td>Life Jackets/Chalecos Salvavidas</td>
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<td>Ring Buoys/Boyas Anulares</td>
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<td><strong>Vital Equipment/Equipo Esencial</strong></td>
<td><strong>Condition/Condición</strong></td>
<td><strong>Good/Buena</strong></td>
<td><strong>Replace/Reemplazar</strong></td>
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<td>Air Conditioning/Aire Condicionado</td>
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<td>Bilge Level &amp; Cleanliness/Niveles de Sentina &amp; Limpieza</td>
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<td>Emergency Lightning/Luces de Emergencia</td>
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<td>Vessel Items / Elementos de la Embarcación</td>
<td>Expiration Date / Fechas de Expiración</td>
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<td>Official Number / Número Oficial</td>
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<tr>
<td>Red Flares / Bengalas Rojas</td>
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<tr>
<td>Orange Flares / Bengalas Anaranjadas</td>
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<td>Port Life Raft / Balsas Salvavidas de Babor</td>
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<tr>
<td>Port Life Raft’s Hydrostatic / Hidrostático Balsas Salvavidas de Babor</td>
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<td>Starboard Life Raft / Balsas Salvavidas de Estribor</td>
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<tr>
<td>Starboard Life Raft’s Hydrostatic / Hidrostático Balsas Salvavidas de Estribor</td>
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<td>First Aid Kit / Kit de Primeros Auxilios</td>
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<td>CO2 (6 months) / CO2 (6 meses)</td>
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<td>Fire Extinguishers / Extintores</td>
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<tr>
<td>Dry-Dock / Varado</td>
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<tr>
<td>Certificate of Inspection / Certificado de Inspección</td>
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<tr>
<td>Certificate of Documentation / Certificado de Documentación</td>
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<td>FCC</td>
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<tr>
<td>FCC Station License (Bridge to Bridge) / FCC Licencia de Estación (Puente a Puente)</td>
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<td>FCC Safety Radiotelephony Certificate / FCC Certificado de Seguridad Radiotelefónica</td>
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<td>EPIRB</td>
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<td>EPIRB NOAA</td>
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<td>EPIRB Hydrostatic / EPIRB Hidrostático</td>
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<tr>
<td>Ring Buoy Battery / Batería de Boya Anular</td>
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<td>Passenger Vessel Association / Asociación de Embarcaciones de Pasajero</td>
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Comments / Comentarios:

_________________________________________________________________
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Signatures / Firmas

<table>
<thead>
<tr>
<th>Vessel Maintenance Supervisor / Supervisor de Mantenimiento de Embarcación</th>
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<tr>
<td></td>
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<tr>
<td>Capitán de Embarcaciones / Captain of Vessels:</td>
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BAREBOAT CHARTER AGREEMENT

[VESSEL NAME, O.N.]

This BAREBOAT CHARTER AGREEMENT (this “Agreement”) is made as of the _____ day of ______, 2020, by and between PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and instrumentality of the Commonwealth of Puerto Rico (“Owner”) and HMS FERRIES – Puerto Rico, LLC, a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, having an office at 222 Pearl Street, New Albany, IN 47150 (“Charterer”), whereby Owner will let and demise and Charterer will hire the United States flag passenger ferry vessel [VESSEL NAME], Official Number [XXXXXXX] (the “Vessel”) which is qualified to engage in the United States coastwise trade.

ARTICLE 1

MTOMA

Reference is made to that certain Maritime Transport Operations and Maintenance Agreement dated [Insert Date] between the parties hereto (the “MTOMA”). This Agreement is being entered into pursuant to the MTOMA. As further provided in this Agreement, certain specified terms and conditions of the MTOMA are hereby incorporated by reference as if they had been set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the MTOMA. In case of inconsistencies between the provisions of this Agreement and those of the MTOMA, the provisions of the MTOMA shall control.

ARTICLE 2

Charter Period

Owner agrees to let and demise and Charterer agrees to hire the Vessel upon the terms and conditions set forth in this Agreement (hereinafter called the “Charter”), which Charter shall be binding and effective immediately upon execution hereof and shall commence on the Delivery Date (as defined in Article 5 below) and shall, subject to the provisions of Article 22, continue until the termination or expiration of the MTOMA. As of the date that this Charter terminates, the Vessel shall be redelivered to Owner pursuant to the terms of Article 20 (the period between the Delivery Date and the date of termination being hereinafter called the “Charter Period”).
ARTICLE 3

Description of the Vessel

The Vessel was built by [Vessel Builder] in [Location] in [Year]. The Vessel has a gross registered tonnage of [GRT] tons, a net registered tonnage of [NRT] tons, and otherwise conforms to the description set forth in the condition and valuation survey attached hereto as Exhibit A. As of the Delivery Date and throughout the term of the Charter, the Vessel shall qualify to be and shall be documented under the laws of the United States. The Owner and the Charterer agree that for purposes of this Charter and the MTOMA, the monetary value of the [Vessel Name] is agreed to be [Value of the vessel for establishing Hull and Machinery coverage].

ARTICLE 4

Representations, Warranties and Undertakings

(a) Owner’s Representations, Warranties and Undertakings

(i) Owner represents and warrants that as of the Delivery Date: (A) title in the Vessel is held by Owner; (B) the description of the Vessel set forth herein is true and accurate; (C) no other person or corporation has any right, title or interest (other than a federal interest) in the Vessel or any lien or encumbrance on the Vessel, other than (i) liens in favor of the crew or routine suppliers to the Vessel, (ii) liens covered by Owner’s insurance, and (iii) any other liens or restrictions specifically indicated in a written notice to Charterer as of the date of this Charter. Said written notice shall be deemed to be a warranty by Owner to Charterer that the Vessel is not otherwise encumbered and if no such notice was then received by Charterer it shall be deemed to be a warranty by Owner that the Vessel was not then so encumbered; and (D) the Vessel is qualified for the U.S. coastwise trade.

(ii) Owner represents and warrants that it is not aware of any liens against the Vessel resulting from incidents or acts which occurred prior to the Delivery Date and that if any such liens are asserted after the Delivery Date same are covered by appropriate insurance.

(iii) Owner undertakes that it will not, during the Charter Period, place any lien or encumbrance on the Vessel, without the prior written consent of Charterer, provided, however, that Owner shall have the
right to subject the Vessel to a mortgage or mortgages in the future so long as all additional costs in connection with such new mortgages are for the Owner’s account and that any new mortgage provides that it is specifically subject to this Charter, and such mortgage contains a provision whereby the mortgagee acknowledges that Charterer will continue to have the use of the Vessel under this Charter for so long as Charterer continues to pay Charter Hire (as defined in Article 15 below) and complies with its other obligations under this Charter and the MTOMA. Charterer agrees that any federal interest in the Vessel shall not constitute any lien or encumbrance for purposes of Owner’s undertaking set forth in this clause (iii).

(b) Charterer’s Representations, Warranties and Undertakings

Charterer represents and warrants that it is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended, and covenants that during the Charter Period it shall remain such a citizen, qualified for the purpose of operation of the Vessel in the coastwise trade of the United States.

ARTICLE 5

Delivery

Owner shall deliver and demise the Vessel to Charterer, and Charterer shall accept delivery and demise of the Vessel at [location] on or about [Delivery Date]. On the date of the actual delivery and acceptance of the Vessel (hereafter the “Delivery Date”), Owner and Charterer shall execute a Protocol of Delivery and Acceptance substantially in the form of Exhibit B attached hereto.

ARTICLE 6

On-Hire and Off-Hire Marine Surveys

(a) On-hire and off-hire marine surveys shall be conducted on the Vessel at the request of the Owner or the Charterer in accordance with the MTOMA. The on-hire marine survey shall occur before delivery of the Vessel and the off-hire marine survey shall occur before the redelivery date. Both surveys shall take place in [Location]. The on-hire marine survey shall be performed by a certified and qualified marine surveyor, who shall be selected by the parties from the list of approved surveyors provided by the Charterer’s insurance underwriter (the “Charterer’s Surveyor”). The off-hire marine survey shall be performed by a certified and qualified marine surveyor, who shall be selected by the parties from the list of approved surveyors provided by the Owner’s insurance underwriter (the “Owner’s Surveyor”).
(b) The cost of the on-hire survey shall be borne by the Owner. The cost of the off-hire survey shall be borne by the Charterer. In addition to the Charterer’s Surveyor or the Owner’s Surveyor, as the case may be, each party shall have the right to hire an independent marine surveyor from the list of approved surveyors provided by the applicable insurance underwriter of such party to inspect the Vessel in conjunction with the survey to be conducted by the other party’s surveyor. The cost of such other surveyor shall be the responsibility of the party requesting the survey. If any surveyor reasonably requires a diver’s inspection or haul out of the Vessel (for purposes of inspection only, as distinguished from repair), either party shall have the right to require a diver’s inspection or haul out of the Vessel, the cost of which shall be on the account of the requesting party.

(c) The determination of the Charterer’s Surveyor and Owner’s Surveyor as to the repairs required to comply with this Agreement and the MTOMA shall be binding on both parties; provided, however, if Charterer’s Surveyor and Owner’s Surveyor disagree about whether certain repairs are required or whether certain damages resulted from normal wear and tear, the parties shall hire a third surveyor from the list of approved surveyors provided to the Owner by its insurance underwriter (the “Third Surveyor”), such surveyor to be mutually agreed upon by the parties and which cost shall be shared equally by the parties.

(d) The determination of the Third Surveyor regarding repairs required, wear and tear and damages shall be binding on both parties.

(e) Any and all deficiencies identified during the on-hire survey that constitute Vessel Extraordinary Repairs shall be repaired by the Owner (or, if so agreed by the parties, by the Charterer), at the Owner’s sole cost, in accordance with the terms of the MTOMA.

(f) Should extraordinary wear and tear and/or damage be identified by the off-hire inspection, the Owner shall notify the Charterer in writing within thirty (30) days of the Owner’s receipt of the report(s) from the Surveyors as to the required repairs to the Vessel, which shall be for the account of the Charterer in accordance with the MTOMA.

ARTICLE 7

Biennial Marine Survey

During the Charter Period, if requested by Owner, the Charterer shall complete a survey of the Vessel at Owner’s expense. To the extent requested by Owner, the biennial survey(s) shall be completed by Charterer during a required USCG dry docking; provided, that an in-water survey shall be conducted three (3) to four (4) months prior to the USCG dry docking so that the Charterer can identify any work required to be performed during such dry docking. The survey(s) shall be performed by a certified and qualified marine
surveyor, who shall be selected by mutual agreement of the Parties.

ARTICLE 8

Use and Trade of the Vessel

(a) During the Charter Period, Charterer shall use the Vessel solely in the manner permitted by the MTOMA.

(b) Charterer shall throughout the Charter Period maintain, at its cost, the documentation of the Vessel under the laws and flag of the United States in the name of Owner, which documentation shall at all times be sufficient to permit the use of the Vessel in the Ferry Service or, subject to receipt of any necessary approvals of any governmental authority and the terms of the MTOMA, in any other lawful U.S. coastwise trade. Owner shall, at the request of Charterer, promptly execute such documents and furnish such information as Charterer may reasonably require to enable Charterer to maintain such documentation. Neither Owner nor Charterer shall suffer or permit anything to be done which might injuriously affect the entitlement of the Vessel under the laws and regulations of the United States to be so documented for use in the United States coastwise trade.

ARTICLE 9

Condition Upon Delivery

(a) Owner will exercise due diligence to ensure that, upon delivery to Charterer, the Vessel and its engines, boilers, hull, machinery, equipment, outfit and appurtenances shall:

(i) be in every way seaworthy and in complete working order and condition and fit to perform the Ferry Service in accordance with the applicable provisions the MTOMA;

(ii) comply with all applicable United States Coast Guard ("USCG") regulations and all applicable laws, treaties, conventions, requirements and regulations;

(iii) have all trading certificates valid and unextended, and

(iv) shall otherwise comply with the Standards of Acceptance established in accordance with the MTOMA.
ARTICLE 10

Cost of Operation

During the Charter Period, Charterer shall have exclusive possession and control of the Vessel and shall man, victual, navigate, operate, insure, supply and fuel the Vessel in accordance with the terms of the MTOMA. The Master, officers and crew of the Vessel shall be employed by Charterer and shall remain Charterer's servants, navigating and working the Vessel on behalf of and at the risk of Charterer.

ARTICLE 11

Optional Inspections by Owner, Federal Agencies or Authorities

(a) The Owner shall have the right, at the Owner’s cost and expense, to conduct an independent inspection of the Vessel for wear and tear and other damage whenever the Vessel is dry docked. The Owner shall also have the right, at the Owner’s cost and expense, to conduct an independent inspection of the Vessel with reasonable prior notice. The Charterer shall cooperate with the Owner’s inspector(s), and shall provide access to maintenance and repair records and other relevant documents as may be requested by such inspector(s) and/or the Owner.

(b) The FTA and the USCG shall have the right to conduct any and all inspections authorized by applicable laws and regulations, including inspection of the Vessel, review of maintenance records, review of ship repair specifications, etc. The Charterer shall cooperate with the inspectors of the FTA, the USCG or any other federal agency with jurisdiction over the Charterer’s operations, and shall provide such reasonable assistance and access to maintenance and repair records and other relevant documents as may be requested by such inspector(s). The Charterer shall also cooperate with the FTA’s project management oversight consultant in a manner consistent with execution of the MTMOA.

ARTICLE 12

Fuel, Lubricants, Water, Stores, Equipment and Spare/Replacement Parts

(a) On or as soon as possible following the Delivery Date, Owner shall be responsible for the actual costs for fuel, unbroached lubricating oils, unused lubricating oils in storage tanks, and unbroached consumable stores as may be aboard the Vessel as of the Delivery Date. On redelivery Owner shall reimburse Charterer for the actual costs for such fuel, unbroached lubricating oils, unused lubricating oils in storage tanks and unbroached consumable stores as then remain on board the Vessel but only to the extent such costs
(b) Charterer shall have the use, without extra cost, of such equipment, outfit and appurtenances as are on board the Vessel on the Delivery Date. The same or their substantial equivalent shall be returned to Owner on the date of redelivery of the Vessel to Owner in the same good order and condition as when received, reasonable wear and tear excepted. Charterer shall have the use, without extra cost, of spare and replacement parts and stores as are on board the Vessel on the Delivery Date. The same or their substantial equivalent shall be returned to Owner upon redelivery of the Vessel in the same good condition as when received. A joint inventory of spares and replacement parts, stores and equipment will be performed by Charterer and Owner jointly on the Delivery Date and on the date of redelivery of the Vessel in accordance with the terms of the MTOMA.

(c) Subject to Articles 13 and 14 below, Charterer shall, provide such additional equipment, outfit, tools, spare and replacement parts, as may be required for Charterer's operation of the Vessel. Spare and replacement parts ordered for, but not delivered to, the Vessel by or for Owner on or before the Delivery Date, or the same or the substantial equivalent of such spare and replacement parts ordered by or for Charterer on or before the redelivery of the Vessel shall be taken over and paid for, respectively, by Charterer or Owner, as the case may be, when delivered to the Vessel; and such equipment shall remain the property of, respectively, Charterer or Owner, as the case may be.

(d) For the purposes of Article 12(a) above, Charterer and Owner or their designated representatives shall, on (or at a mutually agreeable time prior to) the Delivery and redelivery of the Vessel, inventory fuel, unbroached lubricating oils, unused lubricating oils in storage tanks and unbroached consumable stores as shall then be on board the Vessel; and said inventories shall be used to determine the sums, if any, owing to Owner or Charterer pursuant to this Article 12, which sums shall be due and payable to Owner or Charterer, as the case may be, in United States Dollars on presentation of the respective party's invoice.

ARTICLE 13

Charterer's Changes

Charterer shall make no structural changes in the Vessel without obtaining Owner's prior written consent. Subject to the foregoing provision and to the provisions of Article 14, Charterer shall have the right to install any pumps, gear or equipment which it may require in addition to that on board the Vessel as of the Delivery Date,
provided that such alterations and installations are accomplished in compliance with standard marine practices, and USCG regulations and rules. Pumps, gear and equipment so installed shall remain the property of Owner. Charterer shall leave the Vessel in the same condition as she was at delivery, ordinary wear and tear excepted.

ARTICLE 14

Vessel Maintenance, Repairs, Capital Improvements and Warranty Items

(a) During Phase 1 of the MTOMA (subject to the terms of Section 5.1 and after the Delivery Date) the Owner, and during Phase 2 of the MTOMA, the Charterer, shall perform or cause to be performed all Maintenance and Ordinary Repairs required for the Vessel in accordance with the terms of the MTOMA and shall cover all costs and expenses relating thereto subject, during Phase 1, to the corresponding reimbursement provisions of the MTOMA.

(b) During Phase 1, the Owner shall cover the costs and expenses of all Vessel Extraordinary Repairs required for the Vessel, which shall be performed by Owner or Charterer, as the case may be, in accordance with the terms of the MTOMA.

(c) During Phase 1 and Phase 2, the Owner shall cover the costs of any required Vessel Capital Improvements to the Vessel, which shall be performed by Owner or Charterer, as the case may be, in accordance with the terms of the MTOMA.

(d) The Charterer shall be responsible for the exercise and enforcement of all manufacturer’s warranties relating to the Vessel to the extent that: (i) full, correct and complete copies of the warranties are provided, and (ii) upon Delivery, such warranties were in full and force and event and unaffected by any event or action occurring prior to the Delivery Date. The Charterer shall not take any actions that might result in the waiver or unenforceability of any such warranties. Nothing herein shall make the Charterer liable for any condition of the Project Assets existing prior to the Delivery date or otherwise arising out of the negligence of willful misconduct of the Owner.

ARTICLE 15

Charter Hire

(a) Charterer shall pay Owner for the use and hire of the Vessel during the Charter Period the sum of One (1) Dollar per year from the Delivery Date until the end of the Charter Period on a Hell or High Water basis with Charterer having no right of set-off, counterclaim, abatement or similar reduction right (“Charter Hire”). Charter Hire for the year in which the Delivery Date occurs shall be paid by Charterer on the Delivery Date. Thereafter, Charter Hire shall be paid annually on each anniversary of the
Delivery Date.

**ARTICLE 16**

**Liens**

(a) In addition to the undertakings and warranties in Articles 4 and 9 concerning absence of average, charters, liens and encumbrances upon delivery of the Vessel to Charterer hereunder, Owner warrants that throughout the Charter Period, Owner will not cause the Vessel to incur any liens, encumbrances and/or charges whatsoever, except as permitted under Article 4 of this Agreement; and Owner will defend, indemnify and hold Charterer harmless with respect to any such liens, encumbrances and/or charges.

(b) Charterer will not permit any lien or encumbrance to be imposed on the Vessel arising out of Charterer's use of the Vessel hereunder; and neither Charterer, the Master, the Vessel nor any third party has or shall have any right, power or authority during the Charter Period to create, incur or permit to be placed or imposed upon the Vessel, its freights, profits or hire any lien whatsoever other than liens for crew's wages, salvage and other supplier's liens created by operation of law. Charterer will promptly remove any liens arising out of Charterer's use of the Vessel hereunder. Charterer agrees to carry a true copy of this Charter with the Vessel's papers on board the Vessel and to exhibit the same to any person having business with the Vessel which may give rise to a maritime lien upon the Vessel or to the sale, conveyance, mortgage or lease thereof and on demand to any representative of the Owner. Charterer shall also place and keep prominently displayed in the Master's cabin and the chart room a printed notice, framed under glass, reading as follows:

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THIS VESSEL IS OWNED BY THE COMMONWEALTH OF PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY AND IS UNDER CHARTER TO HMS FERRIES – PUERTO RICO, LLC. PURSUANT TO THE TERMS OF THE BAREBOAT CHARTER DATED [___, 20__]. UNDER THE TERMS OF THE BAREBOAT CHARTER, NEITHER THE CHARTERER, NOR ANY OTHER PERSON HAS THE RIGHT, POWER, OR AUTHORITY TO CREATE, INCUR OR PERMIT TO BE PLACED OR IMPOSED UPON THIS VESSEL ANY LIEN WHATSOEVER.
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ARTICLE 17

Insurance and Indemnities

(a) Insurance

Charterer shall maintain and keep in effect throughout the term of this Charter the insurance coverages required by the MTOMA.

(b) Indemnities

Owner agrees to indemnify and hold harmless Charterer as set forth in the MTOMA. Charterer agrees to indemnify and hold harmless Owner as set forth in the MTOMA.

ARTICLE 18

Loss

(a) In the event of the actual, constructive, arranged or compromised total loss, or the abandonment to underwriters, of the Vessel during the Charter Period (even though Charterer shall have been deprived of, or limited in, the use of the Vessel in any respect at the time of its loss or abandonment), this Charter shall automatically terminate as soon as the Vessel has been so lost or abandoned; and all proceeds due under the applicable policies of insurance maintained under Article 17 shall be promptly paid to the Owner.

(b) In the event that during the Charter Period (even though Charterer shall have been deprived of, or limited in the use of, the Vessel in any respect following a loss) it is, in Owner's opinion, inadvisable and/or uneconomical to make repairs to the Vessel following such loss, Charterer will have the right to (i) declare the Vessel a constructive total loss, (ii) resolve a compromised or arranged total loss with respect to the Vessel, or (iii) abandon the Vessel to underwriters. This Charter will automatically terminate as soon as the Vessel has been so lost or abandoned; and all proceeds due under the applicable policies of insurance maintained under Article 18 shall be promptly paid to Owner.

ARTICLE 19

Requisition

(a) Requisition (not involving title) of the Vessel for use by any United
States governmental authority during the Charter Period shall not terminate this Charter. Charterer shall remain liable for the payment of Charter Hire and for the performance of all other obligations hereunder but shall be entitled to the proceeds of requisition charter hire paid for the Vessel by such requisitioning authority up to the amounts actually paid as Charter Hire by Charterer to Owner during the applicable period. All requisition charter hire paid in excess of the amounts actually paid as Charter Hire by Charterer to Owner during the applicable period shall be for the benefit of the Owner.

(b) If, during the Charter Period, the Vessel shall be requisitioned for title by any United States governmental authority for whatever cause and such requisition shall not have been revoked within forty-five (45) days thereafter, this Charter shall thereupon terminate; and any proceeds received, whether under applicable policies of insurance maintained under Article 17 or otherwise, shall be paid to Owner.

**ARTICLE 20**

**Redelivery**

(a) Unless an event described in Article 18(a), 18(b) or 19(b) hereof has occurred with respect to the Vessel, Charterer shall redeliver the Vessel to Owner at [location] or at such other location mutually agreed by the Parties at the termination of this Charter in the same condition as accepted, ordinary wear and tear excepted. For purposes of this Agreement, the term “**Ordinary Wear and Tear**” shall mean normal depreciation and deterioration due to normal and proper use, passage of time, operation of the elements and/or casualty, taking into account the Service in which the Vessel is to be or has been utilized, but excluding any depreciation or deterioration that would have been corrected or avoided with routine maintenance and the effects of negligent acts or omissions by Charterer.

(b) Should the Vessel require repairs that exceed those required due to Ordinary Wear and Tear in order to restore it to its original condition and repair, and such repair and restoration work would extend beyond the end of the Charter Period, the Charterer, at its sole cost, shall initiate the required repair and restoration work in such a manner as to ensure redelivery of the Vessel on the termination date of this Charter, and the Charterer’s restoration and repair obligations shall survive the termination of this Charter. The Owner shall have the right to withhold any payments due to the Charterer hereunder to the extent provided for in the MTOMA. The Owner also may, but shall not be obligated to, complete such repairs on behalf
of the Charterer and invoice the Charterer for the reasonable cost of such repairs, which invoice Charterer shall pay within thirty (30) days of receipt, or deduct the amount of such invoice from any and all amounts due to the Charterer hereunder and/or under the MTOMA.

**ARTICLE 21**

**Vessel Plans and Drawings**

On or before the Delivery Date, Owner shall supply and deliver to Charterer a full description of the Vessel and, to the extent available, copies of all documents, plans, specifications, technical manuals and drawings in its possession relating to the operation and maintenance of the Vessel, including actual maintenance and repair records and regulatory inspection records.

**ARTICLE 22**

**Termination for Default**

(a) If Charterer is in breach of any of its material obligations under this Charter and if its breach shall continue for a period of fifteen (30) days after written notice thereof has been given to Charterer by Owner, Owner may, at its option, terminate this Charter by written notice to Charterer. If such default is incapable of being cured in such period and the Charterer diligently commences to cure such default, then such period shall be extended until final cure; provided, however that the total cure period shall never exceed one hundred twenty (120) days.

(b) If Owner shall by any act or omission be in breach of its material obligations under this Charter to the extent that Charterer is deprived of the use of the Vessel and such breach shall continue for a period of thirty (30) days after written notice thereof has been given by Charterer to Owner, Charterer may at its option terminate this Charter by written notice to Owner. If such default is incapable of being cured in such period and the Owner diligently commences to cure such default, then such period shall be extended until final cure; provided, however that the total cure period shall never exceed one hundred twenty (120) days. If the Owner fails to cure within the applicable time period, the Charterer may terminate this Agreement in whole or in part by giving written notice thereof to the Authority specifying the effective date of such termination, which shall occur no less than ninety (90) days after the date of such notice.
ARTICLE 23

Termination of MTOMA

The terms of this Charter and the MTOMA are concurrent and if for any reason (and notwithstanding the rights of any party to cure a default hereunder) the MTOMA is terminated, then this Charter will automatically terminate as of the date of such MTOMA termination.

ARTICLE 24

Wreck Removal

In the event of the Vessel becoming a wreck or obstruction to navigation, Charterer shall indemnify Owner against any sums whatsoever which Owner shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.

ARTICLE 25

General Average

General average, if any, shall be adjusted according to the York-Antwerp Rules 1994 and any subsequent amendments thereto. Cargo owned by Charterer, if any, shall contribute to general average.

ARTICLE 26

Assignment and Sub-Demise; Sale and Transfer

Charterer shall not assign or transfer this Agreement or any interest herein directly or indirectly, by any means whatsoever, by operation of law or otherwise, including by merger or consolidation, except with the prior consent in writing of the Owner. Any assignment, attempted assignment, transfer or attempted transfer by Charterer in violation of the foregoing sentence shall be void and of no effect and shall constitute a default hereunder on the part of the Charterer.
ARTICLE 27

Notices

All Notices and other communications hereunder shall be in writing and delivered or mailed or sent by electronic mail and addressed as follows (or at such other address for a party as shall be specified in a notice given in accordance with this Article 27):

To Owner:

[Insert Owner Contact Info]

With copies to:

[Insert Contact Info]

To Charterer:

HMS Ferries – Puerto Rico, LLC.
222 Pearl Street
New Albany, IN 47150
Tel: (206) 780-1440
Fax: (812) 941-9994
Attention: Matthew Miller, President

With copies to:

[Insert Contact Info]
ARTICLE 28

Dispute Resolution, Choice of Law, Venue

Any disputes shall be resolved in accordance with the provisions of Article 33 of the MTOMA.

ARTICLE 29

Salvage

All salvage services rendered by the Vessel during the Charter Period shall be for the benefit of Charterer. Charterer shall satisfy salvage claims of the crew and any other expenses incurred in connection with such salvage services.

ARTICLE 30

Entire Agreement

This Charter and the MTOMA (including any document(s) incorporated by reference herein or therein and/or annexed hereto or thereto) are intended by the parties to constitute the final expression of their agreement regarding the bareboat chartering of the Vessel and are the complete and exclusive statement of the terms under which the bareboat chartering is undertaken. No amendments, modification, waiver or discharge of any term in this Charter shall be valid unless reduced to writing and executed by the party to be charged therewith. The headings of provisions of this Charter are for convenience only and shall not be deemed to limit, restrict or alter their content, meaning or effect. In case of inconsistencies between provisions of this Agreement and the MTOMA, the provisions of the MTOMA shall control.
ARTICLE 31

Miscellaneous Provisions

(a) During the term of this bareboat charter, Charterer and Owner shall cooperate to assure the Vessel at all times will comply with all applicable federal, commonwealth and municipal statutes, ordinances, rules and regulations pertaining to the use, employment, possession, operation, navigation, maintenance, management or the work of the Vessel, and Charterer shall have on board the Vessel, when required thereby, valid certificates showing such compliance.

(b) This bareboat charter is not a personal contract, and Owner shall have the benefit of all limitations of and exemptions from all liabilities accruing to the Owners of vessels by any statute, regulation or rule of law for the time being enforced, and Charterer shall have the benefit of all limitations of and exemptions from liability accruing to chartered owners or charterers of vessel by any statute, regulation or rule of law for the time being enforced; provided, however, that such limitations of and exemptions from liability shall not in any way effect the obligations of the parties to each other.

(c) Charterer agrees that neither Charterer nor any of its employees nor any of its subcontractors is or shall be an agent, servant or employee of Owner by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by the Owner or the Commonwealth of Puerto Rico or any of their respective officers, agents or employees. The provisions of this section shall not be considered inconsistent with the treatment with Charterer as an agent of the Owner for purposes of the excise and sales and use tax exemptions that may apply with respect to purchases of articles and services acquired in the performance Charterer’s obligations under the MTOMA.

(d) If any provisions of this Charter violate or are in conflict with any valid and applicable convention, law, treaty, requirement, regulation and/or the like, such provisions shall be void; but the remaining provisions hereof shall continue in full force and effect.

(e) This Agreement may be executed in counterparts which when taken together shall constitute one and the same instrument.

(f) The Parties agree and acknowledge that this Agreement must be filed with the Office of the Comptroller of the Commonwealth, pursuant to the provisions of
Act. No. 18 of the Legislative Assembly of Puerto Rico, approved October 30, 1975, as amended. The obligations pursuant to this Agreement shall not be enforceable until it shall have been submitted for filing with the Office of the Comptroller of the Commonwealth as provided by such Act No. 18. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution or delivery of this Agreement. The parties acknowledge and agree that this Agreement is being executed pursuant the MTMOA and that all of the representations, warranties and covenants of the Charterer set forth in Sections 25.2(f), 25.2(h), 25.2(i), 25.2(j), 25.3, 25.4 and 25.5 pertaining to legal requirements for governmental contracts are hereby incorporated by reference as set forth expressly herein.

(Signature Page Follows)
IN WITNESS WHEREOF, the parties have caused this Charter to be duly executed as of the day and year first written above.

WITNESS

By: ________________________
Name: ________________________
Title: ________________________

PUERTO RICO AND THE ISLAND MUNICIPALITIES
MARITIME TRANSPORT AUTHORITY

By: ________________________
Name: ________________________
Title: ________________________

WITNESS

By: ________________________
Name: ________________________
Title: ________________________

HMS FERRIES – PUERTO RICO, LLC.

By: ________________________
Name: ________________________
Title: ________________________
EXHIBIT A

[Vessel Name]

CONDITION AND VALUATION SURVEY

On the date that the Vessel is placed at Charterer's disposal, as provided in Article 5, the particulars and capacities of the Vessel and her equipment shall be as set forth in the attached condition and valuation survey.
EXHIBIT B

PROTOCOL OF DELIVERY AND ACCEPTANCE

ARTICLE 1. Delivery of Vessel

On __________ at __________ EST, the U.S. flag vessel [Vessel Name], Official No. [XXXXXXX] (the "Vessel") was delivered by PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, and accepted by HMS FERRIES – PUERTO RICO, LLC., under the terms of the Bareboat Charter Agreement, (the "Charter") dated as of __________, ______ between the undersigned, and the Standards of Acceptance established pursuant to the MTOMA.

ARTICLE 2. Delivery of Inventory Items

Inventory Items required under Article 11 of this Charter have been delivered with the Vessel. A list thereof will be agreed upon after delivery.

ARTICLE 3. Consumable Stores

The bunkers, lubricating oils, unbroached provisions, wires, parts, oils, ropes and consumable stores on board the Vessel and the prices thereof will be agreed upon after delivery.

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: __________________________

Name: __________________________

Title: __________________________

HMS FERRIES – PUERTO RICO, LLC.

By: __________________________

Name: __________________________

Title: __________________________

App. C-20
1. Phase 2 Fixed Fee

The following provides the amount of Phase 2 Fixed Fee that the Authority will be required to provide to the Operator during Phase 2, for the scope of work in the Request for Proposal (Appendix HH). Any changes to the scope of work from that identified in the Request for Proposal will result in a contract modification and subsequent change to Appendix D. The Phase 2 Fixed Fee will be paid to the Operator in accordance with the terms included in Section 5.2 (b) – Compensation during Phase 2. The Phase 2 Fixed Fee amounts below are provided in nominal USD.

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<td>33,091,084</td>
<td>32,882,444</td>
<td>32,585,121</td>
<td>32,181,468</td>
<td>31,650,327</td>
<td>30,966,325</td>
<td>30,099,033</td>
</tr>
</tbody>
</table>
2. Adjustments to Compensation

The adjustments described below will be made in accordance with Section 5.12 of the Agreement.

(a) Insurance Premiums

<table>
<thead>
<tr>
<th>Phase 2 Year</th>
<th></th>
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</tr>
<tr>
<td><strong>Operator’s Base Cost of Insurance ($)</strong> ¹</td>
<td>1,300,628</td>
<td>1,313,633</td>
<td>1,326,770</td>
<td>1,340,038</td>
<td>1,353,438</td>
<td>1,366,972</td>
<td>1,380,642</td>
<td>1,394,448</td>
<td>1,408,393</td>
<td>1,422,477</td>
</tr>
<tr>
<td><strong>Operator’s Insurance Cost Ceiling ($)</strong> ²</td>
<td>1,430,690</td>
<td>1,444,997</td>
<td>1,459,447</td>
<td>1,474,041</td>
<td>1,488,782</td>
<td>1,503,670</td>
<td>1,518,706</td>
<td>1,533,893</td>
<td>1,549,232</td>
<td>1,564,725</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase 2 Year</th>
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<td>16</td>
<td>17</td>
<td>18</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td><strong>Operator’s Base Cost of Insurance ($)</strong></td>
<td>1,436,702</td>
<td>1,451,069</td>
<td>1,465,579</td>
<td>1,480,235</td>
<td>1,495,037</td>
<td>1,509,988</td>
<td>1,525,088</td>
<td>1,540,339</td>
<td>1,555,742</td>
<td>1,571,299</td>
</tr>
<tr>
<td><strong>Operator’s Insurance Cost Ceiling ($)</strong></td>
<td>1,580,372</td>
<td>1,596,175</td>
<td>1,612,137</td>
<td>1,628,259</td>
<td>1,644,541</td>
<td>1,660,987</td>
<td>1,677,596</td>
<td>1,694,372</td>
<td>1,711,316</td>
<td>1,728,429</td>
</tr>
</tbody>
</table>

Amounts are provided in nominal USD.

¹ Amount based on Operator’s proposed annual cost of insurance.
² Amount based on Operator’s proposed annual cost of insurance plus a 10% increase.
(b) Price of Fuel

<table>
<thead>
<tr>
<th></th>
<th>Phase 2 Year</th>
<th></th>
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<td>9</td>
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</tr>
<tr>
<td>Operator Base Price of Fuel ($)(^3)</td>
<td>3.61</td>
<td>3.64</td>
<td>3.68</td>
<td>3.72</td>
<td>3.75</td>
<td>3.79</td>
<td>3.83</td>
<td>3.87</td>
<td>3.90</td>
<td>3.94</td>
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<tr>
<td>Operator Fuel Price Ceiling ($)(^4)</td>
<td>3.97</td>
<td>4.01</td>
<td>4.05</td>
<td>4.09</td>
<td>4.13</td>
<td>4.17</td>
<td>4.21</td>
<td>4.25</td>
<td>4.30</td>
<td>4.34</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>Phase 2 Year</th>
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<td>16</td>
<td>17</td>
<td>18</td>
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<td>20</td>
</tr>
<tr>
<td>Operator Base Price of Fuel ($)</td>
<td>3.98</td>
<td>4.02</td>
<td>4.06</td>
<td>4.10</td>
<td>4.15</td>
<td>4.19</td>
<td>4.23</td>
<td>4.27</td>
<td>4.31</td>
<td>4.36</td>
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<tr>
<td>Operator Fuel Price Ceiling ($)</td>
<td>4.38</td>
<td>4.43</td>
<td>4.47</td>
<td>4.51</td>
<td>4.56</td>
<td>4.61</td>
<td>4.65</td>
<td>4.70</td>
<td>4.74</td>
<td>4.79</td>
</tr>
</tbody>
</table>

Amounts are provided in nominal USD.

\(^3\) Amount based on Operator’s proposed annual cost of fuel price per gallon.

\(^4\) Amount based on Operator’s proposed annual cost of fuel price per gallon plus a 10% increase.

App. D-3
3 Windfall Revenues and Windfall Net Income

(a) Sharing Service Revenues

<table>
<thead>
<tr>
<th>Year</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
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<td></td>
</tr>
<tr>
<td>Cumulative Projected Service Revenues ($)</td>
<td>8,058,750</td>
<td>16,305,713</td>
<td>24,745,463</td>
<td>33,382,692</td>
<td>42,222,211</td>
<td>51,268,951</td>
<td>60,527,970</td>
<td>70,004,453</td>
<td>79,703,718</td>
<td>89,631,220</td>
</tr>
<tr>
<td>Windfall Revenues Threshold ($)</td>
<td>10,476,375</td>
<td>21,197,426</td>
<td>32,169,102</td>
<td>43,397,500</td>
<td>54,888,874</td>
<td>66,649,636</td>
<td>78,686,361</td>
<td>91,005,789</td>
<td>103,614,834</td>
<td>116,520,586</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
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</tr>
<tr>
<td>Cumulative Projected Service Revenues ($)</td>
<td>99,792,549</td>
<td>110,193,440</td>
<td>120,839,776</td>
<td>131,737,588</td>
<td>142,893,061</td>
<td>154,312,540</td>
<td>166,002,533</td>
<td>177,969,712</td>
<td>190,220,924</td>
<td>202,763,190</td>
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<tr>
<td>Windfall Revenues Threshold ($)</td>
<td>129,730,313</td>
<td>143,251,473</td>
<td>157,091,709</td>
<td>171,258,864</td>
<td>185,760,979</td>
<td>200,606,302</td>
<td>215,803,293</td>
<td>231,360,626</td>
<td>247,287,202</td>
<td>263,592,147</td>
</tr>
</tbody>
</table>

Amounts are provided in nominal USD.

App. D-4
(b)  *Sharing Actual Ancillary Income*\(^5\)

<table>
<thead>
<tr>
<th>Phase 2 Year</th>
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<td>7</td>
</tr>
<tr>
<td>Cumulative</td>
<td>205,000</td>
<td>451,000</td>
<td>746,200</td>
<td>1,100,440</td>
<td>1,525,528</td>
<td>2,035,634</td>
<td>2,647,760</td>
</tr>
<tr>
<td>Projected Ancillary Income ($)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Windfall Net Income Threshold ($)</td>
<td>266,500</td>
<td>586,300</td>
<td>970,060</td>
<td>1,430,572</td>
<td>1,983,186</td>
<td>2,646,324</td>
<td>3,442,088</td>
</tr>
<tr>
<td>Phase 2 Year</td>
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<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td>Cumulative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Projected Ancillary Income ($)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Windfall Net Income Threshold ($)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Amounts are provided in nominal USD.

---

\(^5\) Only covers Ancillary Activities for which projections were included in the Operator’s proposal (Special Services and repair and maintenance work performed at the Isla Grande Facility).
LIST OF FERRY TERMINALS, MOORING FACILITIES, AND OTHER FACILITIES

1. Metro Service
   a) Pier 2, Old San Juan Terminal (Included in Phase 2 Pro Forma)
   b) Cataño Pier and Terminal (Included in Phase 2 Pro Forma)

2. Island Ferry Service
   a) Ceiba Pier and Terminal (Included in Phase 2 Pro Forma)
   b) Culebra Sardinas Pier and Terminal (Included Phase 2 Pro Forma)
   c) Culebra San Idelfonso Pier (Not included in Phase 2 Pro Forma)
   d) Isabel II Pier and Terminal (Not included in Phase 2 Pro Forma)
   e) Mosquito Pier and Terminal (Included in Phase 2 Pro Forma)

3. Isla Grande Shipyard
   a) Maintenance Base Facility (Included in Phase 2 Pro Forma)

What follows is a table with the information required by Section 25.1(j) of the Agreement:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Owner</th>
<th>Owner’s Address for Notices</th>
<th>Lease Agreement†</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pier 2</td>
<td>Puerto Rico Ports Authority</td>
<td>P.O. Box 362829 San Juan, PR 00936-2829</td>
<td>Lease Agreement dated June 30, 2005</td>
<td>20 years</td>
</tr>
<tr>
<td>Cataño</td>
<td>Puerto Rico Ports Authority</td>
<td>P.O. Box 362829 San Juan, PR 00936-2829</td>
<td>Lease Agreement dated June 30, 2005</td>
<td>20 years</td>
</tr>
<tr>
<td>Ceiba</td>
<td>Authority for the Redevelopment of the Land and Facilities of the Roosevelt Roads Naval Station</td>
<td>355 F.D. Roosevelt Avenue Suite 106 Hato Rey, PR 00918</td>
<td>January 21, 2019²</td>
<td>30 years</td>
</tr>
</tbody>
</table>

† This table lists the lease agreement existing as of the date hereof. However, the Authority will be entering into new lease agreements, in the form attached as Appendix FF to the Agreement, with each of the Owners listed in this Appendix.

² The day of the month on which the Agreement was executed is not entirely legible.
<table>
<thead>
<tr>
<th>Location</th>
<th>Authority</th>
<th>Address</th>
<th>Lease Agreement</th>
<th>Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sardinas</td>
<td>Puerto Rico Ports Authority</td>
<td>P.O. Box 362829, San Juan, PR 00936-2829</td>
<td>Lease Agreement dated June 30, 2005</td>
<td>20 years</td>
</tr>
<tr>
<td>Sardinas (waiting area)</td>
<td>Municipality of Culebra</td>
<td>P.O. Box 7 Culebra, PR 00775-0189</td>
<td>None in effect.</td>
<td>N/A</td>
</tr>
<tr>
<td>San Idelfonso</td>
<td>Commonwealth of Puerto Rico</td>
<td>Box 41269, Minillas Station, San Juan, PR 00940-1269</td>
<td>None in effect.</td>
<td>N/A</td>
</tr>
<tr>
<td>Isabel II</td>
<td>Puerto Rico Ports Authority</td>
<td>P.O. Box 362829, San Juan, PR 00936-2829</td>
<td>None in effect.</td>
<td>N/A</td>
</tr>
<tr>
<td>Mosquito</td>
<td>Municipality of Vieques</td>
<td>Office of the Mayor, Carlos Lebrum Street, Vieques, PR 00765</td>
<td>Lease Agreement dated August 29, 2018</td>
<td>23 years</td>
</tr>
<tr>
<td>Isla Grande</td>
<td>Puerto Rico Ports Authority</td>
<td>P.O. Box 362829, San Juan, PR 00936-2829</td>
<td>None in effect.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

1. **Metro Service.** The ferry facilities provided by the Authority for the metro service are described as follows:

a)  Pier 2, Old San Juan Terminal

The San Juan Pier No. 2 is part of the Metro Ferry Service route from Pier No. 2 in Old San Juan across the bay to the ferry terminal in Cataño. It is located at Paseo Concepción de Gracia, at Marina Street in Old San Juan.

The Facility includes the terminal building and adjacent plazas up to the top of the stairs to the promenade, and the retail spaces along the promenade.  

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3 This is the postal address of the Department of Transportation and Public Works, which is the governmental agency primarily responsible for these properties owned directly by the Commonwealth of Puerto Rico.

4 This agreement is pending ratification from the municipal legislature of the Municipality of Vieques.

5 Except for the following retail spaces, which shall remain under the control of the Puerto Rico Ports Authority: (1) Mavana Co. DBA Subway and; (2) Banco Popular de Puerto Rico.

App. E-2
Figure 1: Old San Juan Terminal Approximate Site Boundary
b) Cataño Pier and Terminal

The Cataño Terminal Facility is part of the Metro Ferry Service route across the bay to the ferry terminal at Pier No. 2 in Old San Juan. Located at the Cataño municipality’s north shore, at Las Nereidas Avenue.

The Facility includes the terminal building and adjacent plazas, including the landscaped areas between the terminal building and Avenida Las Nereidas. It also includes the retail spaces in the terminal building, the parking area to the east of the transit center is part of the terminal.

Figure 2: Cataño Terminal Approximate Site Boundary

---

6 The parking area located at the west of the transit center will remain as part of the Puerto Rico Ports Authority operation and maintenance.
2. **Island Service.** The ferry facilities provided by the Authority for the island service are described as follows:

a) **Ceiba Pier and Terminal⁷**

The Ceiba Terminal is part of the Island Ferry Service route from Ceiba to the Municipality Islands of Vieques and Culebra, located at the Marina Drive, in the Naval Station Roosevelt Roads, Ceiba.

The Facility includes the terminal building, facilities, and grounds, vehicle queueing, and passenger waiting areas and all passenger and vehicle loading systems, including ramps and gangways, and the cafeteria in the terminal building.

![Ceiba Terminal Approximate Site Boundary](image)

---

⁷ The Parties agree that the operations conducted at the Ferry Terminal in Ceiba on the Effective Date may be relocated to a new Ferry Terminal located near where such existing Ferry Terminal is located.
b) Sardinas Pier and Terminal

The Culebra ferry route includes cargo and passenger services. The ferry terminal is located in the Sardinas Bay, at the Pedro Márquez Street.

The Facility includes the terminal building and other facilities at the Sardinas terminal, the plaza between the existing terminal building and the vehicle loading ramp to the north.

Figure 4: Sardinas Terminal Approximate Site Boundary
c) San Idelfonso Pier

The San Idelfonso pier provides temporary/limited service for cargo and passenger vessels between Ceiba and Culebra. The pier is located in the Ensenada Honda Bay with access through the PR-250 road to the north, Culebra National Wildlife Administration facilities to the east, and Punta Cementerio to the west.

Figure 5: San Idelfonso Pier Approximate Site Boundary

App. E-7
d) Isabel II Pier and Terminal

The Vieques ferry route includes cargo and passenger services. The Isabel II pier and terminal are located at State Road PR-200R, in the Municipality of Vieques.

The Facility includes the terminal building, vehicle/cargo loading ramp, passenger operations facility, and grounds of the existing terminal at Isabel II.

Figure 6: Isabel II Terminal Approximate Site Boundary
e) Mosquito Pier and Terminal

The facilities include the main terminal building with ticket sales windows, administrative offices, and passenger and vehicle holding areas. The vehicle/cargo ramp and passenger loading facility are located on a causeway extending north from the main terminal building. The Mosquito Terminal has access through the PR-200.

The facility includes the terminal building, vehicle/cargo loading ramp, passenger operations facility, roadways, and grounds of the renovated facility.

Figure 7: Mosquito Terminal Approximate Site Boundary
3. **Isla Grande Shipyard.** The facility for the vessels’ maintenance and repairs provided by the Authority is described as follows:

a) **Maintenance Base Facility**

The shipyard facility located at Isla Grande in San Juan is comprised of a Synchrolift\(^8\) and upland track system administrative offices, warehouse, a fuel tank equipment facility, and a parking area. The property is located between the Fernando Ribas Dominicci airport to the north, the Crowley Terminal to the east and southeast, and the San Juan Bay to the west.

The Facility includes the shipyard, including all buildings, grounds, equipment, and furnishings.

\(^8\) The MTA is in the process of procuring services for the acquisition of a ship lift.
LIST OF KEY PERSONNEL

1. General

1.1 Operator Personnel. The Operator properly qualified and trained General Manager, Key Personnel and other personnel to operate, repair and maintain the Vessels, Facilities and other equipment to perform the Work in accordance with the standards required under this Agreement includes:

(1) Matthew Miller: President of HMS Ferries
(2) Steve Caputo: General Manager of Puerto Rico Operations
(3) Gregory Dronket: Operations, Fleet and Shipyards Management
(4) John Sainsbury: Naval engineering and Shipyards Management
(5) Dan Frank: Fleet Maintenance (routine maintenance and repair)
(6) Michael Doctor: Fleet Technical and Safety
(7) Tim Aguirre: Operations, Safety and Customer Service
(8) Kristen Crawford: Human Recourses and Training
(9) Shawn Bierdz: Chief Financial Person
(10) Erika Kinsella: Accounting
(11) Eric Denley: Legal Counsel, and Risk Management

The Operator Management and Administrative structure is composed of three operating units and a management administrative unit as described in figures 9.

Figure 9: Operator Management and Administrative Structure

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1 Key Technical and Financial Personnel provided in Statement of Qualification (SOQ) submitted by HMS Ferries.
2 Management and Administrative Structure provided in Proposal submitted by HMS Ferries.
### MONTHLY OPERATING BUDGET FOR PHASE 1 YEARS 1 - 3

#### 1. Phase 1 Year 1 Budget

<table>
<thead>
<tr>
<th>Labor</th>
<th>1</th>
<th>2</th>
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<th>11</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management &amp; Administration (Project)</td>
<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
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<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
<td>102,132</td>
</tr>
<tr>
<td>Project travel, relocation, housing, incentives</td>
<td>70,204</td>
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<td>904,619</td>
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<td>904,619</td>
<td>904,619</td>
<td>904,619</td>
</tr>
</tbody>
</table>

#### Operating - Ferry

| Fuel | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 | 314,302 |
| Lubes | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 | 12,572 |
| Maintenance (Island) | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 | 100,439 |
| Maintenance deliveries Logistics and Management | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 | 9,040 |
| Maintenance (Metro) | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 | 50,154 |
| Maintenance deliveries Logistics and Management | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 | 4,514 |
| Consumables and Supplies | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 | 29,276 |
| Utilities (all) | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 | 10,646 |
| Safety (all) | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 |
| Total | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 | 544,250 |

#### Operating - Terminals

| M&R - Island | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 | 6,337 |
| M&R - Main (Rosie Roads) | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 | 20,278 |
| M&R - Metro | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 | 5,323 |
| Consumables and Supplies (all) | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 | 14,258 |
| Travel (all) | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 | 8,872 |
| Office (all) | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 | 1,331 |

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App. G-1
### APPENDIX G

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App. G-2
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2. Phase 1 Year 2 Budget

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App. G-3
### APPENDIX G

| M&R - Island | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 |
| M&R - Main (Rosie Roads) | 30,417 | 30,417 | 30,417 | 30,417 | 30,417 | 30,417 | 30,417 | 30,417 | 30,417 | 30,417 |
| M&R - Metro | 9,125 | 9,125 | 9,125 | 9,125 | 9,125 | 9,125 | 9,125 | 9,125 | 9,125 | 9,125 |
| Consumables and Supplies (all) | 22,813 | 22,813 | 22,813 | 22,813 | 22,813 | 22,813 | 22,813 | 22,813 | 22,813 | 22,813 |
| Travel (all) | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 | 15,208 |
| Office (all) | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 |
| Safety (all) | 76,042 | 76,042 | 76,042 | 76,042 | 76,042 | 76,042 | 76,042 | 76,042 | 76,042 | 76,042 |

#### Operating - Shipyard

| M&R | 38,021 | 38,021 | 38,021 | 38,021 | 38,021 | 38,021 | 38,021 | 38,021 | 38,021 | 38,021 |
| Consumables and Supplies | 13,688 | 13,688 | 13,688 | 13,688 | 13,688 | 13,688 | 13,688 | 13,688 | 13,688 | 13,688 |
| Travel | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 | 2,281 |
| Office | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 |
| Utilities | 22,052 | 22,052 | 22,052 | 22,052 | 22,052 | 22,052 | 22,052 | 22,052 | 22,052 | 22,052 |
| Safety | 6,844 | 6,844 | 6,844 | 6,844 | 6,844 | 6,844 | 6,844 | 6,844 | 6,844 | 6,844 |
| Other | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 |
| **Total** | 92,010 | 92,010 | 92,010 | 92,010 | 92,010 | 92,010 | 92,010 | 92,010 | 92,010 | 92,010 |

#### Overhead

| HMS (corporate overhead allocation) | 27,854 | 27,854 | 27,854 | 27,854 | 27,854 | 27,854 | 27,854 | 27,854 | 27,854 | 27,854 |
| All Professional Services | 35,121 | 35,121 | 35,121 | 35,121 | 35,121 | 35,121 | 35,121 | 35,121 | 35,121 | 35,121 |
| Ongoing Website and Ticketing | 3,954 | 3,954 | 3,954 | 3,954 | 3,954 | 3,954 | 3,954 | 3,954 | 3,954 | 3,954 |
| Insurance Fleet (3% cap value) | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 | 75,000 |
| Insurance Land | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 |
| Insurance All Other | 10,417 | 10,417 | 10,417 | 10,417 | 10,417 | 10,417 | 10,417 | 10,417 | 10,417 | 10,417 |
| Ongoing IT | 3,802 | 3,802 | 3,802 | 3,802 | 3,802 | 3,802 | 3,802 | 3,802 | 3,802 | 3,802 |
| Travel | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 |
| Utilities | 6,083 | 6,083 | 6,083 | 6,083 | 6,083 | 6,083 | 6,083 | 6,083 | 6,083 | 6,083 |
| Phone | 7,878 | 7,878 | 7,878 | 7,878 | 7,878 | 7,878 | 7,878 | 7,878 | 7,878 | 7,878 |
| Office supplies | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 | 4,563 |
| **Total** | 223,943 | 223,943 | 223,943 | 223,943 | 223,943 | 223,943 | 223,943 | 223,943 | 223,943 | 223,943 |

#### Marketing and Communications

| | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 | 20,833 |

App. G-4
### APPENDIX G

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### 3. Phase 1 Year 3 Budget

#### Phase 1 Year 3 Month

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#### Operating - Ferry

| Fuel | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 | 586,052 |
| Maintenance (Island) | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 | 304,331 |
| Maintenance (Metro) | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 | 86,839 |
| Maintenance deliveries Logistics and Management | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 | 7,816 |
| Consumables and Supplies | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 | 50,689 |
| Utilities (all) | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 | 18,433 |
| Safety (all) | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 | 15,360 |

App. G-5
### APPENDIX G

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#### Operating - Terminals

| M&R - Island | 21,610 | 21,610 | 21,610 | 21,610 | 21,610 | 21,610 | 21,610 | 21,610 | 21,610 |
| M&R - Main (Rosie Roads) | 37,388 | 37,388 | 37,388 | 37,388 | 37,388 | 37,388 | 37,388 | 37,388 | 37,388 |
| Consumables and Supplies (all) | 33,291 | 33,291 | 33,291 | 33,291 | 33,291 | 33,291 | 33,291 | 33,291 | 33,291 |
| Travel (all) | 17,444 | 17,444 | 17,444 | 17,444 | 17,444 | 17,444 | 17,444 | 17,444 | 17,444 |
| Office (all) | 4,387 | 4,387 | 4,387 | 4,387 | 4,387 | 4,387 | 4,387 | 4,387 | 4,387 |
| Utilities (all) | 26,131 | 26,131 | 26,131 | 26,131 | 26,131 | 26,131 | 26,131 | 26,131 | 26,131 |
| Safety (all) | 81,385 | 81,385 | 81,385 | 81,385 | 81,385 | 81,385 | 81,385 | 81,385 | 81,385 |
| **Total** | 236,852 | 236,852 | 236,852 | 236,852 | 236,852 | 236,852 | 236,852 | 236,852 | 236,852 |

#### Operating - Shipyards

| M&R | 38,401 | 38,401 | 38,401 | 38,401 | 38,401 | 38,401 | 38,401 | 38,401 | 38,401 |
| Consumables and Supplies | 13,824 | 13,824 | 13,824 | 13,824 | 13,824 | 13,824 | 13,824 | 13,824 | 13,824 |
| Travel | 2,304 | 2,304 | 2,304 | 2,304 | 2,304 | 2,304 | 2,304 | 2,304 | 2,304 |
| Office | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 |
| Safety | 6,912 | 6,912 | 6,912 | 6,912 | 6,912 | 6,912 | 6,912 | 6,912 | 6,912 |
| Other | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 |
| **Total** | 92,931 | 92,931 | 92,931 | 92,931 | 92,931 | 92,931 | 92,931 | 92,931 | 92,931 |

#### Overhead

| HMS (corporate overhead allocation) | 28,133 | 28,133 | 28,133 | 28,133 | 28,133 | 28,133 | 28,133 | 28,133 | 28,133 |
| Insurance Fleet (3% cap value) | 75,750 | 75,750 | 75,750 | 75,750 | 75,750 | 75,750 | 75,750 | 75,750 | 75,750 |
| Insurance Land | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 |
| Insurance All Other | 10,521 | 10,521 | 10,521 | 10,521 | 10,521 | 10,521 | 10,521 | 10,521 | 10,521 |
| Travel | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 | 21,042 |
| Phone | 6,144 | 6,144 | 6,144 | 6,144 | 6,144 | 6,144 | 6,144 | 6,144 | 6,144 |
| Communications | 7,957 | 7,957 | 7,957 | 7,957 | 7,957 | 7,957 | 7,957 | 7,957 | 7,957 |
| Office supplies | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 | 4,608 |
| **Total** | 226,183 | 226,183 | 226,183 | 226,183 | 226,183 | 226,183 | 226,183 | 226,183 | 226,183 |

#### Marketing and Communications

App. G-6
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**Subtotal**

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The amounts above do not include reimbursement for tax as described in Section 5.1(a) of the Agreement, any Vessel Extraordinary Repairs or any Facility Extraordinary Repairs that the Authority requests the Operator undertake in accordance with Sections 8.6(b) and 13.2(b) of the Agreement, respectively.
APPENDIX H

FORM OF PAYMENT AND PERFORMANCE BOND

Argonaut Insurance Company
Deliveries Only: 225 W. Washington, 24th Floor,
Chicago, IL 60600
United States Postal Service: PO Box 469011
San Antonio, TX 78246

BOND NO. SUR0059960

KNOW ALL MEN BY THESE PRESENTS:

That HMS Ferries Inc. (the "Principal"), and Argonaut Insurance Company, as surety(ies) (the "Surety", and together with the Principal, the "Obligors"), are held and firmly bound unto the Puerto Rico and the Island Municipalities Maritime Transport Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, and its respective successors and assigns, as obligee (collectively, the "Obligee") in the amount of Five Million Dollars ($5,000,000.00) (the "Stated Amount") lawful money of the United States of America, for the payment of which to the Obligee, the Principal and the Surety do hereby bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a "Maritime Transport Operations and Maintenance Agreement" with the Obligee dated as of October 27, 2020 (the "Contract"), which Contract is by reference incorporated herein and made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall comply with all of its obligations under the Contract and shall make due and punctual payment of any amount due by the Principal to the Obligee under the Contract, including its obligation to make any payment due as a result of an event of default under the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. The Principal and Surety hereby jointly and severally agree with the Obligee that if the Principal fails to comply with any of its payment obligations under the Contract including, those payment obligations resulting from a default by the Principal under the Contract, after the expiration of a period of thirty (30) days after the date on which the payment obligation was due, Obligee may execute this bond and collect from the Surety the amount then due by the Principal. The amount so paid by Surety shall be deducted from the Stated Amount of this Bond.

2. The Obligee shall have a direct right of action against the Principal and Surety, which right of action shall be asserted in proceedings instituted in the U.S. Federal Court in the District of Puerto Rico.
3. The bond will remain in full force and effect until **October 27, 2021**
   The bond shall be automatically renewed by continuation certificate signed by
   the Surety from year to year, on the same terms and conditions, unless cancelled.

4. The bond shall not be subject to cancellation by the Surety except after notice to the
   Obligee, to the address specified in the Contract, by registered mail at least sixty (60)
   days prior to the date of cancellation. Failure to maintain this bond in the amount
   provided above shall be a default of the Principal under the Contract, and may, at the
   Obligee's discretion, result in the Obligee executing this bond and collecting for its use
   the full amount payable hereunder for application in accordance with the Contract.

5. If this bond is not renewed at least sixty (60) days prior to its expiration date, Obligee
   may execute this bond and collect for its use the amount due hereunder for application in
   accordance with the Contract.

6. This bond is governed by the laws of the Commonwealth of Puerto Rico.

7. Regardless of the number of years this Bond is in force, the number of renewals made,
   and/or the premium charges, the maximum amount payable under the Bond, shall be
   limited to the Stated Amount.

8. Any amount of partial drawings and multiple presentations are permitted under this Bond.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their
several seals this 23rd day of October, 2020, the name and corporate seal of each corporate party
being hereto affixed, and these presents duly signed by the undersigned representative pursuant
to authority of its governing body.
In the Presence of:

[Corporate Seal]

HMS Ferries Inc.

By: [Signature]

Name: Shawn M. Biardz
Title: Treasurer

Surety:

Argonaut Insurance Company

By: [Signature]

Name: Todd P. Loehnert
Title: Attorney-in-Fact
Argonaut Insurance Company  
Deliveries Only: 225 W. Washington, 24th Floor  
Chicago, IL 60606  
United States Postal Service: P.O. Box 469011, San Antonio, TX 78246

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

John B. Ayres, Monica A. Kaiser, Todd P. Loechner, Paula J. Teague, Michael W. Baxter, Madison Haller

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

$85,000,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 8th day of May, 2017.

Argonaut Insurance Company

by:  
Joshua C. Betz, Senior Vice President

STATE OF TEXAS  
COUNTY OF HARRIS SS:

On this 8th day of May, 2017 A.D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.

Kathleen M. Meece  
(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the 27th day of October 2020.

James Blizard, Vice President-Surety

THIS DOCUMENT IS NOT VALID UNLESS THE WORDS ARGO POWER OF ATTORNEY ARE IN BLUE. IF YOU HAVE QUESTIONS ON AUTHENTICITY OF THIS DOCUMENT CALL (210) 321-8400.
APPENDIX I

TRANSITION PLAN

PURPOSE

The purpose of the Transition Plan (Plan) is to establish a rational, methodical, and cooperative approach for transferring the operation and maintenance of the Puerto Rico Ferry System from the government of Puerto Rico (Authority) to HMS Ferries, Inc. (HMS).

The Plan explains key phases and milestones, along with certain tasks that must be completed for the transfer of service to occur in a safe, reliable, efficient manner. By its nature, the Plan will be developed and implemented in stages, and will be modified based on actual conditions encountered.

INTENT

This Plan will require development of a Joint Project Team under the construct of an Integrated Command Structure (ICS)\(^1\), which will allow for both parties to participate in all aspects of the transition.

As Phase 1 conditions precedent are satisfied, a joint (Authority and HMS) ICS structure will be development and readied for execution of the transition. While transition is preliminarily estimated to take 1 year, it could take longer depending on Authority’s ability to deliver the Ferry System Assets (Vessels and Facilities) to HMS as required in full working order and in full regulatory compliance as described in the Operations and Maintenance Agreement.

GROUND RULES

The ground rules for the development of the Plan are outlined below:

1. **Communication and Cooperation** - An effective transition can only occur through an intense commitment to communication and cooperation. At any time that communication and/or cooperation breaks down between Authority and HMS, the process shall halt and the issues shall be resolved to the mutual satisfaction of the Parties.

   **There shall be no unilateral decisions imposed during the development and implementation of the Plan.**

2. **Roles and Responsibilities** – The Plan shall define roles and responsibilities and clearly identify the responsible party of the Joint Project Team. The responsible party is required to routinely communicate the status of its activities and tasks, and notify team members of potential challenges or impediments before they manifest into a problem. The ICS construct will allow for this communication.

\(^1\) Developing and populating an organization chart for the ICS will be one of the first joint task of the Transition Period.
The effective transfer of the Ferry System from the Authority to HMS is a team effort, but will require individual parties to fulfill their documented obligations to the team. Failures to meet established plan deliverables can impact the project schedule and costs.

3. **Project Management Process** – The Plan and related activities shall follow established project management protocol.

   Unless another framework is agreed to, the standards of the Project Management Institute (PMI) will serve as the guideline for the development of the Comprehensive Transition Project Plan.

4. **Dispute Resolution** – The ability of the Parties to work cooperatively and develop a rational and methodical Plan is prerequisite to any actual transition activities.

   If the Parties cannot successfully develop a mutually agreeable Comprehensive Transition Project Plan either party may initiate the process described in Article 33 of the Operating and Maintenance Agreement.

**TASK LIFE CYCLE**

A Task Life Cycle is a series of specific tasks which occur during the project. They can take place sequentially or in parallel, but all have a start and completion. Often, a project will not be able to proceed to a subsequent task until a preceding task is complete. This transition point is referred to as a “Task Gate.”

The schedule relationship between critically linked phases is considered the critical path.

Here the recognized project life-cycle phases:

- **Project Start** (Commences when the Conditions Precedent in Section 2.4 of the Operations and Maintenance Agreement have been satisfied)
- **Organization and Planning** (This document outlines the process for the development of the Comprehensive Transition Project Plan)
- **Task Work**
- **Task Close** (At the completion of all transition activities)

**PROCESS GROUPS**

Every project requires team effort and all persons involved during the project lifecycle are part of the project team.

The project team is organized into functional Process Groups. These groups are defined as:

- **Initiating** (occurring now)
- **Planning**
- **Executing**
- Monitoring and Controlling
- Closing

Once activated, this project requires clear definition of the members associated with these five process groups.

PROJECT INFORMATION AND DATA

A large volume of information and data will need to be collected, analyzed, and disseminated to the project team and process groups. This will generally be organized as:

- **Performance Data** – (e.g. raw collected data and measurements)
- **Performance Information** – (e.g. deeper analysis or project data resulting in identification of project trends, issues, or changes)
- **Performance Report** (e.g. project reports documenting project performance, status, issues and possible adjustments)

Once activated, this project requires regular collection and dissemination project information and data and integration of that into project monitoring and adjustment.

PROJECT PLAN ELEMENTS

This Transition Plan is a guideline for the processes that provides for the safe, reliable, and efficient transfer of the Ferry System from the Authority to HMS in a rational, methodical, and cooperative manner.

To accomplish this, a Project Team must be identified and the details of the Comprehensive Transition Project Plan must be jointly developed and implemented. The Comprehensive Transition Project Plan will at a minimum address:

- Scope of Work and Deliverables
- Schedule
- Costs and Budget
- Resources
- Communications and Stakeholder Engagement
- Risk Management
- Change Management
- Monitoring and Control
- Project Close

HMS STATED APPROACH

In its Technical Proposal, HMS presented and the Authority accepted, HMS’s approach to planning and mobilization activities. Here is a summary:
**Project Start** – This is the date when the Conditions Precedent in Section 2.4 of the Operations and Maintenance Agreement have been satisfied and is Contract Commencement. All activities are tied to this milestone.

**Mobilization Activities** – This is when the development of the Comprehensive Transition Project Plan outlined in this document officially commences. (See Task 4 – Shipyards and Ferry Transition Plan.)

**Task 1 – Asset Assessments** – Upon Project Start, the development of the Asset Assessment Plan will begin. Once the Asset Assessment Plan is agreed to, assessments shall commence. These assessments shall take place on the vessels and facilities that HMS will take operational control over during Phase 1. The purpose of the asset assessments is to inspect and document the general condition of the assets, associated inventories, and to identify deficiencies in the areas of:

- Regulatory compliance
- Manufacturer’s recommended maintenance and repair regimes
- Customer Amenities
- Operational readiness

The US Coast Guard and third-party surveyors will participate in these inspections. The intent is for the team to expose all issues so that they can be objectively addressed.

60 days is scheduled for completion of the asset inspection the costs of which shall be born fully by the Authority (or paid for by HMS and reimbursed by Authority as described in the Operations and Maintenance Agreement.)

**Task 2 – Asset Rehabilitation Plan** – The development of the Asset Rehabilitation Plan for each particular asset will commence within two weeks of the assessment of that asset. While HMS will work with the Authority on the development of the Rehabilitation Plans, the Authority be responsible for the costs of implementing and managing rehabilitation activities.

The purpose of the Asset Rehabilitation Plan is to outline the corrective actions need to be completed to bring the assets to the appropriate Standards of Acceptance in the Operating Agreement. It is not until the assets are at the proper standard that HMS will assume responsibility for operating and maintaining a specific asset.

60 days are scheduled for development of the Asset Rehabilitation Plans after the completion of the Asset Assessments.

Neither party can unilaterally approve the Asset Rehabilitation Plan.

**Task 3 – Implementation of the Asset Rehabilitation Plan** – Once each Asset Rehabilitation Plan is completed and approved by the parties, that plan can be implemented.
The ATM is responsible for implementing and managing asset rehabilitation and all associated costs. HMS will need to accept and approve that the work has been completed as described in the Asset Rehabilitation Plan.

180 days are allocated for rehabilitation activities. However, this will be adjusted based on the approved Asset Rehabilitation Plan (Task 2) and implementation of the Rehabilitation Plan (Task 3).

**Task 4 – Completion of the Asset Rehabilitation** – Mutual acceptance by both parties of the resolution of each deficiency noted in the Rehabilitation Plan is an absolute requirement and major milestone.

Neither party can unilaterally declare that work must commence or that it is complete. If agreement cannot be reached, the Dispute Resolution process in Article 33 shall be followed.

**Task 5 – Implementation of the Transition** – Implementation of the transition will commence once the Asset Rehabilitation and Ferry and Shipyard Transition Plans are approved.

Transition activities are scheduled to take 270 days. However, this will be adjusted based on what is developed during Task 4 (Ferry and Shipyard Transition Plan).

Transition activities are anticipated to occur in the following order:

a. Shipyard Transition
b. Metro Transition
c. Culebra Transition
d. Vieques Transition

Each area transition is scheduled to commence 60 days after the next. The actual transition schedule will be established during Task 4 and will be subject to ATM having Ferry System assets rehabilitated as required.

**Task 6 – Commence Ticketing and Reservation System Upgrade** – HMS originally proposed this task would commence 180 days after Project Start.

The Authority and HMS have agreed to commence Ticketing and Reservation System upgrades immediately following Project Start.

180 days are scheduled for this activity with the new ticketing system in place when HMS takes over the Metro Ferry Service.
## Detailed Transition Table:

The attached provides greater clarity on the anticipated year-long transition that the Plan will guide both parties in completing.
LANDLORD’S CONSENT, ESTOPPEL AND SUBORDINATION AGREEMENT

[LETTERHEAD]

LANDLORD’S CONSENT, ESTOPPEL AND SUBORDINATION AGREEMENT

To: HMS FERRIES-PUERTO RICO, LLC
222 Pearl Street, New Albany, IN 47150
Attention: __________________________

Attention: Javier Vázquez-Morales, Esq.

Re: Maritime Transport Operations and Maintenance Agreement (as ammended or otherwise modified from time to time, the “O&M Agreement”) between Puerto Rico and The Island Municipalities Maritime Transport Authority, HMS Ferries, Inc. and HMS Ferries-Puerto Rico, LLC, (together its successors and permitted assignees as their interests may appear, the “Operator”)

Ladies and Gentlemen:

The undersigned, as landlord (together its successors and assignees, the “Landlord”), and the Puerto Rico and The Island Municipalities Maritime Transport Authority, a public corporation and instrumentality of the Commonwealth of Puerto Rico created pursuant to Act No. 1-2000, as amended (together its successors and assignees, the “Authority”), are parties to that certain [INSERT NAME OF THE AGREEMENT], dated as of ________________, ______ (as ammended or otherwise modified from time to time, the “Agreement”), for certain real property and related personal property (the “Property”) more particularly described in Exhibit A attached hereto and made a part hereof.

The Government of Puerto Rico, through the Authority and the Puerto Rico Public-Private Partnerships Authority (the “P3 Authority”), instituted as an important public policy the establishment of a public-private partnership in order to improve the passenger and cargo ferry services, including the Island Service (covering the ferry services between Vieques, Culebra and Ceiba) and the Metro Service (covering the ferry services between Old San Juan and Cataño). Accordingly, the Authority and the P3 Authority initiated and followed a procurement process consistent with the provisions of Act No. 29-2009, as amended, also known as the Public-Private Partnership Act (the “PPP Act”) and the procurement guidelines of the Federal Transit Administration, pursuant to which the Operator was selected as the private sector entity to (i) manage and operate the Authority’s ferry system (the “Ferry System”), including the vessels owned or chartered by the Authority (the “Vessels”) and the ferry terminals, parking facilities, mooring facilities and other facilities and related infrastructure used in connection with the ferry services which are under the control of the Authority (collectively referred to as the “Facilities”), which include the Property under the
control of the Authority by virtue of the Agreement with the Landlord, and (ii) engage in other ancillary commercial activities (the “Project”). The Project constitutes a Priority Project (as that term is defined in the PPP Act) and regulations thereunder and will proceed according to the provisions set forth in the PPP Act.

In consideration thereof, the Authority, HMS Ferries, Inc. and the Operator will enter into the O&M Agreement, which, among other matters, grants the Operator the right to use the Vessels and the Facilities, together with all the rights and privileges necessary for the Operator to operate and manage the Ferry System and to conduct ancillary activities permitted thereunder (including, without limitation, the right to enter into agreements with third parties granting them rights derived from such agreements with the Authority, such as a concession agreement granting a right to use a space in the Facilities to offer and sell products or services and subcontracting any portion of the Services in accordance with the O&M Agreement), as more particularly described in the O&M Agreement (collectively, the “Assigned Rights”). A copy of the O&M Agreement has been provided to the Landlord.

Landlord hereby represents, warrants, confirms and certifies to the Operator that the following statements are true, correct and complete as of the date hereof, and hereby covenants and agrees with the Authority and the Operator, as follows:

1. The Agreement is in full force and effect and constitutes the valid, legal and binding obligation of the Landlord, enforceable against the Landlord in accordance with its terms.

2. A true, correct and complete copy of the Agreement is attached hereto as Exhibit B. Except as set forth in Exhibit B and in this Landlord’s Consent, Estoppel and Subordination Agreement (this “Consent and Estoppel”), (i) the Agreement has not been amended, supplemented, terminated or otherwise modified, (ii) the Authority has not made any waivers with respect to any provisions of the Agreement, and (iii) the Agreement is the only agreement between Landlord and the Authority regarding the subject thereof, including the Property.

3. The Landlord is the sole owner in fee simple title (“pleno dominio”) of the Property. Except as set forth in Exhibit C, the Landlord has not mortgaged, pledged or otherwise encumbered its interest in the Property. With respect to each encumbrance disclosed on Exhibit C, the Landlord covenants and agrees to make commercially reasonable efforts to cause the beneficiary of such encumbrance to deliver, for the benefit of the Landlord, the Authority and the Operator, (i) an acknowledgment and consent to the Agreement, the O&M Agreement and the assignment of the Assigned Rights to the Operator, and (ii) a non-disturbance and attornment agreement pursuant to which such beneficiary agrees that neither it nor any successor or assign will disturb the Authority’s or Operator’s possession of the Property, to the extent no event of default under the Agreement has occurred and is continuing. No third party has an interest over the Property that may be conflicting with the interests of the Operator.
over the Property and no other lease or similar agreement encumbers the Property as of the date hereof.

4. Except as set forth in Exhibit C, no person or entity has challenged (or, to the best of Landlord’s knowledge, would have cause to challenge) the grant of the Agreement to the Authority, or the performance by Landlord of its obligations thereunder, nor has any person or entity asserted any right against Landlord or the Property that has or may reasonably be expected to have an adverse effect on the Authority’s interest in the Property or the development, construction, operation or management of the Property as concurrently done by the Authority or as contemplated under the O&M Agreement.

5. Except as set forth in Exhibit C, there are no outstanding defenses, claims or offsets against the Authority under the Agreement.

6. Other than as set forth in Exhibit C hereto, there are no monetary obligations of the Authority outstanding and unpaid under the Agreement. All rent or charges payable by the Authority under the Agreement have been paid as due through the period ending on the date hereof, and no rent or charge has been paid more than thirty (30) days in advance of its due date.

7. The annual and monthly rental rate applicable during the term of the Agreement is as set forth in Exhibit C, and the same is payable by the Authority to the Landlord as set forth in the Agreement.

8. Except as set forth in Exhibit C, there are no actions pending against Landlord under any bankruptcy or insolvency laws of the United States or any state, commonwealth, territory or possession thereof.

9. Except as set forth in Exhibit C, there is no litigation or other legal proceeding pending or, to the best of the Landlord’s knowledge, threatened with respect to the Agreement or the Property, and no condemnation or eminent domain proceedings are pending or have been threatened in writing with respect to the Property or any portion thereof.

10. To the best of Landlord’s knowledge, except as set forth in Exhibit C, there is (A) no active environmental claim, (B) a threat of an environmental claim, or (C) knowledge of facts that could reasonably be expected to result in an environmental claim, against Landlord, the Authority or any other potentially responsible party in connection with the past or present ownership, use or operation of the Property, by any federal, state or municipal authority, and the Property is in compliance with all applicable environmental laws.

__________________________

App. J-3
11. To the best of Landlord’s knowledge, except as set forth in Exhibit C, the Property is (A) structurally sound and free of any design, construction, soil and/or structural defects of any kind and (B) free of asbestos or any other hazardous substances in violation of applicable law.

12. The Landlord hereby further certifies, confirms, represents and warrants as follows:

   a. No notice of default under the Agreement has been given by Landlord to the Authority. No notice of default has been received by Landlord from the Authority. To the best of Landlord’s knowledge, the Authority is not in default in the performance of any of its obligations under the Agreement. Landlord is not in default in the performance of any of its obligations under the Agreement. To the best of Landlord’s knowledge, no condition exists which might reasonably be expected to give rise, with the passage of time or otherwise, to a default or breach under the Agreement;

   b. To the best of Landlord’s knowledge, the Authority has not assigned or encumbered the Agreement or subleased or otherwise assigned all or any portion of the Property or the Assigned Rights, and Landlord has not consented to any assignment, mortgage or encumbrance of the Agreement, or sublease or assignment of all or any portion of the Property, other than to the Operator;

   c. As of the date hereof, the undersigned has no current intention to sell, transfer, or convey the Property to any person; and

   d. To the extent permitted under applicable law, the undersigned hereby expressly and unconditionally consents to Authority’s recordation, at Authority’s sole cost, of the Agreement in the corresponding Section of the Registry of Property of Puerto Rico.

13. Landlord hereby acknowledges and consents to the execution of the O&M Agreement and to the assignment of the Assigned Rights by the Authority to the Operator, which assignment of rights is hereby confirmed, consented and agreed to by the Landlord with the same force and effect as if the Assigned Rights were directly granted, assigned and vested by the Landlord to the Operator.

14. Landlord confirms that it has no interest or right as a third-party beneficiary to the rights or obligations of the Authority under the O&M Agreement and agrees that the enforcement of such rights or obligations shall be in the sole discretion of the Authority, in accordance with the provisions of the O&M Agreement. Landlord further agrees not to interfere with the exercise by the Operator and the Authority of their respective rights under the O&M Agreement; provided, however, that the foregoing shall not be interpreted as a renunciation or waiver by Landlord of any rights it may have against the Authority under the Agreement.

15. In consideration to the high public interest of the Project, and being the Project a Priority Project under the PPP Act, the Landlord agrees to and hereby subordinates its right to the payment of money, whether for rent, charges, expenses or indemnities (environmental or otherwise), from the Authority under the Agreement to the
satisfaction in full by the Authority of its obligations under the O&M Agreement; provided, however, that while no event of default by the Authority under the O&M Agreement shall have occurred Landlord shall have the right to collect any rental or other payments due by the Authority under the Agreement.

16. The Operator is hereby authorized by Landlord to place signage on the Property, including, without limitation, signage containing the Operator’s name and logo and other informational signage; provided, however, that each signage shall comply with applicable law and regulations.

17. With respect to Landlord’s retained maintenance and repair obligations, as set forth in Section [_____] of the Agreement, the Landlord covenants and agrees to recognize to the Operator the same rights afforded to the Authority thereunder, provided, however, the Operator shall have no obligation or responsibility to the Landlord. Landlord shall look solely to the Authority with respect to any obligation arising under the Agreement.

18. Landlord acknowledges that the agreements listed in Exhibit C hereto between the Authority and third parties are currently in place with respect to the Property and hereby confirms that such agreements, as well as any similar agreements entered into by Operator and third parties are authorized and permitted by the Landlord, as owner of the Property.

19. Effective upon the Landlord’s execution of this Landlord’s Consent, Estoppel and Subordination Agreement (this “Consent and Estoppel”), the Landlord hereby represents and warrants that (a) the Agreement shall not be further amended or modified without the prior written consent of the Operator; (b) the Landlord is in compliance with all of the terms of the Agreement; and (c) Landlord is fully acquainted with the O&M Agreement and the Assigned Rights, having had the opportunity to request the advice of a counsel of its own choosing and to ask such questions to the Authority and the Operator as it deemed appropriate for the execution of this Consent and Estoppel. Landlord is fully aware of the terms and provisions contained herein and of their effect.

20. The Landlord shall not terminate the Agreement except (i) with the prior written consent of the Authority and the Operator or (ii) upon the occurrence and continuance of an event of default that gives Landlord a termination right under the Agreement, only if Landlord has complied with the applicable notice requirement in this Paragraph 21 and the event of default has not been cured within the applicable cure period provided in the Agreement or herein (whichever expires later). If at any time the Landlord intends to terminate the Agreement as a result of the occurrence of any event of default thereunder, the Landlord shall deliver a written notice to the Authority and simultaneously to the P3 Authority and the Operator, indicating the circumstances giving way to such consideration and provide the Authority and the Operator the opportunity to remediate or cure the situation (provided that it shall not be an obligation of the Operator and such cure rights shall be the principal responsibility of the Authority), to the extent curable as permitted by applicable law,
as further provided below. Notwithstanding any provision of the Agreement to the contrary:

a. if such default results from the Authority’s failure to pay any monetary obligations required to be paid by it under the terms of the Agreement, the Operator shall be entitled, but not obliged, to cure, or cause to be cured, any such default within thirty (30) days after the Landlord has given written notice to the Authority of the default, with a copy of such notice having been simultaneously sent to the Operator; and

b. as to any default by the Authority, other than a monetary default as described in clause (a) above, the Operator shall be entitled, but not obligated, to cure, or cause to be cured, any such default so long as (i) the Operator is using reasonable diligence to cause such cure to be effected or the Operator is enforcing any of its rights under the O&M Agreement and has provided notice to the Landlord to such effect within sixty (60) days after receiving the copy of the written notice of default sent by the Landlord, and (ii) all monetary obligations required to be paid by the Authority under the terms of the Agreement are being timely paid; provided, however, that the exercise, at any time and from time to time, by the Operator of any of its rights under this Paragraph 21 shall not be construed as an assumption of any of the Authority’s obligations and/or liabilities under the Agreement.

21. During the term of the O&M Agreement, any conflict or inconsistencies between (i) the terms of the Agreement and this Consent and Estoppel, the terms of this Consent and Estoppel shall control, and (ii) the terms of the O&M Agreement and the Agreement, the terms of the O&M Agreement shall control, provided that any such conflict or inconsistency shall be interpreted and resolved in a manner so as to permit the continuation of the services rendered by the Operator under the O&M Agreement and without affecting Operator’s rights and obligations under the O&M Agreement.

22. Upon continuance of an event of default by the Authority under the Agreement (such default not having been cured during the applicable cure period established in the Agreement or hereunder), the Landlord will grant the Operator the right to enter upon the Property during a sixty (60) day period commencing on the date of expiration of the last applicable cure period, for the purpose of removing the Operator’s personal property therefrom.

23. Although the Operator may, but is not obliged to, cure the Authority’s defaults under the Agreement as provided in Paragraph 21 hereof, the Operator shall not be directly or personally liable for any default or breach of the Authority in connection with the Agreement.

24. In the event the Landlord encumbers its fee simple title to the Property or otherwise encumbers or conveys any of the rights underlying the Assigned Rights, the Landlord covenants and agrees to cause the third party acquiring such interests to provide (i) an acknowledgment and consent to the Agreement, to the O&M Agreement and to the Operator’s Assigned Rights and (ii) a non-disturbance and attornment agreement,
pursuant to which it agrees not to disturb the Authority’s or Operator’s possession of the Property, to the extent no event of default under the Agreement has occurred and is continuing.

25. The Landlord agrees to send to the Operator a copy of any notice or other communications received by the Landlord of a breach or default under any agreement or instrument of encumbrance to which the Landlord is a party and which may affect the Agreement or the Property.

26. The Landlord shall immediately notify the Operator if it becomes aware of any information or event related to the Property that may reasonably be expected to have a material adverse effect on the operation of the Ferry System or Facilities or the rights and obligations of the Operator under the O&M Agreement.

27. The undersigned further understands and acknowledges that the Operator is acting in reliance upon the representations, warranties, certifications and agreements contained in this Consent and Estoppel and agrees that the Operator and its successors and assigns may rely upon such representations, warranties, certifications and agreements for that purpose.

28. All notices and other communications to be provided under this Agreement shall be in writing and delivered by certified mail, returned receipt requested, at the following addresses or to such other addresses as the parties concerned may subsequently notify in writing to the other party in accordance with the terms hereof:

If to Operator:

HMS FERRIES-PUERTO RICO, LLC
222 Pearl Street, New Albany, IN 47150
Attention: ________________

with copy to (which shall not constitute notice):

O’Neill & Borges LLC,
250 Muñoz Rivera Ave., Suite 800,
San Juan, Puerto Rico 00918-1813,
Attention: Javier Vázquez-Morales, Esq

If to the Authority:

[PLEASE PROVIDE]

with copy to (which shall not constitute notice):

Puerto Rico Public Private Partnership Authority
[PLEASE PROVIDE]
If to the Landlord:

[PLEASE PROVIDE]

29. This Consent and Estoppel shall inure to the benefit of the Operator and its successors and assigns.

30. This Consent and Estoppel shall constitute a binding agreement on the Landlord and its successors and assigns.

31. The provisions set forth in this Consent and Estoppel represent the whole and only agreement among the Landlord, the Authority and the Operator with respect to the subject matters hereof. The terms and conditions set forth herein may not be modified in any manner or terminated, except by an instrument in writing executed by the Landlord, the Authority and the Operator or as set forth in Paragraph 35, below.

32. This Consent and Estoppel shall be interpreted and governed in accordance with the laws of Commonwealth of Puerto Rico. In the event any term or provision herein or the application thereof to any person or circumstance shall, for any reason or to any extent be invalid or unenforceable, the remaining terms and provisions herein, or the application of any such provision to persons or circumstances other than those as to whom or which it has been determined to be invalid or unenforceable, shall not be affected thereby, and every provision herein shall remain valid and enforceable to the fullest extent permitted by law.

33. This Consent and Estoppel may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts shall be deemed a single original of this Consent and Estoppel. An electronic mail transmission of an executed counterpart of a signature page to this Consent and Estoppel shall be deemed to be equivalent to the delivery of an original letter, binding on all parties hereto.

34. The provisions hereof shall remain in full force and effect until (i) the termination of the O&M Agreement, whether by expiration of the term or otherwise, or (ii) the Authority has fully paid and performed all of its obligations to the Operator under the O&M Agreement, whichever occurs last.

35. For purposes of this Consent and Estoppel, any reference to “the best of Landlord’s knowledge” shall mean the knowledge of [the Executive Director] of the Landlord and those persons who report to him/her, in each case based on reasonable inquiry.

IN WITNESS WHEREOF, Landlord has caused this Landlord Consent, Estoppel and Subordination Agreement to be executed as of this ___ day of __________, 2020.
[LANDLORD]

By: __________________________
Name: 
Title: 

ACKNOWLEDGED AND ACCEPTED BY:

HMS FERRIES- PUERTO RICO, LLC

By: __________________________
Name: __________________________
Title: __________________________

Puerto Rico and The Island Municipalities Maritime Transport Authority,

By: __________________________
Name: __________________________
Title: __________________________
Exhibit A

The Property

[Include description of the Premises and reference to any personal property covered by the Agreement]
Exhibit B

The Agreement

A true, correct and complete copy of this Agreement is attached.
### Exhibit C

**Landlord’s Disclosure Schedule**

<table>
<thead>
<tr>
<th>Item/Matter</th>
<th>Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Existing Landlord’s mortgages, pledges or other encumbrances affecting the Property:</td>
<td>(If there is nothing to disclose with respect any of the line items, please write None or N/A)</td>
</tr>
<tr>
<td>2. Challenges (or potential challenges) to the grant of the Agreement to the Authority, or the performance by Landlord of its obligations thereunder:</td>
<td></td>
</tr>
<tr>
<td>3. Rights asserted against Landlord or the Property that have or may have an adverse effect on the Authority’s interest in the Property or the development, construction, operation or management of the Property as concurrently done by the Authority or as contemplated under the O&amp;M Agreement:</td>
<td></td>
</tr>
<tr>
<td>4. Outstanding defenses, claims or offsets against the Authority under the Agreement:</td>
<td></td>
</tr>
<tr>
<td>5. Monetary obligations of the Authority due and outstanding under the Agreement:</td>
<td></td>
</tr>
<tr>
<td>6. The annual and monthly rental rate applicable during the term of the Agreement is:</td>
<td></td>
</tr>
<tr>
<td>7. Actions pending against Landlord under any bankruptcy or insolvency laws of the United States or any state, commonwealth, territory or possession thereof:</td>
<td></td>
</tr>
<tr>
<td>8. Litigation or other legal proceedings pending or threatened with respect to the Agreement or the Property:</td>
<td></td>
</tr>
<tr>
<td>9. Condemnation or eminent domain proceedings pending or threatened in writing with respect to the Property, or any portion thereof:</td>
<td></td>
</tr>
<tr>
<td>10. Active or threatening environmental claim, or knowledge of facts that could reasonably be expected to result in an environmental claim against Landlord, the Authority or any other potentially responsible party in connection with the past or present ownership, use or operation of the Property, by any federal, state or municipal authority, and the Property is in compliance with all applicable environmental laws:</td>
<td></td>
</tr>
</tbody>
</table>
11. Structural or design, construction, or soil defects of any kind affecting the Property:

12. Asbestos or any other hazardous substances in violation of applicable law:

13. Existing agreements between the Authority and third-parties in connection with the Property:
NOTIFICATION

[Letterhead]

_____________, 2020

BY CERTIFIED MAIL

Puerto Rico Fast Ferries, LLC
[ADDRESS]
Attention: ___________

Re: New Operator for the Puerto Rico Ferry System

Dear ____________:

This is to notify you that on even date herewith, the Puerto Rico and The Island Municipalities Maritime Transport Authority ("MTA") entered into a Maritime Transport Operations and Maintenance Agreement (the “O&M Agreement”) with HMS Ferries – Puerto Rico, LLC (the “Operator”) and HMS Ferries, Inc., pursuant to which the Operator is vested with the management and operation of MTA’s ferry services, including without limitation (i) the passenger and cargo ferry services between Vieques, Culebra and Ceiba and Old San Juan and Cataño; (ii) the vessels owned or chartered by MTA (the “Vessels”) and (iii) the ferry terminals, mooring facilities and other facilities under the control of MTA (the “Facilities”). In accordance therewith, the Operator will have physical presence at and will manage and operate the Vessels and the Facilities.

Please be advised that (i) the O&M Agreement does not impair or diminish any of your rights and obligations under that certain [NAME OF THE AGREEMENT] entered on [DATE] between MTA and Puerto Rico Fast Ferries, LLC (the “Fast Ferries Agreement”), (ii) MTA retains all of its rights and obligations under the Fast Ferries Agreement, and (iii) all communications with respect to the services covered under the Fast Ferries Agreement shall be given as provided therein.

Your cooperation is herein required to continue to perform the services contracted under the Fast Ferries Agreement as instructed and as modified by the MTA in accordance with the Fast Ferries Agreement, and under a good faith collaboration with the Operator, when needed and as the case may be, with the objective of providing uninterrupted ferry services to the users while a full transition is implemented by the Operator for the performance of the ferry services and management of the Facilities.

App. K1-1
We hereby request that you update each of the insurance policies required from you under Section ___ of the Fast Ferries Agreement, to include the Operator as an additional insured and deliver evidence thereof to the MTA within ten (10) business days from the date of this notice.

Should you have any inquiries in connection with the foregoing, please feel free to contact ______________ at ______________.

Cordially,

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: ____________________________
Name:__________________________
Title: __________________________

ACKNOWLEDGED AND ACCEPTED BY:

PUERTO RICO FAST FERRIES, LLC

By: ____________________________
Name:__________________________
Title: __________________________
Date: __________________________

c. [HMS Ferries – Puerto Rico, LLC]; Javier Vázquez-Morales, Esq.
NOTIFICATION

[MTA LETTERHEAD]

____________ [__], 2020

BY CERTIFIED MAIL
[Name of Tenant or Concessionaire]
[ADDRESS]
Attention: ____________

Re: New Operator for the Puerto Rico Ferry System

Dear ____________:

This is to notify you that the Puerto Rico and The Island Municipalities Maritime Transport Authority ("MTA") has entered into a Maritime Transport Operations and Maintenance Agreement (the “O&M Agreement”) with HMS Ferries – Puerto Rico, LLC (the “Operator”) and HMS Ferries, Inc. pursuant to which the Operator is vested with the management and operation of MTA’s ferry system, including without limitation (i) the passenger and cargo ferry services between Vieques, Culebra and Ceiba and Old San Juan and Cataño; (ii) the vessels owned or chartered by MTA (the “Vessels”) and (iii) the ferry terminals, mooring facilities and other facilities under the control of MTA (the “Facilities”). In accordance therewith, the Operator will have physical presence at and will manage and operate the Vessels and the Facilities.

Please be advised that Operator has elected to assume all of MTA’s rights and obligations under that certain [NAME OF THE AGREEMENT] entered on [DATE] between MTA and [NAME OF CONTRACTING ENTITY] (the “Agreement”), (ii) MTA has not retained any rights or obligations under the Agreement, (iii) all payments under the Agreement shall hereinafter be made to the Operator, and (iv) all future notices and other communications with respect to the Agreement shall be directed to the Operator at the following address:

[Insert HMS’ address for notices]

We hereby request that you update each of the insurance policies required from you under Section ___ of the Agreement, to include the Operator as an additional insured and deliver evidence thereof to the Operator within ten (10) business days from the date of this notice.

Your cooperation is herein required to continue to perform the services contracted under the Agreement, as instructed by the Operator, with the objective of providing uninterrupted services to the users of the ferry system.
Should you have any inquiries in connection with the foregoing, please feel free to contact ______________________ at ______________________.

Cordially,

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: ____________________________
Name: __________________________
Title: __________________________
ACKNOWLEDGED AND CONSENTED BY:

HMS FERRIES - PUERTO RICO, LLC

By: __________________________
Name: _________________________
Title: __________________________

ACKNOWLEDGED, ACCEPTED AND AGREED TO BY:

[ENTER NAME OF LESSEE OR CONCESSIONAIRE]

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________
APPENDIX L

TENANT OR CONCESSIONAIRE CONSENT AND ESTOPPEL AGREEMENT
FORM

[LETTERHEAD]

TENANT OR CONCESSIONAIRE CONSENT AND ESTOPPEL AGREEMENT

To: HMS FERRIES – PUERTO RICO, LLC
222 Pearl Street, New Albany, IN 47150
Attention: ______________________

c. O’Neill & Borges LLC
250 Muñoz Rivera Ave., Suite 800
San Juan, Puerto Rico 00918-1813
Attention: Javier Vázquez-Morales, Esq.

Re: Maritime Transport Operations and Maintenance Agreement (as amended or otherwise modified from time to time, the “O&M Agreement”) between Puerto Rico and The Island Municipalities Maritime Transport Authority, HMS Ferries, Inc. and HMS Ferries – Puerto Rico, LLC (together its successors and permitted assignees as their interests may appear, the “Operator”)

Ladies and Gentlemen:

The undersigned, as tenant or concessionaire (together with its successors and assignees, the “Tenant”), and the Puerto Rico and The Island Municipalities Maritime Transport Authority, a public corporation and instrumentality of the Commonwealth of Puerto Rico created pursuant to Act No. 1-2000, as amended (together with its successors and assignees, the “Authority”), are parties to that certain [INSERT NAME OF THE AGREEMENT], dated as of ____________________, ______ (as amended or otherwise modified from time to time, the “Agreement”), which is attached hereto as Exhibit A, for certain real property and related personal property (the “Premises”) more particularly described therein.

The Authority and the P3 Authority initiated and followed a procurement process consistent with the provisions of Act No. 29-2009, as amended, also known as the Public-Private Partnership Act (the “PPP Act”) and the procurement guidelines of the Federal Transit Administration, pursuant to which the Operator was selected as the private sector entity to (i) manage and operate the Authority’s ferry system (the “Ferry System”), including the vessels owned or chartered by the Authority (the “Vessels”) and the ferry terminals, parking facilities, mooring facilities and other facilities and related infrastructure used in connection with the ferry services which are under the control of the Authority (collectively referred to as the “Facilities”), of which the Premises form part, and (ii) engage in other ancillary commercial activities (collectively, the “Project”).
In consideration thereof, the Authority, the Operator and HMS Ferries, Inc. have entered into the O&M Agreement, which, among other matters, grants the Operator the right to use the Vessels and the Facilities, together with all the rights and privileges necessary for the Operator to operate and manage the Ferry System and to conduct ancillary activities permitted thereunder (including, without limitation, the right to enter into agreements with third parties granting them rights derived from such agreements with the Authority, such as a concession agreement granting a right to use a space in the Facilities to offer and sell products or services and subcontracting any portion of the Services in accordance with the O&M Agreement), as more particularly described in the O&M Agreement (collectively, the “Assigned Rights”).

Tenant hereby represents, warrants, confirms and certifies to the Operator that the following statements are true, correct and complete as of the date hereof, and hereby covenants and agrees with the Authority and the Operator, as follows:

1. The Agreement is in full force and effect and constitutes the valid, legal and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms.

2. A true, correct and complete copy of the Agreement is attached hereto as Exhibit A. Except as set forth in Exhibit A and in this Tenant or Concessionaire Consent and Estoppel Agreement (this “Consent and Estoppel”), (i) the Agreement has not been amended, supplemented, terminated or otherwise modified, (ii) the Authority has not made any waivers with respect to any provisions of the Agreement, and (iii) the Agreement is the only agreement between Tenant and the Authority regarding the subject thereof, including the Premises.

3. Tenant has not mortgaged, pledged or otherwise encumbered its interest in the Premises.

4. Tenant does not have any outstanding defenses, claims or offsets against the Authority under the Agreement.

5. There are no monetary obligations of the Authority outstanding and unpaid under the Agreement.

6. There are no monetary obligations of the Tenant outstanding and unpaid under the Agreement. All rent or charges payable by the Tenant under the Agreement have been paid as due through the period ending on the date hereof, and no rent or charge has been paid more than thirty (30) days in advance of its due date.

7. The annual and monthly rental rate applicable during the term of the Agreement is as set forth in the Agreement, and the same is payable by the Tenant to the Authority as set forth therein.

8. There are no actions pending against Tenant under any bankruptcy or insolvency laws of the United States or any state, commonwealth, territory or possession thereof.
9. There is no litigation or other legal proceeding pending or, to the best of Tenant’s knowledge, threatened with respect to the Agreement or the Premises, and no condemnation or eminent domain proceedings are pending or have been threatened in writing with respect to the Premises or any portion thereof.

10. No notice of default under the Agreement has been given by Tenant to the Authority. No notice of default has been received by Tenant from the Authority. To the best of Tenant’s knowledge, the Authority is not in default in the performance of any of its obligations under the Agreement. Tenant is not in default in the performance of any of its obligations under the Agreement. To the best of Tenant’s knowledge, no condition exists which might reasonably be expected to give rise, with the passage of time or otherwise, to a default or breach under the Agreement;

11. Tenant hereby acknowledges and, to the extent required under the Agreement consents to, the execution of the O&M Agreement and to the assignment of the Agreement by the Authority to the Operator, which assignment of rights is hereby confirmed, consented and agreed to by the Tenant.

12. Tenant confirms that it has no interest or right as a third-party beneficiary to the rights or obligations of the Authority under the O&M Agreement and agrees that the enforcement of such rights or obligations shall be in the sole discretion of the Authority, in accordance with the provisions of the O&M Agreement. Tenant further agrees not to interfere with the exercise by the Operator and the Authority of their respective rights under the O&M Agreement.

13. With respect to Landlord’s retained maintenance and repair obligations under the Agreement, if any, the Tenant covenants and agrees to recognize to the Operator the same rights afforded to the Authority thereunder.

14. Effective upon the Tenant’s execution of this Consent and Estoppel, the Tenant hereby represents and warrants that Tenant is fully aware of the terms and provisions contained herein and of their effect.

15. During the term of the O&M Agreement, upon any conflict or inconsistencies between (i) the terms of the Agreement and this Consent and Estoppel, the terms of this Consent and Estoppel shall control, and (ii) the terms of the O&M Agreement and the Agreement, the terms of the O&M Agreement shall control, provided that any such conflict or inconsistency shall be interpreted and resolved in a manner so as to permit the continuation of the services rendered by the Operator under the O&M Agreement and without affecting Operator’s rights and obligations under the O&M Agreement.

16. Tenant shall immediately notify the Operator if it becomes aware of any information or event related to the Premises that may reasonably be expected to have a material adverse effect on the operation of the Ferry System or Facilities or the rights and obligations of the Operator under the O&M Agreement.
17. The undersigned further understands and acknowledges that the Operator is acting in reliance upon the representations, warranties, certifications and agreements contained in this Consent and Estoppel and agrees that the Operator and its successors and assigns may rely upon such representations, warranties, certifications and agreements for that purpose.

18. All notices and other communications to be provided under this Consent and Estoppel and under the Agreement shall be in writing and delivered by certified mail, returned receipt requested, at the following addresses or to such other addresses as the parties concerned may subsequently notify in writing to the other party in accordance with the terms hereof:

If to Operator:

HMS Ferries, Puerto Rico, LLC
222 Pearl Street, New Albany, IN 47150
Attention: __________________

with copy to (which shall not constitute notice):

O’Neill & Borges LLC,
250 Muñoz Rivera Ave., Suite 800,
San Juan, Puerto Rico 00918-1813,
Attention: Javier Vázquez-Morales, Esq.

If to Tenant:

To the address set forth for notices in the Agreement.

If to the Authority:

To the address set forth for notices in the Agreement.

19. This Consent and Estoppel shall inure to the benefit of the Operator and its successors and permitted assigns.

20. This Consent and Estoppel shall constitute a binding agreement on Tenant and its successors and assigns.

21. The Agreement and the provisions set forth in this Consent and Estoppel represent the whole and only agreement among Tenant and the Operator with respect to the subject matters hereof. The terms and conditions set forth herein may not be modified in any manner or terminated, except by an instrument in writing executed by Tenant and the Operator.

22. This Consent and Estoppel shall be interpreted and governed in accordance with the laws of Commonwealth of Puerto Rico. In the event any term or provision herein or
the application thereof to any person or circumstance shall, for any reason or to any
extent be invalid or unenforceable, the remaining terms and provisions herein, or the
application of any such provision to persons or circumstances other than those as to
whom or which it has been determined to be invalid or unenforceable, shall not be
affected thereby, and every provision herein shall remain valid and enforceable to the
fullest extent permitted by law.

23. This Consent and Estoppel may be signed in any number of counterparts with the
same effect as if the signatures to each counterpart were upon a single instrument,
and all such counterparts shall be deemed a single original of this Consent and
Estoppel. An electronic mail transmission of an executed counterpart of a signature
page to this Consent and Estoppel shall be deemed to be equivalent to the delivery of
an original letter, binding on all parties hereto.

24. The provisions hereof shall remain in full force and effect until (i) the termination of
the O&M Agreement, whether by expiration of the term or otherwise, or (ii) the
Authority has fully paid and performed all of its obligations to the Operator under the
O&M Agreement, whichever occurs last.

25. The parties hereto agree that, upon assignment and assumption of the Agreement by
the Operator, the Authority shall be automatically released by the Tenant from all of
its obligations under the Agreement.

[Signature page follows]
IN WITNESS WHEREOF, Tenant has caused this Consent and Estoppel to be executed as of this ___ day of ________, 2020.

TENANT

By: __________________________
Name: _________________________
Title: __________________________

ACKNOWLEDGED AND ACCEPTED BY:

HMS Ferries – Puerto Rico, LLC

By: __________________________
Name: _________________________
Title: __________________________

Puerto Rico and The Island Municipalities Maritime Transport Authority

By: __________________________
Name: _________________________
Title: __________________________
Exhibit A

The Agreement

A true, correct and complete copy of this Agreement is attached.
FORM OF ASSIGNMENT OF CONTRACTS

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Agreement”) is made and entered into as of [●], 2020 (the “Effective Date”), by and between the PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (“Assignor”), and HMS FERRIES - PUERTO RICO, LLC, a limited liability company duly organized and existing under the laws of Puerto Rico (“Assignee”).

WITNESSETH:

WHEREAS, Assignor, Assignee and HMS Ferries, Inc. entered into that certain Maritime Transport Operations and Management Agreement on October [●], 2020, as amended (the “O&M Agreement”; capitalized terms not defined herein, shall have the meaning ascribed to such terms in the O&M Agreement).

WHEREAS, Assignor and [●] (the “Contract Party”) entered into the contract or concession agreement identified in Exhibit A (the “Assigned Contract”).

WHEREAS, Assignor wishes to assign, transfer and convey to Assignee all of its right, title and interest in and to the Assigned Contract and Assignee wishes to assume all of Assignor’s right, title & interest under the Assigned Contract (including all future obligations of Assignor under the Assigned Contract), subject to the terms and conditions set forth in the O&M Agreement and those set forth herein.

NOW THEREFORE, in consideration of the promises and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Assignment and Acceptance. As of the Effective Date, Assignor hereby assigns, conveys, transfers, sets over and delivers unto Assignee all of Assignor’s right, title and interest in and to the Assigned Contract and Assignee hereby assumes and accepts the same.

2. Release of Assignor. As of the Effective Date, Assignor is hereby released by the Contract Party from all of its obligations under the Assigned Contract.

3. Further Assurances. Each of the parties hereto agrees to take or cause to be taken such further actions and to execute, deliver and file or cause to be filed such further documents and instruments, as may be necessary or as may be reasonably requested by the other party in order to fully effectuate the purposes, terms and conditions of this Agreement.

APPENDIX M
4. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Puerto Rico without regard to its conflict of law principles.

5. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed and original and all of which taken together shall be the same agreement.

6. **Binding Nature.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

[signature page follows]
IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed and delivered as of the Effective Date.

ASSIGNOR:

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: ___________________________
Name: ___________________________
Title: ___________________________

ASSIGNEE:

HMS FERRIES – PUERTO RICO, LLC

By: ___________________________
Name: ___________________________
Title: ___________________________

ACKNOWLEDGED AND AGREED TO BY:

CONTRACT PARTY:

[NAME]

By: ___________________________
Name: ___________________________
Title: ___________________________
ISLAND RESIDENT IDENTIFICATION PROCEDURE

In 2020 the MTA intends to implement a fare increase for trips to the Municipalities of Vieques and Culebra (“Municipal Islands”). The proposed rate change does not include an increase in rates for residents, business owners, employees of the Municipal Islands or essential necessities suppliers (“residents & others”).

Because the rate change does not apply to everyone, MTA needs a mechanism to identify the residents & others in order to provide them with their special rate. Instead of creating an ID card for this purpose, the MTA is developing the “Special ID Vieques and Culebra Registry” (“Registry”).

The Registry is a cloud-based database created as a joint venture between MTA, the Municipal Islands and various other governmental agencies that will connect to the ferry ticketing system. When the citizen registers, they create an account, upload a valid government ID, and request the rate benefits that are applicable to them. Once the citizen provides the required information, the platform validates the request and if approved, the citizen’s registry is complete. Once the registration is complete, the citizen will be able to apply the preferential rate to their trip ticket purchase, both online and at the ferry terminals.
CONDITIONS PRECEDENT TO PAYMENT OF PHASE 2 FIXED FEE

The Authority will not be obligated to make any payment of the Phase 2 Fixed Fee unless all of the following conditions precedent, as may be applicable, have been satisfied by the Operator on the dates set forth herein.

<table>
<thead>
<tr>
<th>Conditions Precedent</th>
<th>Section</th>
<th>Filing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Monthly Invoices</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receipt by the Authority of an invoice submitted by the Operator that includes a written certification, in the form of Exhibit A, stating that no officer or employee of the Authority will derive or obtain any benefit or profit of any kind from this Agreement.</td>
<td>Section 5.3(i)</td>
<td>On or before each Monthly Payment Date</td>
</tr>
<tr>
<td><strong>Revenues and Expense Reports</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receipt by the Authority of any reports of the Operator’s revenues and expenditures for the period specified by the Authority. The reports shall be submitted as frequently as required for the Authority to comply with Applicable Law, with applicable FTA requirements or as required for the Authority to obtain reimbursements from FTA. Such reports shall also include a certificate (together with other evidence reasonably requested by the Authority) stating that the Operator complied with all applicable FTA procurement guidelines and USCG regulations during such period. If requested by the Authority, the Operator shall provide the invoices and evidence of payment thereof by the Operator with respect to the expenditures that the Authority reasonably believes are eligible for reimbursement to the Authority by FTA.</td>
<td>Section 5.3(j)</td>
<td>Upon written request by the Authority</td>
</tr>
</tbody>
</table>
Exhibit A

Form of Anti-Corruption Certifications

We certify under penalty of nullity that no public servant of the Puerto Rico and the Island Municipalities Maritime Transport Authority (the “Authority”) will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for the services provided is the agreed-upon price that has been negotiated with an authorized representative of the Authority. The total amount shown on this invoice is true and correct. The services have or will be rendered in accordance with the written agreement with the Authority, and no other payment has been received for such services.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Maritime Transport Operations and Maintenance Agreement dated ________________, 2020 between HMS Ferries, Inc., HMS Ferries – Puerto Rico, LLC and the Puerto Rico and Island Municipalities Maritime Transport Authority (the “Agreement”).

By: _________________________
Name: _______________________
Title: ________________________
RATES FOR SPECIAL SERVICES AND UNSCHEDULED TRIPS

The rates for Special Services and Unscheduled Trips set forth below are subject to the following:

- Rates apply to the baseline service schedule and terminals in the RFP scope of work. If the baseline service schedule and/or terminals change, so will these rates.
- Rates apply to the larger vessels in the RFP scope of work. Rates for the smaller vessels in the RFP scope of work will be developed during Phase 1. If the vessels change, so will these rates. Of note, the baseline RFP service schedule has no passenger-only sailings to Vieques.
- The fuel price per gallon is the same as in the original proposal.
- The crew cost per hour is the same as in the original proposal.
- There is a minimum four 4-hour crew call out for Metro and Vieques runs and a 6-hour call out for Culebra.
- Terminal personnel are included and management time is included.
- Additional maintenance and repair, insurance, and general consumables are included.
- Rates for Special Services (6.1) increase 1.5% per year, effective on January 1st of each year following the commencement of Phase 2. The Authority and the Operator will reevaluate the percentage increase in good faith every five (5) years.
- Rates for Unscheduled Trips (6.3) shall remain the same during Phase 1. After that period and every three (3) years, the Authority and the Operator will reevaluate in good faith whether an increase shall be permitted.
- Price indicated covers 1 round trip.

<table>
<thead>
<tr>
<th></th>
<th>METRO</th>
<th>ISLAND</th>
<th>ISLAND</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Juan to Cataño</td>
<td>Ceiba to Vieques</td>
<td>Ceiba to Culebra</td>
</tr>
<tr>
<td>Special Services (6.1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passenger-Only</td>
<td>$3,180</td>
<td>$4,800</td>
<td>$7,925</td>
</tr>
<tr>
<td>Ro/Pax</td>
<td></td>
<td>$5,864</td>
<td>$8,295</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unscheduled Trips (6.3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger-Only</td>
</tr>
<tr>
<td>Ro/Pax</td>
</tr>
</tbody>
</table>
SPECIAL PERIODS OF UNSCHEDULED TRIPS

Two (2) additional unscheduled round trips per weekend day (Friday, Saturday and Sunday) for each of Culebra and Vieques will be required during the following periods:

1. April through mid-August
2. Holy week (Palm Sunday through Easter Sunday)
3. Christmas Season: Mid-December through mid-January
4. Long Weekends (i.e. weekends where Friday and/or the following Monday is a government holiday)
LIST OF AUTHORITY PROVIDED VESSELS

1. **Metro Service.** The vessels provided by the Authority for the metro service are described as follows:

<table>
<thead>
<tr>
<th>Vessel Name</th>
<th>Official Number</th>
<th>COI Date</th>
<th>COI Expiration</th>
<th>Last Dry Dock</th>
<th>Next Dry Dock</th>
<th>Max Pax</th>
<th>Horsepower</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Covadonga</strong></td>
<td>956427</td>
<td>January 15, 2016</td>
<td>January 15, 2021</td>
<td>March 26, 2018</td>
<td>August 31, 2019</td>
<td>144</td>
<td>930</td>
</tr>
<tr>
<td><strong>La Decima</strong></td>
<td>1221847</td>
<td>May 19, 2014</td>
<td>May 19, 2019</td>
<td>April 30, 2016</td>
<td>Past Due</td>
<td>49</td>
<td>330</td>
</tr>
<tr>
<td><strong>Amelia</strong></td>
<td>954592</td>
<td>September 27, 2019</td>
<td>September 27, 2024</td>
<td>August 13, 2019</td>
<td>August 21, 2021</td>
<td>143</td>
<td>930</td>
</tr>
</tbody>
</table>

---

1 Vessels Information included in Certificates of Inspection (COI) provided by MTA.
2 La Decima shall be modified by the Authority to be capable of docking at terminals prior to acceptance by the Operator.
La Princesa (Out of Service)³

<table>
<thead>
<tr>
<th>Feature</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Number</td>
<td>1221854</td>
</tr>
<tr>
<td>COI Date</td>
<td>November 29, 2013</td>
</tr>
<tr>
<td>COI Expiration</td>
<td>November 29, 2018</td>
</tr>
<tr>
<td>Last Dry Dock</td>
<td>September 30, 2016</td>
</tr>
<tr>
<td>Next Dry Dock</td>
<td>Past Due</td>
</tr>
<tr>
<td>Max Pax</td>
<td>150</td>
</tr>
<tr>
<td>Horsepower</td>
<td>1930</td>
</tr>
</tbody>
</table>

2. Island Service. The vessels provided by the Authority for the island service are described as follows:

Cayo Blanco (In-Service)

<table>
<thead>
<tr>
<th>Feature</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Number</td>
<td>1222191</td>
</tr>
<tr>
<td>COI Date</td>
<td>August 19, 2019</td>
</tr>
<tr>
<td>COI Expiration</td>
<td>April 15, 2024</td>
</tr>
<tr>
<td>Last Dry Dock</td>
<td>June 26, 2019</td>
</tr>
<tr>
<td>Next Dry Dock</td>
<td>March 31, 2021</td>
</tr>
<tr>
<td>Max Pax</td>
<td>592</td>
</tr>
<tr>
<td>Horsepower</td>
<td>7080</td>
</tr>
</tbody>
</table>

Cayo Largo (In-Service)

<table>
<thead>
<tr>
<th>Feature</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Number</td>
<td>1212869</td>
</tr>
<tr>
<td>COI Date</td>
<td>December 19, 2017</td>
</tr>
<tr>
<td>COI Expiration</td>
<td>December 19, 2022</td>
</tr>
<tr>
<td>Last Dry Dock</td>
<td>November 13, 2017</td>
</tr>
<tr>
<td>Next Dry Dock</td>
<td>November 13, 2019</td>
</tr>
<tr>
<td>Max Pax</td>
<td>297</td>
</tr>
<tr>
<td>Horsepower</td>
<td>6120</td>
</tr>
</tbody>
</table>

³ Delivery of this Vessel is subject to its required repairs being completed in accordance with Section 8.1 of the Agreement.
<table>
<thead>
<tr>
<th><strong>Isleño (In-Service)</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Official Number</strong></td>
<td>1157743</td>
</tr>
<tr>
<td><strong>COI Date</strong></td>
<td>April 18, 2019</td>
</tr>
<tr>
<td><strong>COI Expiration</strong></td>
<td>April 18, 2024</td>
</tr>
<tr>
<td><strong>Last Dry Dock</strong></td>
<td>March 29, 2019</td>
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<tr>
<td><strong>Next Dry Dock</strong></td>
<td>March 31, 2021</td>
</tr>
<tr>
<td><strong>Max Pax</strong></td>
<td>206</td>
</tr>
<tr>
<td><strong>Horsepower</strong></td>
<td>3220</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Santa María (Out of Service)</strong></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Official Number</strong></td>
<td>965338</td>
</tr>
<tr>
<td><strong>COI Date</strong></td>
<td>May 30, 2014</td>
</tr>
<tr>
<td><strong>COI Expiration</strong></td>
<td>May 30, 2019</td>
</tr>
<tr>
<td><strong>Last Dry Dock</strong></td>
<td>August 9, 2016</td>
</tr>
<tr>
<td><strong>Next Dry Dock</strong></td>
<td>Past Due</td>
</tr>
<tr>
<td><strong>Max Pax</strong></td>
<td>137</td>
</tr>
<tr>
<td><strong>Horsepower</strong></td>
<td>2720</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Isla Bonita (Out of Service)</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>Official Number</strong></td>
<td>1242571</td>
</tr>
<tr>
<td><strong>COI Date</strong></td>
<td>June 22, 2016</td>
</tr>
<tr>
<td><strong>COI Expiration</strong></td>
<td>June 22, 2017</td>
</tr>
<tr>
<td><strong>Last Dry Dock</strong></td>
<td>June 3, 2016</td>
</tr>
<tr>
<td><strong>Next Dry Dock</strong></td>
<td>Past Due</td>
</tr>
<tr>
<td><strong>Max Pax</strong></td>
<td>400</td>
</tr>
<tr>
<td><strong>Horsepower</strong></td>
<td>5200</td>
</tr>
</tbody>
</table>
STANDARDS OF ASSET ACCEPTANCE

The Government of Puerto Rico (Authority) is required to transfer the Ferry System (vessels, terminals and facilities) to the Operator in full and complete working order, any latent defects notwithstanding.

The Authority shall ensure that all Maintenance and Ordinary Repairs, Extraordinary Repairs, and Capital Improvements are performed in accordance with Section 8.6 (Vessels) and Section 13.2 (Facilities) of the Operation and Maintenance Agreement. All costs associated with ensuring the vessels, terminals and facilities are to the agreed upon standard will be the responsibility of the Authority.

The Ferry System assets will be in absolute compliance with all rules, permits, regulations, and laws as they apply.

Any deficiency in equipment or any component of each asset identified during the course of the Asset Assessment and/or Phase 1 and determined to have causal factors that existed prior to vessel or facility acceptance, shall be the responsibility of the Authority to correct or remedy. Deficiencies shall be categorized as Priority 1, 2, or 3 according to the following standard:

1. Priority 1: Repairs necessary for safe operation of an asset; repairs necessary to resolve a “no sail” USCG 835(F) or 835(V) or “red tag” issued by another government inspector.
2. Priority 2: Repairs that are not required for safe operation; that can be made dockside; and that can be executed within six months of approval.
3. Priority 3: Repairs that can only be made in a shipyard during a drydocking availability or that require more than six months to acquire the necessary materials and execute

The standards and process to determine the origin or existence of defects shall be mutually agreed by both parties, and include at least the following:

**Vessels**

1. **Regulatory:**
   - Compliance with all applicable regulatory rules and requirements.
   - All regulatory inspections complete, all certificates in place, and all deficiencies cleared.
   - No outstanding items of non-compliance, whether identified by U.S. Coast Guard inspectors or other, of any kind.

2. **Survey:**
   - Insurance (Condition and Valuation) surveys shall be completed and all findings and recommendations called out by the surveyor(s) completed or addressed in the Rehabilitation Plan.

3. **Asset Assessment:**
   - A thorough assessment of the asset to be jointly conducted by MTA and HMS, to ensure verification that all machinery or component manufacturers’ maintenance requirements have been fully complied with to date.

App. S-1
• Where verification is not possible, items shall be added to the Rehabilitation Plan for the most prudent resolution in accordance with generally accepted standard marine practices.

4. **Asset Rehabilitation Plan:**
   - The Authority will lead development of an Asset Rehabilitation Plan that will be approved by both parties.
   - The Rehabilitation Plan will establish a plan for completion of all the Priority 1, Priority 2, and Priority 3 items identified in the Asset Assessments.

5. **Bare Boat Charter (On-Hire) Survey:** Completed with all findings and recommendations called out by the surveyor noted and approved for remediation.

**Further guidance for terminals**

1. **Regulatory:** Full OSHA and EPA compliance. All inspections complete, all certificates in place, all deficiencies cleared. No outstanding items of any kind.

2. **Survey:**
   - An insurance (facility) survey completed and all findings and recommendations called out by the surveyor completed and cleared.
   - Professional engineers survey completed with all findings and recommendations called out by the engineer completed and cleared.

3. **Asset Assessment:** An Asset Assessment conducted jointly by MTA and HMS which verifies that all machinery manufacturers maintenance requirements and recommendations have been completed through the life of the facility. Where verification is not possible, items shall be added to the rehabilitation plan for the most prudent resolution in accordance with generally accepted standard maintenance practices.

4. **Asset Rehabilitation Plan:** A plan approved by both parties and all Priority 1 items complete, and Priority 2 and Priority 3 items planned for repair.
FORM OF SUBLEASE AGREEMENT

AGREEMENT OF SUBLEASE AND CONCESSION

AGREEMENT OF SUBLEASE AND CONCESSION (this “Agreement” or “Sublease”), made as of the ___ day of ________, 2020 (the “Effective Date”), by and between PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and instrumentality of the Government of Puerto Rico (hereinafter referred to as “Sublandlord”), and HMS FERRIES – PUERTO RICO, LLC, a Puerto Rico limited liability company (hereinafter referred to as “Subtenant”). Sublandlord and Subtenant are sometimes referred to herein individually as a “Party” or collectively as the “Parties”.

RE C I T A L S:

WHEREAS, pursuant to that certain Lease and Concession Agreement (the “Underlying Lease”), dated as of __________, [Puerto Rico Ports Authority] [Municipality of Vieques] [Municipality of Culebra], as landlord (“Landlord”), leased to Sublandlord, as tenant, the facility identified as the [_______] terminal and its adjacent cargo piers, known as [_______] (the “Terminal Facility”) located at [_______] of [_________], Puerto Rico, as more particularly described in the Underlying Lease;

WHEREAS, Sublandlord leases the Terminal Facility for the operation of maritime transport of cargo and passengers to and from the Terminal Facility subject to the terms of use, covenants and conditions set forth in the Underlying Lease;

WHEREAS, Sublandlord is a public corporation of the Commonwealth of Puerto Rico created by virtue of Act No. 1-2000, as amended, known as the Puerto Rico and the Island Municipalities Maritime Transport Authority Act (the “MTA Act”);

WHEREAS, the Executive Director of Sublandlord is authorized and empowered to execute this Agreement pursuant to Resolution Number [_____] dated [_____] executed by the Secretary of the Department of Transportation and Public Works pursuant to Article 4(a) of the MTA Act, and the [_______] of Subtenant is authorized and empowered to execute this Agreement pursuant to [_________________];

WHEREAS, on [_______] the Parties entered into a Maritime Transport Operations and Maintenance Agreement (the “O&M Agreement”; capitalized terms not otherwise defined herein or in the Underlying Lease, shall have the meaning as set forth in the O&M Agreement) whereby Subtenant agreed to conduct the metro and island maritime transport services of cargo and passengers previously conducted by Sublandlord and to operate and maintain the piers and terminal facilities necessary to provide such services, including, without limitation, the Terminal Facility;

WHEREAS, the Ferry System requires net subsidy from Sublandlord in order to operate, and Subtenant has agreed to operate the Ferry System and to accept the Phase 1 Service Payment and the Phase 2 Fixed Fee for operation of the Ferry System during Phase 1 and Phase 2, respectively;

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WHEREAS, the Ferry System requires net subsidy from Sublandlord in order to operate, and Subtenant has agreed to operate the Ferry System and to accept the Phase 1 Service Payment and the Phase 2 Fixed Fee for operation of the Ferry System during Phase 1 and Phase 2, respectively;

WHEREAS, Subtenant has represented to Sublandlord pursuant to Section 48.12 of the O&M Agreement that the Sublandlord has realized a saving in subsidy by not less than $6,000,000 that otherwise would have been bid by Subtenant for the Phase 2 Fixed Fee;

WHEREAS, in connection with the O&M Agreement, Sublandlord has agreed to sublease to Subtenant, and to authorize Tenant the use of, the Terminal Facility (hereinafter, the “Leased Premises”) for the purposes of carrying out the Works and the Ancillary Activities set forth in the O&M Agreement (the “Permitted Use”), and Subtenant has agreed to sublease from Sublandlord and acquire the right to use the Leased Premises, subject to the terms, covenants and agreements set forth herein and in the O&M Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein and in the O&M Agreement, and other good, adequate and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. **Subleasing of Leased Premises.** Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, the Terminal Facility, on and subject to the terms and conditions set forth hereinafter, in the O&M Agreement and, subject to the provision of Section 6 herein, the Underlying Lease. With respect to any portion of the Leased Premises that are in the public domain, the rights granted to Tenant hereunder are in the nature of a concession.

2. **Term.** The term (the “Term”) of this Agreement shall commence on the Effective Date and shall expire on the earlier of: (i) the date of expiration of the Underlying Lease or its earlier termination, (ii) the date of expiration of the O&M Agreement or its earlier termination, and (iii) such earlier date on which the Term shall expire or be cancelled or terminated otherwise pursuant to the written agreement of the Parties or the O&M Agreement (the “Expiration Date”). Subtenant shall have no right to occupy the Leased Premises or any portion thereof after the expiration of the Sublease or after termination of the Sublease. In the event Subtenant or any party claiming by, through or under Subtenant, holds over the Leased Premises, Sublandlord may exercise any and all remedies available to it at law or in equity to recover possession of the Leased Premises, and to recover damages.

3. **Rent.** (a) In recognition of the requirement for subsidy from the Sublandlord to the Subtenant for operation of the Ferry System, the Sublandlord agrees to accept, and the Subtenant agrees to pay, for Subtenant’s possession and use of the Leased Premises hereunder during the term, the total monthly rent (the “Basic Rent”) of ONE HUNDRED DOLLARS ($100.00). [Subtenant shall pay such rent to Sublandlord in advance on the first (1st) day of each month], commencing on the Effective Date. Basic Rent for any partial month shall be prorated on a per diem basis.]
(b) Sublandlord shall continue to be responsible for the payment of rent to Landlord as established in Section 1.13 of the Underlying Lease agreement.

(c) Unless otherwise provided under the O&M Agreement, Subtenant hereby also agrees to pay all utility charges, insurance charges, maintenance charges, property taxes (should the assessment thereof arises from any of Subtenant’s improvements), and any and all other payments or reimbursements (other than rent) payable by Subtenant under this Agreement (the “Additional Rent”).

(d) The Basic Rent and the Additional Rent (hereinafter collectively, the “Rent”) shall be paid in legal currency of the United States of America. All Rent shall be remitted directly to Landlord or Sublandlord, as instructed in writing by Sublandlord, through a manager’s or official bank check or wire transfer or ACH debits based on Sublandlord’s written instructions delivered to Subtenant. It is Subtenant’s duty to take the necessary measures and precautions to ensure that the Rent is received by Landlord or Sublandlord, as applicable, on or before its due date. The payment of Rent is separate from any other agreement or obligation contained in this Agreement and shall be paid without the need of previous request or notice by Sublandlord, without set off, adjustment or abatement of any kind.

4. **Permitted Use.** Subtenant shall use and occupy the Leased Premises for the Permitted Use in accordance with the provisions of the Underlying Lease and the O&M Agreement, and for no other purpose and otherwise in accordance with the terms and conditions of the Underlying Lease or the O&M Agreement. Subtenant shall not use the Leased Premises, or any part thereof, or knowingly permit the same to be used for any illegal, immoral or improper purpose.

5. **Permits.** Unless otherwise provided in the O&M Agreement, Subtenant may make alterations, changes, additions or improvements to the Leased Premises, provided it has obtained Sublandlord’s and Landlord’s prior written consent, subject to the terms, covenants and conditions set forth in the O&M Agreement, including with respect to payments or reimbursements from Sublandlord to cover any such improvements. Subtenant shall, at its own cost and expense (except as otherwise provided in the O&M Agreement), (i) procure each and every permit, license, certificate or other authorization (“Permits”) that a subtenant is required to obtain to occupy, use and operate its business at the Leased Premises in connection with the lawful and proper use of the Leased Premises by a subtenant, (ii) comply strictly with all applicable laws and regulations concerning the operation of its business and its use therefor in the Leased Premises, including without limitation, any and all nuisance and environmental regulations, and (iii) comply with Section [____] of Underlying Lease. Sublandlord shall cooperate with Subtenant on a commercially reasonable manner by providing such available information, documents or authorizations to Sublandlord, that could be required for filing and obtaining such Permits. To the extent necessary, Sublandlord shall timely make any and all notifications required under its current Permits in connection with this Sublease Agreement.

6. **Subordination to and Incorporation of the Underlying Lease.** An executed copy of the Underlying Lease, with all of its amendments, modifications and extensions is hereby attached as **Exhibit A.** Subtenant hereby acknowledges and agrees that this Agreement is in all respects
subject and subordinate to the terms and conditions of the Underlying Lease herein attached and to all matters to which the Underlying Lease is subject and subordinate. Except as otherwise expressly provided in, or as may be otherwise inconsistent with the O&M Agreement, or to the extent not applicable to the Leased Premises, the terms, provisions, covenants, stipulations, conditions, rights, obligations, remedies, and agreements contained in the Underlying Lease are incorporated in this Agreement by reference, and are made a part hereof as if herein set forth at length, Sublandlord being substituted for the “landlord” under the Underlying Lease, Subtenant being substituted for the “tenant” under the Underlying Lease, and the Leased Premises being substituted for the “leased premises” under the Underlying Lease. As between Sublandlord and Subtenant, nothing contained in the Underlying Lease shall be deemed to modify, supersede or amend the provisions of the O&M Agreement and the Authority. is and shall remain as the only obligee under the Underlying Lease. Nothing contained in the O&M Agreement shall affect the rights of Landlord under the Underlying Lease or the responsibility of Sublandlord toward Landlord. Further to the foregoing, Sublandlord hereby covenants and agrees to notify Subtenant of any proposed or intended amendments, supplements or otherwise modifications to the terms and conditions of the Underlying Lease, which proposed amendments may not, in any event, restrict, limit or adversely affect the rights granted to Subtenant hereunder, unless the written consent of the Subtenant is obtained in advance.

7. **Sublandlord Not Required to Provide Services.** Except to the extent that any repairs or restorations are required under the O&M Agreement to be made by Sublandlord, or comply with any laws or requirements of any governmental authorities, Sublandlord shall not be required to provide any of the services that Landlord has agreed to provide pursuant to the Underlying Lease (or required by law), or make any of the repairs or restorations that Landlord has agreed to make pursuant to the Underlying Lease (or required by law), or take any other action that Landlord has agreed to provide, furnish, make, comply with or take, or cause to be provided, furnished, made, complied with or taken under the Underlying Lease. Subtenant shall not have any claim against Sublandlord by reason of Landlord’s failure or refusal to comply with the provisions of the Underlying Lease, unless such failure or refusal is a direct result of Sublandlord’s negligence or willful misconduct or such failure or refusal also constitutes a breach of Sublandlord’s obligations hereunder. As between Sublandlord and Subtenant, the obligations of each with respect to repairs, restoration and improvements are those set forth in the O&M Agreement.

8. **Delivery of Possession.** The Leased Premises shall be delivered to Subtenant on the date of execution of this Agreement by all Parties. Subtenant acknowledges that it has inspected the Leased Premises before the execution of this Agreement and assumes its possession in its “AS IS, WHERE IS” condition, subject to any repair identified in a written agreement existing between the Parties required to be made by Sublandlord on or after the delivery of the Leased Premises to Subtenant pursuant to the O&M Agreement and also Subtenant acknowledges its commitment to perform during the Term any and all reasonable repairs to the Leased Premises as required and provided under the O&M Agreement in accordance with the conditions established in the Underlying Lease. Subtenant acknowledges that upon termination, cancellation or early termination of this Agreement it shall surrender and deliver the Leased Premises, without demand, to the Sublandlord as set forth in the O&M Agreement, including without limitation the repair obligations under Section 13.4 and the handback provisions set forth in Section 46.1 thereof.
9. [Intentionally Omitted.]

10. **Utilities.** Unless otherwise agreed in the O&M Agreement, Subtenant shall pay for its use and consumption of utilities by paying directly to the utility service provider or to Landlord, as instructed in writing by Sublandlord, the total pass-through cost (with no markup) of utility services used or consumed by Subtenant thereof as contemplated in Section 3(b) hereof. Subtenant shall not hold Sublandlord liable for any utility service interruption to the Leased Premises or for damages suffered due to any interruption unless such interruption is caused by Sublandlord’s negligence or willful misconduct.

11. **Signs.** Any signs or advertising material that Subtenant would like to install or erect at the Leased Premises will comply with the provisions set forth in Section 19.1 of the O&M Agreement. Sublandlord and Subtenant agree that any signage to be erected, installed, maintained or replaced on and upon the Leased Premises shall be tasteful and aesthetically pleasing, shall not (i) affect the aesthetics of the Leased Premises and the improvements therein, and (ii) shall be in accordance with Applicable Laws and any of Landlord’s guidelines and specifications, set forth in the Underlying Lease, that requires Landlord written approval.

12. **Additional Events of Default by Subtenant.** In addition to the events or acts of tenant that shall be considered a breach or cause for termination within the Underlying Lease, it shall be considered an Event of Default of this Agreement if during the Term hereof, an event of default by Subtenant under the O&M Agreement has occurred and continues after all relevant cure periods have elapsed, as applicable.

13. **Quiet Enjoyment.** Upon Subtenant’s observance of all terms, covenants and conditions of this Agreement and the O&M Agreement that are to be observed and performed by Subtenant, Sublandlord covenants that Subtenant may peaceably and quietly enjoy the Leased Premises, during the Term, or until the Expiration Date.

14. **Sublease, Not Assignment.** Anything herein to the contrary notwithstanding, this Agreement shall be deemed to be a sublease of the Leased Premises and with respect to the portion of the Leased Premises that are in the public domain, shall be deemed a concession for the use thereof in accordance with the O&M Agreement and not an assignment, in whole or in part, of Sublandlord’s interest in the Underlying Lease. Sublandlord shall not be released from, and Subtenant shall not be deemed to have assumed, any of Sublandlord’s obligations under the Underlying Lease, unless otherwise set forth herein. Nothing contained herein shall affect Landlord’s rights or Sublandlord’s obligations under the Underlying Lease.

15. **Assignment.** Except as set forth in Section 34.1 of the O&M Agreement, Subtenant may not assign this Agreement, without Sublandlord’s and Landlord’s prior written consent and subject to the terms of the O&M Agreement. Subtenant may sublease and grant concession agreements as contemplated in the O&M Agreement provided they are made in accordance with the requirements of the Underlying Lease. It is a condition precedent to any assignment or sublease of the Leased Premises, that such incidental use complies with the provisions of the O&M Agreement, including without limitation the provisions set forth in Section 48.12 thereof as to Incidental Use.
change of control in Subtenant or change in the persons or entities having direct or indirect interest in the Subtenant as prescribed in the O&M Agreement shall be considered as an assignment for the purposes of this Section 15, which requires Sublandlord’s and Landlord’s prior written consent.

16. **Notices.** Any notice, statement, demand, consent, approval, advice or other communication required or permitted to be given, rendered or made by either Party to the other, pursuant to this Agreement or pursuant to any Applicable Law or requirement of public authority (collectively, “**Notices**”) shall be in writing and shall be deemed to have been properly given as set forth in the O&M Agreement.

17. **Indemnification.** Each Party hereby agree to indemnify and hold harmless the other Party in accordance with the provisions of Article 28 of the O&M Agreement, as applicable.

18. **Covenants, Representations, and Warranties of Sublandlord.**

Sublandlord hereby covenants, represents and warrants to and with Subtenant as follows:

a. Sublandlord is the owner of all rights of the “tenant” under the Underlying Lease, free and clear of any lien, assignment, sublease, option or other charge or encumbrance.

b. A complete and correct copy of the Underlying Lease, including all amendments, schedules, and exhibits thereto is attached hereto as **Exhibit A.** The Underlying Lease sets forth the entire agreement and understanding between Sublandlord and Landlord with respect to the Underlying Premises, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby or the rights of the Sublandlord in respect thereof. The Sublandlord represents and warrants that the Underlying Lease is in full force and effect and is the legal, valid, and binding obligation of the Sublandlord, enforceable against the Sublandlord in accordance with its terms.

c. Except as disclosed to Subtenant in writing, Sublandlord has paid Landlord all balance owed to Landlord under the Underlying Lease. Sublandlord shall remedy any default of Sublandlord under the Underlying Lease that affects Subtenant’s rights hereunder.

d. It has full right, power and authority to enter into and perform this Agreement, to do so without the consent or joinder of any other party being required, except for Landlord’s consent which may be required for the execution of this Agreement. If so, such consent has been received by Subtenant.

e. The terms and conditions of this Agreement do not conflict with or violate any other existing agreements to which Sublandlord is a party or by which Sublandlord is bound, that could reasonably be expected to result in a material adverse effect of Sublandlord.

f. Each person signing this Agreement on behalf of Sublandlord covenants, warrants and represents that it is a current authorized officer of said entity pursuant to the terms of
the MTA Act and has the power and due authority to execute this Agreement in the capacity stated and to bind the entity for which such person is signing.

g. Sublandlord agrees, upon request by Subtenant, to promptly deliver to Subtenant such resolutions, certificates or other affidavits evidencing the foregoing as may be reasonably requested.

h. Any and all representations of Sublandlord as to the environmental conditions of the Leased Premises as of the date hereof are set forth in Section 25.1(e) of the O&M Agreement.

19. **Covenants, Representations and Warranties of Subtenant.**

a. Subtenant covenants, warrants and represents that it has full right, power and authority to enter into and perform this Agreement, to do so without the consent or joinder of any other party being required.

b. The terms and conditions of this Agreement do not conflict with or violate any other existing agreements between such party and any third parties.

c. That Subtenant is a corporation, duly formed and in good standing under the laws of the State of Delaware, and is duly qualified to do business in the Commonwealth of Puerto Rico.

d. Each person signing this Agreement on behalf of Subtenant covenants, warrants and represents that it is a current authorized officer of said entity and has the power and due authority to execute this Agreement in the capacity stated and to bind the entity for which such person is signing.

e. Subtenant agrees, upon request by Sublandlord, to promptly deliver to Sublandlord such resolutions, certificates or other affidavits evidencing the foregoing as may be reasonably requested.

f. That this Agreement is related and accessory to the Underlying Lease and the O&M Agreement.

20. **Entire Agreement, Amendment, Waiver.** This Agreement, together with the O&M Agreement, contain the entire agreement between the Parties and all prior negotiations and agreements are merged into this Agreement and the O&M Agreement. Any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the Parties. No provision of this Agreement shall be deemed to have been waived by Sublandlord or Subtenant unless such waiver is in writing and signed by Sublandlord or Subtenant, as the case may be. The covenants and agreements contained in this Agreement shall bind and inure to the benefit of Sublandlord and Subtenant and their respective successors and assigns. This Agreement may be executed in counterparts, each of which will be
21. **Cross Default.** Any default by any Party under the O&M Agreement shall be considered a default by such defaulting Party under this Agreement. Any default by Subtenant under this Agreement shall be considered a default under the O&M Agreement.

22. **Fiscal Liabilities.**

a. Subtenant represents and warrants that, at the time of execution of this Sublease, it has:

   (i) if required by law, filed tax returns for the last five (5) years, as evidenced by a recent Income Tax Return Filing Certificate issued by the Puerto Rico Treasury Department delivered to Sublandlord on or prior to the date hereof;

   (ii) no outstanding tax debt with the Government of Puerto Rico nor with the United States Government (if applicable) and is not subject to a payment plan thereunder as evidenced by a recent certificate of no debt issued by the Puerto Rico Treasury Department delivered to Sublandlord on or prior to the date hereof;

   (iii) no outstanding sales and use tax debt with the Government of Puerto Rico and is not subject to a payment plan thereunder, pursuant to a certification issued by the Puerto Rico Treasury Department and delivered to the Sublandlord indicating that Subtenant does not owe Puerto Rico sales and use taxes to the Commonwealth;

   (iv) if required by law, filed sales and use tax returns for the last sixty (60) tax periods as evidenced pursuant to a recent Puerto Rico Sales and Use Tax Filing Certificate issued by the Puerto Rico Treasury Department delivered to the Sublandlord;

   (v) to the extent applicable and as required by applicable law, paid all of its unemployment taxes, disability and social security taxes, unemployment insurance, temporary disability (workmen’s compensation) and chauffeur’s social security during the last five (5) years in accordance with the Puerto Rico Employment Security Act, or is in compliance with a payment plan therefor and in compliance with the terms and conditions thereof, as evidenced by a recent certificate issued by the Department of Labor and Human Resources of Puerto Rico delivered to the Sublandlord on or prior to the date hereof.

   (vi) paid all real or personal property taxes with the Municipal Revenues Collection Center (the “CRIM”), if any, as evidenced by a recent certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the CRIM and delivered to Sublandlord; and

   (vii) (vii) No outstanding indebtedness with the Puerto Rico Child Support Administration (“ASUME”), pursuant to a recent certification issue by ASUME and
delivered to Sublandlord evidencing Subtenant’s compliance with the withholdings required to be made by employers under Applicable Law.

b. Subtenant has delivered to the Sublandlord on or prior to the date hereof a copy of Subtenant’s Merchant’s Registration Certificate.

c. Subtenant has delivered to the Sublandlord on or prior to the date hereof (i) copies of all its organizational documents and certificates of authorizations to do business in Puerto Rico, duly registered on the Puerto Rico Department of State, as the same have been amended from time to time, (ii) recent certificates of good standing issued by the Puerto Rico Department of State, (iii) certification that it has complied and is in compliance with the provisions of the PPP Authority’s Ethical Guidelines, and (iv) the Sworn Statement attached to as Appendix X to the O&M Agreement, required under Act No. 2-2018 of the Legislative Assembly of Puerto Rico, as amended from time to time (the “Anti-Corruption Code”).

d. Subtenant expressly recognizes that the compliance with the provisions of this Section 22 is an essential condition of this Agreement, and if any representation or warranty is not accurate, in whole or in part, the same shall constitute cause for Sublandlord to terminate this Agreement.

23. If, in accordance with the policies of the governmental authorities in charge of the issuance of any of the above-mentioned certifications, any of such certifications is not obtainable by the Subtenant, the Sublandlord acknowledges and agrees that a sworn statement in connection thereof shall be sufficient for purposes of complying with this Section 22.

24. **Debt Certification.** Subtenant warrants to Sublandlord that neither Subtenant nor its directors, officers or stockholders owe any amount to Sublandlord or to any agency or instrumentality of the Government of Puerto Rico, either personally or under this or any other corporate or partnership name.

25. **Compliance with Laws.**

a. The Subtenant shall, at all times and at its own cost and expense, observe and comply, in all material respects, and observe and comply, in all material respects, with all Applicable Laws now existing or later in effect that are applicable to it, including laws and regulations enforced by the Puerto Rico Public Service Commission, Environmental Statutes, the ADA all other Laws expressly enumerated in the O&M Agreement and Underlying Lease, and those that may in any manner apply with respect to the performance of the Subtenant’s obligations under this Agreement. Subtenant shall notify Sublandlord in writing within seven (7) days after receiving notice from a Governmental Authority that Subtenant may have violated any of the above.

b. Subtenant acknowledges, represents and warrants that no official or employee of Sublandlord or Landlord has a direct or indirect economic interest in Subtenant’s rights under this Agreement in accordance with the provisions of the Anti-Corruption Code, which Anti-Corruption Code Subtenant herein certifies it has received a copy of, read, understood and complied with at all
times previous to the execution of this Agreement and agrees that it will subsequently comply with it in its entirety, including, without limitation, with the requirements of Governmental Contractor Code of Ethics, which forms part of the Anti-Corruption Code.

c. To the knowledge of Subtenant, all information regarding Subtenant provided to Sublandlord by the Subtenant or on behalf of the Subtenant was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Effective Date, unless specifically related to a prior period in time.

d. Criminal Proceedings.

   (i) Subtenant warrants and certifies that as of the Effective Date and for the preceding twenty (20) years, (A) neither it nor its President, any of its Vice Presidents or Directors, Executive Director or Member of a Board of Officials or Board of Directors (or any person that holds a position with Subtenant equivalent to any of the foregoing), nor any of its subsidiaries nor any of its Equity Participants (each, a “Covered Party”), has been convicted, has entered a plea of guilty or nolo contendere or has been indicted in any criminal procedure in any State, Commonwealth or federal court or in any foreign country for criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property, or for the felonies or misdemeanors mentioned in the Anti-Corruption Code, and (B) each Covered Party is complying and shall continue to comply at all times with laws that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to Subtenant under State or federal Law, including the Foreign Corrupt Practices Act. If a Covered Party after the Effective Date becomes indicted or convicted in a criminal procedure for any type of offense described in this Section 25 (d), Subtenant shall immediately notify Sublandlord thereof in writing as required by the Anti-Corruption Code.

e. Subtenant shall comply with all Applicable Laws regarding non-discrimination.

f. Subtenant attests, subject to the penalties for perjury, that no representative of Subtenant, directly or indirectly, to the best of Subtenant’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

g. As required by Article 10 of Act No. 14 of January 8, 2004, 3 P.R. Laws Ann. § 930 et seq., Subtenant shall use, to the extent (i) available and applicable to the services provided under the O&M Agreement and (ii) not in contravention with any federal law with supremacy over the provision of Act 14-2004, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth. For the avoidance of doubt, nothing herein shall require Subtenant to exercise a “local preference” for any goods or services for purposes of applicable federal laws.
h. None of Subtenant or its subsidiaries or, when acting on behalf of Subtenant or its subsidiaries, any director, officer, manager, administrator or employee of Subtenant or its subsidiaries or, in connection with this Agreement, any Affiliates of Subtenant has:

   (i) violated, conspired to violate, aided and abetted the violation of any Anti-Corruption Laws or committed any felonies or misdemeanors under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in the Anti-Corruption Code, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico;

   (ii) been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, or has been found guilty of any such type of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

i. Subtenant has not, directly or indirectly, made or received, and will not make or receive, any payments in connection with this Agreement in order to illegally or improperly obtain business or other rights.

j. Subtenant is not aware that it is being investigated as part of a criminal or civil process by any law enforcement or regulatory authority in connection with the Anti-Corruption Code or any criminal laws or regulations.

k. None of Subtenant, its subsidiaries, parent company or any directors, officers or employees of any thereof is (A) a Person, or is a Person owned or controlled by a Person (a “Sanctioned Person”), with whom dealings are restricted or prohibited by, or are sanctionable under, any economic sanctions or trade restrictions administered or enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union or Her Majesty’s Treasury or any other authority with jurisdiction over Subtenant, its subsidiaries or its Affiliates (collectively, “Sanctions”) or (B) located, organized or resident in a country or territory with which dealings are broadly restricted, prohibited or made sanctionable under any Sanctions (currently, the Crimea, Cuba, Iran, North Korea and Syria) (each, a “Sanctioned Country”). Subtenant and its subsidiaries have not violated and have not engaged in any conduct sanctionable under Sanctions. There are not now, nor have there been within the past five (5) years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of the parent company, threatened against the parent company, Subtenant, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.

l. Subtenant does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between Subtenant and the particular interests it represents.
m. As of the Effective Date, Subtenant has no litigation whatsoever with the Commonwealth of Puerto Rico, its agencies or instrumentalities.

n. Subtenant shall inform Sublandlord if, at any time during the Term, it becomes subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.

26. Cancellation of this Agreement. Notwithstanding any other provision in this Agreement, Sublandlord may immediately cancel or terminate this Agreement should (i) Subtenant or any of its officers, directors, managers and/or administrators is found guilty in Puerto Rico Court or Federal Court of one of the crimes listed in (i) the Anti-Corruption Code, (ii) Act No. 237, (iii) Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, (iv) Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, or (v) any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico; or (ii) this Agreement be obtained by fraud, collusion, conspiracy, or other unlawful means as determined by a final unappealable judgement of a court of competent jurisdiction.

27. Force Majeure. The Force Majeure provisions of the O&M Agreement shall apply to this Sublease.

28. Estoppel Certificate. The Subtenant, upon Sublandlord’s request, shall provide to the Sublandlord with an Estoppel Certificate wherein it certifies that (i) this Sublease is unmodified and in full force and effect (or if any modifications, with specifications as to such modifications and certify that this Sublease as modified is in full force and effect); (ii) no Party is in default under any provision of this Sublease; (iii) Subtenant is in possession of the Leased Premises, (iv) there is no petition, whether voluntary or otherwise, pending as to Subtenant or related party under the bankruptcy laws of the United States, and (v) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees. Upon request by Subtenant, Sublandlord shall provide Subtenant with an Estoppel Certificate wherein it certifies that (i) this Sublease is unmodified and in full force and effect (or if any modifications, with specifications as to such modifications and certify that this Sublease as modified is in full force and effect); (ii) to Sublandlord’s knowledge, no Party is in default under any provision of this Sublease; (iii) Sublandlord has all rights of “tenant” under the Underlying Lease, and (iv) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees.
29. **No Partnership, Joint Venture.** No provision of this Agreement shall be deemed or construed to create a relationship of principal and agent, partnership, joint venture or similar relationship between Sublandlord and Subtenant, it being understood that the sole relationship between such parties is that of a sublandlord and a subtenant.

30. **Survival.** Any covenant, right or obligation of Sublandlord or Subtenant which is not satisfied or completed prior to expiration or earlier termination of this Sublease shall survive the expiration or earlier termination of this Agreement.

31. **Severability.** If any covenant, restriction, term, condition or provision of this Agreement or the application thereof to any person or circumstance is or becomes to any extent illegal, invalid or unenforceable under present or future laws effective during the Term, then it is the intent of the Parties to this Agreement that no other covenant, restriction, term, condition or provision of this Agreement, or the application thereof to persons or circumstances other than those to which such term or provision is illegal, invalid or unenforceable, shall not be affected or impaired thereby.

32. **Choice of Law.** This Agreement, and the rights and obligations of the Parties under this Agreement, shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Venue shall be in the state and federal courts located in San Juan, Puerto Rico.

33. **Disputes.** The Parties agree that any Dispute with respect to this Sublease shall be resolved in accordance with the provisions of Article 33 of the O&M Agreement.

34. **Inconsistencies.** In the event of any inconsistency between the terms of this Agreement and the terms of the O&M Agreement, the terms, covenants and provisions of the O&M Agreement shall be controlling; provided, however, that the terms of the O&M Agreement shall not affect the rights of Landlord under the Underlying Lease.

35. **Filing with Controller’s Office.** The Parties hereby acknowledge and understand that this Agreement shall be filed in the Puerto Rico Controller’s Office, according to the Applicable Laws.

36. **Recordation.** This Agreement shall not be recorded in the Registry of the Property of Puerto Rico.

37. **Recitals.** The Recitals set forth in the Preamble to this Agreement are hereby incorporated herein and made to form an integral part hereof.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the
day and year first above written.

SUBTENANT:

HMS FERRIES – PUERTO RICO, LLC

By:___________________________
Name:__________________________
Title:___________________________

SUBLANDLORD:

PUERTO RICO AND THE
ISLAND MUNICIPALITIES
MARITIME TRANSPORT
AUTHORITY

By:___________________________
Name:__________________________
Title:___________________________
Exhibit A

The Underlying Lease
FORM OF SUBLEASE AGREEMENT

AGREEMENT OF SUBLEASE
(Isla Grande Facility)

AGREEMENT OF SUBLEASE (this “Agreement” or “Sublease”), made as of the ___ day of ________, 2020 (the “Effective Date”), by and between PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and instrumentality of the Government of Puerto Rico (hereinafter referred to as “Sublandlord”), and HMS FERRIES – PUERTO RICO, LLC, a Puerto Rico limited liability company (hereinafter referred to as “Subtenant”). Sublandlord and Subtenant are sometimes referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS:

WHEREAS, pursuant to that certain Lease Agreement (the “Underlying Lease”), dated as of ____________, Puerto Rico Ports Authority, as landlord (“Landlord”), leased to Sublandlord, as tenant, the facility identified as the [_____] terminal and its adjacent cargo piers, known as [_____] (the “Terminal Facility”) located in San Juan, Puerto Rico, Puerto Rico, as more particularly described in the Underlying Lease;

WHEREAS, Sublandlord leases the Terminal Facility for the operation of maritime transport of cargo and passengers to and from the Terminal Facility subject to the terms of use, covenants and conditions set forth in the Underlying Lease;

WHEREAS, Sublandlord is a public corporation of the Commonwealth of Puerto Rico created by virtue of Act No. 1-2000, as amended, known as the Puerto Rico and the Island Municipalities Maritime Transport Authority Act (the “MTA Act”);

WHEREAS, the Executive Director of Sublandlord is authorized and empowered to execute this Agreement pursuant to Resolution Number [_____] dated [_____] executed by the Secretary of the Department of Transportation and Public Works pursuant to Article 4(a) of the MTA Act, and the [______] of Subtenant is authorized and empowered to execute this Agreement pursuant to [__________________];

WHEREAS, on [_______] the Parties entered into a Maritime Transport Operations and Maintenance Agreement (the “O&M Agreement”; capitalized terms not otherwise defined herein or in the Underlying Lease, shall have the meaning as set forth in the O&M Agreement) whereby Subtenant agreed to conduct the metro and island maritime transport services of cargo and passengers previously conducted by Sublandlord and to operate and maintain the piers and terminal facilities necessary to provide such services, including, without limitation, the Terminal Facility;
WHEREAS, the Ferry System requires net subsidy from Sublandlord in order to operate, and Subtenant has agreed to operate the Ferry System and to accept the Phase 1 Service Payment and the Phase 2 Fixed Fee for operation of the Ferry System during Phase 1 and Phase 2, respectively;

WHEREAS, Subtenant has represented to Sublandlord pursuant to Section 48.12 of the O&M Agreement that the Sublandlord has realized a saving in subsidy by not less than $6,000,000 that otherwise would have been bid by Subtenant for the Phase 2 Fixed Fee;

WHEREAS, in connection with the O&M Agreement, Sublandlord has agreed to sublease to Subtenant the Terminal Facility (hereinafter, the “Leased Premises”) for the purposes of carrying out the Works and the Ancillary Activities set forth in the O&M Agreement (the “Permitted Use”), and Subtenant has agreed to sublease from Sublandlord the Leased Premises, subject to the terms, covenants and agreements set forth herein and in the O&M Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein and in the O&M Agreement, and other good, adequate and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. Subleasing of Leased Premises. Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, the Terminal Facility, on and subject to the terms and conditions set forth hereinafter and in the O&M Agreement.

2. Term. The term (the “Term”) of this Agreement shall commence on the Effective Date and shall expire on the earlier of: (i) the date of expiration of the Underlying Lease or its earlier termination, (ii) the date of expiration of the O&M Agreement or its earlier termination, and (iii) such earlier date on which the Term shall expire or be cancelled or terminated otherwise pursuant to the written agreement of the Parties or the O&M Agreement (the “Expiration Date”). Subtenant shall have no right to occupy the Leased Premises or any portion thereof after the expiration of the Sublease or after termination of the Sublease. In the event Subtenant or any party claiming by, through or under Subtenant, holds over the Leased Premises, Sublandlord may exercise any and all remedies available to it at law or in equity to recover possession of the Leased Premises, and to recover damages.

3. Rent. (a) In recognition of the requirement for subsidy from the Sublandlord to the Subtenant for operation of the Ferry System, the Sublandlord agrees to accept, and the Subtenant agrees to pay, for Subtenant’s possession and use of the Leased Premises hereunder during the term, the total monthly rent (the “Basic Rent”) of ONE HUNDRED DOLLARS ($100.00). [Subtenant shall pay such rent to Sublandlord in advance on the [first (1st) day of each month], commencing on the Effective Date. Basic Rent for any partial month shall be prorated on a per diem basis.]

(b) Unless otherwise provided under the O&M Agreement, Subtenant hereby also agrees to pay all utility charges, insurance charges, maintenance charges, property taxes (should the assessment thereof arises from any of Subtenant’s improvements), and any and all other
payments or reimbursements (other than rent) payable by Subtenant under this Agreement (the “Additional Rent”).

(c) The Basic Rent and the Additional Rent (hereinafter collectively, the “Rent”) shall be paid in legal currency of the United States of America. All Rent shall be remitted directly to Sublandlord, through a manager’s or official bank check or wire transfer or ACH debits based on Sublandlord’s written instructions delivered to Subtenant. It is Subtenant’s duty to take the necessary measures and precautions to ensure that the Rent is received by Sublandlord on or before its due date. The payment of Rent is separate from any other agreement or obligation contained in this Agreement and shall be paid without the need of previous request or notice by Sublandlord, without set off, adjustment or abatement of any kind.

4. **Permitted Use.** Subtenant shall use and occupy the Leased Premises for the Permitted Use in accordance with the provisions of the Underlying Lease and the O&M Agreement, and for no other purpose and otherwise in accordance with the terms and conditions of the Underlying Lease or the O&M Agreement. Subtenant shall not use the Leased Premises, or any part thereof, or knowingly permit the same to be used for any illegal, immoral or improper purpose.

5. **Permits.** Unless otherwise provided in the O&M Agreement, Tenant may make alterations, changes, additions or improvements to the Leased Premises, provided it has obtained Sublandlord’s prior written consent, subject to the terms, covenants and conditions set forth in the O&M Agreement, including with respect to payments or reimbursements from Sublandlord to cover any such improvements. Subtenant shall, at its own cost and expense (except as otherwise provided in the O&M Agreement), (i) procure each and every permit, license, certificate or other authorization (“Permits”) that a subtenant is required to obtain to occupy, use and operate its business at the Leased Premises in connection with the lawful and proper use of the Leased Premises by a subtenant, and (ii) comply strictly with all applicable laws and regulations concerning the operation of its business and its use therefor in the Leased Premises, including without limitation, any and all nuisance and environmental regulations. Sublandlord shall cooperate with Subtenant on a commercially reasonable manner by providing such available information, documents or authorizations to Sublandlord, that could be required for filing and obtaining such Permits. To the extent necessary, Sublandlord shall timely make any and all notifications required under its current Permits in connection with this Sublease Agreement.

6. **Subordination to and Incorporation of the Underlying Lease.** An executed copy of the Underlying Lease, with all of its amendments, modifications and extensions is hereby attached as **Exhibit A.** Subtenant hereby acknowledges and agrees that this Agreement is in all respects subject and subordinate to the terms and conditions of the Underlying Lease herein attached and to all matters to which the Underlying Lease is subject and subordinate. Except as otherwise expressly provided in, or as may be otherwise inconsistent with, the O&M Agreement, or to the extent not applicable to the Leased Premises, the terms, provisions, negative covenants, stipulations, conditions, rights, obligations, remedies, and agreements contained in the Underlying Lease are incorporated in this Agreement by reference, and are made a part hereof as if herein set forth at length, Sublandlord being substituted for the “landlord” under the Underlying Lease, Subtenant being substituted for the “tenant” under the Underlying Lease, and the Leased Premises being substituted for the “leased
premises” under the Underlying Lease. Notwithstanding the foregoing, except for the obligations of Sublandlord under Sections 4, 6, 11, 13, 15(A)-(C), 16(A)-(D), 17(B), 17(D), 18(A)-(B) and 31 of the Underlying Lease, which are hereby accepted and assumed by Subtenant (except as otherwise expressly provided in, or as may be otherwise inconsistent with, the O&M Agreement, but, in any case, such exception shall only apply to the extent of such inconsistency), Subtenant shall not be required to comply with any of the affirmative covenants of Sublandlord set forth in the Underlying Lease. In furtherance of the compliance with Sections 15(A), 15(B) and 18(A) of the Underlying Lease, Sublandlord will deliver in writing to Subtenant copies of each of the applicable regulations, requirements, guidelines, specifications, schedules and quality standards to the extent received by it from the Landlord. In addition, upon request by Subtenant, Sublandlord shall cooperate with Subtenant, on a commercially reasonable manner, in obtaining and sharing with Subtenant any such applicable regulations, requirements, guidelines, specifications, schedules and quality standards from Landlord. Nothing contained in the Underlying Lease shall be deemed to modify, supersede or amend the provisions of the O&M Agreement and the Authority is and shall remain as the only obligee thereunder. Further to the foregoing, Sublandlord hereby covenants and agrees to notify Subtenant of any proposed or intended amendments, supplements or otherwise modifications to the terms and conditions of the Underlying Lease, which proposed amendments may not, in any event, restrict, limit or adversely affect the rights granted to Subtenant hereunder, unless the written consent of the Subtenant is obtain in advance.

7. **Sublandlord Not Required to Provide Services.** Except to the extent that any repairs or restorations are required under the O&M Agreement to be made by Sublandlord, or comply with any laws or requirements of any governmental authorities, Sublandlord shall not be required to provide any of the services that Landlord has agreed to provide pursuant to the Underlying Lease (or required by law), or make any of the repairs or restorations that Landlord has agreed to make pursuant to the Underlying Lease (or required by law), or take any other action that Landlord has agreed to provide, furnish, make, comply with or take, or cause to be provided, furnished, made, complied with or taken under the Underlying Lease. Subtenant shall not have any claim against Sublandlord by reason of Landlord’s failure or refusal to comply with the provisions of the Underlying Lease, unless such failure or refusal is a direct result of Sublandlord’s negligence or willful misconduct or such failure or refusal also constitutes a breach of Sublandlord’s obligations hereunder. As between Sublandlord and Subtenant, the obligations of each with respect to repairs, restoration and improvements are those set forth in the O&M Agreement.
8. **Delivery of Possession.** The Leased Premises shall be delivered to Subtenant on the date of execution of this Agreement by all Parties. Subtenant acknowledges that it has inspected the Leased Premises before the execution of this Agreement and assumes its possession in its “AS IS, WHERE IS” condition, subject to any repair identified in a written agreement existing between the Parties required to be made by Sublandlord on or after the delivery of the Leased Premises to Subtenant pursuant to the O&M Agreement and also Subtenant acknowledges its commitment to perform during the Term any and all reasonable repairs to the Leased Premises as required and provided under the O&M Agreement. Subtenant acknowledges that upon termination, cancellation or early termination of this Agreement it shall surrender and deliver the Leased Premises, without demand, to the Sublandlord as set forth in the O&M Agreement, including without limitation the repair obligations under Section 13.4 and the handback provisions set forth in Section 46.1 thereof.

9. **Underground Storage Tanks.** The Parties acknowledge that there are erected on the Leased Premises certain underground storage tanks and related underground storage tank system (including piping). Subtenant shall not be liable and shall assume no liability whatsoever for any claims, liabilities, losses and obligations relating to the ownership, use, condition, permitting and operation of, or any event occurring arising in connection with the above-mentioned underground storage tanks and related underground storage tank system (including piping).

10. **Utilities.** Unless otherwise agreed in the O&M Agreement, Subtenant shall pay for its use and consumption of utilities by paying to Sublandlord the total pass-through cost (with no markup) of utility services used or consumed by Subtenant thereof as contemplated in Section 3 (b) hereof. Subtenant shall not hold Sublandlord liable for any utility service interruption to the Leased Premises or for damages suffered due to any interruption unless such interruption is caused by Sublandlord’s negligence or willful misconduct.

11. **Signs.** Any signs or advertising material that Subtenant would like to install or erect at the Leased Premises will comply with the provisions set forth in Section 19.1 of the O&M Agreement. Landlord and Tenant agree that any signage to be erected, installed, maintained or replaced on and upon the Leased Premises shall be tasteful and aesthetically pleasing, shall not (i) affect the aesthetics of the Leased Premises and the improvements therein, and (ii) shall be in accordance with Applicable Laws and Landlord’s guidelines and specifications, set forth in the Underlying Lease, if any.

12. **Additional Events of Default by Subtenant.** In addition to the events or acts of tenant that shall be considered a breach or cause for termination within the Underlying Lease, it shall be considered an Event of Default of this Agreement if during the Term hereof, an event of default by Subtenant under the O&M Agreement has occurred and continues after all relevant cure periods have elapsed, as applicable.

13. **Quiet Enjoyment.** Upon Subtenant’s observance of all terms, covenants and conditions of this Agreement and the O&M Agreement that are to be observed and performed by Subtenant, Sublandlord covenants that Subtenant may peaceably and quietly enjoy the Leased Premises, during the Term, or until the Expiration Date.
14. **Sublease, Not Assignment.** Anything herein to the contrary notwithstanding, this Agreement shall be deemed to be a sublease of the Leased Premises and not an assignment, in whole or in part, of Sublandlord’s interest in the Underlying Lease. Sublandlord shall not be released from, and Subtenant shall not be deemed to have assumed, any of Sublandlord’s obligations under the Underlying Lease, unless otherwise set forth herein. Nothing contained herein shall affect Landlord’s rights or Sublandlord’s obligations under the Underlying Lease.

15. **Assignment.** Except as set forth in Section 34.1 of the O&M Agreement, Subtenant may not assign this Agreement, without Sublandlord’s prior written consent and subject to the terms of the O&M Agreement. Subtenant may sublease and grant concession agreements as contemplated in the O&M Agreement. It is a condition precedent to any assignment or sublease of the Leased Premises, that such incidental use complies with the provisions of the O&M Agreement, including without limitation the provisions set forth in Section 48.12 thereof as to Incidental Use. A change of control in Subtenant or change in the persons or entities having direct or indirect interest in the Subtenant as prescribed in the O&M Agreement shall be considered as an assignment for the purposes of this Section 15, which requires Sublandlord’s prior written consent.

16. **Notices.** Any notice, statement, demand, consent, approval, advice or other communication required or permitted to be given, rendered or made by either Party to the other, pursuant to this Agreement or pursuant to any Applicable Law or requirement of public authority (collectively, “Notices”) shall be in writing and shall be deemed to have been properly given as set forth in the O&M Agreement.

17. **Indemnification.** Each Party hereby agree to indemnify and hold harmless the other Party in accordance with the provisions of Article 28 of the O&M Agreement, as applicable.

18. **Covenants, Representations, and Warranties of Sublandlord.**

Sublandlord hereby covenants, represents and warrants to and with Subtenant as follows:

a. Sublandlord is the owner of all rights of the “tenant” under the Underlying Lease, free and clear of any lien, assignment, sublease, option or other charge or encumbrance.

b. A complete and correct copy of the Underlying Lease, including all amendments, schedules, and exhibits thereto is attached hereto as Exhibit A. The Underlying Lease sets forth the entire agreement and understanding between Sublandlord and Landlord with respect to the Underlying Premises, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby or the rights of the Sublandlord in respect thereof. The Sublandlord represents and warrants that the Underlying Lease is in full force and effect and is the legal, valid, and binding obligation of the Sublandlord, enforceable against the Sublandlord in accordance with its terms. No notice of default under the Underlying Lease has been given and, to Sublandlord’s knowledge, no condition exists which might reasonably be expected to give rise, with the passage of time or otherwise, to a default or breach under the Underlying Lease.
c. All amounts due and payable as of the Effective Date by Sublandlord to Landlord under the Underlying Lease have been paid in full.

d. It has full right, power and authority to enter into and perform this Agreement, to do so without the consent or joinder of any other party being required, except for Landlord’s consent which may be required for the execution of this Agreement. If so, such consent has been received by Subtenant.

e. The terms and conditions of this Agreement do not conflict with or violate any other existing agreements to which Sublandlord is a party or by which Sublandlord is bound, that could reasonably be expected to result in a material adverse effect of Sublandlord.

f. Each person signing this Agreement on behalf of Sublandlord covenants, warrants and represents that it is a current authorized officer of said entity pursuant to the terms of the MTA Act and has the power and due authority to execute this Agreement in the capacity stated and to bind the entity for which such person is signing.

g. Sublandlord agrees, upon request by Subtenant, to promptly deliver to Subtenant such resolutions, certificates or other affidavits evidencing the foregoing as may be reasonably requested.

h. Any and all representations of Sublandlord as to the environmental conditions of the Leased Premises as of the date hereof are set forth in the O&M Agreement.

19. **Covenants, Representations and Warranties of Subtenant.**

a. Subtenant covenants, warrants and represents that it has full right, power and authority to enter into and perform this Agreement, to do so without the consent or joinder of any other party being required.

b. The terms and conditions of this Agreement do not conflict with or violate any other existing agreements between such party and any third parties.

c. That Subtenant is a corporation, duly formed and in good standing under the laws of the State of Delaware, and is duly qualified to do business in the Commonwealth of Puerto Rico.

d. Each person signing this Agreement on behalf of Subtenant covenants, warrants and represents that it is a current authorized officer of said entity and has the power and due authority to execute this Agreement in the capacity stated and to bind the entity for which such person is signing.
e. Subtenant agrees, upon request by Sublandlord, to promptly deliver to Sublandlord such resolutions, certificates or other affidavits evidencing the foregoing as may be reasonably requested.

f. That this Agreement is related and accessory to the Underlying Lease and the O&M Agreement.

20. **Entire Agreement, Amendment, Waiver.** This Agreement, together with the O&M Agreement, contain the entire agreement between the Parties and all prior negotiations and agreements are merged into this Agreement and the O&M Agreement. Any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the Parties. No provision of this Agreement shall be deemed to have been waived by Sublandlord or Subtenant unless such waiver is in writing and signed by Sublandlord or Subtenant, as the case may be. The covenants and agreements contained in this Agreement shall bind and inure to the benefit of Sublandlord and Subtenant and their respective successors and assigns. This Agreement may be executed in counterparts, each of which will be deemed to constitute one and the same agreement.

21. **Cross Default.** Any default by any Party under the O&M Agreement shall be considered a default by such defaulting Party under this Agreement. Any default by Subtenant under this Agreement shall be considered a default under the O&M Agreement.

22. **Fiscal Liabilities.**

a. Subtenant represents and warrants that, at the time of execution of this Sublease, it has:

   (i) if required by law, filed tax returns for the last five (5) years, as evidenced by a recent Income Tax Return Filing Certificate issued by the Puerto Rico Treasury Department delivered to Sublandlord on or prior to the date hereof;

   (ii) no outstanding tax debt with the Government of Puerto Rico nor with the United States Government (if applicable) and is not subject to a payment plan thereunder as evidenced by a recent certificate of no debt issued by the Puerto Rico Treasury Department delivered to Sublandlord on or prior to the date hereof;

   (iii) no outstanding sales and use tax debt with the Government of Puerto Rico and is not subject to a payment plan thereunder, pursuant to a certification issued by the Puerto Rico Treasury Department and delivered to the Sublandlord indicating that Subtenant does not owe Puerto Rico sales and use taxes to the Commonwealth;

   (iv) if required by law, filed sales and use tax returns for the last sixty (60) tax periods as evidenced pursuant to a recent Puerto Rico Sales and Use Tax Filing Certificate issued by the Puerto Rico Treasury Department delivered to the Sublandlord;
(v) to the extent applicable and as required by applicable law, paid all of its unemployment taxes, disability and social security taxes, unemployment insurance, temporary disability (workmen’s compensation) and chauffeur’s social security during the last five (5) years in accordance with the Puerto Rico Employment Security Act, or is in compliance with a payment plan therefor and in compliance with the terms and conditions thereof, as evidenced by a recent certificate issued by the Department of Labor and Human Resources of Puerto Rico delivered to the Sublandlord on or prior to the date hereof.

(vi) paid all real or personal property taxes with the Municipal Revenues Collection Center (the “CRIM”), if any, as evidenced by a recent certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the CRIM and delivered to Sublandlord; and

(vii) No outstanding indebtedness with the Puerto Rico Child Support Administration (“ASUME”), pursuant to a recent certification issue by ASUME and delivered to Sublandlord evidencing Subtenant’s compliance with the withholdings required to be made by employers under Applicable Law.

b. Subtenant has delivered to the Sublandlord on or prior to the date hereof a copy of Subtenant’s Merchant’s Registration Certificate.

c. Subtenant has delivered to the Sublandlord on or prior to the date hereof (i) copies of all its organizational documents and certificates of authorizations to do business in Puerto Rico, duly registered on the Puerto Rico Department of State, as the same have been amended from time to time, (ii) recent certificates of good standing issued by the Puerto Rico Department of State, (iii) certification that it has complied and is in compliance with the provisions of the PPP Authority’s Ethical Guidelines, and (iv) the Sworn Statement attached to as Appendix X to the O&M Agreement, required under Act No. 2-2018 of the Legislative Assembly of Puerto Rico, as amended from time to time (the “Anti-Corruption Code”).

d. Subtenant expressly recognizes that the compliance with the provisions of this Section 22 is an essential condition of this Agreement, and if any representation or warranty is not accurate, in whole or in part, the same shall constitute cause for Sublandlord to terminate this Agreement.

23. If, in accordance with the policies of the governmental authorities in charge of the issuance of any of the above-mentioned certifications, any of such certifications is not obtainable by the Subtenant, the Sublandlord acknowledges and agrees that a sworn statement in connection thereof shall be sufficient for purposes of complying with this Section 22.

24. Debt Certification. Subtenant warrants to Sublandlord that neither Subtenant nor its directors, officers or stockholders owe any amount to Sublandlord or to any agency or instrumentality of the Government of Puerto Rico, either personally or under this or any other corporate or partnership name.
25. **Compliance with Laws.**

a. The Subtenant shall, at all times and at its own cost and expense, observe and comply, in all material respects, and observe and comply, in all material respects, with all Applicable Laws now existing or later in effect that are applicable to it, including laws and regulations enforced by the Puerto Rico Public Service Commission, Environmental Statutes, the ADA all other Laws expressly enumerated in the O&M Agreement and Underlying Lease, and those that may in any manner apply with respect to the performance of the Subtenant’s obligations under this Agreement. Subtenant shall notify Sublandlord in writing within seven (7) days after receiving notice from a Governmental Authority that Subtenant may have violated any of the above.

b. Subtenant acknowledges, represents and warrants that no official or employee of Sublandlord or Landlord has a direct or indirect economic interest in Subtenant’s rights under this Agreement in accordance with the provisions of the Anti-Corruption Code, which Anti-Corruption Code Subtenant herein certifies it has received a copy of, read, understood and complied with at all times previous to the execution of this Agreement and agrees that it will subsequently comply with it in its entirety, including, without limitation, with the requirements of Governmental Contractor Code of Ethics, which forms part of the Anti-Corruption Code.

c. To the knowledge of Subtenant, all information regarding Subtenant provided to Sublandlord by the Subtenant or on behalf of the Subtenant was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Effective Date, unless specifically related to a prior period in time.

d. **Criminal Proceedings.**

(i) Subtenant warrants and certifies that as of the Effective Date and for the preceding twenty (20) years, (A) neither it nor its President, any of its Vice Presidents or Directors, Executive Director or Member of a Board of Officials or Board of Directors (or any person that holds a position with Subtenant equivalent to any of the foregoing), nor any of its subsidiaries nor any of its Equity Participants (each, a “Covered Party”), has been convicted, has entered a plea of guilty or *nolo contendere* or has been indicted in any criminal procedure in any State, Commonwealth or federal court or in any foreign country for criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property, or for the felonies or misdemeanors mentioned in the Anti-Corruption Code, and (B) each Covered Party is complying and shall continue to comply at all times with laws that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to Subtenant under State or federal Law, including the Foreign Corrupt Practices Act. If a Covered Party after the Effective Date becomes indicted or convicted in a criminal procedure for any type of offense described in this Section 25 (d), Subtenant shall immediately notify Sublandlord thereof in writing as required by the Anti-Corruption Code.

e. Subtenant shall comply with all Applicable Laws regarding non-discrimination.
f. Subtenant attests, subject to the penalties for perjury, that no representative of Subtenant, directly or indirectly, to the best of Subtenant’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

g. As required by Article 10 of Act No. 14 of January 8, 2004, 3 P.R. Laws Ann. § 930 et seq., Subtenant shall use, to the extent (i) available and applicable to the services provided under the O&M Agreement and (ii) not in contravention with any federal law with supremacy over the provision of Act 14-2004, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth. For the avoidance of doubt, nothing herein shall require Subtenant to exercise a “local preference” for any goods or services for purposes of applicable federal laws.

h. None of Subtenant or its subsidiaries or, when acting on behalf of Subtenant or its subsidiaries, any director, officer, manager, administrator or employee of Subtenant or its subsidiaries or, in connection with this Agreement, any Affiliates of Subtenant has:

   (i) violator, conspired to violate, aided and abetted the violation of any Anti-Corruption Laws or committed any felonies or misdemeanors under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in the Anti-Corruption Code, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico;

   (ii) been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, or has been found guilty of any such type of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

i. Subtenant has not, directly or indirectly, made or received, and will not make or receive, any payments in connection with this Agreement in order to illegally or improperly obtain business or other rights.

j. Subtenant is not aware that it is being investigated as part of a criminal or civil process by any law enforcement or regulatory authority in connection with the Anti-Corruption Code or any criminal laws or regulations.

k. None of Subtenant, its subsidiaries, parent company or any directors, officers or employees of any thereof is (A) a Person, or is a Person owned or controlled by a Person (a “Sanctioned Person”), with whom dealings are restricted or prohibited by, or are sanctionable under, any economic sanctions or trade restrictions administered or enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S.
Department of State or the Bureau of Industry and Security of the U.S. Department of Commerce, the United Nations Security Council, the European Union or Her Majesty’s Treasury or any other authority with jurisdiction over Subtenant, its subsidiaries or its Affiliates (collectively, “Sanctions”) or (B) located, organized or resident in a country or territory with which dealings are broadly restricted, prohibited or made sanctionable under any Sanctions (currently, the Crimea, Cuba, Iran, North Korea and Syria) (each, a “Sanctioned Country”). Subtenant and its subsidiaries have not violated and have not engaged in any conduct sanctionable under Sanctions. There are not now, nor have there been within the past five (5) years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of the parent company, threatened against the parent company, Subtenant, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.

1. Subtenant does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between Subtenant and the particular interests it represents.

m. As of the Effective Date, Subtenant has no litigation whatsoever with the Commonwealth of Puerto Rico, its agencies or instrumentalities.

n. Subtenant shall inform Sublandlord if, at any time during the Term, it becomes subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.

26. Cancellation of this Agreement. Notwithstanding any other provision in this Agreement, Sublandlord may immediately cancel or terminate this Agreement should (i) Subtenant or any of its officers, directors, managers and/or administrators is found guilty in Puerto Rico Court or Federal Court of one of the crimes listed in (i) the Anti-Corruption Code, (ii) Act No. 237, (iii) Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, (iv) Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, or (v) any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico; or (ii) this Agreement be obtained by fraud, collusion, conspiracy, or other unlawful means as determined by a final unappealable judgement of a court of competent jurisdiction.

27. Force Majeure. The Force Majeure provisions of the O&M Agreement shall apply to this Sublease.

28. Estoppel Certificate. The Subtenant, upon Sublandlord’s request, shall provide to the Sublandlord with an Estoppel Certificate wherein it certifies that (i) this Sublease is unmodified and in full force and effect (or if any modifications, with specifications as to such modifications and certify that this Sublease as modified is in full force and effect); (ii) no Party is in default under any provision of this Sublease; (iii) Subtenant is in possession of the Leased Premises, (iv) there is no petition, whether voluntary or otherwise, pending as to Subtenant or related party under the bankruptcy laws of the United States, and (v) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees. Upon request by

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Subtenant, Sublandlord shall provide Subtenant with an Estoppel Certificate wherein it certifies that (i) this Sublease is unmodified and in full force and effect (or if any modifications, with specifications as to such modifications and certify that this Sublease as modified is in full force and effect); (ii) to Sublandlord’s knowledge, no Party is in default under any provision of this Sublease; (iii) Sublandlord has all rights of “tenant” under the Underlying Lease, and (iv) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees

29. **No Partnership, Joint Venture.** No provision of this Agreement shall be deemed or construed to create a relationship of principal and agent, partnership, joint venture or similar relationship between Sublandlord and Subtenant, it being understood that the sole relationship between such parties is that of a sublandlord and a subtenant.

30. **Survival.** Any covenant, right or obligation of Sublandlord or Subtenant which is not satisfied or completed prior to expiration or earlier termination of this Sublease shall survive the expiration or earlier termination of this Agreement.

31. **Severability.** If any covenant, restriction, term, condition or provision of this Agreement or the application thereof to any person or circumstance is or becomes to any extent illegal, invalid or unenforceable under present or future laws effective during the Term, then it is the intent of the Parties to this Agreement that no other covenant, restriction, term, condition or provision of this Agreement, or the application thereof to persons or circumstances other than those to which such term or provision is illegal, invalid or unenforceable, shall not be affected or impaired thereby.

32. **Choice of Law.** This Agreement, and the rights and obligations of the Parties under this Agreement, shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Venue shall be in the state and federal courts located in San Juan, Puerto Rico.

33. **Disputes.** The Parties agree that any Dispute with respect to this Sublease shall be resolved in accordance with the provisions of Article 33 of the O&M Agreement.

34. **Inconsistencies.** In the event of any inconsistency between the terms of this Agreement and the terms of the O&M Agreement, the terms, covenants and provisions of the O&M Agreement shall be controlling.

35. **Filing with Controller’s Office.** The Parties hereby acknowledge and understand that this Agreement shall be filed in the Puerto Rico Controller’s Office, according to the Applicable Laws.

36. **Recordation.** This Agreement shall not be recorded in the Registry of the Property of Puerto Rico.
37. **Recitals.** The Recitals set forth in the Preamble to this Agreement are hereby incorporated herein and made to form an integral part hereof.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the
day and year first above written.

SUBTENANT:

HMS FERRIES – PUERTO RICO, LLC

By: _____________________________
Name: ___________________________
Title: ____________________________

SUBLANDLORD:

PUERTO RICO AND THE
ISLAND MUNICIPALITIES
MARITIME TRANSPORT
AUTHORITY

By: _____________________________
Name: ___________________________
Title: ____________________________
Exhibit A

The Underlying Lease
FORM OF SUBLEASE AGREEMENT

AGREEMENT OF SUBLEASE

AGREEMENT OF SUBLEASE (this “Agreement” or “Sublease”), made as of the ___ day of ______, 2020 (the “Effective Date”), by and between PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and instrumentality of the Government of Puerto Rico (hereinafter referred to as “Sublandlord”), and HMS FERRIES – PUERTO RICO, LLC, a Puerto Rico limited liability company (hereinafter referred to as “Subtenant”). Sublandlord and Subtenant are sometimes referred to herein individually as a “Party” or collectively as the “Parties”.

RE C I T A L S:

WHEREAS, pursuant to that certain Amended and Restated Lease Agreement (the “Underlying Lease”), dated as of [_____], 2020, Authority for the Redevelopment of the Land and the Facilities of the Roosevelt Roads Naval Station, as landlord (“Landlord”), leased to Sublandlord, as tenant, the facility identified as the Ceiba terminal and its adjacent cargo piers, (the “Terminal Facility”) located at Ceiba, Puerto Rico, as more particularly described in Exhibit A of the Underlying Lease;

WHEREAS, Sublandlord leases the Terminal Facility for the operation of maritime transport of cargo and passengers to and from the Terminal Facility subject to the terms of use, covenants and conditions set forth in the Underlying Lease;

WHEREAS, Sublandlord is a public corporation of the Commonwealth of Puerto Rico created by virtue of Act No. 1-2000, as amended, known as the Puerto Rico and the Island Municipalities Maritime Transport Authority Act (the “MTA Act”);

WHEREAS, the Executive Director of Sublandlord is authorized and empowered to execute this Agreement pursuant to Resolution Number [_____] dated [_____] executed by the Secretary of the Department of Transportation and Public Works pursuant to Article 4(a) of the MTA Act, and the [_______] of Subtenant is authorized and empowered to execute this Agreement pursuant to [_______________];

WHEREAS, on October 27, 2020 the Parties entered into a Maritime Transport Operations and Maintenance Agreement (the “O&M Agreement”; capitalized terms not otherwise defined herein or in the Underlying Lease, shall have the meaning as set forth in the O&M Agreement) whereby Subtenant agreed to conduct the metro and island maritime transport services of cargo and passengers previously conducted by Sublandlord and to operate and maintain the piers and terminal facilities necessary to provide such services, including, without limitation, the Terminal Facility;

WHEREAS, the Ferry System requires a net subsidy from Sublandlord in order to operate, and Subtenant has agreed to operate the Ferry System and to accept the Phase 1 Service Payment and
the Phase 2 Fixed Fee for operation of the Ferry System during Phase 1 and Phase 2, respectively and Sublandlord has agreed to comply with its payment obligations to Landlord as required in the Underlying Lease.

**WHEREAS**, Subtenant has represented to Sublandlord pursuant to Section 48.12 of the O&M Agreement that the Sublandlord has realized a saving in subsidy by not less than $6,000,000 that otherwise would have been bid by Subtenant for the Phase 2 Fixed Fee;

**WHEREAS**, in connection with the O&M Agreement, Sublandlord has agreed to (i) sublease to Subtenant the entire delimited area covered by the Underlying Lease (hereinafter referred as the “**Leased Premises**”) for the purposes of carrying out the Works and the Ancillary Activities set forth in the O&M Agreement (the “**Permitted Use**”), and Subtenant has agreed to sublease from Sublandlord the Leased Premises, subject to the terms, covenants and agreements set forth herein and in the O&M Agreement.

**NOW, THEREFORE**, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein and in the O&M Agreement, and other good, adequate and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

1. **Subleasing of Leased Premises.** Sublord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, the **Leased Premises**, on and subject to the terms and conditions set forth hereinafter, in the O&M Agreement and, subject to the provision of Section 6 herein, the Underlying Lease; For the avoidance of doubt, any portion of the property owned by Landlord that is outside of the area described in Exhibit A of the Underlying Lease shall not be subject to this Sublease.

2. **Term.** The term (the “**Term**”) of this Agreement shall commence on the Effective Date and shall expire on the earlier of: (i) the date of expiration of the Underlying Lease or its earlier termination, (ii) the date of expiration of the O&M Agreement or its earlier termination, and (iii) such earlier date on which the Term shall expire or be cancelled or terminated otherwise pursuant to the written agreement of the Parties or the O&M Agreement (the “**Expiration Date**”). Subtenant shall have no right to occupy the Leased Premises or any portion thereof after the expiration of the Sublease or after termination of the Sublease. In the event Subtenant or any party claiming by, through or under Subtenant, holds over the Leased Premises, Sublandlord and Landlord may exercise any and all remedies available to it at law or in equity to recover possession of the Leased Premises, and Sublandlord may exercise any remedies available to it to recover damages.

3. **Rent.** (a) In recognition of the requirement for subsidy from the Sublandlord to the Subtenant for operation of the Ferry System, the Sublandlord agrees to accept, and the Subtenant agrees to pay, for Subtenant’s possession and use of the Leased Premises hereunder during the term, the total monthly rent (the “**Basic Rent**”) of ONE HUNDRED DOLLARS ($100.00). Subtenant shall pay such rent to Sublandlord in advance on the first (1st) day of each month, commencing on the Effective Date. Basic Rent for any partial month shall be prorated on a per diem basis.
(b) Sublandlord shall continue to be responsible for the payment of all obligations to Landlord as established in the Underlying Lease.

(c) Unless otherwise provided under the O&M Agreement and subject to Subtenant’s reimbursement rights under Article 5 of the O&M Agreement, Subtenant hereby also agrees to pay all utility charges, insurance charges, maintenance charges, including common area maintenance, property taxes (should the assessment thereof arises from any of Subtenant’s improvements), and any and all other payments or reimbursements (other than rent) payable by Sublandlord under the Underlying Lease (the “Additional Rent”). For avoidance of doubt, these costs are reimbursable expenses under Section 5.1(d) of the O&M Agreement for Phase 1.

(d) The Basic Rent and the Additional Rent (hereinafter collectively, the “Rent”) shall be paid in legal currency of the United States of America. All Rent shall be remitted directly to Landlord or Sublandlord, as instructed in writing by Sublandlord, through a manager’s or official bank check or wire transfer or ACH debits based on Sublandlord’s written instructions delivered to Subtenant. It is Subtenant’s duty to take the necessary measures and precautions to ensure that the Rent is received by Landlord or Sublandlord, as applicable, on or before its due date. The payment of Rent is separate from any other agreement or obligation contained in this Agreement and shall be paid without the need of previous request or notice by Sublandlord, without set off, adjustment or abatement of any kind.

4. **Permitted Use.** Subtenant shall use and occupy the Leased Premises for the Permitted Use in accordance with the provisions of the Underlying Lease and the O&M Agreement, and for no other purpose and otherwise in accordance with the terms and conditions of the Underlying Lease or the O&M Agreement. Subtenant shall not use the Leased Premises, or any part thereof, or knowingly permit the same to be used for any illegal, immoral or improper purpose.

5. **Permits.** Unless otherwise provided in the O&M Agreement, Subtenant may make alterations, changes, additions or improvements to the Leased Premises, provided it has obtained Sublandlord’s and Landlord’s prior written consent, subject to the terms, covenants and conditions set forth in the O&M Agreement, including with respect to payments or reimbursements from Sublandlord to cover any such improvements. Subtenant shall, at its own cost and expense (except as otherwise provided in the O&M Agreement), (i) procure each and every permit, license, certificate or other authorization (“Permits”) that a subtenant is required to obtain to occupy, use and operate its business at the Leased Premises in connection with the lawful and proper use of the Leased Premises by a subtenant, (ii) comply strictly with all applicable laws and regulations concerning the operation of its business and its use therefor in the Leased Premises, including without limitation, any and all nuisance and environmental regulations, and (iii) comply with Section 7 of Underlying Lease. Sublandlord shall cooperate with Subtenant on a commercially reasonable manner by providing such available information, documents or authorizations to Sublandlord, that could be required for filing and obtaining such Permits. To the extent necessary, Sublandlord shall timely make any and all notifications required under its current Permits in connection with this Sublease Agreement.
6. **Subordination to the Underlying Lease.** An executed copy of the Underlying Lease, with all of its amendments, modifications and extensions is hereby attached as Exhibit A. Subtenant hereby acknowledges and agrees that this Agreement is in all respects subject and subordinate to the terms and conditions of the Underlying Lease herein attached and to all matters to which the Underlying Lease is subject and subordinate. Subtenant agrees not to violate any of Sublandlord’s obligations under the terms of the Underlying Lease; provided, however, that except as otherwise specifically provided herein, nothing in this Agreement shall constitute an assumption by Subtenant of Sublandlord’s obligations under the Underlying Lease. As between Sublandlord and Subtenant, nothing contained in the Underlying Lease shall be deemed to modify, supersede or amend the provisions of the O&M Agreement and the Sublandlord is and shall remain as the only obligee under the Underlying Lease. Nothing contained in the O&M Agreement shall affect the rights of Landlord under the Underlying Lease or the responsibility of Sublandlord toward Landlord. Further to the foregoing, Sublandlord hereby covenants and agrees to notify Subtenant of any proposed or intended amendments, supplements or otherwise modifications to the terms and conditions of the Underlying Lease, which proposed amendments may not, in any event, restrict, limit or adversely affect the rights granted to Subtenant hereunder, unless the written consent of the Subtenant is obtained in advance.

7. **Sublandlord Not Required to Provide Services.** Except to the extent that any repairs or restorations are required under the O&M Agreement to be made by Sublandlord, or comply with any laws or requirements of any governmental authorities, Sublandlord shall not be required to provide any of the services that Landlord has agreed to provide pursuant to the Underlying Lease (or required by law), or make any of the repairs or restorations that Landlord has agreed to make pursuant to the Underlying Lease (or required by law), or take any other action that Landlord has agreed to provide, furnish, make, comply with or take, or cause to be provided, furnished, made, complied with or taken under the Underlying Lease. Subtenant shall not have any claim against Sublandlord by reason of Landlord’s failure or refusal to comply with the provisions of the Underlying Lease, unless such failure or refusal is a direct result of Sublandlord’s negligence or willful misconduct or such failure or refusal also constitutes a breach of Sublandlord’s obligations hereunder. As between Sublandlord and Subtenant, the obligations of each with respect to repairs, restoration and improvements are those set forth in the O&M Agreement.

8. **Delivery of Possession.** The Leased Premises shall be delivered to Subtenant on the date of execution of this Agreement by all Parties. Subtenant acknowledges that it has inspected the Leased Premises before the execution of this Agreement and assumes its possession in its “AS IS, WHERE IS” condition, subject to any repair identified in a written agreement existing between the Parties required to be made by Sublandlord on or after the delivery of the Leased Premises to Subtenant pursuant to the O&M Agreement and also Subtenant acknowledges its commitment to perform during the Term any and all reasonable repairs to the Leased Premises as required and provided under the O&M Agreement and in accordance with the conditions established in the Underlying Lease. Subtenant acknowledges that upon termination, cancellation or early termination of this Agreement it shall surrender and deliver the Leased Premises, without demand, to the Sublandlord as set forth in the O&M Agreement, including without limitation the repair obligations under Section 13.4 and the handback provisions set forth in Section 46.1 thereof.
9. **Terminal Employees.** In connection with the initial take over by Subtenant of Sublandlord’s operations in the Leased Premises, Subtenant has agreed in Section 10.1(a) of the O&M Agreement to interview Sublandlord employees who apply to the Subtenant for employment. After all Sublandlord’s employees who apply for employment with Subtenant in connection with the initial take over of operation have been interviewed and any employment offers have been made, with respect to any remaining employment positions at the Terminal Facility, Subtenant agrees to use reasonable efforts to consider for employment those applicants who are residents of Ceiba or Naguabo, who comply with the job qualifications required by Subtenant for such remaining positions, and who are equally qualified and equally evaluated for the same position as other applicants who are not residents of Ceiba or Naguabo.

10. **Utilities.** Unless otherwise agreed in the O&M Agreement, Subtenant shall pay for its use and consumption of utilities by paying directly to the utility service provider or to Landlord, as instructed in writing by Sublandlord, the total pass-through cost (with no markup) of utility services used or consumed by Subtenant thereof as contemplated in Section 3 (b) hereof. Subtenant shall not hold Sublandlord liable for any utility service interruption to the Leased Premises or for damages suffered due to any interruption unless such interruption is caused by Sublandlord’s negligence or willful misconduct.

11. **Signs.** Any signs or advertising material that Subtenant would like to install or erect at the Leased Premises will comply with the provisions set forth in Section 19.1 of the O&M Agreement. Sublandlord and Subtenant agree that any signage to be erected, installed, maintained or replaced on and upon the Leased Premises shall be tasteful and aesthetically pleasing, shall not (i) affect the aesthetics of the Leased Premises and the improvements therein, and (ii) shall be in accordance with Applicable Laws and any of Landlord’s guidelines and specifications. As set forth in the Underlying Lease, Landlord’s prior written approval shall be required.

12. **Additional Events of Default by Subtenant.** In addition to the events or acts of Subtenant that shall be considered a breach or cause for termination within the Underlying Lease as per Section 6 hereof, it shall be considered an Event of Default of this Agreement if during the Term hereof, an event of default by Subtenant under the O&M Agreement has occurred and continues after all relevant cure periods have elapsed, as applicable.

13. **Quiet Enjoyment.** Upon Subtenant’s observance of all terms, covenants and conditions of this Agreement and the O&M Agreement that are to be observed and performed by Subtenant, Sublandlord covenants that Subtenant may peaceably and quietly enjoy the Leased Premises, during the Term, or until the Expiration Date.

14. **Sublease, Not Assignment.** Anything herein to the contrary notwithstanding, this Agreement shall be deemed to be a sublease of the Leased Premises. Although Subtenant shall comply with the terms and conditions established in the Underlying Lease as set forth in Section 6 hereof, Sublandlord shall not be released from, and Subtenant shall not be deemed to have assumed, any of Sublandlord’s obligations under the Underlying Lease, unless otherwise set forth herein. Nothing contained herein shall affect Landlord’s rights or Sublandlord’s obligations under the Underlying Lease.

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15. **Assignment.** Subtenant may not assign this Agreement, without Sublandlord’s consent, except as set forth in Section 34.1 of the O&M Agreement, and Landlord’s prior written consent and subject to the terms of the O&M Agreement. Subtenant may sublease and grant concession agreements as contemplated in the O&M Agreement provided they are made in accordance with the requirements of the Underlying Lease. It is a condition precedent to any assignment or sublease of the Leased Premises, that such incidental use complies with the provisions of the O&M Agreement, including without limitation the provisions set forth in Section 48.12 thereof as to Incidental Use. A change of control in Subtenant or change in the persons or entities having direct or indirect interest in the Subtenant as prescribed in the O&M Agreement shall be considered as an assignment for the purposes of this Section 15, which requires Sublandlord’s and Landlord’s prior written consent.

16. **Notices.** Any notice, statement, demand, consent, approval, advice or other communication required or permitted to be given, rendered or made by either Party to the other, pursuant to this Agreement or pursuant to any Applicable Law or requirement of public authority (collectively, “Notices”) shall be in writing and shall be deemed to have been properly given as set forth in the O&M Agreement.

17. **Indemnification.** Each Party hereby agree to indemnify and hold harmless the other Party in accordance with the provisions of Article 28 of the O&M Agreement, as applicable. Both parties agree to include Landlord as additional insured in all insurance with respect to the Leased Premises required in Section 24 of the O&M Agreement.

18. **Covenants, Representations, and Warranties of Sublandlord.**

Sublandlord hereby covenants, represents and warrants to and with Subtenant as follows:

a. Sublandlord is the owner of all rights of the “tenant” under the Underlying Lease, free and clear of any lien, assignment, sublease, option or other charge or encumbrance.

b. A complete and correct copy of the Underlying Lease, including all amendments, schedules, and exhibits thereto is attached hereto as Exhibit A. The Underlying Lease sets forth the entire agreement and understanding between Sublandlord and Landlord with respect to the Underlying Premises, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby or the rights of the Sublandlord in respect thereof. The Sublandlord represents and warrants that the Underlying Lease is in full force and effect and is the legal, valid, and binding obligation of the Sublandlord, enforceable against the Sublandlord in accordance with its terms.

   c. Except as disclosed to Subtenant in writing, Sublandlord has paid Landlord all balance owed to Landlord under the Underlying Lease. Sublandlord shall remedy any default of Sublandlord under the Underlying Lease that affects Subtenant’s rights hereunder.
d. It has full right, power and authority to enter into and perform this Agreement, to do so without the consent or joinder of any other party being required, except for Landlord’s consent which may be required for the execution of this Agreement. If so, such consent has been received by Subtenant.

e. The terms and conditions of this Agreement do not conflict with or violate any other existing agreements to which Sublandlord is a party or by which Sublandlord is bound, that could reasonably be expected to result in a material adverse effect of Sublandlord.

f. Each person signing this Agreement on behalf of Sublandlord covenants, warrants and represents that it is a current authorized officer of said entity pursuant to the terms of the MTA Act and has the power and due authority to execute this Agreement in the capacity stated and to bind the entity for which such person is signing.

g. Sublandlord agrees, upon request by Subtenant, to promptly deliver to Subtenant such resolutions, certificates or other affidavits evidencing the foregoing as may be reasonably requested.

h. Any and all representations of Sublandlord as to the environmental conditions of the Leased Premises as of the date hereof are set forth in Section 25.1(e) of the O&M Agreement.

19. **Covenants, Representations and Warranties of Subtenant.**

   a. Subtenant covenants, warrants and represents that it has full right, power and authority to enter into and perform this Agreement, to do so without the consent or joinder of any other party being required.

   b. The terms and conditions of this Agreement do not conflict with or violate any other existing agreements between such party and any third parties.

   c. That Subtenant is a limited liability company, duly formed and in good standing under the laws of the Commonwealth of Puerto Rico.

   d. Each person signing this Agreement on behalf of Subtenant covenants, warrants and represents that it is a current authorized officer of said entity and has the power and due authority to execute this Agreement in the capacity stated and to bind the entity for which such person is signing.

   e. Subtenant agrees, upon request by Sublandlord, to promptly deliver to Sublandlord such resolutions, certificates or other affidavits evidencing the foregoing as may be reasonably requested.

   f. That this Agreement is related and accessory to the Underlying Lease and the O&M Agreement.
20. **Entire Agreement, Amendment, Waiver.** This Agreement, together with the O&M Agreement, contain the entire agreement between the Parties and all prior negotiations and agreements are merged into this Agreement and the O&M Agreement. Any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the Parties. No provision of this Agreement shall be deemed to have been waived by Sublandlord or Subtenant unless such waiver is in writing and signed by Sublandlord or Subtenant, as the case may be. The covenants and agreements contained in this Agreement shall bind and inure to the benefit of Sublandlord and Subtenant and their respective successors and assigns. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

21. **Cross Default.** Any default by any Party under the O&M Agreement shall be considered a default by such defaulting Party under this Agreement. Any default by Subtenant under this Agreement shall be considered a default under the O&M Agreement.

22. **Fiscal Liabilities.**

   a. Subtenant represents and warrants that, at the time of execution of this Sublease, it has:

   (i) if required by law, filed tax returns for the last five (5) years, as evidenced by a recent Income Tax Return Filing Certificate issued by the Puerto Rico Treasury Department delivered to Sublandlord on or prior to the date hereof;

   (ii) no outstanding tax debt with the Government of Puerto Rico nor with the United States Government (if applicable) and is not subject to a payment plan thereunder as evidenced by a recent certificate of no debt issued by the Puerto Rico Treasury Department delivered to Sublandlord on or prior to the date hereof;

   (iii) no outstanding sales and use tax debt with the Government of Puerto Rico and is not subject to a payment plan thereunder, pursuant to a certification issued by the Puerto Rico Treasury Department and delivered to the Sublandlord indicating that Subtenant does not owe Puerto Rico sales and use taxes to the Commonwealth;

   (iv) if required by law, filed sales and use tax returns for the last sixty (60) tax periods as evidenced pursuant to a recent Puerto Rico Sales and Use Tax Filing Certificate issued by the Puerto Rico Treasury Department delivered to the Sublandlord;

   (v) to the extent applicable and as required by applicable law, paid all of its unemployment taxes, disability and social security taxes, unemployment insurance, temporary disability (workmen’s compensation) and chauffeur’s social security during the last five (5) years in accordance with the Puerto Rico Employment Security Act, or is in compliance with a payment plan therefor and in compliance with the terms and conditions thereof, as evidenced by a recent certificate issued by the Department of Labor and Human Resources of Puerto Rico delivered to the Sublandlord.
Sublandlord on or prior to the date hereof.

(vi) paid all real or personal property taxes with the Municipal Revenues Collection Center (the “CRIM”), if any, as evidenced by a recent certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the CRIM and delivered to Sublandlord; and

(vii) No outstanding indebtedness with the Puerto Rico Child Support Administration (“ASUME”), pursuant to a recent certification issue by ASUME and delivered to Sublandlord evidencing Subtenant’s compliance with the withholdings required to be made by employers under Applicable Law.

b. Subtenant has delivered to the Sublandlord on or prior to the date hereof a copy of Subtenant’s Merchant’s Registration Certificate.

c. Subtenant has delivered to the Sublandlord on or prior to the date hereof (i) copies of all its organizational documents and certificates of authorizations to do business in Puerto Rico, duly registered on the Puerto Rico Department of State, as the same have been amended from time to time, (ii) recent certificates of good standing issued by the Puerto Rico Department of State, (iii) certification that it has complied and is in compliance with the provisions of the PPP Authority’s Ethical Guidelines, and (iv) the Sworn Statement attached to as Appendix X to the O&M Agreement, required under Act No. 2-2018 of the Legislative Assembly of Puerto Rico, as amended from time to time (the “Anti-Corruption Code”).

d. Subtenant expressly recognizes that the compliance with the provisions of this Section 22 is an essential condition of this Agreement, and if any representation or warranty is not accurate, in whole or in part, the same shall constitute cause for Sublandlord to terminate this Agreement.

23. If, in accordance with the policies of the governmental authorities in charge of the issuance of any of the above-mentioned certifications, any of such certifications is not obtainable by the Subtenant, the Sublandlord acknowledges and agrees that a sworn statement in connection thereof shall be sufficient for purposes of complying with this Section 22.

24. **Debt Certification.** Subtenant warrants to Sublandlord that neither Subtenant nor its directors, officers or stockholders owe any amount to Sublandlord or to any agency or instrumentality of the Government of Puerto Rico, either personally or under this or any other corporate or partnership name.

25. **Compliance with Laws.**

a. The Subtenant shall, at all times and at its own cost and expense, observe and comply, in all material respects, and observe and comply, in all material respects, with all Applicable Laws now existing or later in effect that are applicable to it, including laws and regulations enforced by the Puerto Rico Public Service Commission, Environmental Statutes, the ADA all other Laws.
expressly enumerated in the O&M Agreement and Underlying Lease, and those that may in any manner apply with respect to the performance of the Subtenant’s obligations under this Agreement. Subtenant shall notify Sublandlord in writing within seven (7) days after receiving notice from a Governmental Authority that Subtenant may have violated any of the above. For the avoidance of doubt, Subtenant is not assuming any responsibility of Sublandlord, including any responsibility arising under environmental laws, whether arising under law, regulation or public deed with respect to the use of the Leased Premises prior to the date hereof.

b. Subtenant acknowledges, represents and warrants that no official or employee of Sublandlord or Landlord has a direct or indirect economic interest in Subtenant’s rights under this Agreement in accordance with the provisions of the Anti-Corruption Code Subtenant herein certifies it has received a copy of, read, understood and complied with at all times previous to the execution of this Agreement and agrees that it will subsequently comply with it in its entirety, including, without limitation, with the requirements of Governmental Contractor Code of Ethics, which forms part of the Anti-Corruption Code.

c. To the knowledge of Subtenant, all information regarding Subtenant provided to Sublandlord by the Subtenant or on behalf of the Subtenant was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Effective Date, unless specifically related to a prior period in time.

d. **Criminal Proceedings.**

   (i) Subtenant warrants and certifies that as of the Effective Date and for the preceding twenty (20) years, (A) neither it nor its President, any of its Vice Presidents or Directors, Executive Director or Member of a Board of Officials or Board of Directors (or any person that holds a position with Subtenant equivalent to any of the foregoing), nor any of its subsidiaries nor any of its Equity Participants (each, a “**Covered Party**”), has been convicted, has entered a plea of guilty or **nolo contendere** or has been indicted in any criminal procedure in any State, Commonwealth or federal court or in any foreign country for criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property, or for the felonies or misdemeanors mentioned in the Anti-Corruption Code, and (B) each Covered Party is complying and shall continue to comply at all times with laws that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to Subtenant under State or federal Law, including the Foreign Corrupt Practices Act. If a Covered Party after the Effective Date becomes indicted or convicted in a criminal procedure for any type of offense described in this Section 25 (d), Subtenant shall immediately notify Sublandlord thereof in writing as required by the Anti-Corruption Code.

e. Subtenant shall comply with all Applicable Laws regarding non-discrimination.

f. Subtenant attests, subject to the penalties for perjury, that no representative of Subtenant, directly or indirectly, to the best of Subtenant’s knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money
or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

g. As required by Article 10 of Act No. 14 of January 8, 2004, 3 P.R. Laws Ann. § 930 et seq., Subtenant shall use, to the extent (i) available and applicable to the services provided under the O&M Agreement and (ii) not in contravention with any federal law with supremacy over the provision of Act 14-2004, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth. For the avoidance of doubt, nothing herein shall require Subtenant to exercise a “local preference” for any goods or services for purposes of applicable federal laws.

h. None of Subtenant or its subsidiaries or, when acting on behalf of Subtenant or its subsidiaries, any director, officer, manager, administrator or employee of Subtenant or its subsidiaries or, in connection with this Agreement, any Affiliates of Subtenant has:

   (i) violated, conspired to violate, aided and abetted the violation of any Anti-Corruption Laws or committed any felonies or misdemeanors under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, known as the Puerto Rico Penal Code, any of the crimes typified in the Anti-Corruption Code, or any other felony that involves misuse of public funds or property, including the crimes mentioned in Article 6.8 of Act 8-2017, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico;

   (ii) been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, or has been found guilty of any such type of offense in the courts of the Commonwealth, the courts of the United States or any court of any jurisdiction.

i. Subtenant has not, directly or indirectly, made or received, and will not make or receive, any payments in connection with this Agreement in order to illegally or improperly obtain business or other rights.

j. Subtenant is not aware that it is being investigated as part of a criminal or civil process by any law enforcement or regulatory authority in connection with the Anti-Corruption Code or any criminal laws or regulations.

k. None of Subtenant, its subsidiaries, parent company or any directors, officers or employees of any thereof is (A) a Person, or is a Person owned or controlled by a Person (a “Sanctioned Person”), with whom dealings are restricted or prohibited by, or are sanctionable under, any economic sanctions or trade restrictions administered or enforced by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union or Her Majesty’s Treasury or any other authority with jurisdiction over Subtenant, its subsidiaries or its Affiliates (collectively, “Sanctions”)

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or (B) located, organized or resident in a country or territory with which dealings are broadly restricted, prohibited or made sanctionable under any Sanctions (currently, the Crimea, Cuba, Iran, North Korea and Syria) (each, a “Sanctioned Country”). Subtenant and its subsidiaries have not violated and have not engaged in any conduct sanctionable under Sanctions. There are not now, nor have there been within the past five (5) years, any formal or informal proceedings, allegations, investigations or inquiries pending, expected or, to the knowledge of the parent company, threatened against the parent company, Subtenant, its subsidiaries, or any of their respective officers or directors concerning violations or potential violations of, or conduct sanctionable under, any Sanctions.

1. Subtenant does not represent particular interests in cases or matters that imply conflicts of interest, or of public policy, between Subtenant and the particular interests it represents.

m. As of the Effective Date, Subtenant has no litigation whatsoever with the Commonwealth of Puerto Rico, its agencies or instrumentalities.

n. Subtenant shall inform Sublandlord if, at any time during the Term, it becomes subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.

26. Cancellation of this Agreement. Notwithstanding any other provision in this Agreement, Sublandlord may immediately cancel or terminate this Agreement should (i) Subtenant or any of its officers, directors, managers and/or administrators is found guilty in Puerto Rico Court or Federal Court of one of the crimes listed in (i) the Anti-Corruption Code, (ii) Act No. 237, (iii) Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, (iv) Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, or (v) any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico; or (ii) this Agreement be obtained by fraud, collusion, conspiracy, or other unlawful means as determined by a final unappealable judgment of a court of competent jurisdiction.

27. Force Majeure. Section 38.2 of the O&M Agreement regarding Force Majeure shall apply to Sublandlord and Subtenant in this Sublease. Also, Sublandlord shall comply with Section 22.11 of the Underlying Lease.

28. Estoppel Certificate. The Subtenant, upon Sublandlord’s request, shall provide to the Sublandlord with an Estoppel Certificate wherein it certifies that (i) this Sublease is unmodified and in full force and effect (or if any modifications, with specifications as to such modifications and certify that this Sublease as modified is in full force and effect); (ii) no Party is in default under any provision of this Sublease; (iii) Subtenant is in possession of the Leased Premises, (iv) there is no petition, whether voluntary or otherwise, pending as to Subtenant or related party under the bankruptcy laws of the United States, and (v) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees. Upon request by Subtenant, Sublandlord shall provide Subtenant with an Estoppel Certificate wherein it certifies that (i) this Sublease is unmodified and in full force and effect (or if any modifications, with
specifications as to such modifications and certify that this Sublease as modified is in full force and effect; (ii) to Sublandlord’s knowledge, no Party is in default under any provision of this Sublease; (iii) Sublandlord has all rights of “tenant” under the Underlying Lease, and (iv) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees.

29. **No Partnership, Joint Venture.** No provision of this Agreement shall be deemed or construed to create a relationship of principal and agent, partnership, joint venture or similar relationship between Sublandlord and Subtenant, it being understood that the sole relationship between such parties is that of a sublandlord and a subtenant.

30. **Survival.** Any covenant, right or obligation of Sublandlord or Subtenant which is not satisfied or completed prior to expiration or earlier termination of this Sublease shall survive the expiration or earlier termination of this Agreement.

31. **Severability.** If any covenant, restriction, term, condition or provision of this Agreement or the application thereof to any person or circumstance is or becomes to any extent illegal, invalid or unenforceable under present or future laws effective during the Term, then it is the intent of the Parties to this Agreement that no other covenant, restriction, term, condition or provision of this Agreement, or the application thereof to persons or circumstances other than those to which such term or provision is illegal, invalid or unenforceable, shall not be affected or impaired thereby.

32. **Choice of Law.** This Agreement, and the rights and obligations of the Parties under this Agreement, shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Venue shall be in the state and federal courts located in San Juan, Puerto Rico.

33. **Disputes.** The Parties agree that any Dispute with respect to this Sublease shall be resolved in accordance with the provisions of Article 33 of the O&M Agreement.

34. **Inconsistencies.** In the event of any inconsistency between the terms of this Agreement and the terms of the O&M Agreement, the terms, covenants and provisions of the O&M Agreement shall be controlling; provided, however, that the terms of the O&M Agreement shall not affect the rights of Landlord under the Underlying Lease.

35. **Filing with Controller’s Office.** The Parties hereby acknowledge and understand that this Agreement shall be filed in the Puerto Rico Controller’s Office, according to the Applicable Laws.

36. **Recordation.** This Agreement shall not be recorded in the Registry of the Property of Puerto Rico.
37. **Recitals.** The Recitals set forth in the Preamble to this Agreement are hereby incorporated herein and made to form an integral part hereof.

*[Signature Page Follows]*
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

SUBTENANT

HMS FERRIES – PUERTO RICO, LLC

By:___________________________
Name:
Title:

SUBLANDLORD

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By:___________________________
Name:
Title:

4848-6982-6500v10
Exhibit A

The Underlying Lease
## LIST OF REQUIRED INSURANCE AND VESSELS’ INSURANCE VALUE

<table>
<thead>
<tr>
<th>Policy Number*</th>
<th>Coverage</th>
<th>Insurance Company*</th>
<th>Amount of Insurance of Each Building</th>
<th>Annual Premium*</th>
<th>Deductible</th>
<th>Renewal Date*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Commercial Inland Marine</strong></td>
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<td></td>
<td>Alliance/AGCS Marine Insurance Company</td>
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<tr>
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<td>Blue Waters Insurers, Corp/Apex American Insurance Company</td>
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<tr>
<td><strong>Commercial Property and Crime</strong></td>
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<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Hall and Machinery</strong></td>
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<tr>
<td></td>
<td></td>
<td>QBE Seguros</td>
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<td>$1,842,062.76</td>
<td>$5,000.00</td>
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</tbody>
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*Refers to information provided for policies that are currently in place as an example.

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# VESSEL INSURANCE VALUE

**From April 18, 2019 to April 18, 2020**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>VESSEL NAME</th>
<th>TYPE</th>
<th>YEAR BUILT</th>
<th>G.T.</th>
<th>NAVEGATION STATUS</th>
<th>HULL &amp; MACHINERY VALUE</th>
<th>DEDUCTIBLE</th>
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<td>1</td>
<td>AMELIA</td>
<td>PASSENGER</td>
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<td>87</td>
<td>NAVEGATIONAL</td>
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<td>PASSENGER/CARGO</td>
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<td>PASSENGER</td>
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<td>87</td>
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<td>PASSENGER/CARGO</td>
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<td>6</td>
<td>LA PRINCESA</td>
<td>PASSENGER</td>
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<td>NAVEGATIONAL</td>
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<td>7</td>
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<td>PASSENGER/FERRY</td>
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<td>8</td>
<td>ISLA BONITA</td>
<td>PASSENGER/CARGO</td>
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**TOTAL** $41,356,904
# LIST OF PENDING LITIGATIONS

## In House- Counsel

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<thead>
<tr>
<th>#</th>
<th>Parties</th>
<th>Case Number</th>
<th>Court</th>
<th>Nature of the Litigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>ATM v. UETC</td>
<td>SJ2019CV03732</td>
<td>Court of First Instance of Puerto Rico, Superior Court of San Juan</td>
<td>Judicial Review of Labor Arbitration Award – Employee dismissal was unjustified</td>
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<tr>
<td>2.</td>
<td>María Brunilda Guerra Santiago v. ATM</td>
<td>SJ2018CV09553</td>
<td>Court of First Instance of Puerto Rico, Superior Court of San Juan</td>
<td>Employee request salaries not earned according to the Resolution of the Board of Appeals in case JA 14-09 and confirmed by the Court of Appeals in the case KLRA 20160142</td>
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<td>3.</td>
<td>Jack Sauerhoff Romero v. ATM &amp; HEOCRA</td>
<td>CU2018CV00021</td>
<td>Court of First Instance of Puerto Rico, Superior Court of Culebra (Fajardo)</td>
<td>Former employee request specific compliance with the collective agreement and damages</td>
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<td>4.</td>
<td>HEOCRA v. ATM</td>
<td>K AC2017-0315</td>
<td>Court of First Instance of Puerto Rico, Superior Court of San Juan</td>
<td>Judicial Review of Labor Arbitration Award- Arbitrator confirms dismissal of an employee was justified</td>
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<td>5.</td>
<td>Juan González v. ATM</td>
<td>NSCl201500635</td>
<td>Court of First Instance of PR, Superior Court of Fajardo</td>
<td>Labor- Discrimination (ADEA)</td>
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## Insurance Claims

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<th>Parties</th>
<th>Case Number</th>
<th>Court</th>
<th>Nature of the Litigation</th>
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<tbody>
<tr>
<td>1.</td>
<td>Carmen Contreras Cádiz v. ATM</td>
<td>FA2019CV01575</td>
<td>Court of First Instance of PR, Superior Court of Fajardo</td>
<td>Tort Claim</td>
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<td>Luz María Ortega Vázquez v. ELA, ACT, ATM</td>
<td>BY2020CV00295</td>
<td>Court of First Instance of PR, Superior Court of Bayamon</td>
<td>Tort Claim</td>
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App. V-2
## LIST OF CURRENT INSURANCE POLICIES

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<th>Insurance Company</th>
<th>Limit</th>
<th>Annual Premium</th>
<th>Deductible</th>
<th>Renewal Date</th>
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<tbody>
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<td>Allianz/AGCS Marine Insurance Company</td>
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<td>$5,828,000.00</td>
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**MAPFRE PRAICO INSURANCE COMPANY**

<table>
<thead>
<tr>
<th>Amount of Insurance of Each Building</th>
<th>Listed Locations</th>
<th>Renewal Date</th>
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<td>Included</td>
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<td>$15,000.00</td>
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**QBE Seguros**

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<th>Limit</th>
<th>Annual Premium</th>
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**MAPFRE PRAICO INSURANCE COMPANY**

<table>
<thead>
<tr>
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**QBE Seguros**

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SWORN STATEMENT REQUIRED UNDER ACT 2-2018

I, Matthew Miller, of legal age, married, executive and resident of Miami Lakes, Florida hereby solemnly swear:

1. That my personal status is the one stated above.

2. That I hold the position of President at HMS FERRIES INC., organized as a corporation under the laws of Delaware with Federal Identification No. 36-4691740 ("HMS Inc."), and at HMS FERRIES – PUERTO RICO, LLC, a wholly owned subsidiary of HMS Inc. organized as a limited liability company under the laws of the Commonwealth of Puerto Rico ("HMSPR", together with HMS Inc., the "Companies").

3. That I am authorized to represent the Companies for purposes of this affidavit.

4. That neither the Companies nor any of their presidents, vice-presidents, directors, managers, executive directors or members of their Boards of Directors, or persons that fulfill similar tasks, have been convicted of, nor have they pleaded guilty to, any of the crimes in Article 6.8 of Puerto Rico Act No. 8-2017, as amended, known as the "Act for the Management and Transformation of the Human Resources of the Government of Puerto Rico" or of any of the crimes listed in Puerto Rico Act No. 2-2018, known as the "Anti-Corruption Code for a New Puerto Rico".

5. That no commissions or bonuses have been paid, in cash or in kind, and there is no commitment for the future payment of any such commissions or bonuses to any public official, employee or any former public official that participated in the negotiations and transactions contemplated by the Companies’ agreement with the Puerto Rico and the Island Municipalities Maritime Transport Authority while working for the Government of Puerto Rico.

6. That everything stated above is true to the best of my knowledge, information and belief and thus, to make it public I sign this declaration in San Juan, Puerto Rico, this 27th day of October, 2020.

By:  

Name: Matthew Miller  
Title: President

Affidavit No. 168

Sworn and subscribed before me by Matthew Miller, of the personal circumstances stated above, in his capacity as President of HMS Ferries, Inc. and HMS Ferries – Puerto Rico, LLC; who is personally known to me, in San Juan, Puerto Rico, this 27th day of October, 2020.

Notary Public
FEDERAL REQUIREMENTS

The Project shall comply with, and the Operator shall perform its obligations and (where relevant) shall require each subcontractor (including subcontractors) to perform their respective obligations under this Agreement, the other RFP Documents (including any agreement executed in connection with the Operator’s obligations therein) in accordance with the following requirements.

1. SPECIFIED REQUIREMENTS APPLICABLE TO ALL CONTRACTS

1.1 General Requirements

The Operator and subcontractors shall comply with applicable requirements and provisions, in effect now or as hereafter amended, of (1) 49 U.S.C. chapter 53 and other procurement requirements of Federal laws; (2) 2 C.F.R. pt. 200; (3) all other applicable Federal regulations pertaining to federally-aided contracts; and (4) Federal Transit Administration (“FTA”) Circular 4220.1F, “Third Party Contracting Guidance”, March 18, 2013, and any later revision thereto, except to the extent FTA determines otherwise in writing; and

1.2 Protection of Security Sensitive Information and Critical Infrastructure Information.

The Operator and subcontractors shall comply with all applicable provisions of 49 C.F.R. Part 1520 and 6 C.F.R. Part 29 and all applicable FTA guidance, including FTA Resource Document for Transit Agencies, “Sensitive Security Information (SSI): Designation, Markings, and Control, Resource Document for Transit Agencies” (March 2009), as may be amended, and all Department of Homeland Security (DHS) directives, including DHS Management Directive System MD Number: 11042.1, “Safeguarding Sensitive but Unclassified (For Official Use Only) Information” (January 6, 2005) as may be amended. The Operator also agrees to include these requirements in each subcontract and to require each subcontractor to include this clause in lower tier contracts.

1.3 Ethics

(a) **Bonus or Commission.** The Operator affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain the Agreement.

(b) **Lobbying Restrictions.** The Operator agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use the proceeds of the Agreement to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer or employee of Congress or employee of a member of Congress, in connection with making, extending or modifying the Agreement;

(2) In addition, the Operator will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress

App. Y - 1
or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subcontractor and other participant at any tier of the Project with USDOT regulations, “New Restrictions on Lobbying”, 49 C.F.R. Part 20, to the extent consistent with 31 U.S.C. § 1352.

(4) The Operator will also comply and assure compliance of each subcontractor and other participant at any tier of the Project with 31 U.S.C. § 3801, et seq.

(5) Subcontractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. Part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the Authority.

(c) False or Fraudulent Statements or Claims. The Operator acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and USDOT regulations, “Program Fraud Civil Remedies”, 49 C.F.R. Part 31, apply to the Operator’s activities in connection with the Project. By executing the Agreement, the Operator certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Operator also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation, directly or indirectly, to the Federal Government, the Federal Government reserves the right to impose on Operator the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Operator makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation directly or indirectly to the Federal Government, the Federal Government reserves the right to impose on Operator the penalties of 49 U.S.C. § 5323(l)(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

(3) Inclusion in Lower Tier Contracts. The Operator agrees to include the clauses at Section 1.3(c)(1) and (2) in each lower tier subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the lower tier subcontract that will be subject to the provisions.

(d) Trafficking in Persons. To the extent applicable, the Operator agrees to comply with, and assures the compliance of each subcontractor with, the requirements of subsection
106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of said subsection (g) consistent with U.S. OMB guidance, “Award Term for Trafficking in Persons”, 2 C.F.R. Part 175:

(1) **Definitions.** For purposes of this section, the Operator agrees that:

(A) Employee means an individual who is employed by the Operator or any subcontractor under the Agreement.

(B) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(C) Private entity:

(i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

(ii) Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(D) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(9). Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(4).

(E) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) The Operator agrees:

(A) To inform the Authority immediately of any information it receives from any source alleging a violation of a prohibition in 22 U.S.C. § 7104(g).

(B) That the Authority may unilaterally terminate the Agreement if the Operator, a subcontractor, or other participant at any tier, or an employee of any of them, violates the provisions of 22 U.S.C. § 7104(g). The Authority’s right to terminate implements FTA’s right to terminate unilaterally:

(i) Under subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and

(ii) Is in addition to all other remedies for noncompliance that are available to the Authority under the Agreement and to the Federal Government.

(C) That:
(i) Neither it, its subcontractors or other participants at any tier, or the employees of any of them, will engage in severe forms of trafficking in persons during the period of time that the Agreement is in effect;

(ii) Neither it, its subcontractors or other participants at any tier, or the employees of any of them, will procure a commercial sex act during the period of time that the Agreement is in effect; or

(iii) Neither it, its subcontractors or other participants at any tier, or the employees of any of them, will use forced labor in the performance of the Agreement or any subcontract;

(iv) The provision of this subsection will be included in all subcontracts and any other arrangement under the Agreement at any tier,

(e) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or to any benefit arising therefrom.

2. SPECIFIED REQUIREMENTS APPLICABLE TO AGREEMENT, CONTRACTS FOR WORK FUNDED BY FTA

Except as otherwise specified below, the requirements of this Section 2 apply to the Operator throughout the Term. Certain requirements must be passed through to subcontractors, including (a) Key Subcontractors and subcontractors at lower tiers performing work related to the Project (“Work”) where funding for the Work is obtained from FTA.

2.1 FTA Regulations and Policies

The Operator and subcontractors shall comply with all applicable FTA regulations, policies, procedures and directives.

2.2 Civil Rights

The Operator agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. The Operator shall include the requirements of this Section 2.2 in every subcontract for performance Work relating to design and construction, and shall require each subcontractor performing such Work, at all tiers, to include requirements of this Section 2.2 in any lower tier subcontracts, if funding for such Work is obtained from the FTA. If funding for Work relating to the operations and maintenance is obtained from the FTA, the Operator shall include the requirements of this Section 2.2 in every subcontract for performance of such Work, and shall require each subcontractor performing such Work, at all tiers, to include the requirements of this Section 2.2 in any lower tier subcontracts.

These include:

(a) Nondiscrimination in Federal Public Transportation Programs. The Operator agrees to comply, and assures the compliance of each subcontractor or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the
basis of race, color, creed, national origin, sex, disability, or age, and prohibit the exclusion or discrimination in employment or business opportunity and/or denial of program benefits in employment or business opportunities, as identified in 49 U.S.C. § 5332. The Operator shall follow, and require its subcontractors and other participants at any tier of the Project to follow, the most recent version of the FTA’s Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients” (October 2012) to the extent required by the FTA.

(b) Nondiscrimination — Title VI of the Civil Rights Act. The Operator agrees to comply, and assures the compliance of each subcontractor or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq.; with USDOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964”, 49 C.F.R. Part 21; and with federal transit law, 49 U.S.C. § 5332. Except to the extent FTA determines otherwise in writing, the Operator agrees to follow all applicable provisions of FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients” (October 2012); USDOT “Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and any other applicable Federal directives that may be issued.

(c) Equal Employment Opportunity. The Operator agrees to, and assures that each subcontractor and other participant at any tier of the Project agree to, prohibit discrimination on the basis of race, color, religion, sex, or national origin. The Operator agrees to comply, and assures the compliance of each subcontractor or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332; with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e; with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note; and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Operator also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Operator agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Operator agrees to take affirmative action that includes employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

accordance with applicable Federal directives affecting construction undertaken as part of the Project.

Specifically, during the performance of the Agreement, the Operator agrees as follows:

(A) The Operator will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action 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 setting forth the 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 considerations for employment without regard to race, color, religion, sex, or national origin.

(C) The Operator will send to each labor union or representative of workers with which he has a collective bargaining agreement or other subcontract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Operator’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The Operator will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The Operator will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the Operator’s noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Operator may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(G) The Operator will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor at all tiers. The Operator will take such action with respect to
any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Operator becomes involved in, or is threatened with, litigation with a subcontractor at any tier as a result of such direction by the administering agency the Operator may request the United States to enter into such litigation to protect the interests of the United States.

(d) Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Operator agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:


(2) The Operator agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the performance of the Agreement and the award and performance of any contract, subcontract or other arrangement under the Agreement in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Operator agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all contracts, subcontracts, and other arrangements under the Agreement.

(3) The Operator will be required to report its DBE participation obtained through race-neutral means throughout the Contract Term as further provided in Section 21.1(d) of the Agreement.

(4) The Operator is required to pay each subcontractor under this contract for satisfactory performance of its contracts no later than fifteen (15) days from receipt of each payment received by the prime contractor from the Authority. Any delay or postponement of payment between prime and sub-contractors may take place only for good cause, and with the Authority’s prior written approval.

(A) The Operator must return retainage payments to each subcontractor within 15 days after the subcontractors’ work is satisfactorily completed. Any delay or postponement of payment between prime and subcontractors may take place only for good cause, and with the Authority’s prior written approval.

(B) The Authority will monitor all payment schedules for inclusion of work performed by subcontractors. The Authority will contact at random subcontractors to ensure that payments for satisfactory completed work have been received. If an occurrence is found in which a subcontractor was not paid by the Operator, the prime contractor will not be reimbursed for work performed by subcontractors, unless and until the Operator pays the subcontractors and ensures that the subcontractors continue to be promptly paid for work performed.
(C) If Operator determines subcontractor work to be unsatisfactory, it must notify the Authority immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.

(5) The Operator must promptly notify the Authority whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Authority.

(e) **Nondiscrimination on the Basis of Sex.** The Operator agrees to comply, and cause subcontractors to comply, with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.; with implementing U.S. Department of Transportation regulations at 49 C.F.R. Part 25 that prohibit discrimination on the basis of sex that may be applicable; and federal transit law, 49 U.S.C. § 5332.

(f) **Nondiscrimination on the Basis of Age.** The Operator agrees to comply, and cause subcontractors to comply with all applicable requirements of:


(g) **Access for Individuals with Disabilities.** To the extent applicable, the Operator and subcontractor shall comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing the services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Operator and subcontractor also shall comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with Titles I, II, and III of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; with federal transit law, 49 U.S.C. § 5332, which includes disability as a prohibited basis for discrimination; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Operator agrees to comply, and cause subcontractors to comply, with applicable implementing
Federal regulations and any later amendments thereto, and agree to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

1. USDOT regulations, “Transportation Services for Individuals with Disabilities (ADA)”, 49 C.F.R. Part 37;
2. USDOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance”, 49 C.F.R. Part 27;
9. FTA regulations, “Transportation for Elderly and Handicapped Persons”, 49 C.F.R. Part 609; and
10. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(h) Drug and Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Operator agrees to comply, and cause subcontractors to comply, with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.


(k) Other Nondiscrimination Laws. The Operator agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

(l) Veterans Employment. The Operator shall, in conjunction with the Authority, submit for review and approval, in accordance with FTA Circular 4220.1F, Chapter IV.2.c.(1)(c) a “Veterans Employment” program.

2.3 Prohibited Interest

No member, officer, or employee of owner or of any local public body during his tenure and for a period of one year thereafter shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

2.4 Termination

If the Federal Government suspends or terminates all or any part of the Federal assistance for the Agreement, the Authority may suspend work under or terminate the Agreement, in whole or in part, under the suspension or termination provision of the Agreement that are applicable in the circumstances.

2.5 Labor Provisions

(a) To the extent that the Agreement or any subcontract involves construction activities, the Operator shall comply with, and assure the compliance of each subcontractor and other participant at any tier of the Project with, the following federal laws and regulations providing protections for construction employees:

Standards Act)”, 29 C.F.R. Part 5. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference;


(b) To the extent that the Agreement or any subcontract concerns activities that do not involve construction, the Operator shall comply and assure the compliance of each subcontractor and other participant at any tier of the Project with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)”, 29 C.F.R. Part 5.

(c) The Operator shall comply with, and assure the compliance of each subcontractor and other participant at any tier of the Project with, the following provisions:

(1) Minimum Wages

(A) All laborers and mechanics employed or working upon the site of the Work will be paid unconditionally and not less often than once a every two-weeks, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor to be included in Agreement and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the subcontractor(s) and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics, subject to the provisions of Section 2.5(c)(1)(D); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are
deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Section 2.5(c)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under Section 2.5(c)(1)(B)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Operator and subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

(B) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. the Authority shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

b. The classification is utilized in the area by the construction industry; and

c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Operator and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), the Authority will send a report of the action taken to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. Said Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

(iii) In the event the Operator and laborers or mechanics to be employed in the classification or their representatives, and the Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Authority shall refer the questions, including the views of all interested parties and the recommendation of the Authority to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (i) and (ii) above, shall be paid to all workers performing work in the classification under the Agreement from the first day on which work is performed in the classification.
(C) Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Operator or subcontractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(D) If the Operator or subcontractor, as appropriate, does not make payments to a trustee or other third person, the Operator may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Operator, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Operator or any subcontractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding

the Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Operator under the Agreement or any other Federal contract with the same entity, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same entity, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Operator or subcontractors the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work, all or part of the wages required by the Agreement, the Authority may, after written notice to the Operator, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and Basic Records

(A) Payrolls and basic records relating thereto shall be maintained by the Operator and each subcontractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b) (2) (B) of the Davis-Bacon Act, the Operator shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Operator and any subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of
trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(B) (i) The Operator and each subcontractor shall submit weekly for each week in which any Work is performed under the Agreement two copies of all payrolls to the Authority within seven days after the regular payroll date for transmission to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 2.5(c)(3)(A), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at http://www.dol.gov/whd/forms/wh347.pdf or successor site. The Operator is responsible for the submission of copies of payrolls by all subcontractors. The Operator and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Authority, as the case may be, for transmission to the USDOT, the Operator or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for the Operator to require a subcontractor, or for a subcontractor to require a lower tier subcontractor, to provide addresses and social security numbers to the Operator or subcontractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(ii) Each payroll submitted shall be accompanied by a “Statement of Compliance”, signed by the Operator, subcontractor or its agent who pays or supervises the payment of the persons employed under the Agreement or subcontract and who shall certify the following:

a. That the payroll for the payroll period contains the information required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. Part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 C.F.R. Part 5, and that such information is correct and complete;

b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulation, 29 C.F.R. Part 3;

c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by this Section 2.5(c)(3)(B)(ii).
(iv) The falsification of any of the above certifications may subject the Operator, subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(C) The Operator or applicable subcontractor shall make the records required under this Section 2.5(c)(3)(A) available for inspection, copying or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Operator, subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to the Operator, sponsor, applicant, or the Authority, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

(4) Apprentices and Trainee

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the subcontractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen’s hourly rate) specified in the subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(B) **Trainees.** Except as proved in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymen wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(C) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this Section 2.5(c) shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 20 C.F.R. Part 30.

(5) **Compliance with Copeland Act Requirements**

The Operator and any subcontractors at any tier shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in the Agreement.

(6) **Subcontracts**

The Operator and any subcontractors at any tier shall insert in any subcontracts the clauses contained in this Section 2.5(c) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Operator shall be responsible for the compliance by any subcontractor at any tier with all the contract clauses in 29 C.F.R. § 5.5.

(7) **Contract Termination: Debarment**

A breach of this Section 2.5(c) may be grounds for termination of the Agreement and/or any subcontract under the Agreement, and for debarment of the Operator or any subcontractor at any tier as provided in 29 C.F.R. § 5.12.

(8) **Compliance with Davis-Bacon and Related Act Requirements**
All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in the Agreement.

(9) Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of the Agreement or any subcontract under the Agreement shall not be subject to the general disputes clause of the Agreement or subcontract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between The Operator (or subcontractor) and the Authority, the U.S. Department of Labor, or the Operator’s/subcontractor’s employees or their representatives.

(10) Certification of Eligibility

(A) By entering into the Agreement, the Operator certifies that neither it (nor he or she) nor any person or firm who has an interest in the Operator is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12 (a) (1).

(B) No part of the Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3 (a) of the Davis-Bacon Act or 29 C.F.R. § 5.12 (a) (1).

(C) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

(d) Contract Work Hours and Safety Standards Act

The Operator shall comply with, and assure the compliance of each subcontractor and other participant at any tier of the Project with, the following provisions:

(1) Overtime Requirements

No contractor (nor the Operator) contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violations; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in this Section 2.5(d)(1), the Operator and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Operator or such subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this Section 2.5(d)(1), equal to the liquidated damages established by the Department of Labor.
pursuant to the Contract Work Hours and Safety Standards Act as of the date of execution of each contract or subcontract involving construction Work (currently $10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in this Section 2.5(d)(1).

(3) **Withholding for Unpaid Wages and Liquidated Damages**

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Operator or subcontractor under the Agreement or any contract or subcontract under the Agreement or any other Federal contract with the same entity, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same entity, such sums as may be determined to be necessary to satisfy any liabilities of such entity for unpaid wages and liquidated damages as provided in the clause set forth above.

(4) **Subcontracts**

The Operator and each subcontractor shall insert in any lower tier subcontracts the applicable clauses set forth in this Section 2.5(d)(1) through (4) and also a clause requiring each lower tier subcontractor to include these clauses in any lower tier subcontracts. The Operator and each subcontractor shall be responsible for compliance by any lower tier subcontractor with said clauses.

(The text of Section 2.5, paragraphs (a) - (d), has been taken from 29 C.F.R. Part 5 as amended through December 19, 2008. Numbering of paragraphs and defined terms have been changed to agree with the format for the Agreement. In the event of conflict, the provisions of the Code of Federal Regulations shall prevail.)

(e) For information regarding appropriate use of Building Construction or Heavy Construction wage rates, refer to U.S. Department of Labor All Agency Memorandum Nos. 130 and 131 entitled “Application of the Standard of Comparison Projects of a Character Similar’ Under the Davis-Bacon and Related Acts”. Following Commercial Close, the Authority will assist the Operator in determining the appropriate prevailing wage rate application.

2.6 **Delinquent Certified Payrolls**

If the Operator is delinquent in submitting its payroll records or those of any subcontractor required under Section 2.5, processing of invoices may be held in abeyance pending receipt of the payroll records. In addition, if the Operator is delinquent in submitting its payroll records or those of any subcontractor, the Operator shall be liable to the Authority for liquidated damages. The liquidated damages shall constitute the sum of $10 for each day that the payroll records are late.
2.7 Cargo Preference – Use of United States-Flag Vessels

(a) To the extent applicable, the Operator shall comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, “Cargo Preference-U.S.-Flag Vessels”, 46 C.F.R. Part 381.

(b) The Operator agrees to utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessel.

(c) The Operator agrees to furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in Section 2.7(a) to the FTA Administrator and the Authority (through the subcontractor(s) in the case of subcontractor(s) bills-of-lading) and to the Office of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, marked with appropriated identification of the Project.

(d) The Operator agrees to insert the substance of the provisions of this clause in all subcontracts issued pursuant to the Agreement.

2.8 Buy America

(a) The Operator shall comply with 49 U.S.C. § 5323(j) and FTA regulations, “Buy America Requirements”, 49 C.F.R. Part 661, and any amendments thereto, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in Appendix A to 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. The Operator is responsible for ensuring lower tier subcontractors are in compliance with this Section 2.8.

(b) In addition to provision any certifications in the Operator’s proposal documents, which shall be incorporated by reference into the Agreement, and the certifications under Section 2.8(a), the Operator shall submit material source documentation throughout the Contract Term to demonstrate compliance with Buy America, at such times and in such form as is required by the Authority. The material source documentation shall include, at a minimum, the name of subcontractor supplying the material, location and contact information of manufacturer, project name and number, date and location material shipped, material description, material quantity, and means of identifying the product (such as label marking, product model number or serial number).

(c) The Authority may undertake investigations as it deems appropriate to confirm compliance with this provision by the Operator and subcontractors, including the right to inspect...
all Project Work, materials, payrolls, and data; and opportunity to audit all Project-related information in accordance with Section 2.16. The Operator shall cooperate with any such investigation.

2.9 Compliance with Environmental Standards

The Operator agrees and understands that environmental and resource laws, regulations, and guidance, now in effect or that may become effective in the future, may apply to the Project.

(a) National Environmental Policy Act

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following federal laws, regulations, executive orders, and guidance, to the extent applicable:

(1) Federal transit laws, specifically 49 U.S.C. § 5323(c)(2), as amended;


(3) U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508;


(7) Other federal environmental protection laws, regulations, executive orders, or guidance applicable to the Project.

(b) Use of Certain Public Lands

The Operator agrees to comply, and assures that its subcontractors at every tier will comply with the following, to the extent applicable:

(1) U.S. DOT laws, specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land that Federal officials authorized under law have determined to be a:

(A) Park of national, State or local significance,

(B) Recreation area of national, State or local significance,
(C) Wildlife refuge of national, State or local significance, or

(D) Waterfowl refuge of national, State or local significance, and


(c) Wild and Scenic Rivers

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, protections for the national wild and scenic rivers system, including the following, to the extent applicable:


(2) U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297; and


(d) Wetlands

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, protections for wetlands provided in Executive Order No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note, to the extent applicable.

(e) Floodplains

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note, facilitating compliance with the flood hazards protections in floodplains, to the extent applicable.

(f) Endangered Species and Fishery Conservation

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following protections for endangered species, to the extent applicable:

(1) The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544; and


(g) Waste Management
The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k, to the extent applicable.

(h) Hazardous Waste

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, establishing requirements for the treat of areas affected by hazardous waste, to the extent applicable.

(i) Historic Preservation

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following, to the extent applicable:

1. 49 U.S.C. § 303;
2. § 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f;
5. U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. Part 800, including consultation with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project and notification of the FTA of affected properties.

(j) Indian Sacred Sites

The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following, to the extent applicable:

1. Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Inuit, Aleuts, and Native Hawaiians;
2. The American Indian Religious Freedom Act, 42 U.S.C. § 1996; and

(k) Mitigation of Adverse Environmental Effects

If the Project causes or results in any adverse environmental effect, the Operator agrees to, and agrees to assure that its subcontractors:
(1) Comply with all environmental mitigation measures that may be identified as commitments in the environmental documents that apply to the Project, such as environmental assessments, environmental impact statements, memoranda of agreement, documents required under 49 U.S.C. § 303, any other environmental documents, and any conditions the Federal Government imposes in a finding of no significant impact or record of decision; and

(2) Assure that any mitigation measures agreed on are incorporated by reference and made a part of the Agreement, that any deferred mitigation measures will be incorporated by reference and made a part of the Agreement as soon as agreement with the Federal Government is reached, and that any mitigation measures agreed to will not be modified or withdrawn without the written approval of the Federal Government.

2.10 Energy Conservation

The Agreement shall comply with mandatory standards and policies relating to energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 et seq. To the extent applicable, the Operator agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments”, 49 C.F.R. Part 622, Subpart C. The Operator is responsible for ensuring lower tier subcontractors are in compliance with this Section 2.10.

2.11 Certification Regarding Debarment

The Operator agrees that it will comply with the following requirements of 2 C.F.R. Part 180, subpart C, as adopted and supplemented by USDOT regulations at 2 C.F.R. Part 1200:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any subcontractor at any tier that is debarred or suspended, except as authorized by:

(1) USDOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200;

(2) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, as amended; and


(b) It will review the U.S. GSA “System for Award Management,” https://www.sam.gov, or successor site, if required by USDOT regulations, 2 C.F.R. Part 1200.

(c) It will include, and require each of its subcontractors at every tier to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier subcontractor will:

(1) Comply with Federal debarment and suspension requirements; and
(2) Review the “System for Award Management” at https://www.sam.gov, or successor site, if necessary to comply with USDOT regulations, 2 C.F.R. Part 1200.

2.12 Fly America Requirements

The Operator shall comply with 49 U.S.C. § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. §§ 301-10.131 through 301-10.143, which provide that the Operator and its subcontractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of individuals and their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Operator shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Operator agrees to include, and to require subcontractors to include, the requirements of this Section 2.12 in all subcontracts that may involve international air transportation.

2.13 Jones Act Requirements

The Operator shall comply with, and assure that its subcontractors at every tier comply with, all of the requirements of the Jones Act, as amended, 46 U.S.C. § 50101 et seq., and relevant regulations, including, but not limited to, the regulatory provisions of Subpart M of 46 C.F.R. Part 67. Notwithstanding the foregoing, the Operator shall ensure the Project complies with the following requirements of the Jones Act:

(a) At all times, the percent of U.S. citizen beneficial ownership in the ultimate parent ship-owing company and all intervening subsidiaries must be no less than seventy-five percent;

(b) All vessels must be built and repaired in U.S. shipyards. Notwithstanding the foregoing, foreign repairs are permitted in limited circumstances, in accordance with 19 U.S.C. § 1466, where such repairs meet the following requirements:

(1) Repairs are performed on a U.S.-built vessel;

(2) Any foreign-built component of the hull or superstructure added to the vessel does not constitute a major component (one and a half percent of the vessel’s discounted lightship weight); and

(3) For an aluminum- or steel- constructed vessel:

(A) The work performed on the hull or superstructure of the vessel does not constitute a considerable part of the hull or superstructure (seven and a half percent or more of the vessel’s discounted lightship weight); or

(4) For vessel that is neither aluminum- or steel- constructed:
(A) The work performed on the hull or superstructure of the vessel does not constitute a considerable part of the hull or superstructure (seven and a half percent or more of the vessel’s discounted lightship weight, calculated as if the vessel were wholly constructed of steel or aluminum);

(c) The crew of all vessels must be comprised of no less than seventy-five percent United States citizens or permanent residents. Residents of Puerto Rico will qualify for this requirement; and

(d) All vessels must possess a coastwise endorsement which is issued by the United States Coast Guard, pursuant to 46 U.S.C. § 55102(b) and 46 U.S.C. § 55103(a).

For clarity, the Authority does not qualify as an employer of the captain or crew of any vessel owned and/or operated by the Operator, including for the purposes of 46 U.S.C. §30104.

2.14 Recycled Products/Recovered Materials

The Operator agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. To the extent applicable, the Operator shall include these requirements in each subcontract and require each subcontractor to include this clause in lower tier subcontracts.

2.15 Seismic Safety Requirements

The Operator shall comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 et seq., in accordance with Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction”, 42 U.S.C. § 7704 note, and comply with USDOT regulations, “Seismic Safety”, 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117). The Operator shall include this clause in each subcontract issued under the Agreement for architectural and engineering services and construction related to new buildings or additions to new buildings, and shall require each subcontractor to include this clause in similar lower tier subcontracts.

2.16 Access to Records and Reports

(a) The Operator shall retain, and cause subcontractors at any tier to retain, complete and readily accessible records related in whole or in part the Project, including, but not limited to, data, documents, reports, records, statistics, subcontracts and subagreements, leases, arrangements, and supporting materials related to those records.

(b) The Operator shall provide, and shall cause subcontractors at any tier to provide, to the Authority, the U.S. Secretary of Transportation, the Department of Transportation, and the Comptroller General of the United States, or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g) and 2 C.F.R. pt. 200; opportunity to inspect all Work, materials, payrolls, and data; and opportunity to audit all Project-related information.
(c) The Operator shall provide, and shall cause subcontractors at any tier to provide, the Authority and the FTA Administrator or their authorized representatives, including any project management oversight subcontractor, access to the contract records and construction sites.

(d) The Operator shall permit, and cause subcontractors to permit, any of the foregoing parties to reproduce by any means whatsoever or to copy excerpt and transcriptions as reasonably needed.

(e) The Operator shall maintain, and shall require subcontractors to maintain, all books, records, accounts, and reports required under the Agreement for a period of not less than three years after the date final payment is made under the Agreement (and agrees for itself and its subcontractors that the Authority, the Department of Transportation, and the Comptroller General of the United States shall have access to and the right to examine such documents), except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case the Operator agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 C.F.R. pt. 200.

(f) The Operator shall include, and cause its subcontractors at any tier to include, the provisions of this Section 2.16 in each subcontract under the Agreement.

2.17 No Obligation by the Federal Government

(a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, subcontract or other arrangement at any tier, absent its express written consent, the Federal Government is not a party to the Agreement and has no obligations or liabilities to the Operator or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Operator shall include this clause in each subcontract issued under the Agreement and shall require each subcontractor to include this clause in lower tier subcontracts. It is further agreed that the clause shall not be modified, except to identify the parties who will be subject to its provisions.

2.18 Clean Water Requirements

The Operator agrees to comply with, and agrees to assure that any subcontracts exceeding $100,000 at every tier comply with, the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, and its implementing regulations and guidance, except as the federal government determines otherwise in writing. The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following:

(a) Protection of underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f through 300j-6;
(b) Notice of violating facility provisions in Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368 to the Authority, understanding that the Authority will in turn report each violation as required to FTA and EPA’s Regional Office; and

(c) Executive Order No. 11738, “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

2.19 Federal Requirements

(a) The Operator shall at all times comply with the requirements in this Appendix 8 and all applicable FTA regulations, policies, procedures and directives, including 49 C.F.R. Part 26, as these regulations, policies, procedures, and directives may be amended and promulgated from time to time, including those listed directly or by reference in the Master Agreement between the Authority and FTA. The Operator’s failure to so comply shall constitute a material breach of the Agreement, which may result in termination of the Agreement or other remedies in accordance with Articles 9, 17 and 19 of the Agreement.

(b) The Operator shall include this clause in each subcontract issued under the Agreement and shall require each subcontractor to include this clause in lower tier subcontract, modified as appropriate to identify the parties and relevant terms of the subcontract.

2.20 Clean Air

The Operator agrees to comply with, and agrees to assure that any subcontracts exceeding $100,000 at every tier comply with, the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q, and its implementing regulations and guidance, except as the federal government determines otherwise in writing. The Operator agrees to comply with, and agrees to assure that its subcontractors at every tier comply with, the following:


(b) State Implementation Plans (SIP), including implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project, assuring if the Project is identified as a Transportation Control Measure in the SIP it will be wholly consistent with the design concept and scope described in the SIP, and complying with § 176(c) of the Clean Air Act, 49 U.S.C. § 7506(c) and U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23, U.S.C. or the Federal Transit Laws,” 40 C.F.R. Part 93, subpart A; and

(c) Notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 49 U.S.C. § 7414 and Executive Order No. 11738, “Providing for Administration of
the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

2.21 FTA Terms

The preceding provisions include, in part, certain standard terms and conditions required by the USDOT, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, as amended and updated, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Operator shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions. The Operator agrees to include these requirements in each subcontract and to require each subcontractor to include this clause in lower tier subcontracts.

2.22 National Transit Database Reporting Requirements

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 Authority and the FTA. A draft of the report shall be submitted to the Authority 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 Authority in preparing reports required for other Federal, State, or other assistance programs as reasonably requested by the Authority. The Operator’s responsibility to provide such information, complete such forms, to file such reports, and to fully cooperate so that the Authority 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.

2.23 Changes in Requirements

Federal requirements cited above may change and the changed requirements shall be applicable to the Agreement as required. It is understood by the Operator and each subcontractor that all limits or standards set forth above to be observed in the performance of the Agreement services are minimum requirements.

3. SPECIFIED REQUIREMENTS APPLICABLE TO THE OPERATOR AND SUBCONTRACTORS WHEN PERFORMING OPERATIONS WORK

The following requirements apply to the Operator and subcontractors with respect to the operations and maintenance Work even if FTA funding is not obtained for such Work.

3.1 Privacy Act

(a) The Operator agrees to comply with, and assure the compliance of subcontractors at any tier and their respective employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 522a. Among other things, the Operator
agrees to obtain the express consent of the Federal Government before the Operator or its employees (or, a subcontractor at any tier or its employees) operate a system of records on behalf of the Federal Government. The Operator understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

(b) The Operator agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

3.2 Background Checks, Redress and Immigration Status

The Operator shall comply with all applicable provisions contained in 49 C.F.R. Parts 1570, 1572, and 1580, as well as all relevant FTA, Department of Homeland Security (DHS) and Transportation Security Administration (TSA) guidance, including FTA guidance, “Transit Agency Security and Emergency Management Protective Measures” (November 2006), and joint FTA/TSA guidance, “TSA/FTA Security and Emergency Management Action Items for Transit Agencies” (December 2006), each as supplemented by TSA guidance “Additional Guidance on Background Checks, Redress and Immigration Status”.

3.3 Transit Employee Protective Agreements

General Transit Employee Protective Requirements – If and to the extent that the U.S. Department of Labor (or an arbitrator pursuant to arbitration between the parties) determines that the Unified Protective Arrangement applies to the operations of the Ferry System, the Operator agrees to perform the Agreement in compliance with said Unified Protective Arrangement or such terms and conditions otherwise determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the Agreement and applicable to the operation of the Ferry System, in each case under 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto.
BUY AMERICA CERTIFICATION

Instructions:

Bidder to complete the Buy America Certification listed below. Bidder shall certify EITHER COMPLIANCE OR NON-COMPLIANCE (not both). This Certification MUST BE submitted with the Bidder’s bid response.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661 and any amendments thereto.

Signature _________________________________________________

Company Name ____________________________________________

Title  _____________________________________________________

Date  _ ____________________________________________________

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Signature _________________________________________________

Company Name ____________________________________________

Title  _______________ ______________________________________

Date  ____________________________________________________

Special Note: Make sure you have signed only one of the above statements -- either Compliance OR Non-Compliance (not both).
## PRMTA CONCESSION CONTRACTS

### Ceiba

<table>
<thead>
<tr>
<th>Concession</th>
<th>Contract Number</th>
<th>Area and location</th>
<th>Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carlos Jeep</td>
<td>ATM 18-19-(5)-016</td>
<td>Commercial lease 160 sq ft</td>
<td>$520.00</td>
</tr>
<tr>
<td>HMCA (Surf Shack)</td>
<td>ATM 18-19-(5)-011</td>
<td>Commercial lease 299 sq ft</td>
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</tr>
<tr>
<td>Oriental Bank</td>
<td>ATM 18-19-(5)-014</td>
<td>Commercial lease for ATM (cash machine) 5 sq ft</td>
<td>$500.00</td>
</tr>
<tr>
<td>Coca Cola</td>
<td>ATM 18-19-(4)-043</td>
<td>Vending machine 5 sq ft (per machine)</td>
<td>$132 per machine (9 machines)</td>
</tr>
<tr>
<td>Smart Parking</td>
<td>ATM 18-19-(4)-037</td>
<td>Commercial lease for parking space 7.2 acres</td>
<td>$4,000.00</td>
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### Cataño

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Coquí Bayú, Inc.</td>
<td>ATM 18-19-(5)-025</td>
<td>Coffee Machine 10 sq ft</td>
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<tr>
<td>Coca Cola</td>
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### Culebra

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<tbody>
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<td>Hot Cash Corp.</td>
<td>ATM-14-15-4-022</td>
<td>Commercial lease for ATM (cash machine) 5 sq ft</td>
<td>$150.00 per machine (1 machine)</td>
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<tr>
<td>José Padilla Colón DBA J.L. Padilla Vending &amp; Amusement</td>
<td>ATM 11-12-(4)-005</td>
<td>Vending machine 5 sq ft per machine</td>
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### Pier II, San Juan

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<tbody>
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<tr>
<td>Puerto Rico Café Colao</td>
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<tr>
<td>Jaime Torres (Sweet Cone)</td>
<td>ATM 15-16-(4)-017</td>
<td>Commercial space 236.27 sq ft</td>
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### Vieques

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<td>Hot Cash Corp.</td>
<td>ATM-14-15-4-022</td>
<td>Commercial lease for ATM (cash machine) 5 sq ft</td>
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<td>ATM 11-12-(4)-005</td>
<td>Vending machine 5 sq ft per machine</td>
<td>$132 per machine (2 machines)</td>
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COST ESTIMATE COMPARISON

Option 1

Assumes a mix of Authority provided vessels and HMS chartered vessels.

<table>
<thead>
<tr>
<th></th>
<th>CEIBA-CULEBRA</th>
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<th>CULEBRA-CEIBA</th>
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<tr>
<td><strong>Departure</strong></td>
<td><strong>Arrival</strong></td>
<td><strong>Vessel</strong></td>
<td><strong>Terminal</strong></td>
<td><strong>Departure</strong></td>
</tr>
<tr>
<td>4:00 AM</td>
<td>6:00 AM</td>
<td>Ro/Pax</td>
<td>Sardinas</td>
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<tr>
<td>4:45 AM</td>
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<tr>
<td>9:00 AM</td>
<td>10:00 AM</td>
<td>Pax</td>
<td>Sardinas</td>
<td>11:00 AM</td>
</tr>
<tr>
<td>9:30 AM</td>
<td>11:30 AM</td>
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<td>Sardinas</td>
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</tr>
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<td>Sardinas</td>
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</tr>
<tr>
<td>1:00 PM</td>
<td>2:00 PM</td>
<td>Pax</td>
<td>Sardinas</td>
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<tr>
<td>2:30 PM</td>
<td>4:30 PM</td>
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<tr>
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<tr>
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</table>

<table>
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<tr>
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<th>CEIBA-VIEQUES</th>
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<td><strong>Departure</strong></td>
<td><strong>Arrival</strong></td>
<td><strong>Vessel</strong></td>
<td><strong>Terminal</strong></td>
<td><strong>Departure</strong></td>
</tr>
<tr>
<td>4:00 AM</td>
<td>5:00 AM</td>
<td>Ro/Pax</td>
<td>Isabel II</td>
<td>6:00 AM</td>
</tr>
<tr>
<td>6:00 AM</td>
<td>7:00 AM</td>
<td>Pax</td>
<td>Isabel II</td>
<td>6:30 AM</td>
</tr>
<tr>
<td>9:00 AM</td>
<td>10:00 AM</td>
<td>Pax</td>
<td>Isabel II</td>
<td>7:30 AM</td>
</tr>
<tr>
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<td>Isabel II</td>
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<tr>
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<td>Isabel II</td>
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<td>Isabel II</td>
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### Table 2: Cost Estimate Comparison Option 1

<table>
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<th></th>
<th>Option 1</th>
<th>Baseline</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Mgmt. &amp; Admin</td>
<td>1,463,000</td>
<td>1,337,000</td>
<td>126,000</td>
</tr>
<tr>
<td>Ferry - Group Land</td>
<td>6,521,200</td>
<td>5,147,800</td>
<td>1,373,400</td>
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<tr>
<td>Ferry - Group Marine</td>
<td>11,356,174</td>
<td>5,706,285</td>
<td>5,649,890</td>
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<tr>
<td>Shipyard - Group</td>
<td>1,288,000</td>
<td>1,288,000</td>
<td>0</td>
</tr>
<tr>
<td>Mobilization travel, relocation, housing</td>
<td>1,237,702</td>
<td>1,010,931</td>
<td>226,771</td>
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<tr>
<td>Recruiting</td>
<td>309,426</td>
<td>202,186</td>
<td>107,239</td>
</tr>
<tr>
<td>Training</td>
<td>412,567</td>
<td>336,977</td>
<td>75,590</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>22,588,07</td>
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### Operating - Ferry

<table>
<thead>
<tr>
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<td>Charter Hire</td>
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<td>Delivery (one way only)</td>
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<tr>
<td>Maintenance (Island)</td>
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<td>Maintenance (Metro)</td>
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<td>Maintenance deliveries Logistics and Management</td>
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<td>Consumables and Supplies</td>
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<tr>
<td>Travel (all)</td>
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<tr>
<td>Utilities (all)</td>
<td>273,750</td>
<td>219,000</td>
<td>54,750</td>
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<tr>
<td>Safety (all)</td>
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<td><strong>Total</strong></td>
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### Operating - Terminals

<table>
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<td>M&amp;R - Island</td>
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<td>M&amp;R - Main</td>
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<td>M&amp;R - Metro</td>
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### Operating - Shipyard

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<th>Office</th>
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### Overhead

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMS (see admin labor sheet)</td>
<td>365,750</td>
<td>334,250</td>
<td>31,500</td>
</tr>
<tr>
<td>Other Prof Services</td>
<td>478,803</td>
<td>421,455</td>
<td>57,348</td>
</tr>
<tr>
<td>Ongoing Website and Ticketing</td>
<td>47,450</td>
<td>47,450</td>
<td>0</td>
</tr>
<tr>
<td>Insurance Fleet (3% cap value)</td>
<td>1,268,926</td>
<td>900,000</td>
<td>368,926</td>
</tr>
<tr>
<td>Insurance Land</td>
<td>300,000</td>
<td>250,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Insurance All Other</td>
<td>187,500</td>
<td>125,000</td>
<td>62,500</td>
</tr>
<tr>
<td>Ongoing IT</td>
<td>45,625</td>
<td>45,625</td>
<td>0</td>
</tr>
<tr>
<td>Travel</td>
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<td>250,000</td>
<td>0</td>
</tr>
<tr>
<td>Utilities</td>
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<tr>
<td>Phone</td>
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<tr>
<td>Comms</td>
<td>94,535</td>
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<tr>
<td>Office supplies</td>
<td>54,750</td>
<td>54,750</td>
<td>0</td>
</tr>
<tr>
<td>Safety (covered at individual locations)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
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<td>2,687,315</td>
<td>570,274</td>
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### Marketing and Communications

<table>
<thead>
<tr>
<th>Category</th>
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<th>Amount</th>
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<tr>
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</table>

### SUB-TOTAL

<table>
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<th>Amount</th>
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<th>Amount</th>
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<tbody>
<tr>
<td></td>
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<td>34,818,095</td>
<td>21,368,204</td>
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### Bond Cost

Tax
Vessel Extra-Ordinary *
Vessel Capital Exp *
Shipyard and Other Terminal Capital Exp *

### Management Fee

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1,740,905</td>
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App. BB - 3
GRAND TOTAL w/ FEE

<table>
<thead>
<tr>
<th></th>
<th>58,995,61</th>
<th>36,558,999</th>
<th>22,436,614</th>
</tr>
</thead>
</table>

Option 1:

This is a comparison of the baseline estimate (from the original RFP) and the schedule option provided by the Authority (Table 1) This is an estimate of steady-state operations - as they might occur during Phase 1 of the project.

Items that still need to be included in total costs are:
1. Bond
2. Tax
3. Extra-Ordinary Vessel Expenditures
4. Capital Expenditures for vessels, shipyard, and terminals
(These items all increase the management fee by cost x 5%)

**Assumptions:**

- This is a pass-through estimate with all costs being reimbursable. Management Fee is based on 5% of all expenses.
- Corporate overhead is an expense (and is included in the model).
- Assumes all Authority schedule run times are achievable.
- Assumes fuel runs are included in the schedule and NOT in addition to the above schedule.
- Assumes no extra runs - due to greatly expanded schedule.
- Fuel costs modeled at original $3.50/gal.
- Total outside charter hire (before management fee) is estimated at $4,093,750/year. This is an allowance number.
- HMS to charter a “supply-type” Ro/Pax with crew (3) included.
- Only mobilization fee delivery to SJU is included in the allowance amount of $95,000. Return trip needs to be included.
- All insurance is an allowance and will be billed at actual.

**Vessel Mix:**

The availability and charter costs of additional vessels cannot be confirmed at this time. Therefore, these costs are estimates only.

In addition to the five (5) baseline vessels initially provided by the Authority, HMS will provide a Pax/Only vessel and a small Ro/Pax vessel through a charter, for a total of seven (7) vessels.
**Option 2**

Assumes the Authority provides sufficient vessels to those originally described in the RFP.

### Table 3: Schedule Option 2

<table>
<thead>
<tr>
<th>CEIBA-CULEBRA</th>
<th>CULEBRA-CEIBA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CEIBA-CULEBRA</strong></td>
<td><strong>CULEBRA-CEIBA</strong></td>
</tr>
<tr>
<td>Departure</td>
<td>Arrival</td>
</tr>
<tr>
<td>4:00 AM</td>
<td>6:00 AM</td>
</tr>
<tr>
<td>4:45 AM</td>
<td>5:45 AM</td>
</tr>
<tr>
<td>9:00 AM</td>
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<tr>
<td>9:30 AM</td>
<td>11:30 AM</td>
</tr>
<tr>
<td>11:00 AM</td>
<td>12:00 PM</td>
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<tr>
<td>12:00 PM</td>
<td>1:30 PM</td>
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<tr>
<td>1:00 PM</td>
<td>2:00 PM</td>
</tr>
<tr>
<td>3:00 PM</td>
<td>4:00 PM</td>
</tr>
<tr>
<td>5:00 PM</td>
<td>7:00 PM</td>
</tr>
<tr>
<td>7:00 PM</td>
<td>8:00 PM</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VIEQUES-CEIBA</th>
<th>CEIBA-VIEQUES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CEIBA-VIEQUES</strong></td>
<td><strong>VIEQUES-CEIBA</strong></td>
</tr>
<tr>
<td>Departure</td>
<td>Arrival</td>
</tr>
<tr>
<td>4:00 AM</td>
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<td>5:30 PM</td>
</tr>
<tr>
<td>5:00 PM</td>
<td>6:00 PM</td>
</tr>
<tr>
<td>7:30 PM</td>
<td>8:30 PM</td>
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<tr>
<td>8:30 PM</td>
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</tr>
</tbody>
</table>
### Table 4: Cost Estimate Comparison Option 2

<table>
<thead>
<tr>
<th>Labor</th>
<th>Option 1</th>
<th>Baseline</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mgmt. &amp; Admin</td>
<td>1,463,000</td>
<td>1,337,000</td>
<td>126,000</td>
</tr>
<tr>
<td>Ferry - Group Land</td>
<td>6,521,200</td>
<td>5,147,800</td>
<td>1,373,400</td>
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<tr>
<td>Ferry - Group Marine</td>
<td>11,320,490</td>
<td>5,706,285</td>
<td>5,614,205</td>
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<tr>
<td>Shipyard - Group</td>
<td>1,288,000</td>
<td>1,288,000</td>
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</tr>
<tr>
<td>Mobilization travel, relocation, housing</td>
<td>1,235,561</td>
<td>1,010,931</td>
<td>224,630</td>
</tr>
<tr>
<td>Recruiting</td>
<td>308,890</td>
<td>202,186</td>
<td>106,704</td>
</tr>
<tr>
<td>Training</td>
<td>411,854</td>
<td>336,977</td>
<td>74,877</td>
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</table>

| Total                                      | 22,588,070| 15,029,179| 7,519,816  |

#### Operating - Ferry

<table>
<thead>
<tr>
<th>Item</th>
<th>Option 1</th>
<th>Baseline</th>
<th>Difference</th>
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</thead>
<tbody>
<tr>
<td>Fuel</td>
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<td>Lubes and disposals</td>
<td>387,049</td>
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<td>108,530</td>
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<tr>
<td>Charter Hire</td>
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<td>0</td>
</tr>
<tr>
<td>Delivery (one way only)</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Maintenance (Island)</td>
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<td>1,807,908</td>
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<tr>
<td>Maintenance (Metro)</td>
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<tr>
<td>Maintenance deliveries Logistics and Management</td>
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<tr>
<td>Consumables and Supplies</td>
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<tr>
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<tr>
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<td>273,750</td>
<td>219,000</td>
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<tr>
<td>Safety (all)</td>
<td>228,125</td>
<td>182,500</td>
<td>45,625</td>
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</table>

| Total                                      | 21,937,968| 13,402,350| 8,535,618  |

#### Operating - Terminals

<table>
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<tr>
<th>Item</th>
<th>Option 1</th>
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<th>Difference</th>
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<tbody>
<tr>
<td>M&amp;R - Island</td>
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<tr>
<td>M&amp;R - Main</td>
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<tr>
<td>M&amp;R - Metro</td>
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<td>109,500</td>
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<tr>
<td>Shuttles</td>
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<td>0</td>
</tr>
<tr>
<td>Consumables and Supplies (all)</td>
<td>328,500</td>
<td>273,750</td>
<td>54,750</td>
</tr>
<tr>
<td>Travel (all)</td>
<td>182,500</td>
<td>182,500</td>
<td>0</td>
</tr>
<tr>
<td>Office (all)</td>
<td>27,375</td>
<td>27,375</td>
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<tr>
<td>Utilities (all)</td>
<td>365,000</td>
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<td>Safety (all)</td>
<td>985,500</td>
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</table>

| Total                                      | 2,576,900 | 2,345,125 | 231,775    |
## Operating - Shipyard

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost 1</th>
<th>Cost 2</th>
<th>Cost 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>M&amp;R</td>
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<tr>
<td>Consumables and Supplies</td>
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<tr>
<td>Travel</td>
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<tr>
<td>Office</td>
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<td>54,750</td>
<td>0</td>
</tr>
<tr>
<td>Utilities</td>
<td>264,625</td>
<td>264,625</td>
<td>0</td>
</tr>
<tr>
<td>Safety</td>
<td>82,125</td>
<td>82,125</td>
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</tr>
<tr>
<td>Other</td>
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<tr>
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</table>

## Overhead

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost 1</th>
<th>Cost 2</th>
<th>Cost 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMS (see admin labor sheet)</td>
<td>365,750</td>
<td>334,250</td>
<td>31,500</td>
</tr>
<tr>
<td>Other Prof Services</td>
<td>478,803</td>
<td>421,455</td>
<td>57,348</td>
</tr>
<tr>
<td>Ongoing Website and Ticketing</td>
<td>47,450</td>
<td>47,450</td>
<td>0</td>
</tr>
<tr>
<td>Insurance Fleet (3% cap value)</td>
<td>1,268,926</td>
<td>900,000</td>
<td>368,926</td>
</tr>
<tr>
<td>Insurance Land</td>
<td>300,000</td>
<td>250,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Insurance All Other</td>
<td>187,500</td>
<td>125,000</td>
<td>62,500</td>
</tr>
<tr>
<td>Ongoing IT</td>
<td>45,625</td>
<td>45,625</td>
<td>0</td>
</tr>
<tr>
<td>Travel</td>
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<tr>
<td>Utilities</td>
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<tr>
<td>Phone</td>
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</tr>
<tr>
<td>Comms</td>
<td>94,535</td>
<td>94,535</td>
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</tr>
<tr>
<td>Office supplies</td>
<td>54,750</td>
<td>54,750</td>
<td>0</td>
</tr>
<tr>
<td>Safety (covered at individual locations)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>3,257,589</td>
<td>2,687,315</td>
<td>570,274</td>
</tr>
</tbody>
</table>

## Marketing and Communications

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost 1</th>
<th>Cost 2</th>
<th>Cost 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUB-TOTAL</td>
<td>51,675,57</td>
<td>34,818,095</td>
<td>16,857,483</td>
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## Bond Cost

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost 1</th>
<th>Cost 2</th>
<th>Cost 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Vessel Extra-Ordinary</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Vessel Capital Exp</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shipyard and Other Terminal Capital Exp</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Management Fee</td>
<td>0.05</td>
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<td>1,740,905</td>
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<tr>
<td><strong>Subtotal</strong></td>
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<td>842,874</td>
</tr>
</tbody>
</table>

App. BB - 7
This is a comparison of the baseline estimate (from the original RFP) and the schedule option (Table 3) provided by the Authority.

This is an estimate of steady-state operations - as they might occur during phase 1 of the project.

Items that still need to be included in total costs are:
1. Bond
2. Tax
3. Extra-Ordinary Vessel Expenditures
4. Capital Expenditures for vessels, shipyard, and terminals
(These items all increase the management fee by cost x 5%)

**Assumptions:**

- This is a pass-through estimate with all costs being reimbursable. Management Fee is based on 5% of all expenses.
- Corporate overhead is an expense (and is included in the model).
- Assumes all Authority schedule run times are achievable.
- Assumes fuel runs are included in the schedule and NOT in addition to the schedule.
- Assumes no extra runs due to greatly expanded schedule.
- Fuel costs modeled at original $3.50/gal.
- Assumes the Authority provides sufficient vessels to run this schedule.
- All insurance is an estimate and will be billed at actual costs.
PERMIT EXCEPTIONS

1. Old San Juan Terminal (Pier 2)
   a. MSJ/OGPE Single Permit (categorical exclusion, use permit, fire prevention certificate, sanitary license)
   b. DNER General Permit for Emergency Generator
   c. DNER Emergency Plan
   d. EPA NPDES MSGP

2. Cataño Pier and Terminal
   a. OGPE Single Permit (categorical exclusion, fire prevention certificate, sanitary license)
   b. DNER Air Permit for Fire Pump
   c. DNER General Permit for Emergency Generator
   d. DNER Emergency Plan
   e. EPA NPDES MSGP

3. Ceiba Pier and Terminal
   a. OGPE Single Permit (categorical exclusion, fire prevention certificate, sanitary license)
   b. DNER General Permit for Emergency Generator
   c. DNER Emergency Plan
   d. EPA NPDES MSGP
   e. Marine Administrative Concession

4. Culebra - Sardinas Pier and Terminal
   a. OGPE Single Permit (categorical exclusion, fire prevention certificate, sanitary license)
   b. DNER General Permit for Emergency Generator
   c. DNER Emergency Plan
   d. EPA NPDES MSGP
   e. Marine Administrative Concession

5. Culebra - San Ildefonso Pier
   a. OGPE Single Permit (categorical exclusion, fire prevention certificate, sanitary license)
   b. DNER General Permit for Emergency Generator
   c. DNER Emergency Plan
   d. EPA NPDES MSGP
   e. Marine Administrative Concession

6. Vieques - Isabel II Pier and Terminal
   a. OGPE Single Permit (categorical exclusion, use permit, fire prevention certificate, sanitary license)
b. DNER General Permit for Emergency Generator
c. DNER Emergency Plan
d. EPA NPDES MSGP
e. Marine Administrative Concession

7. Vieques - Mosquito Pier and Terminal
   a. OGPE Single Permit (categorical exclusion, use permit, fire prevention certificate, sanitary license)
   b. DNER Underground Injection Control (Septic Tank) Permit
c. EPA NPDES MSGP
d. Marine Administrative Concession

8. Isla Grande Maintenance Facility
   a. OGPE Single Permit (categorical exclusion, use permit, fire prevention certificate, sanitary license)
   b. DNER General Permit for Emergency Generator
c. DNER Underground Storage Tank (UST) Permit
d. EPA SPCC Plan / DNER Emergency Plan
e. EPA NPDES MSGP
FORM OF ADMINISTRATIVE DETERMINATION
March 17, 2020

ADMINISTRATIVE DETERMINATION NO. 20-06 ("AD 20-06")

ATTENTION: ENTITIES ENTERING INTO OPERATION AND MAINTENANCE PARTNERSHIP CONTRACTS WITH A PARTNERING GOVERNMENT ENTITY UNDER ACT 29-2009, AS AMENDED, OR ACT 120-2018, AS AMENDED

SUBJECT: TAXATION RULES APPLICABLE TO A CONTRACTOR THAT ENTERS INTO A PUBLIC-PRIVATE PARTNERSHIP CONTRACT WITH A PARTNERING GOVERNMENT ENTITY FOR THE OPERATION AND MAINTENANCE OF A FUNCTION, SERVICE OR FACILITY

I. Statement of Motives

Act 29-2009, as amended, known as the Public-Private Partnership Act ("Act 29") sets forth the public policy regarding Public-Private Partnerships in Puerto Rico ("APP" for its Spanish acronym) and creates the legal framework for the establishment of such partnerships. Pursuant to the provisions of Act 29, any Partnering Government Entity is authorized to establish an APP and execute a Partnership Contract in connection with any Function, Service or Facility, as such terms are defined under Act 29. Act 120-2018, as amended, known as the Act to Transform Puerto Rico’s Electric System ("Act 120"), authorized the establishment of APPs in connection with any Function, Service or Facility of the Puerto Rico Electric Power Authority pursuant to the legal framework established in Act 29.

The purpose of this Administrative Determination is to set forth the taxation rules applicable to a private contracting entity that enters into an Operation and Maintenance Partnership Contract under Act 29 or Act 120 with a Partnering Government Entity for the operation and maintenance of a Function, Service or Facility.

II. Definitions

In accordance to Section 2 of Act 29, the following terms will have the meanings set forth in Act 29 as follows:

1. Contractor - The Person who executes a Partnership Contract with a Partnering Government Entity or the successor thereof.

2. Partnering Government Entity - The Government Entity directly concerned with the
kinds of Functions, Services or Facilities that shall be under the Partnership Contract, and which is or shall be a party to the Partnership Contract.

3. Partnership Contract - The contract executed by the Contractor and the Partnering Government Entity to establish an APP, which may include, but shall not be limited to, a contract to delegate a Function, administer or render one or more Services, or conduct the design, building, financing, maintenance, or operation of one or more Facilities that are themselves, or are closely related to, Priority Projects, as established in Section 3 of Act 29. A Partnership Contract may be, without it being understood as a limitation, any modality of the following kinds of contract: design / build, design / build / operate, design / build / finance / operate, design / build / transfer / operate, design / build / operate / transfer, turnkey contract, long-term lease contract, surface right contract, administrative concession contract, joint venture contract, long term administration and operation contract, and any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of the Priority Projects, as established in Section 3 of Act 29.

4. Function - Any present or future responsibility or operation of a Government Entity, expressly delegated to the same by means of either its enabling act or any pertinent special laws that is closely related to Priority Projects, as established in Section 3 of Act 29

5. Service - Any service rendered or to be rendered by a Government Entity directed to safeguarding the interests or meeting the needs of citizens under the provisions of either its enabling act or other special laws, which are in themselves, or are closely related to, Priority Projects, as established in Section 3 of Act 29.

6. Facility – Any property, capital work or facility of public use, whether real or personal, whether existing or to be developed in the future, including, but not limited to, aqueduct and sewer systems, including all plants, reservoirs, and systems to store, supply, treat, and distribute water, systems to treat, collect, and eliminate rainwater and sewer water, improvements financed under the provisions of the Federal Clean Water Act and the Federal Safe Drinking Water Act, or any other similar or related Federal legislation or regulation; systems to collect, transport, manage, and eliminate nonhazardous and hazardous solid waste; systems to recover resources; systems to produce, transmit or distribute electric power; freeways, highways, pedestrian walkways, parking facilities; airports, convention centers, bridges, sea or air ports, tunnels; transportation systems, including mass transportation systems; communications systems, including telephones, information and technology systems; industrial facilities; public housing; correctional institutions; and any kind of facilities used as tourist, healthcare or agricultural-industrial infrastructure or any other similar facilities.

7. Authority - The Public-Private Partnership Authority.

In addition, the following terms will have the meanings set forth herein for purposes of this Administrative Determination:

1. Management Fees – the fees paid by a Partnering Government Entity to a Contractor
as compensation for the services it provides under an Operation and Maintenance Partnership Contract in connection with the operation and maintenance of a Function, Service or Facility. It excludes the costs incurred by the Contractor on behalf of the Partnering Government Entity in the operation and maintenance of a Function, Service or Facility.

2. Operation and Maintenance Partnership Contract – a contract entered into with a Partnering Government Entity under Act 29 or Act 120 for the operation and maintenance of a Function, Service or Facility which provides that the Partnering Government Entity Fees will remain the property of the Partnering Government Entity. Any contract executed pursuant to Act 29 that includes an agreement that all or part of the Partnering Government Entity Fees are collected and retained by the Contractor, with such fees legally belonging to the Contractor (rather than to the Partnering Government Entity) will not be considered an Operation and Maintenance Partnership Contract for purposes of this Administrative Determination.

3. Partnering Government Entity Fees – the fees or charges imposed by the Partnering Government Entity that are collected by the Contractor (or another agent of the Partnering Government Entity) under an Operation and Maintenance Partnership Contract on behalf of the Partnering Government Entity from the third-party customers or users of the Function, Service or Facility being administered and operated by the Contractor. For example, fees paid by customers of a utility service and the users of a transportation service collected by the Contractor on behalf of the Partnering Government Entity but immediately transferred to the Partnering Government Entity, since legally said fees belongs to such entity.

4. Pass-Through Expenditures – the costs and expenses, without including a profit margin, incurred by a Contractor on behalf of the Partnering Government Entity in the course of providing services under an Operation and Maintenance Partnership Contract in connection with the operation and maintenance of a Function, Service or Facility that are paid from the Partnering Government Entity Fees collected by the Contractor (or another agent of the Partnering Government Entity) or from other sources, including legislative appropriations.

5. Termination Payment – the payment made by a Partnering Government Entity to a Contractor in connection with the termination of an Operation and Maintenance Partnership Contract. To be considered a Termination Payment it must be expressly included in the Operation and Maintenance Partnership Contract

III. Statutory Basis

Pursuant to Section 12 of Act 29, participants in an APP are entitled to certain tax benefits in accordance to the agreements set forth on the Partnership Contract. Among the tax benefits that the Contractor of an APP is entitled to enjoy are the following:

- Property tax exemption – real and personal property that constitute the Facility or property used exclusively in or for the facility or for the Services or Functions that belongs to the Partnering Government Entity and is made available to the Contractor or that is acquired, built or owned by the Partnership Government Entity and is made
available to the Contractor. The property tax exemption percentage shall be established by the Authority.

- Municipal license fees, excise taxes and other municipal taxes - Contractors and municipal governments may establish exemption for the payment of municipal taxes. Municipal governments are authorized to establish the terms and amount of the tax exemptions on said municipal taxes.

- Income taxes – the net income from the operations covered by a Partnership Contract shall be calculated in accordance with the Puerto Rico Internal Revenue Code of 2011, as amended, (“Code”) but the income tax rate will be a flat income tax rate of twenty percent (20%) in lieu or any other income tax imposed by the Code including but not limited to alternative minimum tax. Distributions made out of the earnings and profits covered by the Partnership Contract will be exempt from income taxes

However, a Contractor under a Partnership Contract may not receive tax benefits provided for under the Economic Incentives Act for the Development of Puerto Rico, Act No. 73 of May 28, 2008, for the activity covered under such Contract

Act 29 is silent with respect to the responsibilities of a Contractor in connection with the payment of sales and use taxes, excise taxes and the responsibilities of the Contractor as an employer and withholding Agent.

IV. Determination

A. Treatment of Management Fees and Termination Payments Made to a Contractor

Article 12(a) of Act 29 provides that the Contractors of an Operation and Maintenance Partnership Contract are subject to a twenty (20) percent fixed income tax rate on the net income derived from the operations set forth in the Operation and Maintenance Partnership Contract, computed in accordance with the Puerto Rico Internal Revenue Code of 2011, as amended (the “PR Code”). Article 12(a) of Act 29 further provides that the twenty (20) percent fixed income tax rate applies in lieu of any other income tax, if any, imposed under the PR Code or any other law including, but not limited to, the alternative minimum tax and the tax on the deemed dividend amount imposed under the PR Code. In addition, Article 12(a) of Act 29 provides that the owners of the Contractor will not be subject to the payment of income taxes on dividend distributions of the net income derived from the operations covered under an Operation and Maintenance Partnership Contract.

Based on the above, the net income derived by a Contractor with respect to the Management Fees under an Operation and Maintenance Partnership Contract will be subject to a twenty (20) percent fixed income tax rate. Moreover, for Puerto Rico income tax purposes, the net income derived by a Contractor with respect to a Termination Payment under an Operation and Maintenance Partnership Contract will be considered to be derived from the operations covered by the Operation and Maintenance Partnership Contract, as long as the terms and conditions of said Termination Payment were included in the Partnership Contract.
Furthermore, neither the Management Fees nor the Termination Payment will be subject to the alternative minimum tax imposed under Section 1022.03 of the PR Code or the ten (10) percent deemed dividend tax imposed under Section 1062.13 of the PR Code. Finally, the owners of the Contractor will not be subject to the payment of income taxes on dividend distributions of the net income derived from the operations covered under the Operation and Maintenance Partnership Contract.

B. Treatment of the Partnering Government Entity Fees

As part of its duties and responsibilities under an Operation and Maintenance Partnership Contract, the Contractor may be required to collect (on behalf of the Partnering Government Entity) from third party customers or users the fees or charges imposed on such customers or users in connection with the provision of the Function, Service or Facility being administered and operated by the Contractor, which the Partnering Government Entity formerly collected from third party customers or users prior to the execution of the Operation and Maintenance Partnership Contract. In these cases, the Contractor is merely acting as an intermediary between the Partnering Government Entity and third-party customers or users in the collection of such fees and the Partnering Government Entity Fees legally belong to the Partnering Government Entity (with the Partnering Government Entity being considered the owner of the Partnering Government Entity Fees under the Operation and Maintenance Partnership Contract) and, accordingly, there is no accession to wealth to the Contractor. Therefore, the Partnering Government Entity Fees collected by the Contractor under an Operation and Maintenance Partnership Contract on behalf of the Partnering Government Entity from third-party customers or users in connection with the Function, Service or Facility being administered and operated by the Contractor will not be considered gross income or revenues of the Contractor and the Contractor will not be subject to Puerto Rico income taxes with respect to such fees.

Contractor will be required to keep separate accounting records that clearly reflects the collection and use of the Partnering Government Entity Fees. Contractor shall be subject to audit by the Department or any person the Department may contract for purposes of performing the audit.

C. Treatment of Pass-Through Expenditures

In some Operation and Maintenance Partnership Contracts, the Partnering Government Entity is required to make payments to the Contractor in order to cover the Pass-Through Expenditures incurred by the Contractor on behalf of the Partnering Government Entity. Such payments constitute reimbursements for the costs incurred by the Contractor on behalf of the Partnering Government Entity in order to fulfill its obligations under the Operation and Maintenance Partnership Contract and will not be considered gross income or revenues of the Contractor.

In general, a taxpayer is allowed to deduct all the ordinary and necessary business expenses paid or incurred during the taxable year in carrying on a trade or business, as per Section 1033.01 of the PR Code. However, a taxpayer is not allowed a deduction for expenditures
for which it has a fixed right or expectation of reimbursement from another party for an expense paid on behalf of that party. Furthermore, the reimbursement payment of an otherwise deductible expenditure incurred is not taxable to the taxpayer.

Based on the above, (i) the Contractor will not be entitled to deduct as ordinary and necessary business expenses under Section 1033.01 of the PR Code the Pass-Through Expenditures incurred by the Contractor on behalf of the Partnering Government Entity pursuant to the Operation and Maintenance Partnership Contract, and (ii) the Contractor will not be required to include as gross income or revenues and will not be subject to income taxes under the PR Code with respect to the payments made by the Partnering Government Entity to the Contractor in order to reimburse the Pass-Through Expenditures incurred by the Contractor under the Operation and Maintenance Partnership Contract.

D.  Applicability of Sales and Use Taxes

(i) Acquisition of Taxable Items

In general, every merchant engaged in any business in Puerto Rico that sells taxable items is responsible to collect the sales and use tax (the “SUT”) based on the sales price of the item, as per Sections 4020.01, 4020.02, 4210.01 and 4210.02 of the PR Code.

Notwithstanding the above, Section 4030.08(a) of the PR Code provides that every “taxable item” acquired for official use by the agencies and instrumentalities of the Government of the United States of America and the Government of Puerto Rico are exempt from the payment of the SUT. Furthermore, the term “Government of Puerto Rico” is defined for these purposes as the departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, public instrumentalities and the municipalities of the Government of Puerto Rico, including the Legislative Branch and the Judicial Branch, with such term also includes those persons operating or acting on behalf or in the name thereof, as provided in Section 4010.01(p) of the PR Code.

Consistent with the above, Article 4030.08-1(a)(2) of the Regulations under the PR Code provides that the term “Government of Puerto Rico” (and the Government of the United States of America) includes those persons that operate or act on their behalf, requiring that such persons request and obtain a certificate to those effects from the Secretary of the Treasury (the “Secretary”). The referenced certificate issued by the Secretary will generally be effective for a two (2) year period. Article 4030.08-1(a)(2) of the Regulations under the PR Code and Circular Letter of Internal Revenue No. 19-13 (“CC RI 19-13”) further provide that the person requesting the referenced certificate to act on behalf of the Government must provide to the Secretary evidence to the effect that the entity was created exclusively to act in an official capacity as an agent of the Government. In addition, the person must provide a certification issued by the governmental entity in the name of which the entity is acting in which such authority is acknowledged, as well as a list of the taxable items to be acquired on the governmental entity’s behalf.

Based on the above, it is determined herein that a Contractor that enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity, and has been
organized exclusively for purposes of said contract, will be considered as been operating or acting on behalf or in the name of the Partnering Government Entity with respect to the taxable items that the Contractor is required to acquire on behalf of the Partnering Government Entity in order to fulfill its obligations under the Operation and Maintenance Partnership Contract (the “Covered Items”). Accordingly, the acquisition of such Covered Items by the Contractor will not be subject to the payment of the SUT, as per Section 4030.08(a) of the PR Code even if such Covered Items become the property of the Contractor.

The Contractor should request and the Secretary will issue the certificate referred to in Article 4030.08-1(a)(2) of the Regulations under the PR Code and CC RI 19-13 evidencing that the Contractor is operating or acting on behalf or in the name of the Partnering Government Entity, which will be effective for the same term of duration of the Operation and Maintenance Partnership Contract (rather than for a two (2) year period). The Partnering Government Entity will also certify to the Secretary the classes of items that qualify as Covered Items. Any item acquired by the Contractor that becomes the property of the Partnering Government Entity will automatically qualify as a Covered Item exempt from the payment of the SUT even if it is not included in the certification provided by the Partnering Government Entity.

However, the taxable items acquired by the Contractor that will become property of the Contractor and that are not required to be acquired under the Operation and Maintenance Partnership Contract (i.e. they are not required to be acquired on behalf of the Partnering Government Entity in order to fulfill its obligation under the Operation and Maintenance Partnership Contract) will not be covered by the tax exemption granted under Section 4030.08(a) of the PR Code and, accordingly, will be subject to the payment of the SUT. Although the Contractor is empowered through the Operation and Maintenance Partnership Contract to perform a key governmental function, the SUT exemption for taxable items acquired by the Government of Puerto Rico established in Section 4030.08(a) of the PR Code will not be applicable to the acquisition by the Contractor of taxable items which are typically acquired as part of conducting regular business operations in Puerto Rico.

(ii) Partnering Government Entity Fees

The Partnering Government Entity Fees constitute fees or charges that are imposed by the Partnering Government Entity (rather than by the Contractor) pursuant to applicable legislation. These fees or charges are subject to the provisions of the Operation and Maintenance Partnership Contract that provides consent rights or oversight over such fees or charges to the Partnering Government Entity, with the Contractor merely acting as an intermediary in the collection of a fee or charge legally imposed pursuant to applicable legislation. These charges imposed by the Partnering Government Entity and collected from third party customers or users prior to the execution of the Operation and Maintenance Partnership Contract are not currently subject to the payment of the SUT. For example, pursuant to Section 4010.01(l)(2) of the PR Code, the amount paid to admit a person or vehicle into the collective transportation systems established by the Government of Puerto Rico, such as the Metropolitan Bus Authority, the Ports Authority and the Transportation and Public Works Department, or by an operator or subcontractor, including persons certified by
the Government of Puerto Rico, its agencies or instrumentalities to render those services, are not subject to the payment of the SUT. Similarly, the charges or fees paid by customers of a utility service (such as electricity from the Puerto Rico Electric Power Authority or water from the Puerto Rico Aqueduct and Sewer Authority) are not subject to the payment of the SUT, in accordance with Section 4010.01(gg)(2) of the PR Code.

Based on the above, considering that the Partnering Government Entity Fees are legally imposed by the Partnering Government Entity, with the Partnering Government Entity retaining control or oversight of the referenced fees at all times, such fees should not be subject to the payment of the SUT. Accordingly, the fees and charges imposed on the customers and users of the Service will not be subject to the payment of the SUT, irrespective of whether the Partnering Government Entity Fees belong to the Partnering Government Entity or to the Contractor.

(iii) Examples

Example 1:

Contractor X enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity in order to administer and operate a Service. In order to fulfill its obligations under the Operation and Maintenance Partnership Contract, Contractor X acquires in Puerto Rico certain parts and accessories to be used to repair and maintain certain equipment belonging to the Partnering Government Entity which are used in providing the Service covered under the Operation and Maintenance Partnership Contract. The Contractor also collects on behalf of the Partnering Government Entity from third-party customers or users certain fees or charges imposed on such customers or users in connection with the provision of the Service, which the Partnering Government Entity directly collected from third party customers or users prior to the execution of the Operation and Maintenance Partnership Contract. Contractor X requested and the Secretary issued to Contractor X the certificate referred to in Article 4030.08-1(a)(2) of the Regulations under the PR Code evidencing that Contractor X is operating or acting on behalf or in the name of the Partnering Government Entity. The parts and accessories qualify as Covered Items because they will become part of a property belonging to the Partnering Government Entity. The acquisition of the referenced parts and accessories by Contractor X is not subject to the payment of the SUT. In addition, the fees or charges paid by the third-party customers or users in connection with the provision of the Service constitute Partnering Government Entity Fees that are not subject to the payment of the SUT.

Example 2:

Contractor X enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity in order to administer and operate a Service. After entering into the Operation and Maintenance Partnership
Contract, Contractor X acquires in Puerto Rico certain office equipment to be used by its executives in the rendering of services under the Operation and Maintenance Partnership Contract. Such equipment is not required for the provision of the Services and will belong to the Contractor. The acquisition of the office equipment by Contractor X is subject to the payment of the SUT, since the SUT exemption provided under Section 4030.08(a) of the PR Code is not applicable to these transactions, considering that such taxable items are typically acquired by entities conducting regular business operations in Puerto Rico and are not required to be acquired by Contractor X in order to fulfill its obligations under the Operation and Maintenance Partnership Contract.

E. Applicability of Excise Taxes

Subtitle C of the PR Code provides for the imposition of excise taxes on certain products, such as fuel and motor vehicles (the “Excise Tax”). In general, the Government of Puerto Rico is exempt from the payment of the Excise Tax. For example, the departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, public instrumentalities and the municipalities of the Government of Puerto Rico, including the Legislative Branch and the Judicial Branch, are exempt from the payment of the Excise Tax imposed under Sections 3020.08 and 3020.09 of the PR Code on vehicles, boats and heavy equipment, as per Section 3030.16(b) of the PR Code.

Consistently with the SUT treatment referred to above, the acquisition of products otherwise subject to the Excise Tax by a Contractor that enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity will not be subject to the payment of the Excise Tax, to the extent the Contractor is required to acquire the referenced products on behalf or in the name of the Partnering Government Entity and the products are required in order for the Contractor to fulfill its obligations under the Operation and Maintenance Partnership Contract. To those effects, the Partnering Government Entity will certify to the Secretary the products that qualify as Covered Items and, accordingly, are not subject to the payment of the Excise Tax. On the other hand, the acquisition of products otherwise subject to the Excise Tax by a Contractor which are not required to be acquired under the Operation and Maintenance Partnership Contract, and which are typically acquired as part of conducting regular business operations in Puerto Rico, will be subject to the payment of the Excise Tax.

F. Applicability of Act 48-2013

Article 1 of Act 48-2013 imposes a special contribution equivalent to one and a half (1.5) percent of the total amount of every professional service, consulting, marketing, public relationships, communications, training or orientation, and lobbying contract executed by an agency, dependency or instrumentality of the Government of Puerto Rico, public corporations, as well as by the Legislative Branch and the Judicial Branch (the “Special Tax”). The Special Tax must be withheld by the Puerto Rico Treasury Department or by the corresponding governmental entity at the time of making payments for services rendered under the contract. Administrative Determination No. 13-14 issued on August 28, 2013 contains a list of certain services which are subject to the payment of the Special Tax, as well
as a list of other services which are not subject to the Special Tax.

For purposes of Act 48-2013 the term “professional or advisory services” has the meaning established on Act 23-2004, as amended. At the same time, Act 237-2004 defines the term “professional or advisory services” as those whose main performance consists of the product of intellectual, creative or artistic work, or in the management of highly technical or specialized skills. Moreover, Article 2 of said act established that the procurement of professional or advisory services shall be exceptionally improved and used only when the governmental entity does not count or cannot use the internal resources to be contracted, or when the "expertise" skill or experience necessary for the achievement of the purposes for which he is hired.

In the case of an Operation and Maintenance Partnership Contract, the Contractor is not performing a professional or advisory service of certain expertise, the Contractor is basically performing the acts and duties that the Partnering Government Entity shall be subject to perform. Pursuant to the Partnership Contract the Partnering Government Entity delegates de operation, functions, services and responsibilities of the entity to the Contractor. The Contractors “substitutes” the Partnering Government Entity on the duties that by law the Partnering Government Entity must do in order receive the Partnering Government Entity Fees.

Since the services to be performed by the Contractor, in an Operation and Maintenance Partnership Contract, do not constitute “professional or advisory services” as the term is defined on Act 237-2004, then it is determined herein that a Contractor that enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity will not be subject to the Special Tax.

G. Contributions to a Government Retirement Plan

Under Article 10(g) of Act 29, certain government employees that are hired by a Contractor that enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity may continue to make contributions to the corresponding Government Retirement Plan, and the Contractor may make the corresponding employer contributions to the referenced plan. For taxable years beginning after December 31, 2018, Section 1033.15(a)(6) of the PR Code provides that the contributions made by employees to Government Retirement Plans will be considered as a reduction from wages subject to taxation in accordance with the provisions of Section 1081.01 of the PR Code.

When an employer makes contributions for the benefit of a participant in a retirement plan to an employees' trust or annuity contract which forms part of the retirement plan enjoying tax exemption according to Section 1081.01(a) of the PR Code (“Tax Qualified Plan”), the participant does not have to include said contributions in gross income at the time of the contribution. Similarly, contributions by a participant to a Tax Qualified Plan are made on a pre-tax basis and, accordingly, are excluded from the employee's current income.

Based on the above, it is determined herein that the contributions made by the employees to
the corresponding Government Retirement Plan, which are withheld from the employees’ wages, will be made on a pre-tax basis and, accordingly, will not be considered taxable income to the employees at the time of the contribution. Said contribution shall be reported on the employee’s Withholding Statement (Form 499-R/W-2PR) in the year the contribution to the plan is withheld to the employee. Similarly, any contributions to a Government Retirement Plan made by the Contractor that enters into an Operation and Maintenance Partnership Contract with a Partnering Government Entity on behalf of such employees will not be considered at the time taxable income to the employees.

H. Private Rulings

This Administrative Determination is intended to address certain Puerto Rico tax considerations that might be of general application to a Contractor entering into an Operation and Maintenance Partnership Contract under Act 29 or Act 120 with a Partnering Government Entity for the operation and maintenance of a Function, Service or Facility. Contractors entering into an Operation and Maintenance Partnership Contract which, due to the specific factual background, require a determination from the Secretary regarding certain tax considerations not specifically addressed in this Determination Letter should request the issuance of a private ruling from the Secretary.

In filing the ruling petition with the Secretary, the Contractor should follow the requirements established in Circular Letter of Tax Policy No. 16-09, Procedure for the Request of Private Rulings and Issuance of Administrative Determination Letters (“CL 16-09”). The petition must be addressed to the Assistant Secretary for the Internal Revenue Area, and may be filed with the Puerto Rico Treasury Department (the “Department”) by any of the following two (2) methods:

- **In Person:** Department of the Treasury, Ruling Request under Act 29-2009, Office 620, Intendente Ramírez Building located at 10 Paseo Covadonga, Old San Juan, Puerto Rico 00901
- **By Mail:** Department of the Treasury, Ruling Request under Act 29-2009, Office 620, P.O. Box 9024140, San Juan, P.R. 00902-4140

Furthermore, the Contractor shall be subject to a service charge established under Article 6(a)(17)(vii) of Regulation 9115 of October 8, 2019, better known as “Regulation for the Imposition of Service Charges for Requests Submitted to the Treasury Department.” In addition, the petition must include a copy of the Operation and Maintenance Partnership Contract executed between the Contractor and the Partnering Government Entity.

The ruling petition, together with the information requested above, must be included in digital format in any external memory device. Furthermore, the Department reserves its authority to request additional information and/or documentation from the Contractor as part of the evaluation of the ruling petition.
V. Effectiveness

The provisions of this Administrative Determination are effective immediately.

For additional information regarding the provisions of this Administrative Determination, you may contact us at (787) 622-0123, option 8.

Cordially,

Francisco Parés Alicea
Secretary of Treasury
October _____, 2020

BY MESSENGER

Francisco Parés Alicea, CPA
Department of the Treasury
Ruling Request under Act 29-2009
Office 620
Intendente Ramírez Building
10 Paseo Covadonga, Old San Juan, Puerto Rico 00901

RE: Ruling request

Dear Mr. Parés Alicea:

On behalf of our client, HMS Ferries, Inc., employer identification number 36-469140 (the “HMS Ferries”), and its wholly owned subsidiary, HMS Ferries - Puerto Rico, LLC, employer identification number 66-0933950 (the “Company”), we respectfully request your determinations as to the application of Administrative Determination No. 20-06 (“AD 20-06”) and certain provisions of the Puerto Rico Internal Revenue Code of 2011 (the “PR Code”) to Phase 1 of the Maritime Transport Operations and Maintenance Agreement (the “Partnership Agreement”) described below.

I. STATEMENT OF FACTS

HMS Ferries is a corporation organized under the laws of Delaware. The Company is a limited liability company organized under the laws of Puerto Rico. The Company has been organized exclusively to engage in the operations contemplated in the Partnership Agreement.¹

With the collaboration of the Puerto Rico Public-Private Partnerships Authority, the Company and HMS Ferries² have entered into the Partnership Agreement with the Puerto Rico

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¹ Capitalized terms not defined herein shall have the meaning ascribed to the same under Act 29 and/or the Partnership Agreement.

² Pursuant to the Partnership Agreement, the Company will act as the operator and principal obligor with respect to the Ferries Operations. Notwithstanding the foregoing, HMS Ferries signs the Partnership Agreement as a joint obligor.
and Island Municipalities Maritime Transport Authority (the “Partnering Government Entity” or the “Authority”) pursuant to Act No. 29 of June 8, 2009, known as the Public-Private Partnership Act (as amended, “Act 29-2009”). This project is considered a Priority Project, as such term is defined in Act 29-2009.

Pursuant to the Partnership Agreement, the Company, as initial obligor, and HMS Ferries, as joint obligor, became responsible for the operation and maintenance of the “Ferry System”. Under the Partnership Agreement, the Company was granted the exclusive right to operate and maintain the “Project Assets”, for the rendering “Maritime Transportation Services”, and performing “Maritime Transport Operations”. The Partnership Agreement contemplates that the Company will provide services and engage in activities that are relevant to the operation of the

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3 The Authority is a public corporation and instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act No. 1-2000, as amended.

4 As stated in the Recitals of the Partnership Agreement, the public private partnership established therein, for the operation and maintenance of the Ferry Service and ancillary commercial activities by the Company (the “Project”) is a Priority Project (as defined in Act 29).

5 See Section 1.1. of the Partnership Agreement, which defines the “Ferry System” as including the Project Assets used in connection with the Maritime Transport Operation, including Vessels, Facilities, docks, maintenance facilities, equipment, documents, data, software and information systems. “Maritime Transport Operations” are also defined in Section 1.1. and, generally, refer to the transportation of cargo and passengers between San Juan and Cataño and between Ceiba, Vieques and Culebra, as well as the operation and maintenance of the assets used to provide such services. “Project Assets” includes all rights, title and interest in and to all assets now utilized or that are utilized in the operation and maintenance of the Authority’s Ferry System, including Vessels and Facilities, and ancillary commercial activities. The Project Assets include ferry terminals, mooring facilities and other facilities, Authority-provided vessels, and Authority-provided intellectual property. Such Project Assets will continue to be owned by the Authority through the duration of the Partnership Agreement.

“Maritime Transport Services” is defined as the passenger and cargo ferry service between Ceiba, Vieques and Culebra (defined as the Island Services) and between Cataño and San Juan (the Metro Services).

“Maritime Transport Operations” is defined as the operation and maintenance of the vessels and facilities used in the Maritime Transport Services, as specified in the Partnership Agreement.

Appendix B of the Partnership Agreement provides a detailed Scope of Work relating to the obligations of the Company (defined as the “Operator”) in such agreement.
Ferry System, including services to the Authority, such as agreed-upon repairs to the Project Assets, and certain Special Services.  

In addition, the Partnership Agreement authorizes the Company to engage in ancillary activities including (i) the commercial maintenance services to private parties at the Isla Grande terminal, (ii) the operation, maintenance and repair of parking facilities, (iii) the rendering of marketing and advertising services to third parties, (iv) unscheduled trips that involve carrying passengers or cargo (Special Services) (v) the operation (direct or indirect) of food and beverage concessions at the ferry terminals and vessels, and (vi) any other activity expressly authorized by the Authority in writing (collectively referred to as, the “Ancillary Activities”). All the activities described in the previous paragraphs and in this paragraph, including for avoidance of doubt, the Ancillary Activities, are referred to as the “Ferry Operations”.

The Partnership Agreement contemplates a phased transition of the Ferry Operations, divided in two phases, namely Phase 1 and Phase 2. The term of the Partnership Agreement is twenty-three (23) years, beginning on the “Phase 1 Commencement Date”.

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6 The scope of the “Special Services” and the compensation terms for such services are established in Article 6 of the Partnership Agreement. Section 6.1. provides that Special Services means unscheduled trips of Island Service (Ceiba, Vieques and Culebra) (i) that are not included in the regular scheduled services, (ii) are requested by the Authority or a third party and (iii) involve the transportation of passengers or cargo.

7 See Sections 13.1(c) and (e), Article 18 and Section 19.2 of the Partnership Agreement. Section 4.5 of the Partnership Agreement provides the conditions that must be present to commence each type of Ancillary Activity. During Phase 1, the Company may engage in Special Services and other Ancillary Activities, provided that in the latter the Federal Transportation Administration (FTA) Incidental Use authorization shall have been obtained and the parties shall have agreed on how the Ancillary Income from such activities shall be shared. See also Section 48.12 regarding approval required from the FTA for Incidental Use regarding such Ancillary Activities.

8 The Partnership Agreement contemplates a period of time between Effective Date (__________) and Phase 1 Commencement Date. No work is required from the Company during this period, but the parties could agree in writing for the Company to perform work, subject to reimbursement of the Company’s expenses upon the Phase 1 Commencement Date.
Phase 1 ends at midnight on the date immediately preceding the “Phase 2 Commencement Date”. Phase 2 is defined as the period commencing on the Phase 2 Commencement Date and continuing until the termination of the Partnership Agreement. “Phase 2 Commencement Date” is the later of the third anniversary of the Phase 1 Commencement Date or the date of written confirmation of compliance with the Phase 2 Conditions Precedents established in Section 2.6 of the Partnership Agreement. Such conditions include, but are not limited to, the construction of certain facilities at Mosquito and Sardinas.\(^9\)

It follows from the above that there will be no overlapping between Phase 1 and Phase 2 in accordance with the Partnership Agreement’s express terms.\(^10\)

During Phase 1,\(^11\) and upon acceptance by the Company of the Authority-Provided Vessels and Facilities, Company will be required to collect from third-party customers or users the fares, fees or charges imposed on such customers or users in connection with the Ferries Operations, which the Authority formerly collected, including farebox revenues and internet ticket sales. The revenues from the transportation of cargo and passengers between Cataño and San Juan (the “Metro Service”) and between Ceiba, Vieques and Culebra (the “Island Service”) are defined in the Partnership Agreement as the “Service Revenues”. The Service Revenues will remain the property of the Authority during Phase 1 and the Company is obligated to remit such revenues to the Authority within three days from the date of receipt.

The Company will furnish all labor, supervision, machinery and equipment, materials and supplies (other than those forming part of the Authority Provided Vessels and Authority Provided Facilities), and it will generally incur all costs relating to the Ferry Operations. Moreover, the Company will be required to acquire on behalf of the Company goods (including fuel\(^12\)) and services (including services to be rendered by affiliated entities outside Puerto Rico) necessary to fulfill the Company’s obligations under the Partnership Agreement and which generally may be subject to sales and use tax (“SUT”) under Subtitles D and DDD of the PR Code, or excise taxes under Subtitle C of the PR Code (“Excise Tax”), including to crude oil tax imposed under Sections 3020.07 and 3020.07A of the PR Code (the “Crude Oil Tax”). During Phase 1, the Company will

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\(^9\) The Partnership Agreement contemplates that conditions precedent to both phases may be waived or postponed by the parties or made subject to the dispute resolution process established in such agreement.

\(^10\) A ruling request was submitted to the Puerto Rico Treasury Department on ___ to address the application of certain provisions of the PR Code and other relevant statutes to Phase 2 of the Partnership Agreement.

\(^11\) Phase 1 includes a transition period during which the parties will cooperate with each other to ensure the orderly transition of control, custody, operation, management, and maintenance of the Ferry Operations. The transition period commences on the “Phase 1 Commencement Date” and ends on the later of the first anniversary of such commencement date or the date upon which all vessels provided by the Authority to the Company during Phase 1.

\(^12\) See Section 3.5 of the Partnership Agreement.
receive a reimbursement of budgeted and pre-approved operating expenses for the performance of the work during Phase 1. Such payments are defined in the Partnership Agreement as “Phase 1 Service Payments”. As sole compensation for its services during Phase 1, the Company will receive a “Management Fee”, in an amount specified in Appendix G of the Partnership Agreement.\textsuperscript{13}

According to the Partnership Agreement, during Phase 2, the Company will remit to the Authority fifty percent (50\%) of the excess of Service Revenues over specified agreed-upon revenue thresholds (“Windfall Revenue Thresholds”). In addition, net income for Ancillary Activities exceeding projected net income thresholds (“Windfall Income Thresholds”) by more than thirty percent (30\%) will also be shared in equal parts with the Authority, within the due date and under certain procedures established therein (the amounts to be shared with the Authority “Windfall Payments”).\textsuperscript{14} According to Section 4.5 of the Partnership Agreement, before engaging in Ancillary Activities during Phase 1, the parties shall have agreed on how income from such activities will be shared between the Authority and the Company. To the extent any such Ancillary Income sharing payments are made to the Authority, such payments shall be considered “Windfall Payments”.

The Partnership Agreement provides for the circumstances in which it may be terminated by any of the parties. In certain circumstances specified in the Partnership Agreement, a “Termination Fee” will be made to the Company.

\textbf{II. RULINGS REQUESTED}

The following determinations are herein requested with respect to the application of AD 20-06 to Phase 1 of the Partnership Agreement:

1. Except for the provisions in the Partnership Agreement specific to Phase 2, the determinations made in Administrative Determination No. 20-06, dated March 17, 2020 (“AD 20-06”), shall apply with respect to such Partnership Agreement, and thus:

\textsuperscript{13} See definition of Management Fee in Section 1.1. of the Partnership Agreement. During Phase 2, the Service Revenues, and revenues from Ancillary Activities (“Ancillary Revenues”) will belong to the Company, except as provided below. The Company will also receive from the Partnering Government Entity an annual fee, which includes the Management Fee, in the amounts specified in the Partnership Agreement (“Phase 2 Fixed Fee”). The Phase 2 Fixed Fee is subject to approved modifications for changes in insurance and fuel costs. The Phase 2 Fixed Fee is not a reimbursement of costs. See Sections 5.2, Appendix D, 5.10(b) and Section 5.12 of the Partnership Agreement.

\textsuperscript{14} See Section 5.2(c) of the Partnership Agreement.
a. The net income derived by the Company with respect to the Management Fees and Termination Fee under the Partnership Agreement will be subject to a twenty (20) percent fixed income tax rate, and such Management Fees and Termination Fee will not be subject to alternative minimum taxes under Section 1022.03 of the PR Internal Revenue Code of 2011 (the “PR Code”), or income taxes on actual or imputed dividend distributions under Section 1062.13 of the PR Code, in accordance with Part IV.A of the AD 20-06 and Article 12 of Act 29-2009. In addition, the net income derived from Ancillary Activities during Phase 1 shall be subject to the fixed 20% income tax rate, shall not be subject to alternative minimum taxes and distributions thereof shall not be subject to Puerto Rico income taxes, in accordance with Article 12 of Act 29-2009.

b. The Service Revenues under the Partnership Agreement that are collected and remitted to the Authority during Phase 1 and any Windfall Payments to be made to the Authority in Phase 1 will not be considered gross income or revenues of the Company and the Company will not be subject to Puerto Rico income taxes with respect to such Service Revenues and Windfall Payments during Phase 1, in accordance with Part IV.B of the AD 20-06.

c. The Phase 1 Service Payments shall be treated as Pass-Through Expenditures, and thus, such payments will not constitute revenues or gross income of the Company, and will not be taxable to the Company, in accordance with Part IV.C of the AD 20-06. In addition, the Phase 1 Service Payments shall be not be deducted as ordinary and necessary business expenses under Section 1033.01 of the PR Code.

d. The Company shall be treated as an agent operating and acting on behalf of the Authority with respect to the taxable items that the Company acquires on behalf of the Authority and that are certified as Covered Items by the Authority in accordance with the procedures established in Part IV.D(i) of the AD 20-06 and guidance cited therein. This treatment shall also apply with respect to otherwise applicable excise taxes, in accordance with Part IV.E of the AD 20-06. Therefore, the Company shall not be subject to sales and use taxes (“SUT”) or excise taxes (“Excise Tax”) on the purchase or introduction of Covered Items even if the items become the property of the Contractor. For avoidance of doubt, taxable items acquired by the Company which are necessary for the Company to fulfill its obligations under the Partnership Agreement, and that become the property of the Authority, shall not be subject on SUT or Excise Tax even if not listed as a Covered Item. The Company, however, shall submit to PR Treasury an amended certification of Covered Items provided by the Authority within thirty (30) days from the date of acquisition of such items.
e. Service Revenues collected by the Company on behalf of the Authority during Phase 1 shall be treated as Partnering Government Entity Fees for purposes of the AD 20-06, and thus, no sales and use taxes shall be imposed on such Service Revenues for the duration of the Contract Term, in accordance with Part IV.D.(ii).

f. The special contribution imposed by Act 48-2013 on certain professional service, consulting, marketing, and other services to the Government of Puerto Rico shall not apply with respect to the Ferry Operations, in accordance with Part IV.F of the AD 20-06.

g. Any contributions to a government retirement plan by the employees, under the circumstances described in Part IV.G of the AD 20-06 will not be considered income to the employees, in accordance therewith.

2. The crude oil, unfinished oils or end products derived from oil and any other hydrocarbons mixture that the Company is required to acquire in order to fulfill its obligations with respect to the Ferry Operations under the Partnership Agreement will be considered Covered Items not subject to the payment of the Crude Oil Tax imposed by Sections 3020.07 and 3020.07A of the PR Code. Therefore, the purchase or introduction into Puerto Rico of such Covered items shall not be subject to sales and use taxes or excise taxes. Any item acquired by the Company which is necessary for the Company to fulfill its obligations under the Partnership Agreement, and that becomes the property of the Authority will automatically qualify as a Covered Item exempt from the payment of the SUT or the Excise Taxes even if it is not included in the certification provided by the Authority.

3. In addition, the Company will not be subject to the deduction disallowance relating to certain payments to non-Puerto Rico affiliates of the Company provided under Sections 1033.17(a)(17) and 1033.17(a)(16) of the PR Code (the “51% Expense Disallowance”), since the Company will be considered to be covered under a special statute that grants tax exemption with respect to income derived under the Partnership Agreement, in accordance with Sections 1033.17(a)(17)(C) and 1033.17(a)(16)(D). The Company shall be allowed to claim a deduction for ordinary and necessary business expenses with respect to all eligible business expenses, in accordance with Section 1033.01 of the PR Code.

III. STATEMENTS OF LAW AND ANALYSIS

(A) Application of AD 20-06 to Phase 1 of the Partnership Agreement
Act 29-2009 establishes the public policy regarding Public-Private Partnerships (PPP) in Puerto Rico in connection with any Function, Service or Facility, as such terms are defined therein. Article 12 of Act 29-2009 provides certain tax benefits to a Contractor of a PPP, including a 20% fixed income tax rate, in lieu of any other income tax, on the net income from the operations covered by a Partnership Contract (as such term is defined in Act 29-2009). In addition, Article 12 of Act 29-2009 provides that such income shall not be subject to alternative minimum taxes or alternative basic taxes, and that no additional income taxes shall be imposed upon distributions of such income to the Contractor’s owners.

On March 17, 2020, the Secretary of the Treasury issued Administrative Determination No. 20-06 (“AD 20-06”) to provide guidance with respect to the tax treatment applicable to a private contracting entity (“Contractor”) in connection with certain public-private partnership contracts executed in accordance with Act 29-2009. Copy of the AD 20-06 is enclosed and made part of this ruling request. We respectfully submit that the Partnership Agreement and the parties involved in such Partnership Agreement should be considered within the scope of the relevant definitions of the AD 20-06, inasmuch as:

1. The Partnership Agreement has been entered into under the provisions of Act 29-2009.
2. The Authority is a Partnering Government Entity since it is a Government Entity directly concerned with the operation of the Ferry System (mass transportation service), and thus it is concerned with the Functions, Services and Facilities contemplated by Act 29-2009.
3. The Company is a Person who executed a Partnership Contract with a Partnering Government Entity.
4. The Partnership Agreement is “a contract executed by the Contractor and the Partnering Government Entity to establish an APP” which includes the delegation of a Function, the administration of or the rendering of one or more Services, and/or the “maintenance or operation of one or more Facilities that are themselves, or are closely related to, Priority Projects, as established in Section 3 of Act 29.” We submit that in this case the Partnership Agreement delegates the operation and maintenance of the Project Assets, which fall within the definition of “Facility” in the AD 20-06. It also delegates the maritime transportation service (the Ferry Operation). Therefore, the Partnership Agreement is within the scope of the definition of “Partnership Contract” in the AD 20-06.

It follows from the above that the Partnership Agreement in this case completely fits the definitions cited in the AD 20-06 as set by Act 29-2009 (Part II, definitions 1 through 7, on pages 1 and 2 of the AD 20-06).

In addition, the AD 20-06 includes additional definitions for purposes of the determinations made therein, including the meaning of “Management Fees”, “Partnering Government Entity
Fees”, “Pass-Through Expenditures” and “Termination Payment”, and provides additional guidance. We respectfully submit that:

1. The compensation to be received by the Company in connection with Phase 1, defined in the Partnership Agreement as “Management Fee” qualifies as “Management Fees”, as such term is defined on page 2 of the AD 20-06, since such fees will be paid by the Partnering Government Entity (the Authority) to a Contractor (the Company) as compensation for the services it provides under the Partnership Agreement in connection with the operation and maintenance of a Function, Service or Facility (the Ferry Operations) and it excludes the costs incurred by the Company on behalf of the Authority. The Termination Fee contemplated in the Partnership Agreement qualifies as a Termination Payment, as such term is defined in the AD 20-06, since such fee is contemplated expressly in the Partnership Agreement and will be relevant in connection with the early termination of the Partnership Agreement. Also, we respectfully submit that income from the Ancillary Activities should be treated as income derived from the operations under a Partnership Contract under Act 29-2009. Therefore, such Management Fees, Termination Fees and Ancillary Income should be afforded the treatment established in Article 12 of Act 29-2009 and Part IV.A. of the A.D. 20-06.

2. The Service Revenues to be collected by the Company on behalf of the Authority constitute Partnering Government Entity Fees for purposes of Part IV.B. of the AD 20-06, since such Service Revenues constitute the fees or charges imposed by the Authority (the Partnering Government Entity) that are collected by the Company on behalf of the Authority from the third-party customers or users of the Function, Service or Facility being administered or operated by the Company (the Ferry System or Project Assets). In this case, the definition of Partnering Government Entity Fees specifies as an example the fees paid by users of a transportation service. In Phase 1, such fees will be transferred to the Authority by the Company within three days, as they legally belong to the Authority. To the extent Windfall Payments are made with respect to Phase 1, such Windfall Payments should also be excluded from the gross income of the Company, inasmuch as by operation of the Partnership Agreement, such revenues will legally belong to the Authority.

3. The Phase 1 Service Payments contemplated by the Partnership Agreement qualify as Pass-Through Expenditures for purposes of Part IV.C. the AD 20-06, since such payments will be reimbursements of costs and expenses, without including a profit margin, incurred by the Company on behalf of the Authority in the course of the rendering of the services contemplated in the Partnership Agreement in connection with the operation and maintenance of a Function, Service or Facility (the Ferry Operations).

4. The Company should be considered as operating and acting on behalf of the Authority with respect to the taxable items the Company is required to acquire on behalf of the Authority in order to fulfill its obligations under the Partnership Agreement, since the Company has been organized
exclusively to operate under such Partnership Agreement, which requires the Company to provide all items necessary for the performance of the Ferry Operations. The Company will comply with the certification requirements established in the A.D. 20-06 and other applicable regulatory and administrative guidance. Enclosed is the list of Covered Items issued by the Authority. Accordingly, such Covered Items should not be subject to SUT or Excise Tax, in accordance with Part IV.D.1 and IV.E. of A.D. 20-06.

5. No SUT should be required to be collected by the Company with respect to the Service Revenues, in accordance with Part IV.D.ii of the A.D. 20-06, since such Service Revenues qualify as Partnering Government Entity Fees, as explained above. Specifically, such Service Revenues are legally imposed by the Authority and the Authority retains control or oversight over such Service Revenues during Phase 1.

6. We also submit that the Company will not be rendering a professional or advisory service for purposes of Act 48-2013, in accordance with Part IV.F of A.D. 20-06.

7. The treatment of Part IV.G of A.D. 20-06 should apply with respect to contributions made by employees under a Government Retirement Plan in accordance with Article 10(g) of Act 29-2009.

Nevertheless, the determinations made in the AD 20-06 and the relevant definitions described above are all tied to a certain type of contract, an “Operation and Maintenance Partnership Contract”. Such term is defined in point 2 on page 3 of the AD 20-06, as follows:

“a contract entered into with a Partnering Government Entity under Act 29 or Act 120 for the operation and maintenance of a Function, Service or Facility which provides that the Partnering Government Entity Fees will remain the property of the Partnering Government Entity. Any contract executed pursuant to Act 29 that includes an agreement that all or part of the Partnering Government Entity Fees are collected and retained by the Contractor, with such fees legally belonging to the Contractor (rather than to the Partnering Government Entity) will not be considered an Operation and Maintenance Partnership Contract for purposes of this Administrative Determination.” (Emphasis ours)

While all the definitions in the AD 20-06, including the definition of “Partnership Contract”, clearly would apply to Phase 1 of the Partnership Agreement, the underlined language above, by its own terms, could be interpreted as completely excluding the Partnership Agreement from the scope and application of the AD 20-06, in light of the Phase 2 provisions of such Partnership Agreement. Part IV.H of the AD 20-06 provides that its provisions are considered of general application to a Contractor entering into an Operation and Maintenance Partnership Contract under Act 29-2009 with a Partnering Government Entity for the operation and maintenance of a Function, Service or Facility. A private letter ruling addressing a specific contract is required only if there is a specific factual background that requires a determination from the
Secretary regarding certain tax considerations not specifically addressed in the AD 20-06. We hereby respectfully request that the Department prevent what we believe is an unintended result of the underlined language in the definition of the term Operation and Maintenance Partnership Contract in the present case, caused by the hybrid nature of the Partnership Agreement.

The AD 20-06 provides for the tax treatment of certain aspects of a Partnership Contract that fits within the definition of an Operation and Maintenance Partnership Contract, where the main premise is that the Partnering Government Entity Fees (the Service Revenues in our case) remain the property of the Partnering Government Agency (the Authority). The AD 20-06, however, does not address a situation in which a contract provides a clear bifurcation between an arrangement that follows the definition of “Operation and Maintenance Partnership Contract” (Phase 1 in our case) and an arrangement that would fall outside of such definition (Phase 2 in our case).

The AD 20-06 is clear that, being a pronouncement of general application, its scope has been limited to the type of arrangement defined therein. However, this does not mean that other arrangements under Act 29-2009 will be considered excluded from the possibility of applying the same guidance established in the AD 20-06. Rather, as mentioned above, the AD 20-06 expressly provides for the possibility of addressing tax considerations relevant to other types of arrangements through the private letter ruling procedures in accordance with Circular Letter of Tax Policy No. 16-09. In light of this, we submit that the lack of guidance with respect to a hybrid contract such as the Partnership Agreement should not be viewed, as a tax policy determination, as impeding the application of AD 20-06 to a part or phase of a contract that would otherwise be expressly covered under AD 20-06.

In the case of the Partnership Agreement, there are two clearly distinguishable phases to the arrangement between the Partnering Government Entity (the Authority) and the Company. Phase 1 is structured as a traditional operation and maintenance agreement that follows the definition of Operation and Maintenance Partnership Contract in AD 20-06, Phase 2, however, would be excluded from the definition of Operation and Maintenance Partnership Contract for purposes of the AD 20-06 (i.e. for purposes of applying a pronouncement of general application without the need to consider in a private letter ruling context the specific facts relevant to the agreement). Considering the clear bifurcation of Phase 1 and Phase 2 under the terms of the Partnership Agreement, we respectfully request that Phase 1 of the Partnership Agreement be treated as a separate Operation and Maintenance Partnership Agreement for purposes of the application of the AD 20-06 regardless of the type of arrangement that will be applied once Phase 2 of the Partnership Agreement commences. Note that under the terms of the Partnership Agreement there will be no overlapping between Phase 1 and Phase 2, so that the relevance and applicability of the provisions of AD 20-06 will cease by its own terms as of the date of commencement of Phase 2 under the Partnership Agreement.
In light of the above, we submit that the determinations made in AD 20-06 are applicable to Phase 1 of the Partnership Agreement and rulings 1a. through 1.g. should be issued as requested.

(B) Excise Taxes on crude oil, unfinished oils or end products derived from oil and any other hydrocarbons mixture

In addition, we respectfully submit that the clarification in ruling number 2 above regarding the scope of the exemption from Excise Tax, including the Crudita Tax to Covered Items under the Partnership Agreement is supported by the following:

Subtitle C of the PR Code provides for the imposition of the Excise Tax on certain products, such as fuel and motor vehicles. In general, the Government of Puerto Rico is exempt from the payment of the Excise Tax. For example, the departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, public instrumentalities and the municipalities of the Government of Puerto Rico, including the Legislative Branch and the Judicial Branch, are exempt from the payment of the Excise Tax imposed under Sections 3020.08 and 3020.09 of the PR Code on vehicles, boats and heavy equipment, as per Section 3030.16(b) of the PR Code.

In addition, in general, Sections 3020.07 and 3020.07A of the PR Code impose the Crude Oil Tax on the use in Puerto Rico of crude oil, unfinished oils or end products derived from oil and any other hydrocarbons mixture. Notwithstanding the above, Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code provides that the Crude Oil Tax does not apply to the crude oil, unfinished oils, end products derived from oil, nor any other hydrocarbon mixture (including natural gas) used to generate electricity by: (A) the Electric Power Authority, any successor entity or any entity that operates facilities of the Electric Power Authority or its successor; (B) any generation plant regarding only that portion of natural gas used to generate electricity sold to the Electric Power Authority or any successor entity; (C) to the Maritime Transport Authority, any successor or any entity that operates the maritime transportation servicing the island municipalities of Vieques and Culebra; or (D) to businesses that have a decree issued under Act 73-2008 with respect to the provisions of subsection (6) and (8) of Section 9 of said act, or equivalent sections of the preceding or succeeding industrial incentives acts.

As stated above, the Company will be considered to be exclusively organized for and operating or acting on behalf or in the name of the Authority with respect to Covered Items.

Consistently with the SUT treatment referred to with respect to ruling 1.d. above, the acquisition of products otherwise subject to the Excise Tax by the Company under the Partnership Agreement will not be subject to the payment of the Excise Tax, to the extent the Company is required to acquire the referenced products on behalf or in the name of the Partnering Government.
Entity and which are required in order for the Company to fulfill its obligations under the Partnership Agreement. To those effects, the Authority will certify to the Secretary of the Treasury the products that qualify as Covered Items and, accordingly, are not subject to the payment of the Excise Tax. See list of Covered Items enclosed. On the other hand, the acquisition of products otherwise subject to the Excise Tax by the Company which are not required to be acquired under the Partnership Agreement, and which are typically acquired as part of conducting regular business operations in Puerto Rico, will be subject to the payment of the Excise Tax.

With respect to the Crude Oil Tax, Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code provides an exemption to the Authority, any successor or any entity that operates the maritime transportation servicing the island municipalities of Vieques and Culebra. (emphasis ours). This Crude Oil Tax exemption should be applicable to the Company with respect to the Ferry Operations conducted under Phase 1 and Phase 2 of the Partnership Agreement.

We are aware that a literal reading of the exemption from the Crude Oil Tax provided under Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code would limit the exemption to those cases in which the product acquired is “…used to generate electricity...”. However, such limitation should be interpreted to be applicable to Subsections (A), (B) and (D), which apply to the Electric Power Authority as well as to a business generating electricity that has a decree of tax exemption under Act 73-2008, as amended. Applying the limitation that the product acquired is “…used to generate electricity...” to the Authority (or to any successor or operator of the transportation system) would, in practice, make inexistent the Crude Oil Tax exemption provided under Subsection (C), since evidently neither the (nor any successor or operator of the transportation system) would be engaged at any time in the generation of electricity.

We are also aware that the exemption from the Crude Oil Tax provided under Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code makes reference, for purposes of the exemption under Subsection (C), to the maritime transportation servicing the island municipalities of Vieques and Culebra. While no specific reference is made to the transportation servicing the route of Cataño-San Juan (currently serviced by the Authority), we understand that the tax exemption in question should be interpreted broadly, so that the fuel products acquired by the Company in order to provide to transportation services with respect to the Cataño-San Juan route under the Partnership Agreement be also exempt from the payment of the Crude Oil Tax.

(C) 51% Expense Disallowance

Finally, we respectfully submit that the 51% Expense Disallowance should not be applied with respect to Phase 1, and ruling number 2 should be issued as requested, for the reasons discussed below.
Section 1033.17(a)(17) of the PR Code provides that fifty-one (51) percent of the expenses incurred by a taxpayer and paid or to be paid to: (i) a related person not engaged in a trade or business in Puerto Rico, if such expenses are attributable to the conduct of a trade or business in Puerto Rico and not subject to tax or withholding at source under the PR Code in the taxable year in which they were incurred or paid, or (ii) a home office located outside of Puerto Rico, by a foreign corporation engaged in trade or business in Puerto Rico through a branch, are not allowed as deductions in computing the net taxable income (the “51% Expense Disallowance”). Section 1033.17(a)(16) of the PR Code similarly provides for the 51% Expense Disallowance in the case of entities taxable as partnerships under Chapter 7 or under Subchapters D or E of Chapter 11 of Subtitle of the PR Code. Furthermore, Sections 1033.17(a)(17)(C) and 1033.17(a)(16)(D) of the PR Code provide that the 51% Expense Disallowance does not apply to persons that operate under the provisions of Act 73 of May 28, 2008, known as the Puerto Rico Development Economic Incentives Act, or any other similar preceding or succeeding act, or under the provisions of Act 74 of July 10, 2010, known as the Puerto Rico Tourist Development Act of 2010, Act 83 of July 19, 2010, and Act 20 of January 17, 2012, or any other similar preceding or succeeding act, or of any other special statute that grants a tax exemption with respect to income derived from the operations covered under a decree, resolution or concession of tax exemption conferred under such acts.

Section 1033.01 of the PR Code allows the deduction of ordinary and necessary business expenses in the determination of net taxable income.

As mentioned above, the 51% Expense Disallowance does not apply to entities enjoying a preferential income tax treatment under a tax incentives law or under any other similar or special statute that granting tax exemption. Act 29-2009 is a special statute pursuant to which the net income derived from the activities covered under the Partnership Agreement is subject to a preferential twenty (20) percent fixed income tax rate, which from a practical point of view results in the granting of a partial exemption on the net income derived by the Company (considering that the maximum ordinary corporate income tax rate amounts to thirty-seven and a half (37.5) percent). Accordingly, it is the Company will not be subject to the 51% Expense Disallowance provided under Sections 1033.17(a)(17) and 1033.17(a)(16) of the PR Code, since the Company will be considered to be covered under a special statute that grants tax exemption with respect to income derived under the Partnership Agreement.

The Company should be allowed ordinary and necessary business deductions under Section 1033.01 of the PR Code.

The Company intends to submit a separate ruling request to address the tax treatment of Phase 2 of the Partnership Agreement.
IV. CONCLUSION

Based on all of the above, the ruling should be issued as requested herein.

V. PROCEDURAL MATTERS

These representations are submitted in order to comply with the procedural requirements established in Circular Letter of Tax Policy No. 16-09 issued by the PR Treasury:

A. Circular Letter 16-09

1) To our best knowledge and belief, the same issues discussed in this ruling request have not been raised in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of Section 1010.05 of the PR Code);

2) To our best knowledge and belief, except for the ruling request regarding Phase 2, PR Treasury has not previously ruled on the same or similar issues for the taxpayer, a related taxpayer (within the meaning of Section 1010.05 of the PR Code) or a predecessor;

3) To our best knowledge and belief, the taxpayer, a related taxpayer, a predecessor, or any representative has not previously submitted a request (including an application for change in accounting method) involving the same or similar issues to PR Treasury but withdrew the request before a letter ruling or administrative determination was issued;

4) To our best knowledge and belief, the taxpayer, a related taxpayer, or a predecessor has not previously submitted a request (including an application for change in accounting method) involving the same or similar issues that are currently pending with PR Treasury;

5) To our best knowledge and belief, at the same time as this request, the taxpayer or a related taxpayer is not presently submitting another request (including an application for change in accounting method) involving the same or similar issues to PR Treasury with respect to Phase 1 of the Partnership Agreement;

6) To our best knowledge and belief, the law in connection with this ruling is not uncertain and the issues are adequately addressed by relevant authorities;

7) To our best knowledge and belief, there are no authorities contrary to taxpayer’s contentions that could affect the proposed transactions;
8) We respectfully request that a conference be held should you deem it necessary; and

9) We do not want separate letter rulings to be issued in the present case.

B. Administrative

1) Evidence of the required filing fee of $_____ is enclosed.

2) A Power of Attorney is enclosed.

3) The checklist is enclosed.

4) A draft of the Ruling Letter is enclosed.

5) A copy of the contract executed between the Contractor and the Partnering Government Entity is enclosed.

If you have any questions, or if additional information is required in connection with this request, please feel free to contact the undersigned.

Respectfully submitted,

Enclosures

#590183v6
DECLARATION

Under penalty of perjury, I declare that I have examined this request, including the accompanying documents, if any, and to the best of my knowledge and belief, this request contains all relevant facts relating to such request, the facts presented in support of the requested rulings are true, correct and complete, and the issues contained therein (a) are not being considered by the Puerto Rico Treasury Department in connection with an active examination or audit of a tax return of the interested parties or by the Assistant Secretary of Appeals; and (b) are not pending litigation in a case involving the undersigned or a related taxpayer.

HMS Ferries, Inc.
HMS Ferries - Puerto Rico, LLC

__________________________     _________________________    ______________________
Signature                  Title                                Date

_______________________________
Name of Person Signing Declaration
BY MESSENGER

Francisco Parés Alicea, CPA
Department of the Treasury
Ruling Request under Act 29-2009
Office 620
Intendente Ramírez Building
10 Paseo Covadonga, Old San Juan, Puerto Rico 00901

RE: Ruling request

Dear Mr. Parés Alicea:

On behalf of our client, HMS Ferries, Inc., employer identification number 36-469140 (“HMS Ferries”), and its wholly owned subsidiary, HMS Ferries Puerto Rico, LLC, employer identification number 66-0933950 (“Company”), we respectfully request your determinations as to certain tax consequences under the Puerto Rico Internal Revenue Code of 2011, as amended (the “PR Code”), and Act No. 29 of June 8, 2009, as amended (“Act 29”), known as the Public-Private Partnership Act, with respect to the proposed transaction described herein.

I. STATEMENT OF FACTS

HMS Ferries is a corporation organized under the laws of Delaware. The Company is a limited liability company organized under the laws of Puerto Rico. The Company has been organized exclusively to engage in the operations contemplated in the Partnership Agreement, as defined below.¹

With the collaboration of the Puerto Rico Public-Private Partnership Authority, the Company and HMS Ferries have entered into a Maritime Transport Operations and Maintenance Agreement (the “Partnership Agreement”) with the Puerto Rico and the Island Municipalities

¹ Capitalized terms not defined herein shall have the meaning ascribed to the same under Act 29 and/or the Partnership Agreement.
Maritime Transport Authority (the “Partnering Government Entity” or the “Authority”)\(^2\) pursuant to Act 29, whereby the Company, as initial obligor, and HMS Ferries, as joint obligor,\(^3\) become responsible for the operation and maintenance of the “Ferry System”.\(^4\) This project is considered a Priority Project, as such term is defined in Act 29.\(^5\)

Under the Partnership Agreement, the Company was granted the exclusive right to operate and maintain the “Project Assets”, for the rendering of “Maritime Transportation Services”, and performing “Maritime Transport Operations”.\(^6\) The Partnership Agreement contemplates that the Company will provide services and engage in activities that are relevant to the operation of the Ferry System, including services to the Authority, such as agreed-upon repairs to the Project Assets, and certain Special Services.\(^7\)

In addition, the Partnership Agreement authorizes the Company to engage in Ancillary Activities including: (i) the commercial maintenance services to private parties at the Isla Grande terminal, (ii) the operation, maintenance and repair of parking facilities, (iii) the rendering of marketing and advertising services to third parties, (iv) unscheduled trips that involve carrying

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\(^2\) The Authority is a public corporation and instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act No. 1-2000, as amended.

\(^3\) Pursuant to the Partnership Agreement, the Company will act as the operator and principal obligor with respect to the Ferry Operations, as defined below. Notwithstanding the foregoing, HMS Ferries signs the Partnership Agreement as a joint obligor and covenants to be obligated to immediately perform any obligation of the Company upon an event of default of such entity, beyond applicable cure periods. Therefore, for purposes of this ruling request, when referring to the Company, it should be understood that we are referring to (and that the determinations to be issued by the Puerto Rico Treasury Department in response to this ruling request cover) the legal entity that will perform the services under the Partnership Agreement.

\(^4\) Section 1.1. of the Partnership Agreement defines “Ferry System” as including the Project Assets used in connection with the Maritime Transport Operation, including Vessels, Facilities, docks, maintenance facilities, equipment, documents, data, software and information systems. “Maritime Transport Operations” and “Maritime Transportation Services” are also defined in Section 1.1. of the Partnership Agreement and generally refer to the transportation of cargo and passengers between San Juan and Cataño and between Ceiba, Vieques and Culebra, as well as the operation and maintenance of the assets used to provide such services.

\(^5\) As stated in the Recitals of the Partnership Agreement, the public private partnership established therein, for the operation and maintenance of the Ferry Service and ancillary commercial activities by the Company (the “Project”), is a Priority Project (as defined in Act 29).

\(^6\) See Section 4.2(b) of the Partnership Agreement, which lists Project Assets as including Ferry Terminals, Mooring Facilities and other Facilities, Authority-Provided Vessels, and all Authority Provided Intellectual Property. The Authority maintains title to the Project Assets throughout the Contract Term and following the expiration or termination of the Partnership Agreement.

\(^7\) The scope of “Special Services” and the compensation terms for such services are established in Article 6 of the Partnership Agreement. Section 6.1. provides that Special Services means unscheduled trips of Island Service (Ceiba, Vieques and Culebra) (i) that are not included in the regular scheduled services, (ii) are requested by the Authority or a third party and (iii) involve the transportation of passengers or cargo.
passengers or cargo (Special Services), (v) the operation (direct or indirect) of food and beverage concessions at the ferry terminals and vessels, and (vi) any other activity expressly authorized by the Authority in writing (collectively the “Ancillary Activities”). All the activities described in the previous paragraphs and in this paragraph, including for avoidance of doubt, the Ancillary Activities, are referred to as the “Ferry Operations”).

The Partnership Agreement contemplates a phased transition of the Ferry Operations, divided in two phases, namely Phase 1 and Phase 2. Throughout the term of the Partnership Agreement (the “Contract Term”), the Company will furnish all labor, supervision, machinery and equipment, materials and supplies (other than those forming a part of the Authority Provided Vessels and Authority Provided Facilities), and it will generally incur all costs relating to the operation and management of the Ferry Operations. Moreover, during both Phase 1 and Phase 2, the Company will be required to acquire goods (including fuel) and services (including services from non-Puerto Rico affiliates), on behalf of the Authority, necessary to fulfill the Company’s obligations under the Partnership Agreement and which generally may be subject to the payment of the sales and use tax (the “SUT”) under Sections 4020.01, 4020.02, 4210.01 and 4210.02 of the PR Code or the excise taxes imposed under Subtitle C of the PR Code (the “Excise Tax”), including to crude oil tax imposed under Sections 3020.07 and 3020.07A of the PR Code (the “Crude Oil Tax”).

Phase 1 is structured as a traditional operation and maintenance agreement and, therefore, is covered by the provisions of Administrative Determination No. 20-06. During Phase 1, and upon the acceptance of the Authority Provided Vessels and Authority Provided Facilities, the Company will be required to collect from third-party customers or users the fares, fees or charges imposed on such customers or users in connection with the Ferry Operations, which the Authority Entity formerly collected, including farebox revenues and internet ticket sales. The revenues from the transportation of cargo and passengers between Cataño and San Juan (the “Metro Service”) and between Ceiba, Vieques and Culebra (the “Island Service”), are defined in the Partnership Agreement.

8 See Sections 13.1(c) and (e), Article 18, and Section 19.2 of the Partnership Agreement. Section 4.5 of the Partnership Agreement provides the conditions that must be present to commence each type of Ancillary Activity. During Phase 1, the Company may engage in Special Services and other Ancillary Activities, provided that the latter the Federal Transportation Administration (FTA) Incidental Use authorization shall have been obtained and the parties shall have agreed on how the Ancillary Income from such activities shall be shared. See also Section 48.12 regarding approval required from the FTA for Incidental Use regarding such Ancillary Activities.

9 The term of the Partnership Agreement is twenty-three (23) years, beginning on the “Phase 1 Commencement Date”. Phase 1 ends at midnight on the date immediately preceding the “Phase 2 Commencement Date”. Phase 2 Commencement Date is the later of the third anniversary of the Phase 1 Commencement Date or the date of written confirmation of compliance with Phase 2 Conditions Precedents, as such term is defined in the Partnership Agreement. There will be no overlapping between Phase 1 and Phase 2 in accordance with the terms of the Partnership Agreement.

10 See Section 3.5 of the Partnership Agreement.

11 A ruling request was submitted to the Puerto Rico Treasury Department on _____ to address the application of the AD 20-06 and certain provisions of the PR Code to Phase 1 of the Partnership Agreement.
Agreement as “Service Revenues”. The Service Revenues will remain the property of the Authority during Phase 1 and the Company is obligated to remit such revenues to the Authority within three days from the date of receipt.12

During Phase 2, the Service Revenues and revenues from Ancillary Activities ("Ancillary Revenues") will belong to the Company, except as provided below.13 The Company will also receive from the Authority an annual fee, which includes the Management Fee,14 in the amounts specified in the Partnership Agreement (the “Phase 2 Fixed Fee”).15 The Phase 2 Fixed Fee is subject to approved modifications for changes in insurance and fuel costs.16 During Phase 2, the Authority will not reimburse the costs incurred by the Company in order to fulfill its obligations under the Partnership Agreement.

According to the Partnership Agreement, the Company will remit to the Authority fifty percent (50%) of Service Revenues in excess of agreed-upon revenue thresholds (defined as “Windfall Revenue Thresholds”). In addition, net income from Ancillary Activities exceeding projected net income thresholds (“Windfall Income Thresholds”) by more than thirty percent (30%) will also be shared in equal parts with the Authority, within the due date and under certain procedures established therein (the amounts to be shared with the Authority upon meeting the Windfall Revenue Thresholds and the Windfall Income Thresholds is collectively referred to as the “Windfall Payments”).17

The Partnership Agreement provides for the circumstances in which it may be terminated by any of the parties. In certain circumstances specified in the Partnership Agreement, a “Termination Fee” will be paid to the Company.

II. RULES REQUESTED

The following determinations are herein requested with respect to certain tax consequences in connection with the Partnership Agreement:

12 See Section 5.10(a) of the Partnership Agreement. During Phase 1, the Company will receive a reimbursement of budgeted and pre-approved operating expenses for the performance of the work (defined in the Partnership Agreement as “Phase 1 Service Payments”). As sole compensation for its services during Phase 1 the Company will receive a Management Fee, in an amount specified in Appendix G of the Partnership Agreement.

13 See Sections 5.2(a) and 5.10(b) of the Partnership Agreement.

14 Management Fee is defined as the fee paid to the Company, by the Authority, above and beyond any and all costs incurred by the Operator (the Company) in the provision of services described in the Partnership Agreement. See Section 1.1 of the Partnership Agreement.

15 See Section 5.2(b) and Appendix D of the Partnership Agreement.

16 See Section 5.12 of the Partnership Agreement.

17 See Section 5.2(c) of the Partnership Agreement.
1. The tax consequences to the Company with respect to Phase 1 of the Partnership Agreement are those provided under the provisions of Administrative Determination No. 20-06 and the ruling letter issued by the Puerto Rico Treasury Department on ________.

2. The net income derived by the Company with respect to the Ferry Operations, including the Service Revenues, the Phase 2 Fixed Fee, the Termination Fee or any other net income derived from business activities conducted under the Partnership Agreement, including without limitation the Ancillary Activities, (all such sources of income under the Partnership Agreement, collectively referred to as the “Ferry Operations Income”) will be considered to be derived from the operations provided in the Partnership Agreement and, accordingly, to the extent that all or a portion of it is considered ordinary income, will be treated as net income derived from the operations covered by the Partnership Agreement subject to the twenty (20) percent fixed income tax rate provided under Article 12(a) of Act 29, and will not be subject to the alternative minimum tax imposed under Section 1022.03 of the PR Code or the ten (10) percent deemed dividend tax imposed under Section 1062.13 of the PR Code. In addition, the owners of the Company will not be subject to the payment of income taxes on dividend distributions derived from the Ferry Operations Income. The portion of the Windfall Payments to be remitted by the Company to the Authority will not be considered gross income or revenues of the Company and the Company will not be subject to Puerto Rico income taxes with respect to such shared Windfall Payments. Such shared Windfall Payments shall be excluded from the Company’s gross income for the taxable year in which the revenues under the Partnership Agreement have been realized, as long as the Company has complied with the conditions established in the Partnership Agreement relating to the time of determination and payment of remittance of shared Windfall Payments to the Authority (otherwise, the exclusion of shared Windfall Payments shall be applied in the taxable year in which such amounts are remitted to the Authority).

3. The Company will not be subject to the deduction disallowance relating to certain payments to non-Puerto Rico affiliates of the Company provided under Sections 1033.17(a)(17) and 1033.17(a)(16) of the PR Code (the “51% Expense Disallowance”), since the Company will be considered to be covered under a special statute that grants tax exemption with respect to income derived under the Partnership Agreement, in accordance with Sections 1033.17(a)(17)(C) and 1033.17(a)(16)(D). The Company shall be allowed to claim a deduction for ordinary and necessary business expenses with respect to all eligible business expenses, in accordance with Section 1033.01 of the PR Code.

4. Pursuant to Section 4030.08(a) of the PR Code, the Company will be considered to be organized exclusively to operate and act on behalf of the Authority and to be
operating or acting on behalf or in the name of the Authority with respect to the taxable items that the Company is required to acquire on behalf of the Authority and which are required in order for the Company to fulfill its obligations under the Partnership Agreement (the “Covered Items”). Accordingly, the acquisition of such Covered Items by the Company will not be subject to the payment of the SUT, as per Section 4030.08(a) of the PR Code, even if such Covered Items become the property of the Company. Any item acquired by the Company which is necessary for the Company to fulfill its obligations under the Partnership Agreement, and that becomes the property of the Authority will automatically qualify as a Covered Item exempt from the payment of the SUT even if it is not included in the certification provided by the Authority. The Company, however, shall submit to PR Treasury an amended certification provided by the Authority within thirty (30) days from the date of acquisition of such items.

5. The acquisition by the Company of taxable items, not required to be acquired on behalf of the Authority, necessary for the operation of its regular business and to carry other activities not constituting Ferry Operations are not considered Covered Items and will not be covered by the tax exemption granted under Section 4030.08(a) of the PR Code and, accordingly, will be subject to the payment of the SUT.

6. The fees and charges imposed during Phase 2 of the Partnership Agreement on the customers and users with respect to the Ferry Operations, including activities giving rise to Service Revenues and Ancillary Revenues will not be subject to the payment of the SUT, in accordance with Section 4010.01(l)(2) of the PR Code.

7. The acquisition by the Company under the Partnership Agreement of products otherwise subject to the Excise Tax imposed under Subtitle C of the PR Code that are considered Covered Items will not be subject to the payment of the Excise Tax. In particular, the crude oil, unfinished oils or end products derived from oil and any other hydrocarbons mixture that the Company is required to acquire in order to fulfill its obligations with respect to the Ferry Operations under the Partnership Agreement will be considered Covered Items not subject to the payment of the Crude Oil Tax imposed under Sections 3020.07 and 3020.07A of the PR Code.

8. The crude oil, unfinished oils or end products derived from oil and any other hydrocarbons mixture that the Company is required to acquire on behalf of the Authority during Phase 1 of the Partnership Agreement in order to fulfill its obligations with respect to the Ferry Operations will be considered Covered Items not subject to the payment of the Crude Oil Tax imposed under Sections 3020.07 and 3020.07A of the PR Code.

9. The acquisition by the Company of products otherwise subject to the Excise Tax imposed under Subtitle C of the PR Code which are not considered Covered Items

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nor necessary for the Company to fulfill its obligations under the Partnership Agreement, will be subject to the payment of the Excise Tax.

10. The Company will not be subject to the special contribution of one and a half (1.5) percent imposed under Article 1 of Act 48-2013.

11. The contributions made by the employees to the corresponding Government Retirement Plan, which are withheld from the employees’ wages, will be made on a pre-tax basis and, accordingly, will be excluded from the employees’ income at the time of the contribution. Similarly, any contributions to a Government Retirement Plan made by the Company under the Partnership Agreement on behalf of such employees will not be considered at the time taxable income to the employees.

III. STATEMENTS OF LAW

(A) Service Revenues, Phase 2 Fixed Fee, and Termination Fee payments made to the Company and income derived by the Company from the Ferry Operations under the Partnership Agreement, including the Ancillary Activities

Article 12(a) of Act 29 provides that the Contractors are subject to a twenty (20) percent fixed income tax rate on the net income derived from a contract executed under Act 29, computed in accordance with the PR Code. Article 12(a) of Act 29 further provides that the twenty (20) percent fixed income tax rate applies in lieu of any other income tax, if any, imposed under the PR Code or any other law including, but not limited to, the alternative minimum tax and the tax on the deemed dividend amount imposed under the PR Code. In addition, Article 12(a) of Act 29 provides that the owners of the Contractor will not be subject to the payment of income taxes on dividend distributions of the net income derived from a contract executed under Act 29.

(B) Deduction of Expenses Between Related Parties

Section 1033.17(a)(17) of the PR Code provides that fifty-one (51) percent of the expenses incurred by a taxpayer and paid or to be paid to: (i) a related person not engaged in a trade or business in Puerto Rico, if such expenses are attributable to the conduct of a trade or business in Puerto Rico and not subject to tax or withholding at source under the PR Code in the taxable year in which they were incurred or paid, or (ii) a home office located outside of Puerto Rico, by a foreign corporation engaged in trade or business in Puerto Rico through a branch, are not allowed as deductions in computing the net taxable income (the “51% Expense Disallowance”). Section 1033.17(a)(16) of the PR Code similarly provides for the 51% Expense Disallowance in the case of entities taxable as partnerships under Chapter 7 or under Subchapters D or E of Chapter 11 of Subtitle of the PR Code. Furthermore, Sections 1033.17(a)(17)(C) and 1033.17(a)(16)(D) of the PR Code provide that the 51% Expense Disallowance does not apply to persons that operate under the provisions of Act 73 of May 28, 2008, known as the Puerto Rico Development Economic Incentives Act, or any other similar preceding or succeeding act, or under the provisions of Act 74
of July 10, 2010, known as the Puerto Rico Tourist Development Act of 2010, Act 83 of July 19, 2010, and Act 20 of January 17, 2012, or any other similar preceding or succeeding act, or of any other special statute that grants a tax exemption with respect to income derived from the operations covered under a decree, resolution or concession of tax exemption conferred under such acts.

Section 1033.01 of the PR Code allows the deduction of ordinary and necessary business expenses in the determination of net taxable income.

(C) Sales and Use Taxes and Excise Taxes (including the Crude Oil Tax)

In general, every merchant engaged in any business in Puerto Rico that sells taxable items is responsible to collect the SUT based on the sales price of the item, as per Sections 4020.01, 4020.02, 4210.01 and 4210.02 of the PR Code.

Notwithstanding the above, Section 4030.08(a) of the PR Code provides that every “taxable item” acquired for official use by the agencies and instrumentalities of the Government of the United States of America and the Government of Puerto Rico are exempt from the payment of the SUT. Furthermore, the term “Government of Puerto Rico” is defined for these purposes as the departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, public instrumentalities and the municipalities of the Government of Puerto Rico, including the Legislative Branch and the Judicial Branch, with such term also including those persons operating or acting on behalf or in the name thereof, as provided in Section 4010.01(p) of the PR Code. Article 4030.08-1(a)(2) of the Regulations under the PR Code further provides that the term “Government of Puerto Rico” (and the Government of the United States of America) includes those persons that operate or act on their behalf, requiring that such persons request and obtain a certificate to those effects from the Secretary of the Treasury (the “Secretary”).

Article 4030.08-1(a)(2) of the Regulations under the PR Code and Circular Letter of Internal Revenue No. 19-13 (CC RI 1913) further provides that the person requesting the referenced certificate to act on behalf of the Government must provide to the Secretary evidence to the effect that the entity was created exclusively to act in an official capacity as an agent of the Government. In addition, the person must provide a certification issued by the governmental entity in the name of which the entity is acting in which such authority is acknowledged, as well as a list of the taxable items to be acquired on the governmental entity’s behalf.
The Service Revenues constitute fees or charges that are imposed by the Authority pursuant to applicable legislation. These fees or charges are subject to the provisions of the Partnership Agreement that provides consent rights or oversight over such fees or charges to the Authority, despite the fact that referenced fees will be collected and retained by the Company, with such fees becoming the property of the Company. The charges for the Services and for the Ancillary Activities are imposed by the Authority and collected from third party customers or users prior to the execution of the Partnership Agreement are not currently subject to the payment of the SUT. Pursuant to Section 4010.01(l)(2) of the PR Code, the amount paid to admit a person or vehicle into the collective transportation systems established by the Government of Puerto Rico, such as the Metropolitan Bus Authority, the Ports Authority and the Transportation and Public Works Department, or by and operator or subcontractor, including persons certified by the Government of Puerto Rico, its agencies or instrumentalities to render those services, are not subject to the payment of the SUT.

Moreover, Subtitle C of the PR Code provides for the imposition of the Excise Tax on certain products, such as fuel and motor vehicles. In general, the Government of Puerto Rico is exempt from the payment of the Excise Tax. For example, the departments, agencies, administrations, bureaus, boards, commissions, offices, public corporations, public instrumentalities and the municipalities of the Government of Puerto Rico, including the Legislative Branch and the Judicial Branch, are exempt from the payment of the Excise Tax imposed under Sections 3020.08 and 3020.09 of the PR Code on vehicles, boats and heavy equipment, as per Section 3030.16(b) of the PR Code.

In addition, in general, Sections 3020.07 and 3020.07A of the PR Code impose the Crude Oil Tax on the use in Puerto Rico of crude oil, unfinished oils or end products derived from oil and any other hydrocarbons mixture. Notwithstanding the above, Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code provides that the Crude Oil Tax does not apply to the crude oil, unfinished oils, end products derived from oil, nor any other hydrocarbon mixture (including natural gas) used to generate electricity by: (A) the Electric Power Authority, any successor entity or any entity that operates facilities of the Electric Power Authority or its successor; (B) any generation plant regarding only that portion of natural gas used to generate electricity sold to the Electric Power Authority or any successor entity; (C) to the Maritime Transport Authority, any successor or any entity that operates the maritime transportation servicing the island municipalities of Vieques and Culebra; or (D) to businesses that have a decree issued under Act 73-2008 with respect to the provisions of subsection (6) and (8) of Section 9 of said act, or equivalent sections of the preceding or succeeding industrial incentives acts.

(D) Act 48-2013

Article 1 of Act 48-2013 imposes a special contribution equivalent to one and a half (1.5) percent of the total amount of every professional service, consulting, marketing, public relationships, communications, training or orientation, and lobbying contract executed by an agency, dependency or instrumentality of the Government of Puerto Rico, public corporations, as well as by the Legislative Branch and the Judicial Branch (the “Special Tax”). The Special Tax
must be withheld by the Puerto Rico Treasury Department or by the corresponding governmental entity at the time of making payments for services rendered under the contract. Administrative Determination No. 13-14 issued on August 28, 2013 contains a list of certain services which are subject to the payment of the Special Tax, as well as a list of other services which are not subject to the Special Tax.

(E) Contributions to a Government Retirement Plan

Under Article 10(g) of Act 29, certain government employees that are hired by a Contractor that enters into an Act 29 contract with a government entity may continue to make contributions to the corresponding Government Retirement Plan, and the Contractor may make the corresponding employer contributions to the referenced plan. For taxable years beginning after December 31, 2018, Section 1033.15(a)(6) of the PR Code provides that the contributions made by employees to Government Retirement Plans will be considered as a reduction from wages subject to taxation in accordance with the provisions of Section 1081.01 of the PR Code.

When an employer makes contributions for the benefit of a participant in a retirement plan to an employees’ trust or annuity contract which forms part of the retirement plan enjoying tax exemption according to Section 1081.01(a) of the PR Code (”Tax Qualified Plan”), the participant does not have to include said contributions in gross income at the time of the contribution. Similarly, contributions by a participant to a Tax Qualified Plan are made on a pre-tax basis and, accordingly, are excluded from the employee’s current income.

IV. ANALYSIS

(A) Service Fees, Phase 2 Fixed Fee, Termination Fee payments made to the Company and income derived by the Company from the Ferry Operations under the Partnership Agreement, including the Ancillary Activities

The net income derived by the Company with respect to the Ferry Operations, including Service Revenues, Phase 2 Fixed Fee, and Termination Fee payments under the Partnership Agreement (the Ferry Operations Income) will be considered to be derived from the operations provided in the Partnership Agreement and, accordingly, to the extent that all or a portion of it is considered ordinary income, will be treated as net income derived from the operations covered by the Partnership Agreement subject to the twenty (20) percent fixed income tax rate provided under Article 12(a) of Act 29. In addition, any income derived by the Company with respect to the operations conducted under the Partnership Agreement, including the Ancillary Activities, will also be subject to the twenty (20) percent fixed income tax rate provided under Article 12(a) of Act 29. Furthermore, the Ferry Operations Income and any income from the operations contemplated by the Partnership Agreement, including the Ancillary Activities will not be subject to the alternative minimum tax imposed under Section 1022.03 of the PR Code or the ten (10) percent deemed dividend tax imposed under Section 1062.13 of the PR Code.
In addition, the owners of the Company will not be subject to the payment of income taxes on dividend distributions of the earnings and profits derived from the operations contemplated in the Partnership Agreement, including the Ferry Operations Income.

For avoidance of doubt, because the portion of the Windfall Payments to be shared with the Authority belongs to such government entity in accordance with the Partnership Agreement, such portion of the Windfall Payments to be remitted by the Company to the Authority will not be considered gross income or revenues of the Company and the Company will not be subject to Puerto Rico income taxes with respect to such shared Windfall Payments. Such shared Windfall Payments shall be excluded from the Company’s gross income for the taxable year in which the revenues under the Partnership Agreement have been realized, as long as the Company has complied with the conditions established in the Partnership Agreement relating to the time of determination and payment of remittance of shared Windfall Payments to the Authority (otherwise, the exclusion of shared Windfall Payments shall be applied in the taxable year in which such amounts are remitted to the Authority).

(B) Deduction of Expenses Between Related Parties

As mentioned above, the 51% Expense Disallowance does not apply to entities enjoying a preferential income tax treatment under a tax incentives law or under any other similar or special statute granting a tax exemption. Act 29 is a special statute pursuant to which the net income derived from the activities covered under the Partnership Agreement is subject to a preferential twenty (20) percent fixed income tax rate, which from a practical point of view results in the granting of a partial exemption on the net income derived by the Company (considering that the maximum ordinary corporate income tax rate amounts to thirty-seven and a half (37.5) percent). Accordingly, the Company should not be subject to the 51% Expense Disallowance provided under Sections 1033.17(a)(17) and 1033.17(a)(16) of the PR Code, since the Company should be considered to be covered under a special statute that grants tax exemption with respect to income derived under the Partnership Agreement.

The Company should be allowed ordinary and necessary business deductions under Section 1033.01 of the PR Code.

(C) Sales and Use Taxes and Excise Taxes (including the Crude Oil Tax)

The Company will be considered to be exclusively organized for and operating or acting on behalf or in the name of the Authority with respect to Covered Items. Accordingly, the acquisition of such Covered Items by the Company should not be subject to the payment of the SUT, as per Section 4030.08(a) of the PR Code even if such Covered Items become the property of the Company. Accordingly we submit that the Company will request and the Secretary will issue the certificate referred to in Article 4030.08-1(a)(2) of the Regulations under the PR Code evidencing that the Company is operating or acting on behalf of, or in the name of, the Partnering Government Entity (as such term is defined in Act 29). The Authority will also certify to the Secretary the classes of items that qualify as Covered Items. Any item acquired by the Company
that becomes the property of the Partnering Government Entity should automatically qualify as a Covered Item exempt from the payment of the SUT even if it is not included in the certification provided by the Authority.

However, the taxable items acquired by the Company that will become property of the Company and that are not required to be acquired under the Partnership Agreement (i.e., they are not required to be acquired on behalf of the Authority in order to fulfill its obligation under the Partnership Agreement) will not be covered by the tax exemption granted under Section 4030.08(a) of the PR Code and, accordingly, will be subject to the payment of the SUT. Although the Company is empowered through the Partnership Agreement to perform a key governmental function, the SUT exemption for taxable items acquired by the Government of Puerto Rico established in Section 4030.08(a) of the PR Code will not be applicable to the acquisition by the Company of taxable items which are (1) not required to be acquired in order to fulfill its obligations under the Partnership Agreement and (2) typically acquired as part of conducting regular business operations in Puerto Rico.

Similarly, the fees and charges imposed on the customers and users of the Ferry Operations will not be subject to the payment of the SUT, despite the fact that the Service Revenues and Ancillary Revenues belong to the Company under Phase 2 of the Partnership Agreement, considering such fees or charges are subject to the provisions of the Partnership Agreement that provides consent rights or oversight over such fees or charges for the Services, and considering that the users of the Ferry Operations are not currently subject to SUT on such services.

Consistently with the SUT treatment referred to above, the acquisition of products otherwise subject to the Excise Tax by the Company under the Partnership Agreement should not be subject to the payment of the Excise Tax, to the extent the Company is required to acquire the referenced products on behalf or in the name of the Partnering Government Entity and which are required in order for the Company to fulfill its obligations under the Partnership Agreement. To those effects, the Authority will certify to the Secretary the products that qualify as Covered Items and, accordingly, are not subject to the payment of the Excise Tax. On the other hand, the acquisition of products otherwise subject to the Excise Tax by the Company which are not required to be acquired under the Partnership Agreement, and which are typically acquired as part of conducting regular business operations in Puerto Rico, will be subject to the payment of the Excise Tax.

With respect to the Crude Oil Tax, Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code provides an exemption to the Authority, any successor or any entity that operates the maritime transportation servicing the island municipalities of Vieques and Culebra. (emphasis ours). This Crude Oil Tax exemption should be applicable to the Company with respect to the Ferry Operations conducted under Phase 1 and Phase 2 of the Partnership Agreement.

We are aware that a literal reading of the exemption from the Crude Oil Tax provided under Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code would limit the exemption to those cases in which the product acquired is “…used to generate electricity…”. However, such
limitation should be interpreted to be applicable to Subsections (A), (B) and (D), which apply to the Electric Power Authority as well as to a business generating electricity that has a decree of tax exemption under Act 73-2008, as amended. Applying the limitation that the product acquired is “…used to generate electricity…” to the Authority (or to any successor or operator of the transportation system) would, in practice, make inexistent the Crude Oil Tax exemption provided under Subsection (C), since evidently neither the (nor any successor or operator of the transportation system) would be engaged at any time in the generation of electricity.

We are also aware that the exemption from the Crude Oil Tax provided under Sections 3020.07(h)(1) and 3020.07A(h)(1) of the PR Code makes reference, for purposes of the exemption under Subsection (C), to the maritime transportation servicing the island municipalities of Vieques and Culebra. While no specific reference is made to the transportation servicing the route of Cataño-San Juan (currently serviced by the Authority), we understand that the tax exemption in question should be interpreted broadly, so that the fuel products acquired by the Company in order to provide to transportation services with respect to the Cataño-San Juan route under the Partnership Agreement be also exempt from the payment of the Crude Oil Tax. Arguably, the above quoted language of Subsection (C) uses the description of the route in order to identify the intended beneficiary of the exemption and not to limit the application of the exemption to a specific route.

(D) Act 48-2013

Article 12(a) of Act 29 provides for the imposition of a twenty (20) percent fixed income tax rate on the net income derived from the Partnership Agreement, computed in accordance with the PR Code, which applies in lieu of any other income tax, if any, imposed under the PR Code or any other law (emphasis ours). Accordingly, we respectfully submit that the Company should not be subject to the Special Tax, considering that Article 12(a) of Act 29 provides that the twenty (20) percent fixed income tax rate applies in lieu of any other income tax which may be imposed under any other law.

(E) Contributions to a Government Retirement Plan

We respectfully submit that the contributions made by the employees to the corresponding Government Retirement Plan, which are withheld from the employees’ wages, will be made on a pre-tax basis and, accordingly, should be excluded from the employees’ income at the time of the contribution. Similarly, any contributions to a Government Retirement Plan made by the Company under the Partnership Agreement on behalf of such employees should not be considered at the time taxable income to the employees.

V. CONCLUSION

Based on all of the above, the rulings should be issued as requested herein.

VI. PROCEDURAL MATTERS
These representations are submitted in order to comply with the procedural requirements established in Circular Letter of Tax Policy No. 16-09 issued by the PR Treasury:

**A. Circular Letter 16-09**

1) To our best knowledge and belief, the same issues discussed in this ruling request have not been raised in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of Section 1010.05 of the PR Code);

2) To our best knowledge and belief, except for the Phase 1 ruling mentioned above, PR Treasury has not previously ruled on the same or similar issues for the taxpayer, a related taxpayer (within the meaning of Section 1010.05 of the PR Code) or a predecessor;

3) To our best knowledge and belief, the taxpayer, a related taxpayer, a predecessor, or any representative has not previously submitted a request (including an application for change in accounting method) involving the same or similar issues to PR Treasury but withdrew the request before a letter ruling or administrative determination was issued;

4) To our best knowledge and belief, the taxpayer, a related taxpayer, or a predecessor has not previously submitted a request (including an application for change in accounting method) involving the same or similar issues that are currently pending with PR Treasury;

5) To our best knowledge and belief, at the same time as this request, the taxpayer or a related taxpayer is not presently submitting another request (including an application for change in accounting method) involving the same or similar issues to PR Treasury;

6) To our best knowledge and belief, the law in connection with this ruling is not uncertain and the issues are adequately addressed by relevant authorities;

7) To our best knowledge and belief, there are no authorities contrary to taxpayer’s contentions that could affect the proposed transactions;

8) We respectfully request that a conference be held should you deem it necessary; and

9) We do not want separate letter rulings to be issued in the present case.

**B. Administrative**

1) Evidence of the required filing fee of $_____ is enclosed.
2) A Power of Attorney is enclosed.

3) The checklist is enclosed.

4) A draft of the Ruling Letter is enclosed.

5) A copy of the contract executed between the Contractor and the Partnering Government Entity.

If you have any questions, or if additional information is required in connection with this request, please feel free to contact the undersigned.

Respectfully submitted,

Enclosures

DECLARATION

Under penalty of perjury, I declare that I have examined this request, including the accompanying documents, if any, and to the best of my knowledge and belief, this request contains all relevant facts relating to such request, the facts presented in support of the requested rulings are true, correct and complete, and the issues contained therein (a) are not being considered by the Puerto Rico Treasury Department in connection with an active examination or audit of a tax return of the interested parties or by the Assistant Secretary of Appeals; and (b) are not pending litigation in a case involving the undersigned or a related taxpayer.

HMS Ferries, Inc.
HMS Ferries Puerto Rico, LLC

__________________________________  _________________________  ______________________
Signature                                   Title                               Date

Name of Person Signing Declaration

App. EE2-15
LEASE AND CONCESSION AGREEMENT

This LEASE AGREEMENT ("Lease" or "Lease Agreement") is made and entered into as of __________, 2020 ("Commencement Date"), by and between [the PUERTO RICO PORTS AUTHORITY], a ____________________________ (the "Landlord"), and the PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and instrumentality of the Government of Puerto Rico (the "Tenant"). Landlord and Tenant are sometimes referred to herein individually as a “Party” or collectively as the “Parties”.

WITNESSETH

WHEREAS, Landlord owns fee simple title to the facility identified as the [______________] and its adjacent [cargo] piers, known as [______________] (collectively, the "Facility") and the property more specifically described in Exhibit A attached hereto (the “Leased Premises” or “Premises”);

WHEREAS, Tenant is a public corporation of the Commonwealth of Puerto Rico created by virtue of Act No. 1-2000, as amended, known as the Puerto Rico and the Island Municipalities Maritime Transport Authority Act (the “MTA Act”);

WHEREAS, the Executive Director of the Tenant is authorized and empowered to execute this Lease Agreement pursuant to Resolution Number [____] dated [_____] executed by the Secretary of the Department of Transportation and Public Works pursuant to Article 4(a) of the MTA Act, and the [Executive Director] of the Landlord is authorized and empowered to execute this Lease Agreement pursuant to pursuant to [______________], as amended from time to time;

WHEREAS, Landlord recognizes that (i) the Facility has been embedded by and designated to serve a priority public use within the Commonwealth of Puerto Rico, which permits the provision of maritime transportation; (ii) Tenant is empowered under the MTA Act to manage ferry services for Vieques, Culebra, Cataño and San Juan and is experienced in the administration of terminal facilities such as the Facility, and (iii) considers it in the public interest to lease the Leased Premises to Tenant, for the operation of maritime transport of cargo and passengers to and from the Facility at the Municipality of [____] subject to the terms, covenants and conditions set forth in this Lease;

WHEREAS, Tenant proposes to enter or has entered into a Maritime Transport Operations and Maintenance Agreement (the “MTOMA”) with the Operator identified in the MTOMA, and Landlord has agreed to permit Tenant to enter into a sublease agreement with such Operator;

WHEREAS, Landlord acknowledges that the MTOMA constitutes a Priority Project under Act No. 29-2009, as amended, also known as the Public-Private Partnership Act; and
WHEREAS, this Lease Agreement sets out the agreed terms and conditions upon which Landlord shall lease to Tenant, and Tenant shall lease from Landlord, the Leased Premises as of the date hereof.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties and each of them do agree as follows:

ARTICLE I
BASIC TERMS OF LEASE

The following sections set forth basic information referred to in this Lease Agreement and, where appropriate, constitute definitions of the terms hereinafter listed.

1.01 LANDLORD: [PUERTO RICO PORTS AUTHORITY] (“Landlord”)

1.02 LANDLORD’S POSTAL ADDRESS:

[Puerto Rico Ports Authority
P.O. Box 362829
San Juan, PR 00936-2829
Attn: Executive Director]

1.03 TENANT: PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

1.04 TENANT’S POSTAL ADDRESS:

Puerto Rico and the Island Municipalities
Maritime Transport Authority
PO Box 41118
San Juan, PR 00940
Attn: Executive Director

1.05 TENANT’S EMPLOYER IDENTIFICATION NUMBER: 66-0584953

1.06 LEASED PREMISES: As described in Exhibit A of this Lease Agreement, the Facility having a total estimated area of [●], and the underlying property more specifically described in Exhibit A attached, including the entire main pier area (the “Main Pier Area”), the parking area (the “Parking Area”), all appurtenances, improvements, fixtures, easements, maritime facilities and rights thereunder and the other areas (the “Other Areas”). Should the
Leased Premises consist of various projects or structures, the term “Building” shall be construed to include each and all of the buildings and structures described in Exhibit A. With respect to any portion of the Leased Premises that are in the public domain, the rights granted to Tenant hereunder are in the nature of a concession.

1.07 PERMITTED USE: The Leased Premises shall be used for any lawful commercial act or activity permitted under the laws of the Commonwealth of Puerto Rico. The permitted uses hereunder include, but are not limited to, the following uses (the “Specific Uses”): Vessel operations and related activities associated to maritime vessel transportation, including but not limited to the loading and discharge of passenger and cargo and the docking of vessels, concessions to food vendors, ticketing sales, managing the leasing of retail spaces, storage and the parking of visitor automobiles and motorcycles in the Parking Area; provided, however, that such ancillary uses (food vendors and retail spaces) shall not hinder or adversely interfere with the normal business operations and maintenance of the cargo and passenger maritime transportation to and from the Leased Premises. Tenant is authorized to lease the Leased Premises to the Operator (as defined in the MTOMA) for the Permitted Use.

1.08 LEASE TERM: The term of this Lease Agreement shall commence on even date herewith (the “Commencement Date”) and shall expire on the twentieth (20th) anniversary of the date hereof (the “Initial Term”). The Initial Term of this Lease Agreement shall be automatically extended for an additional period of three (3) years commencing as of the termination of the Initial Term, unless at least thirty (30) days prior to the termination of the Initial Term, Tenant has delivered to Landlord notification of its desire to not extend the Initial Term (the “Automatic Renewal Term”); provided that Tenant shall have the option to further extend the Automatic Renewal Term, [by written notification to Landlord at least thirty (30) days prior to the termination of the Automatic Renewal Term], if so required to comply with federal requirements regarding the use of federal funds for the alterations, changes, additions or improvements necessary or convenient for the Leased Premises to be used for the Permitted Use (the “Optional Renewal Term”, collectively with the Initial Term and the Automatic Renewal Term, the “Termination Date”).

1.09 YEAR: “Year” shall mean 365 consecutive days unless the year in question is a leap year, in such case the term “Year” shall mean 366 consecutive days.

1.10 DATE OF DELIVERY OF POSSESSION: Although Tenant has had possession of the Leased Premises as of [______], pursuant to a previous lease agreement between the parties hereto, possession to the Leased Premises subject to the terms, covenants and conditions set forth in this Lease Agreement is granted by the Landlord to the Tenant as of the date hereof.

1.11 RENT COMMENCEMENT DATE: On even date hereof.

Initials

App. FF1-3
1.12 **MONTHLY RENT:** The monthly installments to be paid to Landlord shall be a gross monthly amount equivalent to [$100.00] (the “Monthly Rent”).

1.13 **EFFECT OF REFERENCE TO A DEFINED TERM IN ARTICLE I.** Each of the capitalized terms used in Article I shall be construed in accordance with the definition thereof contained in this Lease Agreement. In the event of any conflict between the defined term and the essence of the agreement set forth in this Lease Agreement, the latter shall prevail.

1.14 **EXHIBITS.** The following marked exhibits are incorporated in this Lease Agreement by reference as if set forth at length herein and form an integral part hereof:

[ X ] Exhibit A - Description of Leased Premises

[ X ] Exhibit B – Estoppel, Consent and Subordination Agreement

**ARTICLE II**
**TITLE, AUTHORITY AND DEMISE**

2.01 **Title and Authority.** Landlord represents and warrants to Tenant that Landlord is the fee simple owner of the Leased Premises described in Exhibit A hereto and, in such capacity, has full right and lawful authority to lease the Leased Premises to Tenant and to grant to Tenant all the rights pertaining thereto, subject to the liens, encumbrances and restrictions which may affect it, if any, existing as of the date hereof, more particularly described in Schedule 2.01 attached hereto and made a part hereof (the “Permitted Liens”), and the terms and conditions of this Lease Agreement and of its Exhibits. The Leased Premises will not be subject to any liens, encumbrances or restrictions, other than those imposed by this Lease, the sublease with the Operator and the Permitted Liens. Landlord covenants and agrees with Tenant that: (i) the Permitted Use of the Leased Premises is permitted under applicable laws and regulations and that no action will be taken by Landlord that may have an adverse effect on such use; and (ii) during the Term, the Leased Premises will not be subject to any liens, encumbrances or restrictions, other than those imposed by this Lease, the sublease with the Operator and the Permitted Liens.

2.02 **Demise.** Subject to the terms, covenants and conditions of this Lease Agreement, Landlord leases the Leased Premises to Tenant, together with all appurtenances and rights thereto, and Tenant accepts same subject to the terms, covenants and conditions of this Lease Agreement.
ARTICLE III
LEASE TERM AND POSSESSION

3.01 Term. The Term shall commence on the Commencement Date and expire on the Termination Date as stated in Section 1.08 hereof, unless earlier terminated in accordance with the provisions of Articles XVIII and XIX of this Lease Agreement (the “Term”).

3.02 Delivery of Possession of Leased Premises. The date all Parties have executed this Lease Agreement as set forth in Section 1.10 hereof.

ARTICLE IV
USE OF THE LEASED PREMISES, RESTRICTIONS AND OPERATIONAL REQUIREMENTS

4.01 Use of Leased Premises. Tenant shall use and occupy the Leased Premises solely and exclusively as authorized in Section 1.07 of this Lease Agreement. Tenant is authorized to sublease the Leased Premises to Operator and Tenant is hereby authorized by Landlord to vest into Operator all rights vested to Tenant hereunder. Any material change in the Permitted Use must be previously approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned, delayed or denied in any manner. Tenant shall not use the Leased Premises, or any part thereof, or knowingly permit the same to be used by it or by Operator or any other party for any illegal, immoral or improper purposes. Tenant shall not make or permit to be made any unreasonable disturbance, noise or annoyance whatsoever detrimental to the vicinity of the Leased Premises.

ARTICLE V
RENT

5.01 Monthly Rent. As of the Rent Commencement Date set forth in Section 1.11 hereof (the “Rent Commencement Date”), Tenant shall pay to Landlord the Monthly Rent set forth in Section 1.12 hereof in monthly installments in advance on or before the first (1st) day of each calendar month; provided, however, that if the Rent Commencement Date does not fall on the first (1st) day of a calendar month, the Monthly Rent for the initial partial month shall be prorated based on a thirty (30) day month and included with the first payment of Monthly Rent due the first day of the first full calendar month following the Rent Commencement Date.

5.02 Additional Rent. Any amount Tenant is obligated to pay or reimburse Landlord under this Lease Agreement that is not a Monthly Rent shall be referred to herein as “Additional Rent” and, except as otherwise stated in this Lease Agreement, shall be made at the same time as the Monthly Rent payments.
5.03 **Payment Method.** The Monthly Rent and the Additional Rent (hereinafter collectively, the “Rent”) shall be paid in legal currency of the United States of America. All Rent shall be remitted to Landlord, through a manager’s or official bank check or wire transfer or ACH debits based on Landlord’s written instructions delivered to Tenant. It is Tenant’s duty to take the necessary measures and precautions to ensure that the Rent is received by Landlord on or before its due date. The payment of Rent is separate from any other agreement or obligation contained in this Lease Agreement and shall be paid without the need of previous request or notice by Landlord, without set off, adjustment or abatement of any kind, except as otherwise provided for herein. If Tenant requests receipts for payment of any Rent from Landlord, Landlord shall promptly provide same.

**ARTICLE VI**

**ALTERATIONS AND IMPROVEMENTS**

6.01 **General Provisions.** Tenant acknowledges that it has inspected the Leased Premises before the execution of this Lease Agreement and assumes its possession in its “AS IS, WHERE IS” condition, and also acknowledges its commitment to perform at its own expense any and all reasonable repairs to the Leased Premises if the damage was in any way caused by the fault or negligence of Tenant’s boat or guests, invitees or licensees, and Tenant shall, at the expiration of the Term or any subsequent renewal terms, surrender and deliver said area, without demand, in as good order and conditions as when entered upon, ordinary wear and tear excepted. Landlord does not assume any responsibility to reimburse Tenant for any related expense.

6.02 **Alterations and Improvements.** Except as otherwise expressly set forth elsewhere in this Lease Agreement, all alterations, changes, additions or improvements necessary or convenient for the Leased Premises to be used for the purposes set forth in Section 1.07 of this Lease Agreement, including, without limitation, any fire suppression system as required by the proper authorities, all of which shall be paid for by Tenant. Tenant (and, to the extent applicable, any of its sublessees or assignees) may make alterations, changes, additions or improvements to the Leased Premises without Landlord’s prior written consent; provided, however, that Tenant shall give prior written notice to Landlord of any substantial improvements to the Leased Premises. Notwithstanding the foregoing, if and only if, Tenant intends to change the Permitted Use of the Leased Premises set forth in Section 1.07, then any improvements required by Tenant in connection therewith shall require Landlord’s prior written consent, which shall not be unreasonably withheld or denied.

6.03 **Liens and Encumbrances.** Tenant may not create nor allow the filing of any lien against the fee simple estate in the Leased Premises. Tenant (and, to the extent applicable, any of its sublessees or assignees) may encumber its leasehold interest in the Leased Premises without Landlord’s consent.
6.04 **Ownership of Improvements; Surrender.** Subject to Tenant’s right to remove any improvements upon the expiration or termination hereof as set forth in this Section 6.04, upon termination of the Lease Agreement, all alterations, changes, additions, or improvements made by Tenant to the Leased Premises shall be deemed incorporated into the Leased Premises and therefore property of Landlord, with no rights of Tenant to any compensation or reimbursement therefore by Landlord. Notwithstanding the foregoing, Tenant, in its sole discretion, may remove, at Tenant’s expense, those improvements, machinery and equipment deemed personal property of Tenant located at the Leased Premises upon termination of the Lease Agreement at Tenant’s sole cost and expense; provided, however, Tenant repairs any and all damages to the Leased Premises caused by the voluntary removal by Tenant of any such alterations, changes, additions or improvements in accordance with this Section 6.04.

**ARTICLE VII**
**MAINTENANCE AND REPAIRS**

7.01 **Tenant’s Duties and Responsibilities.**

(a) Except for those repairs that according to Section 7.02 hereof are Landlord’s responsibility, Tenant shall maintain in good condition, at its own cost and expense, the Leased Premises, with all improvements including, but not limited to, the exterior walls to the Leased Premises, the special facilities, stairs, ramps, and landscaping covering Tenant’s perimeter of the Leased Premises. Except as provided in Section 7.02 hereof, any repair to the Leased Premises is Tenant’s responsibility, unless said repair is necessary due to the negligence or intentional act of Landlord, its agents, employees or contractors. As appropriate, Tenant shall (i) repair or replace doors, windows and their frames; the electrical system; the air conditioning and/or ventilation system; the plumbing, sanitary and sewage systems as well as the equipment, machinery, facilities or objects within the Leased Premises or that form part of the Leased Premises with the same type and quality; and (ii) paint the interior and exterior of the Building.

(b) Tenant shall also maintain the Leased Premises reasonably free (i) of insects, rodents and pests; (ii) of garbage, refuse, debris and any other solid waste; and (iii) from unpleasant or offensive odors. Moreover, Tenant shall maintain the drainage and sewer systems of the Leased Premises free from obstructions.

(c) If Tenant fails to make any repair or if any repair is performed in an incomplete, unsafe or in a manner contrary to applicable laws, rules or regulations, or if required equipment is not replaced when necessary, Landlord may, but is not obligated to, undertake any such repair or replacement as set forth in Section 22.15 hereof. Tenant shall hold Landlord harmless from any damage or inconvenience suffered by Tenant.
due to any repairs performed by Landlord as provided in this paragraph, and Tenant shall have no rights of adjustment or reduction in Rent in connection therewith.

(d) Tenant shall perform all maintenance work necessary to ensure that all its equipment and operations fully comply with the applicable fire prevention standards and such other applicable laws, including, but not limited to, the Environmental Statutes.

(e) The provisions of this Section 7.01 shall not be applicable in the case of damage or destruction resulting from fire or any other event covered by Article XII of this Lease Agreement.

7.02 **Landlord’s Duties and Responsibilities.** Landlord shall make any repair that is necessary due to (i) defects in the structure or design of the Building or construction defects, and (ii) the negligence or intentional act of Landlord, its agents, employees or contractors, in a diligent and workmanlike manner, maintaining at a minimum any interruption to Tenant’s (and, to the extent applicable, any of its sublessees or assignees) use and operations at the Leased Premises.

Landlord shall be responsible for providing adequate and unobstructed access to Tenant to the Leased Premises at all times, including without limitation, means of access, ingress and egress from public streets, entrances, electrical transformer areas, pedestrian ways, utility and sewer lines and facilities, among others.

Landlord shall maintain all the common areas, properties adjacent and surrounding the Leased Premises, as applicable, with (i) adequate pests’ controls; (ii) safe and in clean conditions, free of garbage, refuse, debris and any other solid waste other than in compliance with all applicable laws and regulations; and (iii) free from unpleasant or offensive odors. Moreover, Landlord shall maintain (i) the drainage and sewer systems of all the properties adjacent and surrounding the Leased Premises free from obstructions; and (ii) all common areas utilities, including lines, wires and conduits in adequate and good working conditions.

**ARTICLE VIII**
**UTILITIES**

8.01 **Tenant’s Duties and Responsibilities.** Tenant shall pay for the cost of electricity, light, heat, water, sewer, sanitation, gas, telephone, garbage, fuel, janitorial and any other utility service incident to Tenant’s use of the Leased Premises during the Term of this Lease Agreement. To the extent applicable, Tenant shall request and coordinate with Landlord the installation of metering devices and other mechanisms or systems necessary to obtain the various utility services for the Leased Premises and shall be liable for any deposit and/or installation charge reasonably required by Landlord, the corresponding agency or utility company. Landlord shall provide all reasonably requested assistance Tenant (and, to the
extent applicable, any of its sublessees or assignees) may require to obtain the necessary utility service for the operation of the Leased Premises.

8.02 **Service Interruption.** Tenant shall not adjust the Rent nor hold Landlord liable for any utility service interruption to the Leased Premises or for damages suffered due to any interruption, unless the interruption is for more than three (3) days and was caused by the direct acts or omissions of Landlord or Landlord’s contractors, servants, employees or agents. Landlord shall provide all reasonably requested assistance Tenant may require to restore interrupted utility service to the Leased Premises as expeditiously as possible. If the utility service is interrupted due to the negligence of Landlord, its agents or employees, there shall be a prorated abatement to the Rent and all other charges payable by Tenant pursuant to this Lease based on the amount of time and area deemed nonfunctional by Tenant (such abatement to occur without any notice and cure period).

**ARTICLE IX**
**QUIET ENJOYMENT**

9.01 **Quiet Enjoyment.** Upon Tenant’s payment of Rent and observance of all other terms, covenants and conditions of this Lease Agreement that are to be observed and performed by Tenant, Landlord covenants that Tenant may peaceably and quietly enjoy the Leased Premises, during the Term, or until the termination of the Lease Agreement in accordance with Article XVIII.

**ARTICLE X**
**TAXES, ASSESSMENTS AND DUTIES**

10.01 **Taxes, Assessments and Duties.** Landlord shall pay all real estate taxes and assessments on the Leased Premises, whether regular or special, levied or assessed by the lawful taxing authorities, less any tax exemptions, refunds and abatements granted pursuant to any law or ordinance and less any discounts related to such real estate taxes. Landlord shall pay and discharge all real estate taxes during the Term before they become delinquent and shall make all payments required to be made under the terms of any mortgage or other security instrument which is now or may hereafter constitute a lien on the Leased Premises or any part thereof and which lien is superior to this Lease, if any.

Tenant shall be liable for the payment of all taxes, assessments, duties or any other tax levied by any government entity having taxing authority over fixtures, personal property, and/or the activities directly or indirectly related to Tenant’s operations at the Leased Premises, including, but not limited to, personal property taxes on equipment and machinery of Tenant (or Operator or any other subtenant, as applicable) located at the Leased Premises, but excluding real property taxes. Tenant and Landlord shall pay these taxes, assessments, and duties before their due date. If Tenant has a colorable basis to claim that a tax, assessment or
duty is not due, Tenant is not prohibited by this Article from contesting such tax, assessment or duty, with or without payment, and, by reason of such contest and/or non-payment shall not be in default of this Article.

ARTICLE XI
GOVERNMENTAL APPROVALS; ENVIRONMENTAL

11.01 Governmental Regulations and Environmental Protection.

(a) Governmental Compliance. Landlord covenants, represents and warrants that, as of the date of this Lease, the Premises are in compliance with all Environmental Statutes (as defined below), and there are no hazardous substances on, in or under the Building or the land of the Leased Premises. Tenant shall comply with all laws, rules, regulations, executive orders, administrative orders and requirements of local and federal governmental agencies having jurisdiction over Tenant’s operations at the Leased Premises. Tenant shall, at Landlord’s request, submit evidence of said compliance of any permits, and agency endorsements that may be required by applicable law for Tenant to obtain to use and possess the Leased Premises. Tenant shall conduct all of its operations at the Leased Premises in compliance with all federal, state and local statutes (including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (October 17, 1986) (“CERCLA”); the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. (“RCRA”), and all applicable federal and local statutes related to the environment, now or hereafter enacted, and any additions and amendments thereto and regulations enacted thereunder, ordinances, regulations, orders and requirements of common law, regarding, but not limited to, (i) discharges to the air, soil, surface or groundwater; and (ii) handling, utilizing, storage, treatment or disposal of any hazardous substances or toxic substances as defined therein (“Environmental Statutes”). Tenant shall deliver to Landlord copies of any and all permits, authorizations, certifications and any other documents which certify Tenant’s compliance with the Environmental Statutes and governmental requirements.

(b) Hazardous Substances. Tenant, at its own cost and expense, shall install on the Leased Premises the reasonably necessary equipment to prevent its operations from unreasonably affecting adversely the environmental integrity of the Leased Premises, or causing any unreasonable disturbance to the adjacent properties or to the community in general. Tenant will not treat, store or dispose of any hazardous substance at the Leased Premises, unless Tenant possesses the necessary permits from the agencies with jurisdiction and such activities are performed in compliance with applicable regulations and the terms and conditions of the permit. Tenant will
not generate or store any hazardous substance or waste at the Leased Premises without first obtaining any applicable permits from the local and federal agencies with jurisdiction. The generation and storage of hazardous substances shall be conducted in compliance with applicable Environmental Statutes. Also, Tenant shall not store hazardous waste at the Leased Premises, without first giving notice to Landlord of the location of the storage area and providing evidence of compliance with state and federal regulations as well with the measures Landlord reasonably considers necessary to protect the Leased Premises. At no time shall Tenant dispose of any hazardous substances or waste at the Leased Premises or the ocean body.

Non-hazardous solid waste generated from the operations at the Leased Premises shall be stored, handled, transported and disposed of in accordance with the applicable local and federal laws and regulations.

(c) Reports to Landlord. In addition to any other information or document that may be required hereunder, Tenant shall provide Landlord with (i) written notice, within forty-eight (48) hours, of any discharge or environmental pollution event that requires verbal or written notice to any governmental entity, together with, a copy of any order, communication or report regarding the event. This includes, but is not limited to, any notice required under the provisions of the “Emergency Planning and Community Right to Know Act”; and (ii) written notice within forty-eight (48) hours of any change to the hazardous materials handled at the Leased Premises, or if Tenant observes or has any knowledge of an environmental problem at the Leased Premises even if such problem is not a result of Tenant’s activities; and (iii) a copy of any required permits previously stated under Subsection (a) of this Section 11.01.

(d) Audits and Access to the Leased Premises. Subject to providing twenty (20) days prior written notice to Tenant and within normal business hours, except in the case of an emergency, Landlord reserves the right to reasonably inspect the Leased Premises, and to authorize the local and federal agencies from time to time, during the Term of this Lease Agreement as reasonably deemed necessary, to enter the Leased Premises for the purpose of evaluating the environmental condition of the Leased Premises, and as to Tenant’s compliance with Environmental Statutes. Tenant, for this purpose, will provide Landlord and the regulators with access to all areas or structures on the Leased Premises, provided further, Landlord does not hinder or interfere with Tenant’s use and operations at the Leased Premises. Tenant shall provide access to all the books, registers, documents or instruments that the regulators deem necessary to determine the environmental condition of the Leased Premises, or compliance with environmental regulations, provided further, regulators do not hinder or interfere with Tenant’s use and operations at the Leased Premises.
(e) **Emergency Remediation Response Action.** In the event of any hazardous substance spill, leak, or escape or any other occurrence during the period of Tenant’s operations at the Leased Premises that represent an immediate danger, or threat of an immediate danger, to human health or the environment solely as a result of Tenant’s acts or omissions at the Leased Premises, Tenant shall be responsible to initiate removal or remediation immediately. In such case, Tenant shall be responsible for hiring, at its own expense, those companies with proven experience and reputation to perform said removal activities and/or environmental remediation and shall carry out all the necessary negotiations to accomplish said removal and/or remediation. Unless, in the reasonable judgment of the Tenant it is an emergency or it is imprudent in consideration of human health or the protection of the environment to do so, prior to the formation of any contractual agreement with any company or consultant for the removal and/or, remediation, the company or consultant must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned, delayed or denied in any manner. All other remediation work or removal of hazardous substances not contemplated in the first sentence of this paragraph (e) shall be the responsibility of Landlord and shall be performed at Landlord’s sole cost and expense.

Should any environmental mishap occur, such as, but not limited to, a spill, release or leak that poses an imminent danger to human health or to the environment, in addition to taking all such protective measures, responses and notifications as are required by environmental laws, regulations, and permits, Tenant may cease its operations if Tenant’s operations are the direct cause of said environmental mishap, until said mishap is controlled and all risk to human life or to the environment is suppressed.

(f) **Environmental Conditions Liability.** Tenant shall be liable for any environmental damage and the necessary or remedial action resulting solely from Tenant’s operations at the Leased Premises. Tenant shall indemnify Landlord for any lawsuit, civil or criminal action, administrative action, fine, claim, remedial action and/or clean-up and/or pollutant removal action, toxic or hazardous substance or waste as defined in local and federal laws and regulations that may arise as a result of Tenant’s operations. The term contaminant includes petroleum and its derivatives, asbestos, and PCB. Tenant shall also be liable and shall indemnify Landlord for any complaint, civil or criminal action, administrative action, fine or claim that arises as a result of any violation of any Environmental Statute from any local or federal governmental entity that arises as a result of Tenant’s operations or during the Term Tenant occupied the Leased Premises. Tenant’s liability toward Landlord and its obligation to indemnify Landlord shall survive the termination of this Lease Agreement. Tenant will not be liable for preexisting environmental conditions, nor any environmental condition related to adjoining properties.
ARTICLE XI
DESTRUCTION OF THE LEASED PREMISES

12.01 Notice of Event. Tenant shall notify Landlord within five (5) days after any fire, explosion, spill of hazardous wastes or pollutants (except as otherwise provided in Article XI) or any other kind of accident or extraordinary event which causes or threatens significant damage to the Leased Premises.

12.02 Landlord’s Duty to Repair. Landlord disclaims any responsibility to repair or restore the Leased Premises after damage by fire, explosion or any other casualty covered by Tenant’s insurance policies.

12.03 Tenant’s Duty to Repair. In the event that, at any time during the Lease Term, the Leased Premises shall be damaged or destroyed (partially or totally) by fire or any other casualty insurable under a standard fire and extended coverage endorsement, unless otherwise set forth herein, Tenant shall, at its expense, promptly and with due diligence and in compliance with applicable governmental regulations, either (i) repair, rebuild and restore the same, as nearly as practicable, to the condition existing just prior to such damage or destruction or (ii) repair, rebuild and restore the same for the same use and purposes, but in accordance with such plans and specifications similar to those used by Tenant for the construction of the improvements at the Leased Premises; provided, however, the repaired, rebuilt or replaced building will have a value not less than its value just prior to said loss.

Anything herein to the contrary notwithstanding, it is understood and agreed that if (i) as a result of any such damage or destruction during the last two (2) years of the Lease Term, Tenant’s fixtures, equipment or other property shall be damaged or destroyed and the replacement cost thereof exceeds [___________ DOLLARS ($___________)]; (ii) such damage or destruction shall have taken place within five (5) years of the then scheduled expiration date of the current Lease Term and if the extent of such damage or destruction is such that the cost of restoration would exceed fifty percent (50%) of the amount it would have cost to replace the damaged or destroyed improvements, in its entirety, at the time such damage or destruction took place; or (iii) the damage or destruction cannot be repaired in a period of one hundred twenty (120) days from the day of the date of the casualty or destruction, then and, in either of such event, Tenant may terminate this Lease as of the date of such damage or destruction by giving written notice to Landlord within thirty (30) days thereafter and Tenant shall have an additional sixty (60) days, within which to remove its property from Leased Premises and during such period Tenant shall have no obligation to remit Monthly Rent, Additional Rental or any other charges due and payable pursuant to the provisions of this Lease. In the event that Tenant terminates this Lease as permitted under this Section 12.03, then all insurance proceeds pertaining to any improvements at the Leased Premises payable in connection with the casualty thereof shall be allocated as follows: [●]%

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to Tenant and [●]% to Landlord, and except for the payment of Rent due to Landlord up to the date of the casualty or destruction, the Parties shall be released of any further liability under this Lease Agreement.

12.04 **Total Destruction.** Subject to Article 12.03, if the Leased Premises are substantially or totally destroyed by any cause whatsoever, and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate as of the date the destruction occurred, unless Tenant has notified to Landlord its interest to relocate to another premise owned by Landlord, if available. If another premise is available for rent, Tenant shall have the right to relocate to the other facility within one hundred eighty (180) days as of the date the destruction occurred to commence operations thereunder and the Rent shall be adjusted by any reduction or increase in square footage area compared to the superficial area of the Leased Premises. Notwithstanding the foregoing, in the event that Tenant terminates this Lease as permitted under this Section 12.04, then all insurance proceeds pertaining to any improvements at the Leased Premises payable in connection with the casualty thereof shall be allocated as follows: [●]% to Tenant and [●]% to Landlord, and except for the payment of Rent due to Landlord up to the date of the casualty or destruction, the Parties shall be released of any further liability under this Lease Agreement.

12.05 **Rent Adjustment.** During any period commencing upon the date of such damage or destruction by fire, the elements or any other casualty whatsoever, and ending upon the date Tenant reopens for business, the Monthly Rent, Additional Rental and any other charges payable by Tenant pursuant to this Lease shall abate. Should this Lease Agreement terminate due to casualty or destruction under this Article XII, the Rent shall be due until the date of the casualty or destruction.

**ARTICLE XIII**

**WAIVER OF CLAIMS**

13.01 **Waiver of Claims.** Other than as provided in the Lease Agreement and provided that there are no negligent acts or omissions, or willful misconduct on the part of Landlord, Landlord shall not be liable, and Tenant releases Landlord and waives any claim against Landlord, for any damage to or loss of any property located at the Leased Premises which belongs to Tenant and/or its agents, employees, invitees and/or visitors, and for any other damage or loss suffered by Tenant, or any damage or loss to Tenant which arises from fire, steam, or smoke; short circuit; water, electricity, gas or other utility failure; rain, storms, hurricanes or other weather conditions; flood or leakage; defects in pipes, cables, appliances, plumbing and/or air conditioning systems, regardless if such damage or inconvenience is the result of the condition or working order of the Leased Premises, or any part of it. Landlord shall not be liable for any damage or loss suffered by Tenant and/or its agents, employees, invitees and visitors as a result of criminal conduct, intentional acts, and/or negligent or intentional acts of a third party or of Tenant, its agents, employees, invitees and/or visitors. Tenant
waives and shall be barred from filing any claim against Landlord for any damage or loss at the Leased Premises or to any person or property within the Leased Premises for any cause other than the willful act or negligence of Landlord.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur or that may result of either Party’s performance or non-performance of this Lease Agreement.

13.02 Tenant Responsible for Personal Property. Tenant recognizes that Landlord shall not be liable and waives any claim for any damage to personal property in the Leased Premises that belongs to Tenant, or for the theft or misappropriation thereof. Tenant bears all risk for any damage or loss of any personal property of Tenant.

ARTICLE XIV
INDEMNIFICATION

14.01 Indemnification by Tenant. Provided that there are no negligent acts or omissions, or willful misconduct on the part of Landlord, Tenant shall defend, indemnify and hold harmless Landlord, its directors, officers, employees, invitees, representatives, successors and assignees of liability from any loss, claim, fine, penalty, action or complaint of any type or kind, including any incidental expense or cost (including, but not limited to, defense costs, settlement and attorney fees) (i) in relation to or as a consequence of any damage to a third party (including death), or any damage, loss or destruction of any third party’s property, (a) in or around the Leased Premises due to any negligent act or omission of the Tenant or any of its employees (whether or not said act is within the scope of employee’s job), agents, authorized persons, visitors, successors or assignees, or caused wholly or in part by any negligent act or omission of any of the foregoing, or (b) due to the use or occupation of the Leased Premises by Tenant, its agents, employees, invitees, or visitors; (ii) violation of any federal or state law or regulation, or municipal ordinance, or of any judicial or administrative order, as a direct or indirect consequence of the use or occupation of the Leased Premises by Tenant; or (iii) due to breach of any of Tenant’s obligations under this Lease Agreement. The provisions of this Section 14.01 shall survive and remain in full force after the expiration of the Term or the termination of this Lease Agreement.

14.02 Indemnification by Landlord. Provided that there are no negligent acts or omissions, or willful misconduct on the part of Tenant, Landlord shall defend, indemnify and hold harmless Tenant, its directors, officers, employees, invitees, representatives, successors and assignees of liability from any loss, claim, fine, penalty, action or complaint of any type or kind, including any incidental expense or cost (including, but not limited to, defense costs, settlement and attorney fees) (i) in relation to or as a consequence of any damage to a third party (including death), or any damage, loss or destruction of any third party’s property, (a) in or around the Facility, including, without limitation, the Leased Premises due to any
negligent act or omission of the Landlord or any of its employees (whether or not said act is within the scope of employee’s job), agents, authorized persons, visitors, successors or assignees, or caused wholly or in part by any act or omission of any of the foregoing; (ii) violation of any federal or state law or regulation, or municipal ordinance, or of any judicial or administrative order, as a direct or indirect consequence of fee simple ownership to the Leased Premises or leasing the same to Tenant; or (iii) due to breach of any of Landlord’s obligations under this Lease Agreement. The provisions of this Section 14.02 shall survive and remain in full force after the expiration of the Term or the termination of this Lease Agreement.

ARTICLE XV
INSURANCE

15.01 Insurance. During the Term of this Lease Agreement, Tenant shall maintain in force the following insurance policies:

(a) commercial general liability, including contractual liability, on an “occurrence” basis in minimum amounts of $1,000,000.00 for any one occurrence and annual aggregate, which will insure Tenant against any claim for accidents in or around the Leased Premises due to use or occupation of the Leased Premises by Tenant. This insurance shall include Landlord and its agents, officers, directors and employees as additional insured; and

(b) property insurance with “All Risk” coverage, for one hundred percent (100%) real property replacement cost, including foundations, with an extended coverage endorsement, which names Landlord as beneficiary in case of loss. This insurance shall include coverage for fire, hurricanes, floods, earthquakes and other events of a similar nature, vandalism and malicious mischief, boilers and machinery (if applicable) in building format and content, including all changes, alterations, extensions and improvements made by Tenant to the Leased Premises.

15.02 Insurance Policy Increase. Tenant will pay any premium increase required by an insurance company to cover additional risks resulting from any alteration, change, addition or improvement made by Tenant to the Leased Premises.

15.03 General Requirements. All insurance policies required of Tenant under this Article XV must comply in form and substance to Landlord’s reasonable requirements, and must provide the following: (i) that the insurance coverage may not be reduced, canceled or not renewed by the insurance company without written notice to Landlord and Tenant at least thirty (30) days in advance (unless said cancellation is due to failure to pay premium, in which case notice must be sent at least thirty (30) days in advance); and (ii) that the policy shall be immediately renewed by Tenant on or before its expiration date. Tenant must obtain
said policies from insurance companies duly authorized to do business in Puerto Rico, and acceptable to Landlord, such acceptability not to be unreasonably withheld, conditioned or delayed in any manner. Said insurance companies shall have a classification of not less than [“B-”] and a financial rating of [“IV”] or better, as rated by A.M. Best and Company. Any insurance company meeting such requirements shall be accepted by the Landlord except for good cause shown.

15.04 **Insurance Certificates.** Before the Date of Delivery of Possession Tenant shall submit to Landlord the policies (or certified copies of the same) required under this Article XV with all the mentioned endorsements, and certificates of insurance which evidence the coverage required by Section 15.01 of this Lease Agreement. Tenant expressly recognizes Landlord’s right not to deliver the Leased Premises to Tenant until two (2) days after the policies (or certified copies) and the insurance certificates have been submitted to Landlord, as required in this section.

15.05 **Evidence of Payment; Renewal of Policies.** Tenant must deliver to Landlord satisfactory evidence of payment of the insurance premiums within fifteen (15) days of the respective renewal dates of the respective policies and at the same time submit the corresponding insurance certificate or certified copy of each renewed policy.

15.06 **Landlord Insurance.** During the Term, Landlord shall obtain and keep in force property insurance containing coverage at least as broad as ISO Special Form coverage in effect as of the Date of this Lease and as subsequently revised or amended during the Term, insuring against all risks of direct physical loss or damage, including without limitation endorsements for tornado, flood and earthquake damage, water damage, if and when required by the corresponding governmental authority, in an amount equal to the full insurable replacement cost at the time of loss (without deduction for depreciation, but exclusive of the cost for excavations or foundations) of the structures located at the Leased Premises or its common areas, if applicable, including any improvements and betterments made to the Leased Premises (except any of Tenant’s improvements which shall be insured by Tenant), and containing an agreed valuation provision in lieu of any co-insurance clause.

Additionally, Landlord shall obtain and keep in place throughout the Term commercial general liability insurance written on an “occurrence” basis in minimum amounts of $1,000,000.00 for any one occurrence and annual aggregate, [such limits to apply per location] with respect to bodily injury, personal injury and property damage liability coverage, combined single limits for the adjoining areas of the Leased Premises, insuring against liability for bodily injury, personal injury, or loss or damage to property occurring on, in or about such adjoining areas of the Leased Premises owned by Landlord.

15.07 **Claims.** Tenant shall cooperate with Landlord in the collection of claims against the corresponding insurance companies in those cases where Landlord handles such claims,
including the preparation of damage reports and other documents required to process the claim. In the event Tenant does not provide said documents, Landlord, as Tenant’s agent and attorney-in-fact, shall, in addition to any other remedy available to Landlord, execute and submit any evidence of loss and/or any other document necessary for collection of the claim.

15.07 **Waiver of Subrogation.** (a) Landlord and Tenant agree that all fire and extended coverage and other property damage insurance carried by either of them in relation to the Leased Premises shall be endorsed with a clause providing that any release from liability or waiver of claim for recovery from the other Party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder, provided that the insurer waives all rights of subrogation which such insurer might have against the other party. Any release or any waiver of claim shall not be operative in any case where the effect of such release or waiver is to invalidate any insurance coverage or invalidate the right of the insured to recover thereunder. Should any waiver of subrogation result in a premium increase, Tenant shall, within ten (10) days of notice, pay said increase in order to maintain the effectiveness said release or waiver.

(b) Neither Landlord nor Tenant shall be liable to the other or the insurance company that provided the coverage for any loss or damage to any building or structure of the Leased Premises for the loss of income either through subrogation or any other form, regardless if such loss or damage be, in whole or in part, caused by a negligent act or omission of the other Party, its agents, officers, directors or employees, to the extent that such loss or damage is covered by insurance policy in favor of the affected Party.

**ARTICLE XVI**

**LANDLORD’S RIGHTS**

16.01 **Access to Leased Premises.** Landlord shall be entitled to enter the Leased Premises for the purposes of reasonable inspection, to perform any repairs or work required pursuant to the provisions of this Lease Agreement, or for those repairs or work which Tenant has failed to do despite being responsible therefore under this Lease Agreement, or to show the Leased Premises to persons interested to lease or acquire the same during the last thirty (30) days of the Lease Term. This right to access is subject to the following conditions: (a) if due to any emergency situation, which Landlord shall determine at its reasonable discretion, Landlord shall have full access to the Leased Premises at any time; and (b) under any other circumstances, provided prior five (5) business days’ notice to Tenant and its sublessee, licensees or assignees, Landlord shall have access to the Leased Premises during normal business hours; and (c) Landlord must maintain at a minimum any interruption to Tenant’s operations during any exercise of its rights under this Article; and (d) under any circumstance, and at all times, all Landlord personnel entering upon the Leased Premises must be either qualified to be present on the Leased Premises or must be escorted (see
below), and must always wear all personal protective equipment required by Tenant and must always abide by all health, safety and security requirements of Tenant, and any failure to comply with such rules concerning personal protective equipment or the health, safety or security requirements of Tenant shall be a basis for immediate ejection from the Leased Premises of such Landlord personnel who fails to comply. Tenant shall have the right at all times to escort Landlord personnel through the Leased Premises during any inspection.

ARTICLE XVII
TERMINATION BY BREACH OF TENANT

17.01 Breach by Tenant as Cause for Termination. In addition to, and separate from, any other cause for termination set forth in this Lease Agreement or available under applicable law, each of the following events or acts shall be considered a breach and constitute cause for termination, which termination will be effective upon written notice to Tenant:

(a) Tenant’s failure to pay the Monthly Rent to Landlord within fifteen (15) days from the term provided in Section 5.01 of this Lease Agreement, or upon failure to pay any other sum required to be paid hereunder within sixty (60) days after its due date;

(b) Tenant’s abandonment of the Leased Premises (as defined in Section 17.02 of this Lease Agreement), upon certification of such abandonment by the procedure provided in clause (b) of Section 17.02; and

(c) Tenant’s failure to comply with any of Tenant’s principal or material obligations hereunder within sixty (60) days of receipt of written notice from Landlord requesting performance of any principal obligation. However, if Tenant shall have begun efforts toward performance within said sixty (60) day period and continues to act diligently and makes every reasonable effort to perform, said period of sixty (60) days may be extended by Landlord for a maximum period of ninety (90) days, as necessary for Tenant’s performance of any principal obligation, or such longer period as may be agreed to between the Parties. Principal obligations under this Lease Agreement are limited to the following:

(i) the obligation of Tenant, when required hereunder, to submit any plans for Landlord’s approval or any other information in connection with improvements and alterations to be made by Tenant to the Leased Premises;

(ii) the compliance by Tenant of the environmental provisions of Article XI of this Lease Agreement; and
the prohibition to use or allow the Leased Premises or any part thereof to be used for illegal purposes or for a use that is not permitted by Section 1.07.

17.02 Abandonment. Tenant recognizes that the delivery to Landlord of the keys to the Leased Premises constitutes conclusive proof of Tenant’s intention to abandon the Leased Premises and any equipment, machinery, furniture or other property found within. Tenant also recognizes the fact that the voluntary abandonment of any property at the Leased Premises through the delivery of the keys is incontrovertible evidence of Tenant’s decision to forsake such property and renounce ownership thereof, giving Landlord the absolute right to dispose of said property, as established in clause (b) (ii) below.

(a) For the purposes of this Lease Agreement, Tenant has abandoned the Leased Premises upon the occurrence of any of the following events:

(i) should the Tenant deliver to Landlord the keys to the Leased Premises;

(ii) should the Tenant cease operations and close down the Leased Premises for consecutive period of thirty (30) calendar days or more, provided no Force Majeure has occurred, notwithstanding that equipment, machinery, furniture or other property remain thereat; and/or

(iii) if Tenant removes or transfers its operations, personnel or equipment at the Leased Premises to another location, without the consent of Landlord.

(b) The following procedure is adopted by the Parties to confirm the act of “abandonment” by Tenant under clause (a) of this Section 17.02:

(i) If Tenant has incurred in any act of abandonment described in Section 17.02(a) hereof, Landlord will send Tenant, by certified mail, return receipt requested, a notice which will describe the act of abandonment committed by Tenant. From the date of said notice, Tenant shall have fifteen (15) days to discontinue the abandonment or to dispute in writing the information contained in Landlord’s notice. Should the act of abandonment notified by Landlord continue for more than the fifteen (15) days provided herein, Landlord shall send a second notice to reconfirm the act of abandonment, which notice will be effective at the time the notice is sent.
(ii) Once the act of abandonment is reconfirmed as provided in clause (b)(i) above, Landlord may declare this Lease Agreement terminated by notice to Tenant and such termination shall be effective as of the date mailed. The notice will contain a request to Tenant to remove within ten (10) days all equipment, machinery, furniture or other property remaining at the Leased Premises, and contain a warning to Tenant that if such property is not removed in that time period, Landlord may either remove and store said property, at its own discretion, at the expense and cost of Tenant, or dispose freely of said property as it deems convenient and Tenant will have no right to claim or be compensated for the value of the abandoned property or for any damage or loss caused by such removal by Landlord.

(c) Subject to the performance of the procedure previously described, Tenant waives any claim and releases and holds Landlord harmless from any damage or loss that Tenant may suffer as a consequence of the removal and disposal of the property that Tenant has abandoned at the Leased Premises.

ARTICLE XIX
LANDLORD’S REMEDIES

18.01 Landlord’s Options.

(a) Landlord may terminate this Lease Agreement upon occurrence of any of the events of termination set forth in Sections 17.01 and 17.02 hereof. Said notice shall be given by certified mail with return receipt requested. The termination of this Lease shall become effective on the date indicated in said notice.

(b) Notwithstanding subsection (a), Landlord may always compel specific performance of the terms and conditions of this Lease Agreement and demand and protect its rights under this Lease Agreement through legal proceedings in law or equity to obtain the faithful performance of the covenants and obligations hereunder, including the payment of all amounts due under this Lease Agreement.

(c) Should any cause for termination arise, Landlord shall have available all the rights and remedies provided herein, which are separate and independent.

ARTICLE XIX
LANDLORD DEFAULT

19.01 Landlord Default. The following shall constitute an event of default on the part of Landlord (“Landlord Event of Default”) under this Lease Agreement:

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(a) Landlord fails to comply with any provision of this Lease Agreement in any material respect;

(b) If any third-party contests Landlord’s legal authority to enter into this Lease Agreement and/or if any third party contests the fee simple title of Landlord under this Lease Agreement and said third party prevails in its contest;

(c) If for any reason attributable to Landlord, Tenant loses quiet and peaceful enjoyment of the Leased Premises;

(d) If at any time during the Term, Tenant discovers any hidden structural damages or hazardous substances at the Leased Premises which may cause environmental claims related to a period prior to Tenant’s operation at the Leased Premises or due to Landlord’s negligence or willful misconduct, and after a reasonable time Landlord fails to repair or cure the same; and/or

(e) If Landlord fails to deliver possession of the Leased Premises to Tenant as of the execution of this Lease Agreement.

Notwithstanding the foregoing, Landlord may cure or remedy such failure or breach within fifteen (15) days of receipt of written notice from Tenant requesting performance, or if such failure or breach cannot be cured within such fifteen (15) day period, provided Landlord has commenced to cure such failure within such period, such cure period may be extended by Tenant for a maximum period of sixty (60) days, as necessary.

19.02 **Termination by Tenant.** Tenant may terminate this Lease Agreement at any time, without penalty, should any of the following events occur:

(a) any Landlord Event of Default; and/or

(b) for any reason or for no reason, the Tenant in its discretion determines that the Leased Premises are no longer suitable for the Tenant, in which case the Tenant need only provide Landlord with thirty (30) days advance notice of termination.

**ARTICLE XX**

**RETURN OF LEASED PREMISES**

20.01 **Surrender of Possession.** Upon termination of this Lease Agreement, at the expiration of the Term or otherwise, Tenant must vacate and surrender the Leased Premises to Landlord in
good condition, reasonable wear and tear excepted, including all improvements, changes, or alterations made thereto.

20.02 **Holding Over.** Should Tenant hold over and remain in possession of the Leased Premises after the expiration or termination of the Term, such holdover shall constitute a tenancy from month to month basis on the same terms and conditions set forth in this Lease and at the same Rent payable for the last month of the Term. Tenant may at any time terminate such tenancy upon not less than thirty (30) days prior written notice to the Landlord.

20.03 **Equipment, Machinery, and Furniture Not Removed.** Any equipment, machinery, furniture or other property of Tenant remaining at the Leased Premises after termination of the Term or the termination of this Lease Agreement may be removed by Landlord and stored in another location, and Tenant will be responsible for the removal and storage costs. In no event shall Landlord be liable for the value, preservation, or care of said property. Any sum that Landlord must pay or spend for removal and storage of the property shall be reimbursed by Tenant. Any equipment, machinery, furniture or other property not claimed within a term of thirty (30) days after the expiration or termination of this Lease Agreement, shall be deemed abandoned by Tenant. At Landlord’s option, the property deemed abandoned by Tenant shall be transferred to Landlord without any other formality or document, and Landlord shall be entitled to freely dispose of the same without Tenant having any right or claim to any payment or consideration for said property.

20.05 **Tenant’s Liabilities.** Unless otherwise set forth in this Lease Agreement, neither the expiration or termination of this Lease Agreement (except for permitted Tenant’s terminations set forth in **Section 9.02** hereof), nor the repossession of the Leased Premises or part thereof, nor the reletting of the Leased Premises or any part thereof, pursuant to the provisions hereof, shall release the Tenant of its financial or other obligations under this Lease Agreement, which obligations shall survive the expiration or termination of this Lease Agreement, as well as repossession or reletting of the Leased Premises for a period of six (6) months as of termination of this Lease.

**ARTICLE XXI**
**ASSIGNMENT AND SUBLEASE**

21.01 **Assignment and Sublease.** Tenant (or any assignee, subtenant or concessionaire thereof, including, without limitation, the Operator) may, without the prior written consent of Landlord, (i) assign this Lease Agreement, sublet the Leased Premises or any part thereof, mortgage its leasehold right over the Leased Premises or otherwise place a lien upon its right or any interest in this Lease Agreement in favor of any person or entity; (ii) allow by operation of law the constitution of any lien over Tenant’s leasehold right over the Leased Premises or the transfer of Tenant’s leasehold right over the Leased Premises to a third party; (iii) allow the use or occupation of the Leased Premises, or part thereof, by any person.
or entity that is not Tenant, its agents or employees, subject to the Permitted Use. For the avoidance of doubt, Tenant may assign, transfer or sublet all or part of the Leased Premises to a third party with whom Tenant has a Partnership Agreement, as defined in Act No. 29-2009, as amended, known as the Public-Private Partnerships Act, without the consent of Landlord. It is a condition precedent to any assignment, transfer or sublease of the Leased Premises, in whole or in part, to not unreasonably interrupt the cargo and passenger service provided at the Leased Premises.

ARTICLE XXII
GENERAL PROVISIONS

22.01 Signs and Advertising. Tenant shall have the right to erect and maintain signs within the Leased Premises and to place its name and logo on any Building(s) or structure(s), subject to applicable laws and regulations. Any of the signage erected and installed in any part of the Leased Premises shall be at Tenant’s sole cost and expense. Landlord shall not permit the installation or erection of any advertising, signs, banners, placards, or other written material or any other structures on or in the Leased Premises which obstructs the view of any regulatory signage or other signs of Landlord or other tenants, or which become a nuisance to Landlord or other tenants. Landlord and Tenant agree that any signage to be erected, installed, maintained or replaced on and upon the Leased Premises shall be tasteful and aesthetically pleasing, shall not (i) affect the aesthetics of the Leased Premises and the improvements therein, and (ii) shall be in accordance with applicable laws and Landlord’s guidelines and specifications.

22.02 Parking. Should the number of parking spaces available at the Leased Premises not satisfy Tenant’s requirements, Landlord shall not be responsible for Tenant’s parking requirements, and Tenant hereby releases Landlord of any duty or responsibility with respect to parking.

22.03 Attorneys’ Fees. Each Party shall pay their own reasonable charges and expenses, including court costs and reasonable attorneys’ fees in any action or enforcement of this Lease Agreement.

22.04 Successors and Assignees. This Lease Agreement shall bind and inure to the benefit of each of the Parties, in their respective capacities as Landlord and Tenant, and their respective successors and assigns; provided, however, should title to the Leased Premises be transferred, either voluntarily or involuntarily or by operation of law, the entity or natural person acquiring title shall take title subject to the obligations to perform this Lease Agreement and Landlord hereby agrees to enforce this covenant in any such event.
22.05 Subordination; Sale, Transfer or Conveyance.

(a) Landlord shall require and cause all mortgagees, trustees or holders (collectively or individually the “Holder”) of any existing mortgage, indenture of mortgage, deed of trust, debenture or any other instrument creating a lien, security interest or similar encumbrance on, or a right to terminate Landlord’s interest in, all or any part of the Leased Premises (collectively referred to herein as the “Security Instrument”), to be subordinated to this Lease. Consequently, Landlord shall cause the Holder to execute a subordination, non-disturbance and attornment agreement (“SNDA”) in such form and content as may be acceptable to Tenant and such Holder. The SNDA shall provide among other things that, in the event of a foreclosure, deed in lieu thereof, power of sale or other termination of Landlord’s interest in the Facility or this Lease, such Holder shall, or shall cause a purchaser at foreclosure or by deed in lieu thereof to, (i) recognize and not disturb this Lease or Tenant's possession and rights and remedies under this Lease, (ii) assume the obligations of Landlord under this Lease and the performance of the terms, covenants and conditions of this Lease to be performed by Landlord from and after the date of termination of Landlord’s rights, (iii) not join or name Tenant as a party in any such foreclosure or similar proceeding and (iv) accept this Lease as a direct lease between Tenant and such Holder.

(b) Landlord covenants and agrees (i) to notify Tenant in writing of its intention to sell the Leased Premises; and (ii) to make purchaser in any sale of the Leased Premises expressly aware of this Lease; (iii) to cause any such purchaser of the Leased Premises to specifically assume in writing the leasehold estate created herein; and (iv) to cause the purchaser, transferee or assignee to assume all of Landlord’s obligations hereunder. Nothing in this Section shall be construed to affect Tenant’s rights hereunder and Landlord shall be completely released of all further obligations under this Lease accruing from and after the date of such sale, if made in compliance with this Section.

22.06 Landlord’s Obligations to Lease. The mere delivery to Tenant of an unsigned draft of this Lease Agreement for Tenant’s review and consideration does not create in Tenant a right of option nor does it bind Landlord in any way to lease the Leased Premises to Tenant. Landlord’s obligation to lease under this Lease Agreement shall not be binding until Landlord has executed same upon approval by [●]1.

22.07 Definition of the Term “Tenant”. The term “Tenant” as used in this Lease Agreement shall be construed as plural if there be more than one person or entity appearing and executing this Lease Agreement as Tenant. All changes and grammatical adjustments

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1 To be modified in each case to identify the ruling body behind each Tenant (i.e. Municipal Assemblies, Boards of Directors, etc.).
required to make the provisions of this Lease Agreement apply equally to corporations, partnerships or other entities, or individuals shall, in all instances, be construed as incorporated into the text of the document.

22.08 **Headings.** The headings of the articles and sections of this Lease Agreement are for convenience only and do not limit, expand, or define the contents of the articles and sections hereof.

22.09 **Late Charges.**

(a) All payments that Tenant is obligated to make under this Lease Agreement, including without limitation, the Monthly Rent, the Additional Rent, and any adjustment thereto, shall bear interest from its due date until payment in full, at a rate of one percent (1%) over the prime rate charged by the principal commercial banks in the city of New York as of the date the payment is due. Should the interest be held as usurious, then interest shall be deemed to have accrued at and continue to accrue at the maximum rate of interest permissible, as established by the Interest Rate and Finance Charges Regulatory Board created by Act No. 1, of October 15, 1973, as amended (P.R. Laws Ann. Tit 10, sec. 998), or any future law or regulation.

(b) Should Tenant fail to make a Rent payment within ten (10) days after its due date, then Tenant shall also pay to Landlord a penalty to recover Landlord’s administrative expenses and collection costs equal to (i) thirty dollars ($30.00) per day, or (ii) for each day the amount owed is past due, one half of one percent (0.05%) of the overdue amount, whichever is greater. Anything contained in this section regarding the payment of overdue amounts shall not constitute an extension of the due date of any amount Tenant is obligated to pay under this Lease Agreement, nor shall it constitute a waiver of Tenant’s obligation to pay such amounts as provided in this Lease Agreement.

22.10 **Performance.** Whenever a requirement, obligation, or liability is imposed upon one of the Parties, the concerned Party shall comply with or satisfy said requirement, obligation or liability at its own expense, unless specifically provided to the contrary.

22.11 **Entire Agreement.** This Lease Agreement, along with its Exhibits contains all the terms, conditions, agreements and covenants between the Parties with respect to the Leased Premises; it substitutes and nullifies any other lease agreement or other agreement, oral or written, between the parties regarding the occupation and use of the Leased Premises by Tenant, including any letter of agreement that governed the relationship between the Parties prior to and during the negotiation of this Lease Agreement. This Lease Agreement shall only be modified, amended, altered, or canceled by a written document subscribed by both Parties.

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22.12 **Force Majeure.** In the event that either Landlord or Tenant shall be hindered or delayed in the performance of any of its obligations or commitments under this Lease Agreement by reason of force majeure, the performance of such act shall be excused for the period of time which it is reasonably understood that said act or event hinders its performance. Force majeure is understood as any incident or occurrence beyond the Party’s control, including, but not limited to, lock-outs, strikes, shut downs or labor disputes; inability to obtain necessary materials; riots, acts of war and insubordination; fires, explosions, accidents and acts of sabotage; lack of electricity or fuel; floods, earthquakes, torrential rains and hurricanes; administrative, governmental or court orders or injunctions; federal, state or municipal laws and regulations; the revocation, modification or suspension of a permit, license or other necessary authorization; matters of national security; acts or occurrences not directly or indirectly caused by the other Party (including without limitation its agents, employees, contractors, or invitees); or any other situation or event reasonably beyond the Party’s control. In said situation, the period of time for the Party to comply with any obligation or commitment shall automatically be extended for a period equivalent to the period of duration of such force majeure and the next following business day. In case of a force majeure event, each Party is to act reasonably in all respects with the other Party.

22.13 **Safety Programs.** Tenant agrees to reasonably cooperate, assist and participate in any program Landlord develops or adopts to address any emergency or occurrence constituting force majeure.

22.14 **Estoppel Certificate.** The Parties, upon the other Party’s request, shall provide to the requesting Party with an Estoppel Certificate wherein it certifies that (i) this Lease Agreement is unmodified and in full force and effect (or if any modifications, with specifications as to such modifications and certify that this Lease Agreement as modified is in full force and effect); (ii) the date upon which Tenant began paying Rent and the dates in which all Rent payments were made; (iii) that no Party is not in default under any provision of this Lease Agreement; (iv) that the work by each Party to the Leased Premises, was completed as agreed and that Tenant is in possession of the Leased Premises, (iv) no Party has claims against the other Party under this Lease Agreement, (vi) that there is no petition, whether voluntary or otherwise, pending as to any Party under the bankruptcy laws of the United States, and (vii) any other reasonable representations, confirmations and certifications that may be requested by third party lenders or potential assignees. In addition, Landlord covenants and agrees to deliver to Tenant and Operator an estoppel, consent and subordination agreement substantially in the form attached hereto as Exhibit B, concurrently with the execution of this Lease.

22.15 **Tenant’s Duties; Landlord’s Rights.** All obligations and agreements which Tenant is to perform or carry out under the terms of this Lease Agreement, shall be done exclusively at Tenant’s expense, and without a right to set-off or adjustment against Rent, unless otherwise
set forth herein. Should Tenant breach or fail to perform any of the obligations under this Lease Agreement, and said default persists for more than fifteen (15) days from the delivery by hand or the U.S. Mail of Landlord’s notice demanding performance thereof, Landlord shall be entitled, but shall not be obligated, to act as required to remedy said situation, without waiving or releasing Tenant from its liability with respect to said obligation. Any reasonable sum paid or expense incurred by Landlord in said efforts shall accrue interest pursuant to the provisions of Section 22.09 hereof and must be paid by Tenant to Landlord as Additional Rent.

22.16 **Landlord’s Consent.** Wherever in this Lease Agreement the consent or approval of the Landlord is required (including, without limitation, under Section 6.02, 6.03, 17.02 and 21.01 hereof), such consent shall not be unreasonably withheld, delayed, conditioned or denied, and the same shall be deemed given by the Landlord if (i) the Landlord affirmatively grants such consent, or (ii) the Landlord fails to respond within the allocated time period, which period, unless otherwise stated herein, shall be at least ten (10) days after the date on which a written notice containing information regarding the matter to be consented to or approved is sent to the Landlord.

22.17 **Relationship Between the Parties.** The relationship existing between the Parties is that of Landlord and Tenant exclusively, and nothing provided for in this Lease Agreement shall be interpreted as creating a partnership, joint venture, principal and agent relationship or any other type of relationship between Parties.

22.18 **Cooperation.** Either Party hereto shall cooperate and make all reasonable efforts to obtain any necessary permit or authorization related to Tenant’s operations at the Leased Premises during the Term.

22.19 **Nullity or Partial Invalidity.** If any term, clause, section or article of this Lease Agreement, or the application or enforceability thereof, be declared null, invalid or unenforceable by a final order or judgment from a court having jurisdiction, the remainder of the Lease Agreement, or the application of said term, clause, section or article to persons or circumstances other than those against whom the nullity, invalidity or unenforceability was declared, shall not be affected by said order or judgment, and each term and condition in this Lease Agreement shall be valid and enforceable to the extent permitted by law and consistent with said order or judgment.

22.20 **Accord and Satisfaction.** No payment by Tenant, or the acceptance by Landlord of an amount less than the Rent herein stipulated shall be deemed to be other than a payment toward the stipulated Rent, nor shall any endorsement or statement on any check or any letter or other communication accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to

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Landlord’s right to recover the balance of such Rent or pursue any other remedy provided in this Lease Agreement or at law or equity.

22.21 **Applicable Law.** This Lease Agreement is executed, and its terms and conditions shall be construed and enforced, in accordance with the laws of the Commonwealth of Puerto Rico.

22.22 **Jurisdiction and Competency.** The Parties agree that any action, proceeding, claim, counterclaim or any other kind of judicial action that either of the Parties initiates against the other regarding (i) any matter that arises out of or related to this Lease Agreement; (ii) the legal relationship existing between Landlord and Tenant; (iii) the use or occupation of the Leased Premises by Tenant; (iv) any claim for damages; and/or (v) any statutory remedy, shall be filed and litigated before the Court of First Instance of Puerto Rico.

22.23 **Net Lease.** Tenant recognizes and admits, without limiting the meaning of any other terms and conditions of this Lease Agreement, and as otherwise provided in this Lease Agreement, that the intentions of the Parties in this Lease Agreement are that all Rent to be paid by Tenant to Landlord under this Lease Agreement, must be paid to Landlord, without deduction or setoff of any kind, and that any and all expenses incurred regarding the Leased Premises, or regarding Tenant’s operations in the Leased Premises, including any assessments, taxes, municipal operating licenses, charges, special license and permit fees, insurance premiums, electricity, water, gas, telephone bills and other similar services, cost of repair, maintenance and operation of the Leased Premises, together with all such fixtures that are placed on, attached to, installed or contained in the Leased Premises, shall be paid by Tenant.

22.24 **Notices.** All notices, claims or communications between the Parties referred to or required by this Lease Agreement shall be made in writing and sent by certified mail, return receipt requested, personally delivered, or by electronic means to the addresses of the Parties set forth in Sections 1.02 and 1.04 of this Lease Agreement. Any address change shall be notified to the other Party in writing not less than thirty (30) days before the effective date of said change.

22.25 **Non-Waiver.** The failure of either Party to demand strict performance of any of the provisions of this Lease Agreement upon default of any provision by the other Party shall not constitute nor may it be construed as a waiver of said Party’s right to demand performance of any provision in the future if the default continues, or if the other Party should later repeat the default with respect to the same provision. The receipt or acceptance by Landlord of the Rent or any other amount payable by Tenant under this Lease Agreement, with or without knowledge of Tenant’s default on any obligation or condition under this Lease Agreement, shall not be deemed as release by Landlord in favor of Tenant from compliance with said obligation or condition, nor a waiver of Landlord’s rights or remedies under this Lease Agreement with regard to said default. The consent or approval given by Landlord for any

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act by Tenant which requires said consent or approval, is solely and exclusively limited to the act or event for which said consent or approval was given, and should not be understood as a waiver of any requirement for prior consent or approval for a similar act by Tenant in the future.

22.26 **Cumulative Remedies.** The rights and remedies of each of the Parties in this Lease Agreement are independent, separate and cumulative. The exercise, or failure to exercise any right or remedy, shall not be interpreted or deemed to exclude or bar the exercise of any other right or remedy of either Party under this Lease Agreement or under any law or regulation.

22.27 **Brokers.** Each Party represents and warrants to the other Party that it has not engaged nor used the services of a real estate broker or agent in connection with this lease, and that no real estate agent has participated at any time in the negotiation of this Lease Agreement. Notwithstanding the foregoing, the liability for the payment of any commission or compensation claimed by any real estate professional who may have rendered services to any Party with respect to this Lease Agreement shall be borne by the Party that engaged said real estate professional, and furthermore said Party shall indemnify the other against any damages, liability, expenses and/or attorney’s fees, arising from any claim or lawsuit of any real estate professional for any commission allegedly owed for any service rendered.

22.28 **Governmental Approvals.** All governmental authority approvals, consents, authorizations and/or waivers required for (i) the effectiveness of this Lease Agreement under applicable law, (ii) the enjoyment of Tenant’s rights under this Lease Agreement, and (ii) the execution, delivery and performance of this Lease Agreement by the Landlord, have been issued or obtained by the Landlord and are in full force and effect as of the date hereof. Without limiting the generality of the foregoing, Landlord has obtained approval or a waiver in accordance with Act 26-2017, known as the “Fiscal Compliance Act” from the Puerto Rico Fiscal Agency and Financial Advisory Authority and Regulation 8972 for the Evaluation and Disposition of Real Property of the Executive Branch of the Government of Puerto Rico Under Act 26-2017 of AAFAF (July 7, 2017), for this Lease Agreement.

EXECUTION PAGE FOLLOWS
IN WITNESS WHEREOF, the parties subscribe this Lease Agreement on the dates below stated.

LANDLORD:

[PUERTO RICO PORTS AUTHORITY]
EIN:

By: ___________________________
Name: ________________________
Title: _________________________

Pursuant to Landlord’s Board Resolution
No. ----- - ---
Adopted on _____________,____.

Date: _________________________

TENANT:

PUERTO RICO AND THE ISLAND MUNICIPALITIES
MARITIME TRANSPORT AUTHORITY
EIN: 66-0584953

By: ___________________________
Name: ________________________
Title: Executive Director

Pursuant to Tenant’s Board Resolution
No. ----- - ---
Adopted on _____________,____.

Date: _________________________

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Exhibit A

The Leased Premises
Exhibit B

Estoppel, Consent and Subordination Agreement
Schedule 2.1

Permitted Liens
AMENDED AND RESTATED LEASE AGREEMENT

This AMENDED AND RESTATED LEASE AGREEMENT (the “Lease Agreement”) is made and entered into as of ____________, 2020 (the “Effective Date”), by and between the Authority for the Redevelopment of the Land and the Facilities of the Roosevelt Roads Naval Station, a public corporation of the Commonwealth of Puerto Rico created by Law No. 508 of September 2004, as amended, represented herein by its Executive Director, Ian Carlo Serna (“Landlord”), and the Puerto Rico and the Island Municipalities Maritime Transport Authority, a public corporation of the Commonwealth of Puerto Rico created by Law No. 1 of January 1, 2000, represented herein by its Executive Director, Mara Pérez Torres (“Tenant”).

WHEREAS, on December 20, 2011, the United States of America, acting by and through the Department of the Navy (“Navy”), and the Landlord entered into that certain Economic Development Conveyance Memorandum of Agreement (the “EDC Agreement”);

WHEREAS, on January 25-26, 2012, the Government transferred to the Landlord approximately one thousand three hundred and seventy (1,370) acres in Parcel 3 via 31 Quitclaim Deeds (hereinafter referred to as “Parcel 3”), and that certain Lease in Furtherance of Conveyance between the United States of America and the Landlord, as amended (the “LIFOC”);

WHEREAS, on May 6, 2013, the Navy conveyed to the Landlord one parcel of approximately one thousand five hundred and forty-two (1,542) acres (hereinafter referred to as “Parcel 1”) and a parcel consisting of approximately four hundred and ninety-seven (497) acres both at Roosevelt Roads Naval Station (hereinafter referred to as “Parcel 2”, and together with “Parcel 3”, the “Roosevelt Roads Premises”);

WHEREAS, Landlord owns fee title within the Roosevelt Roads Premises, commonly known as Building for Harbor Patrol and Pier 2 and Bulkhead Alpha, more particularly described in Exhibit A attached hereto (the “Premises”);

WHEREAS, pursuant to that certain Lease Agreement dated January 21, 2019 (the “Original Lease Agreement”), Landlord leased the Premises to Tenant for maritime transport operations from the Premises to Vieques and Culebra;

WHEREAS, Tenant proposes to enter or has entered into a Maritime Transport Operations and Maintenance Agreement (the “MTOMA”) with the Operator identified in the MTOMA, and Landlord has agreed to allow Tenant to enter into a sublease agreement with such Operator;

WHEREAS, Landlord acknowledges that the MTOMA constitutes a Priority Project under Act No. 29-2009, as amended, also known as the “Public Private Partnerships Act” (“Act 29”); and
WHEREAS, Landlord and Tenant desire to amend and restate the Original Lease Agreement to reflect the changes agreed upon by the parties regarding the execution of the MTOMA, as set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE I
BASIC TERMS OF LEASE

The following sections set forth basic information referred to in this Lease Agreement and, where appropriate, constitute definitions of the terms hereinafter listed.

1.1 LANDLORD: Authority for the Redevelopment of the Land and the Facilities of the Roosevelt Roads Naval Station.

1.2 (a) LANDLORD’S POSTAL ADDRESS:
Local Redevelopment Authority of Roosevelt Roads
355 F.D. Roosevelt Avenue
Suite 106
Hato Rey, PR 00918
Attn: Executive Director

(b) LANDLORD’S PHYSICAL ADDRESS:
Local Redevelopment Authority of Roosevelt Roads
355 F.D. Roosevelt Avenue
Suite 106
Hato Rey, PR 00918
Telephone: (787) 274-6088
Attn: Executive Director

1.3 (a) TENANT: Puerto Rico and the Island Municipalities Maritime Transport Authority

(b) TENANT PARENT COMPANY: Puerto Rico Department of Transportation and Public Works

1.4 (a) TENANT’S POSTAL ADDRESS:
Puerto Rico Maritime Transport Authority
Centro Gubernamental Minillas
Torre Sur, Piso 16
Ave. De Diego, Santurce
Phone No. (787) 485-2381
Attn: Executive Director

1.5 TENANT’S EMPLOYER IDENTIFICATION NO. 660584953
1.6 **LEASED PREMISES:** As described in Exhibit A of this Lease Agreement, known as Building known as Harbor Patrol; Pier 2 and Bulkhead Alpha. The total area comprises 39,926.875 square meters equivalent to 9.866 acres. The Leased Premises are identified in Exhibit A. As identified in Exhibit A-1 the premises are divided in two lots. Lot 1 has an approximate area of 19,549.779 sq. mts. and Lot 2 has an approximate area of 20,377.096 sq. mts.

For purposes of this Lease Agreement, the Building’s gross construction area includes, without limitation, bathrooms, ramps, access stairs, loading docks, exterior shelters, corridors between buildings or structures and other roofed structures on the parcel of land, as described in Exhibit A. Should the Leased Premises consist of various projects, the term “Building” shall be construed to include each and all of the buildings described in Exhibit A.

1.7 **PERMITTED USE:** The Leased Premises shall be used for any vessel operations and related activities associated with maritime vessel transportation, including but not limited to the loading and discharge of passengers and cargo and the docking of vessels, concessions to food and beverage vendors, ticketing sales, managing the leasing of retail spaces, storage and the parking of visitor automobiles and motorcycles in the Parking Area; provided, however, that such ancillary uses (food and beverage vendors and retail spaces) shall not hinder or adversely interfere with the normal business operations and maintenance of the cargo and passenger maritime transportation to and from the Leased Premises. Tenant is also hereby authorized to lease the Leased Premises to the Operator (as defined in the MTOMA) for the Permitted Use.

1.8 **PROJECT SCHEDULE:** Tenant provided a project schedule based upon the Design, Permits and Construction Schedule Requirements and Milestones set forth in Exhibit B hereto (the “Project Schedule”). The Project Schedule constitutes the “Baseline Schedule” against which all subsequent schedule report progress shall be made, and by which Landlord will monitor Tenant’s progress with regards to construction and operation milestones achieved as established in the project schedule.

Tenant shall submit every six months from the Effective Date, a progress report of the Project Schedule. If Tenant fails to comply with said Project Schedule report progress and/or the information submitted does not fulfill the milestones agreed in the Project Schedule as established in this Lease Agreement, Section 18 of this Lease Agreement will be activated.

1.9 **LEASE TERM:** The term of this Lease Agreement is thirty (30) years beginning on the date of execution of the present agreement. Tenant may terminate the Lease Agreement before the expiration date by written notice to the other Party, but no later than thirty (30) days before the termination date, and Landlord may not terminate the Lease Agreement, except upon a default by Tenant of its terms, covenants and conditions as set forth in the Lease Agreement, after all applicable cure periods have elapsed.

1.10 **YEAR:** “Year” shall mean 365 consecutive days unless the year in question is a leap year, in such case the term “Year” shall mean 366 consecutive days.
1.11 DATE OF DELIVERY OF POSSESSION: Tenant is occupying the Leased Premises in virtue of a Site Access Agreement, Permitting and Use Agreement executed on July 11, 2018 (the “Access Agreement”). A copy of the agreement is made part of the present agreement as Exhibit B-1.

Tenant intends to conduct some infrastructure improvements at the Leased Premises, described in Tenant’s proposal (Exhibit B-2). In performing such work, Tenant shall comply with all substantive and procedural requirements established in the Access Agreement, as well as with the requirements contained herein.

1.12 RENT COMMENCEMENT DATE: Tenant shall commence to pay rent from the execution of the present agreement.

1.13 BASIC RENT: The Basic Rent to be paid to Landlord shall be a monthly rate of $17,800.00.

If Tenant includes additional activities in the Leased Premises, other than maritime transport, which generate additional revenue, Tenant shall request previous approval from Landlord and if approved will pay annually to Landlord twenty percent (20%) of the gross revenues received by Tenant from such activities.

All requests shall include a copy of the proposed agreement. Tenant shall pay Landlord a monthly fee of five hundred dollars ($500.00) for common area maintenance.

1.14 SECURITY DEPOSIT: At the execution of the present agreement Tenant shall deliver to and maintain with Landlord a security deposit (the “Security Deposit”) in an amount equal to the sum of three months of rent equivalent to fifty-three thousand four hundred dollars ($53,400.00).

The Security Deposit shall secure Tenant’s obligations pursuant to this Lease, and may be drawn on by Landlord, in whole or in part, to cover (a) delinquent rent not paid by Tenant within any applicable notice and cure period, (b) any other Events of Default of Tenant under this Lease Agreement, and (c) Landlord’s costs and expenses incurred to address Tenant’s failure to adhere to and abide by environmental responsibilities or obligations, including those arising during the term of the Tenant’s Access Agreement. The Security Deposit shall be applied at the discretion of Landlord. Tenant shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to Landlord with respect to form, content and issuer.

The Security Deposit payment shall be made with a manager’s or official bank check and delivered by Tenant together with this Lease Agreement.

(a) Replacement. In the event that some or all of the Security Deposit is drawn by Landlord and applied against any delinquent rent not paid by Tenant within any applicable notice or cure period, or against other Events of Default or demand for payment for Tenant’s failure to adhere to and abide by its environmental responsibilities or obligations under Tenant’s Access

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Agreement or this Lease Agreement, Tenant shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with Landlord, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease Agreement is in effect (other than between the date of the application of funds by Landlord and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to Landlord. Failure to maintain and replenish the Security Deposit shall constitute an Event of Default hereunder.

1.15 EFFECT OF REFERENCE TO A DEFINED TERM IN ARTICLE I. Each of the defined terms used in Article I shall be construed in conjunction with the definition thereof contained in this Lease Agreement. In the event of any conflict between the defined term and the balance of the Lease Agreement, the latter shall prevail.

1.16 EXHIBITS. The following marked exhibits are incorporated in this Lease Agreement by reference as if set forth at length herein and form an integral part hereof:

[A] Exhibit A - Description of Leased Premises
[B] Exhibit B - Tenant Project Schedule
[B-1] Exhibit B-1 - July 11, 2018 ATM and LRA Site Access Agreement
[B-2] Exhibit B-2 - Tenants Improvements Proposal
[C] Exhibit C - Environmental Reports
[D] Exhibit D - Applicable LIFOC/EDC/Navy Quitclaim Deed Restrictions
[E] Exhibit E - Threatened and Endangered Species Conservation Measures
[F] Exhibit F - Utility Services Specifications
[G] Exhibit G - Delimitation of SWMU and environmental monitoring wells at lease premises
[H] Exhibit H - Signage Plans
[J] Exhibit J - Plans for Geometric improvements to drop off area and vehicular Traffic.

ARTICLE II
TITLE, AUTHORITY AND DEMISE

2.1 Title and Authority. Landlord is the owner of the property described in Exhibit A hereto and, in such capacity, has full right and lawful authority to lease said property to Tenant and to grant to Tenant all the rights pertaining thereto, subject to the liens, encumbrances and restrictions howsoever imposed which may affect it, if any, and the terms and conditions of this Lease Agreement and of its Exhibits.

2.2 Demise. Subject to the terms, covenants and conditions of this Lease Agreement, Landlord leases the property described in Exhibit A (the “Leased Premises”) to Tenant, and Tenant accepts same.
ARTICLE III
LEASE TERM AND POSSESSION

3.1 Term. The term of this Lease Agreement (hereinafter the “Term”) will be of thirty (30) years. It shall commence on the date of the execution of this agreement and shall expire on the last day of the last Year of the Term. Tenant may terminate the Lease Agreement before the expiration date by written notice to Landlord, not later than thirty (30) days before the termination date, and Landlord may not terminate the Lease Agreement, except upon a default by Tenant of its terms, covenants and conditions set forth in the Lease Agreement, after all applicable cure periods have elapsed.

3.2 Delivery of Possession of Leased Premises. Landlord shall deliver the Leased Premises soon after the date of the execution of the present agreement. The exact delivery date will be evidenced by a receipt signed by both parties.

ARTICLE IV
USE OF THE LEASED PREMISES, RESTRICTIONS AND OPERATIONAL REQUIREMENTS

4.1 Use of Leased Premises. (a) Authorized Use. Tenant shall use and occupy the Leased Premises solely and exclusively as authorized in Section 1.7 of this Lease Agreement. Any change in the authorized use must be previously approved in writing by Landlord.

(b) Restrictions.

b-1) The Navy has prepared certain environmental reports and deeds (“Environmental Reports”) that are made a part of this Lease Agreement. The Environmental Reports are part of the present Lease Agreement as Exhibit C and will be delivered to the Tenant by electronic means. Tenant acknowledges the notifications and restrictions contained in the Environmental Reports and shall strictly comply with all restrictions set forth therein.

b-2) To the extent that any of the notifications and restrictions were violated by Tenant, its agents or contractors during Tenant’s exercise of the Access Agreement or thereafter, (i) Tenant acknowledges and accepts responsibility for such violations, (ii) commits to performing complete corrective action to remediate such violations, (iii) shall ensure that all contractors and their agents are fully informed of and abide by these restrictions, and (iv) shall indemnify, defend, and hold harmless Landlord from any cost, expense, judgment, liability, or loss related to or arising from Tenant’s violation of or failure to adhere to any restriction, notice, permit, or limitation on the use of the premises, whether arising during the term of this Lease or during the term of the Access Agreement.

b-3) Tenant shall not conduct or allow to be conducted any operations, nor make or allow to be made any alterations, that would interfere with or otherwise restrict Navy operations or environmental clean-up or restoration activities by the Navy, USA-Government, EPA, or the Commonwealth of Puerto Rico, or their contractors. Environmental clean-up, restoration or testing activities by these parties shall take priority over Tenant use of the demised premises in the event
of any conflict. In case the Navy or the USA-Government needs to address any environmental matter in the premises, Landlord will notify Tenant in order to make the necessary adjustments during the restoration activities to be performed trying not to interfere with Tenant’s operation. There will be no rent obligations for that period.

**b-4)** Tenant must comply with all terms and conditions of the LIFOC with respect to those portions of the property with land use restrictions at the Leased Premises. Specifically, Tenant shall pay special attention to the restrictions for SWMU 74; SWMU 55; LUG 11- SWMU 23. The areas of the Leased Premises with land use restrictions are detailed in Exhibit D of the present agreement. A copy of the LIFOC will be delivered to the Tenant by electronic means.

**b-5)** Tenant shall not excavate, drill, construct, or make any alterations, additions, or improvements to, or installations upon, or otherwise modify or alter the Leased Premises in any way that could affect the LIFOC.

**b-6)** The area is subject to conservation measures regarding threatened and endangered species delimited in “Threatened and endangered species conservation measures-parcel 25”. Landlord has delivered to Tenant copy of this document. Tenant is hereby made aware of the notifications and restrictions contained therein and shall comply with all restrictions set forth therein as more fully described in Exhibit E hereto.

4.2 Pier use.

**a)** Tenant shall not use the Leased Premises or permit the same to be used for any illegal, immoral or improper purposes. Tenant shall not make or permit to be made any disturbance, noise or annoyance whatsoever on or near to Pier Two (2) and Bulkhead Alpha. Tenant shall make any and all repairs to Pier Two (2) and Bulkhead Alpha if the damage was in any way caused by the fault or negligence of Tenant’s boats, guests, invitees or licensees, and Tenant shall, at the expiration of the Term of this Agreement, surrender and deliver said area at Pier Two (2) and Bulkhead Alpha, without demand in as good order and conditions as when entered upon, ordinary wear and tear excepted.

**b)** Tenant shall permit the Landlord or its agents, at any reasonable time, to enter Pier Two (2) and Bulkhead Alpha for exhibiting the same or making repairs thereto.

**c)** Tenant shall not assign this Lease Agreement, nor sublet Pier Two (2) and Bulkhead Alpha, or any part thereof, to be used for any other purpose than as above stipulated, nor make any alterations therein, nor any and all additions thereto, without the prior written consent of the Landlord, which shall remain upon the area at Pier Two (2) and Bulkhead Alpha as a part thereof, and be surrendered with the area at Pier Two (2) and Bulkhead Alpha at the termination of this agreement.

**d)** Tenant shall, at Tenant’s sole cost and expense, comply with restrictions and limitations imposed in the Quitclaim Deed to the premises and with all statutes, ordinances, rules, orders, regulations and requirements of federal, state and municipal authorities of any kind and all
of their departments and bureaus applicable to the area at Pier Two (2) and Bulkhead Alpha and/or Tenant’s rental thereof which includes but is not limited to a facility security permit (FSP); facility security operator (FSO); use permit; DRNA public domain water use concession; and requirements for maritime transportation operations included in 33 CFR part 105.

(e) The failure of the Landlord to enforce any provisions of this Lease Agreement shall not constitute a waiver of the right to enforce the same thereafter.

(f) Tenant shall conduct all of its operations at Pier Two (2) and Bulkhead Alpha in compliance with all federal, state and local statutes (including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq. as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. No. 99-499, 100 Stat. 1613 (October 17, 1986) (“CERCLA”); the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. (“RCRA”), Coastal zone regulations, ESA, NPDES and all applicable federal and local statutes related to the environment now or hereafter enacted and any additions and amendments thereto and regulations enacted thereunder, ordinances, regulations, orders and requirements of common law, regarding, but not limited to (i) discharges to the water, air, soil, surface; and (ii) handling, utilizing, storage, treatment or disposal of any hazardous substances or toxic substances as defined therein (“Environmental Statutes”). Tenant shall obtain all permits, licenses or approvals and shall make all notifications and registrations required by Environmental Statutes and shall submit to Landlord, upon request, for inspecting and copying all documents, permits, licenses, approvals, manifests and records required to be submitted and/or maintained by the provisions of the Environmental Statutes. Tenant shall also provide promptly to Landlord copies of any correspondence, notice of violation, summons, order, complaint or other document received by Tenant pertaining to compliance with Environmental Statutes.

(g) Tenant shall pay for all water, sanitation, garbage, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other services incident to Tenant’s use of the Leased Premises including Pier Two (2) and Bulkhead Alpha.

(h) If requested by Landlord, Tenant will provide a copy of docked vessel(s) registration(s).

(i) Tenant shall provide Landlord the schedule of the maritime transportation operation.

(j) Tenant cannot authorize any ambulant sales in the Leased Premises.

**ARTICLE V RENT**

5.1 **Basic Rent.** As of the date set forth in Section 1.13 hereof, Tenant shall pay to Landlord the Basic Rent. The Basic Rent for any renewal period shall be the prevailing lease rate charged by Landlord at the time of the renewal period for similar properties in the zone in which the Leased Premises are located; provided, however, that the Basic Rent for a renewal period shall not be less
than that of the preceding lease period. Tenant shall pay the Basic Rent in monthly installments in the amount indicated in Section 1.13 in advance on or before the first day of each calendar month (the “Monthly Rent”); provided, however, that if the Rent Commencement Date does not fall on the first day of a calendar month, the rent for the initial partial month shall be prorated based on a 30-day month and included with the first payment of Monthly Rent due the first day of the first full calendar month following the Rent Commencement Date.

5.2 Additional Rent. Any amount Tenant is obligated to pay or reimburse Landlord under this Lease Agreement that is not Basic Rent shall be considered to be Additional Rent.

5.3 Payment Method. The Basic Rent and the Additional Rent (hereinafter collectively, the “Rent”) shall be paid in legal currency of the United States of America. Any payment or charge identified in this Lease Agreement as Additional Rent shall be made at the same time of the Basic Rent payment. All Rent shall be remitted to Landlord, through a manager’s or official bank check. It is Tenant’s duty to take the necessary measures and precautions to ensure that the Rent is received by Landlord on or before its due date. The payment of Rent is separate from any other agreement or obligation contained in this Lease Agreement and shall be paid without the need of previous request or notice by Landlord, without set off, adjustment or abatement of any kind, except as otherwise provided for herein.

Tenant will conduct some infrastructure improvements at the Leased Premises and at the Roosevelt Roads Premises. Tenant will require Landlord’s previous approval. The request will include plans and specifications of the improvements, the costs and the time schedule for its execution.

The parties agree to consider the improvements conducted by Tenant that are previously approved by Landlord as a rent credit that will be deducted off the basic rent cost. The Security Deposit; CAM; Concessions revenues; utility service payments and any additional rent as defined in Section 5.2 will not be included and considered for rent credits.

5.4 Common Area Maintenance. Tenant shall pay to Landlord, in a timely manner with the rent payment, the amount of five hundred dollars ($500.00) per month for Common Area Maintenance service charges, with respect to security, green areas maintenance, street and highway maintenance, construction and lighting, (jointly, the “CAM”). Said amounts shall be subject to annual revisions made by the Landlord with notice to Tenant during the first month of each natural year.

ARTICLE VI
SECURITY DEPOSIT

6.1 Security Deposit. Upon the issuance of all permits and financial approvals, Tenant shall deliver to Landlord a manager’s or official bank check, for the amount specified in Section 1.14 of this Lease Agreement (the “Security Deposit”), to guarantee the faithful performance of each and every one of Tenant’s obligations, including, but not limited to, the payment of all the Basic Rent, any other expenditures Tenant is responsible for hereunder, and the surrender of the Leased Premises upon expiration of the Term, or at the termination of this Lease Agreement, in the
condition and good order required by Article XIX of this Lease Agreement. Tenant shall not have the right to receive interest on the Security Deposit.

6.2 Use of Security Deposit. Landlord may use all or part of the Security Deposit at any time to cover any payment (including Rent) or expense that, according to the terms and conditions of this Lease Agreement, is Tenant’s responsibility. Should it become necessary for Landlord to use the Security Deposit as a result of a default or violation of the Lease Agreement by Tenant, Tenant must replace the amount used by Landlord within fifteen (15) days of a written demand therefore by Landlord as established in Section 1.14.

6.3 Surrender of Security Deposit. Upon termination of this Lease Agreement, Tenant shall request in writing the Security Deposit (or the remaining balance after use by Landlord to cover any payment (including Rent) or other allowable expense under this Lease Agreement) after Landlord (i) has inspected the Leased Premises; (ii) confirms that the Leased Premises have been surrendered according to Article XIX and the other pertinent terms and conditions of this Lease Agreement; and (iii) determines that no environmental deficiencies exist which are attributable to or a consequence of the operations of Tenant at the Leased Premises.

6.4 Transfer of Security Deposit. In the event of sale, assignment or transfer of the Leased Premises by Landlord to a third party, Landlord shall be entitled to transfer the Security Deposit to its successor, who shall thereafter be solely and exclusively liable for the return of the Security Deposit, and Landlord shall be released upon said transfer from any claim or liability towards Tenant regarding the Security Deposit or its return upon termination of this Lease Agreement.

ARTICLE VII
ALTERATIONS AND IMPROVEMENTS

7.1 General Provisions. Tenant acknowledges that it has inspected the Leased Premises before the execution of this agreement and assumes its possession in its “AS IS, WHERE IS” condition, and also acknowledges its commitment to perform at its own expense any repair to use the Leased Premises as authorized in Section 1.7 of this Lease Agreement. Landlord does not assume any responsibility to reimburse Tenant any related expense. Landlord makes no representation or warranty concerning the suitability of the Leased Premises for any intended use, the accuracy or completeness of any of the Environmental Documents, the environmental condition of the property, or handicap access.

7.2 Alterations and Improvements. All alterations, changes, additions or improvements necessary for the Leased Premises to be used for the purposes set forth in Section 1.7 and 4.1 of this Lease Agreement, shall be paid for by Tenant. Tenant shall make no alterations, changes, additions or improvements without Landlord’s prior written consent. Landlord must approve in writing previous any improvement to be performed at the Leased Premises. Tenant must include in its request for improvements the contractor proposal. The contractor proposal and sketches or plans of the improvements to be performed must include the land restrictions if any of the Leased Premises, its location and specifications.
The parties agree that Tenant will conduct improvements at the Leased Premises and at the Roosevelt Roads Premises. Some of the improvements agreed upon are the lighting thru the road that leads to the Leased Premises and the traffic signs at the Roosevelt Roads Premises, as detailed on Exhibit H.

Tenant agrees to conduct geometric improvements to drop off area and vehicular traffic at the adjacent area to the Leased Premises. The plans for these improvements are included herein as Exhibit J.

7.3 Air Conditioning; Electric Power Generator. Tenant may, at its own expense, install an air conditioning system and/or an electric power generator at the Leased Premises, subject to Landlord’s previous written approval. Any installations of such equipment shall be made in coordination with Landlord.

7.4 Fire Suppression System. Tenant shall implement the necessary security measures to avoid or reduce the risk of fire due to the storage of flammable materials or products. If required by law, Tenant shall install any fire suppression system as required by the proper authorities, including, but not limited to, a sprinkler system at its own cost and expense. It shall be Tenant’s obligation to obtain the necessary endorsements and/or approvals of the Puerto Rico Fire Department for such installation. Tenant shall not use or store on the premises any fire suppression substance that includes any perfluorinated compound.

7.5 Floor Load. Tenant will be responsible for making the due diligence about the Building’s maximum sustainable floor load. In the event that the type of machinery and/or equipment to be installed, stored and/or utilized by Tenant for its operations in the Building exceeds the maximum floor load limit, Tenant shall, at its own expense, make the necessary improvements to the Building which will allow the Building floor to sustain the maximum load required by Tenant’s operations without affecting or damaging the strength or stability of the Building.

7.6 Liens and Encumbrances.

(a) Tenant may not create nor allow the filing of any lien against the Leased Premises.

(b) Tenant certifies and guarantees that all materials used in or for any construction or work in the Leased Premises shall be free of liens and encumbrances at the time said materials are incorporated into the Leased Premises. At the time the construction or work begins, Tenant shall certify to Landlord that the materials to be used are free of liens and encumbrances.

(c) Tenant shall immediately notify Landlord regarding any lien or Exhibit on materials or supplies used in construction or work at the Leased Premises which become incorporated into the Leased Premises. Should an Exhibit be placed upon the Leased Premises or any other type of lien be created that may directly or indirectly affect the Leased Premises, Tenant will quickly take any action, including payment of the amount claimed, necessary to cancel said Exhibit or lien and release the Leased Premises from the lien in a term not greater than thirty (30) days from the date that the lien is filed. Should the lien not be canceled within the period provided above, in addition to any other rights or remedies available to Landlord, Landlord may, but is not obligated to, obtain
the cancellation of the lien by making payment of the amount claimed, by posting of a bond for the amount of the lien, or by any other procedure that Landlord deems appropriate; and any expense incurred in said effort, including attorneys’ fees incurred by Landlord, shall be paid by Tenant as Additional Rent.

7.7 Ownership of Improvements; Surrender. Upon termination of the Lease Agreement, all alterations, changes, additions, or improvements made by Tenant to the Leased Premises with permission, incentives, credits, or other economic assistance from Landlord shall be deemed incorporated into the Leased Premises and therefore property of Landlord, with no rights of Tenant to any compensation or reimbursement therefore by Landlord.

7.8 Plans and Specifications. Should Tenant request the consent of Landlord to conduct any alteration, change, addition, or improvement, Tenant must submit to Landlord for approval plans and specifications for the proposed work. Any plans and specifications must be submitted and approved by Landlord and by the pertinent governmental entities prior to Tenant’s commencement of any work.

ARTICLE VIII
MAINTENANCE AND REPAIRS

8.1 Tenant’s Duties and Responsibilities.

(a) Except for those repairs that according to Section 8.2 hereof are Landlord’s responsibility, Tenant shall maintain in good condition, at its own cost and expense, the Leased Premises, with all improvements including, but not limited to, the exterior premises, the Building, the special facilities, stairs, elevators, ramps, sidewalks, curbs, roads, landscaping, the ground and underground of the Leased Premises, and the pipes, lines, cables or ducts and other utility connections that service the Leased Premises. Any repair to the Leased Premises is Tenant’s responsibility, unless said repair is necessary because of the negligence or some intentional act of Landlord, its agents, employees or contractors. As appropriate, Tenant shall (i) repair or replace doors, windows and their frames; the electrical system; the air conditioning and/or ventilation system; the plumbing, sanitary and sewage systems as well as the equipment, machinery, facilities or objects within the Leased Premises or that form part of the Leased Premises with the same type and quality; and (ii) paint the interior and exterior of the Building.

(b) Tenant shall also maintain the Leased Premises and its surroundings free of (i) insects, rodents and pests; (ii) garbage, refuse, debris and any other solid waste; and (iii) unpleasant or offensive odors. Moreover, Tenant shall maintain the drainage and sewer systems of the Leased Premises free from obstructions.

(c) If Tenant fails to make any repair or if any repair is performed in an unsatisfactory manner, or if equipment is not replaced when necessary, Landlord may, but is not obligated to, undertake any such repair or replacement. Tenant shall reimburse Landlord for all costs incurred in any such repair or replacement plus an additional thirty percent (30%) of the cost of any such repair or replacement in order to cover Landlord’s administrative costs. Any such costs reimbursed by Tenant including the additional percentage charge established above shall be considered
Additional Rent, and as such, shall be paid within the period provided in Article V of this Lease Agreement. Tenant shall hold Landlord harmless from any damage or inconvenience suffered by Tenant as a consequence of any repairs performed by Landlord as provided in this paragraph, and Tenant shall have no rights of adjustment or reduction in Rent in connection therewith.

(d) Tenant shall perform all maintenance work necessary to ensure that all its equipment and operations fully comply with the applicable fire prevention standards and environmental requirements, legal or regulatory.

(e) The provisions of this Section 8.1 shall not be applicable in the case of damage or destruction resulting from fire or any other event covered by Article XIII of this Lease Agreement.

(f) Tenant shall provide the necessary security to the Leased Premises.

(g) Tenant shall provide the necessary equipment, security, and signage for the users of the Leased Premises to comply with Landlord’s traffic regulations for the area. Exhibit H details the signage to be installed by Tenant and Exhibit J establishes the geometric improvements to be performed by Tenant to control traffic in the area.

(h) Tenant shall provide the necessary street lightning for the access route to the Leased Premises. For that matter, Tenant shall issue submittals of the lighting system to Landlord for its approval prior to installation.

(i) Landlord shall previously approve in writing any improvement to be performed at the Leased Premises. Tenant must include in its request for improvements the contractor proposal. The contractor proposal and sketches or plans of the improvements to be performed must include the land restrictions, if any, of the Leased Premises, its location and specifications.

8.2 Landlord’s Duties and Responsibilities. Landlord shall be solely and exclusively responsible for any necessary repairs or restorations due to defects in the design of the Building or construction defects thereof, not apparent at the moment Tenant inspected the Leased Premises prior to occupancy. Except as provided in this Section 8.2, Landlord shall not be responsible for any repair, replacement or improvement to the Leased Premises or to equipment, machinery, facilities, furniture or any other object within the Leased Premises, all of which shall be the responsibility of Tenant as provided in Section 8.1 of this Lease Agreement.

ARTICLE IX
PUBLIC UTILITIES

9.1 Tenant’s Duties and Responsibilities. Tenant shall pay for the cost of electricity, water, gas, telephone and any other utility service to the Leased Premises during the Term of this Lease Agreement, including the period of time, if any, between the Date of Delivery of Possession and the Rent Commencement Date. Tenant shall request and coordinate with Landlord the installation of metering devices and other mechanisms or systems necessary to obtain the various utility
services for the Leased Premises and shall be liable for any deposit and/or installation charge required by Landlord, the corresponding agency or utility company.

9.2 Service Interruption. Tenant shall not make adjustments to the Rent nor hold Landlord liable for any utility service interruption to the Leased Premises or for damages suffered as a consequence of any interruption.

9.3 Electricity.

(a) The Leased Premises are connected to the power lines of the Puerto Rico Electric Power Authority (hereinafter “PREPA”). However, at the time of execution of this Lease Agreement, the power distribution system serving the Leased Premises is not operational. Once the service is reestablished, if Tenant wants to receive PREPA’s electric power services, it is Tenant’s responsibility to coordinate with PREPA, at Tenant’s expense and without any right to reimbursement from Landlord, including the purchase, installation of any equipment and process necessary to make the connection, which equipment must meet PREPA’s requirements.

(b) Electrical Substation. Tenant, at its own cost and expense and without any right to reimbursement from Landlord, may build, install and maintain in coordination with Landlord an electrical substation on the Leased Premises and connect it to Landlord’s distribution lines, subject to compliance with PREPA’s requirements. Under no circumstances shall Tenant install an electrical substation without Landlord’s prior approval as to the capacity and power of said substation, its location within the Leased Premises, and the routing path of the power lines.

(c) Additional Equipment. Tenant covenants not to install or use any equipment that will exceed, or which could reasonably exceed the capacity of the Leased Premises’ power lines without Landlord’s prior consent. Tenant, at its cost and expense, will upgrade the electrical service lines in accordance with the plans and specifications previously approved in writing by Landlord should Tenant’s operations require greater electrical service line capacity. Tenant will have to build its own electrical substation according to its electric power needs.

(d) Landlord is in the process of having an energy generation and distribution system within the Roosevelt Roads Premises independent from PREPA. Once the energy operation is established, Landlord shall connect to the Roosevelt Roads Premises operation.

9.4 Water Supply.

(a) Landlord is the owner of the Potable Water System, currently operated by Integrated Water Solutions (the “Operator”). Landlord represents and warrants that both Landlord and the Operator have current and valid permits required under applicable law to operate the Potable Water System. If Tenant wishes to connect to Landlord’s Potable Water System, it will do it at Tenant’s expense and without any right to reimbursement from Landlord, including the purchase, installation of any equipment and necessary process to make said connection. Said connection will be made in coordination with Landlord and in compliance with the requirements of Exhibit E attached hereto.
(b) Tenant shall pay on a monthly basis, the applicable rate for potable water usage, which rate will be calculated based on Landlord’s regulations.

(c) Should Tenant require water volume and/or water pressure greater than that existing in the area of the Leased Premises, the construction and/or installation of any improvements (including structures), that are necessary, convenient or required by Landlord’s Potable Water System to increase said volume and/or pressure, shall be made at Tenant’s own expense and coordinated with Landlord, but without any right to reimbursement from Landlord for any such improvements unless agreed to otherwise.

(d) Improvements to the Leased Premises’ water main connection shall be performed by Tenant at its own expense. Improvements to the water connection serving the Leased Premises and located outside the boundaries of the Leased Premises shall be performed by Tenant at its own expense.

(e) Tenant must pay Landlord for the potable water usage used since its occupation under the Access Agreement. For that, Landlord will issue the corresponding invoice to Tenant.

9.5 Sanitary System. The Landlord owns the sanitary system in the Leased Premises. If Tenant wishes to connect to Landlord’s Potable Water System, it will do it at Tenant’s expense and without any right to reimbursement from Landlord, including the purchase, installation of any equipment and necessary process to make said connection. Said connection will be made in coordination with Landlord and in compliance with the requirements of Exhibit E attached hereto.

(a) Tenant shall pay monthly, the applicable rate for sanitary services which rate will be calculated according Landlord’s regulations.

(b) Tenant shall pay Landlord for the sanitary services received since its occupation under the Access Agreement. For that, Landlord will issue the corresponding invoice to Tenant.

ARTICLE X
QUIET ENJOYMENT

10.1 Quiet Enjoyment. Upon Tenant’s payment of Rent and observance of all other terms, covenants and conditions of this Lease Agreement that are to be observed and performed by Tenant, Landlord covenants that Tenant may peaceably and quietly enjoy the Leased Premises, during the Term, or until the termination of the Lease Agreement in accordance with Article XVIII.

ARTICLE XI
TAXES, ASSESSMENTS AND DUTIES

11.1 Taxes, Assessments and Duties. Tenant shall be liable for the payment of all taxes, assessments, duties or any other tax levied by any government entity having taxing authority over real property, personal property, and/or the activities directly or indirectly related to Tenant’s operations at the Leased Premises, including, but not limited to, personal property taxes on
equipment and machinery located at the Leased Premises. Tenant shall pay these taxes, assessments, and duties before their due date.

ARTICLE XII
ENVIRONMENTAL

12.1 Governmental Regulations and Environmental Protection. Tenant shall comply with all laws, rules, regulations, executive orders, administrative orders and requirements of local and federal governmental agencies having jurisdiction over Tenant’s operations at the Leased Premises. Tenant shall submit evidence of said compliance of any permits, and agency endorsements, provided that Tenant shall submit to Landlord all operational permits related with the leased premises and its operations.

Tenant shall maintain the Leased Premises and conduct its operations therein in compliance with (i) the terms, conditions, and requirements specified in the Environmental Impact Statement, or any other document prepared for the evaluation of environmental aspects of its operations at the Leased Premises; (ii) the permits issued by the governmental agencies with jurisdiction over the operations at the Leased Premises; and (iii) the deed to the property issued to the Landlord by the United States.

Tenant, at its own cost and expense, shall install on the Leased Premises the necessary equipment to prevent its operations from affecting adversely the environmental integrity of the Leased Premises, or causing any disturbance to the adjacent properties or to the community in general.

Any improvements or installation of equipment for pollution controls required by any agency or governmental entity having jurisdiction thereof shall be at Tenant’s expense and subject to Article VII of this Lease Agreement. Tenant shall also comply with the following permits and regulations, without limitation of any other applicable environmental requirements:

(a) Wells. It is prohibited to drill a water well at the Leased Premises.

(b) Noise. Tenant shall not exceed the maximum noise levels allowed by the Noise Pollution Control Regulation of the Puerto Rico Environmental Quality Board or the agency with jurisdiction over that matter.

(c) Air Emissions. Tenant shall obtain all the necessary construction and operational permits necessary to construct, install, and operate any air emissions source or atmospheric pollution source, as defined by the Regulation for the Control of Atmospheric Pollution Sources according to the local and federal regulations. This includes, but is not limited to (i) ventilation systems to disperse atmospheric emissions resulting from Tenant’s operations; (ii) electric power generators for emergency use; (iii) storage tanks for flammable gases with a capacity greater than five hundred (500) gallons; and (iv) fuel storage tanks (gasoline, diesel, kerosene, acetone, alcohol and others) having a capacity of more than ten thousand (10,000 gallons). Tenant, at its own cost and expense, shall establish the necessary measures and shall install the equipment required to maintain the air quality standards established by the existing laws and regulations and any
amendments thereto as required by the permits issued by the Environmental Protection Agency and the local government authority.

(d) **Gas Storage Tanks.** Tenant shall obtain a permit from the Public Service Commission to install and/or store flammable gases in aboveground storage tanks.

(e) **Underground Storage Tanks.** Tenant shall not install underground tanks to store fuels, raw materials or chemical substances. In the event that any such tanks have been previously installed at the Leased Premises and removal thereof would constitute a risk to the Leased Premises or to Tenant’s operations, such tanks shall be used only if they comply with federal and state regulations for underground storage tanks.

(f) **Aboveground Storage Tanks.** Tenant, if applicable, shall prepare and implement a Spill Prevention, Control and Countermeasure Plan (SPCC Plan) as required by 40 CFR 112 and comply with the applicable law requirements for the installation and operation of aboveground storage tanks. Landlord reserves the right to require secondary containment for any such tank.

(g) **Chemicals.** Storage of any chemical and/or hazardous substance shall be undertaken in full observance of the applicable safety measures required by the local and federal governmental agencies having jurisdiction thereof so as to prevent any leakage or spillage that may contaminate the Leased Premises or adjacent properties.

(h) **Storage of Hazardous Materials.** Tenant shall strictly abide by the rules and regulations established by the Occupational Safety and Health Administration (OSHA) for the storage of hazardous materials (29 CFR Part 1910 Subpart H) as well as with the Puerto Rico Code for Fire Prevention and other local or federal governmental agencies with jurisdiction. Tenant will comply with the minimum distances set forth in the federal and local codes for the storage of hazardous materials, particularly those materials that are flammable.

(i) **Industrial and Sanitary Effluents.** Tenant shall not discharge its sanitary or industrial effluents into the sewer system, nor into any other place until Tenant has obtained the necessary authorization to do so, be it from Landlord, from the local authorities, or the Environmental Protection Agency (EPA), as applicable. Tenant shall request and obtain the necessary permits and/or endorsements from any local or federal agency with jurisdiction in order to install and operate any treatment or pretreatment plant or system for said effluents. Tenant must obtain Landlord’s endorsement and approval to install a treatment or pretreatment plant or system prior to any request for the permits and endorsements of the other pertinent government agencies with jurisdiction. Tenant shall treat its effluents as required prior to discharge, as required by the pertinent governmental agency having jurisdiction.

(j) **NPDES Permit.** Tenant shall not discharge any industrial effluent into the ground. Tenant shall obtain an NPDES permit to discharge stormwater or other effluents into a body of water. Tenant shall obtain an NPDES permit, if stormwater run-off is exposed to raw materials, unfinished or finished products, waste, by-products, industrial machinery or equipment, a materials handling area or a process area. Tenant shall obtain, when applicable, the pertinent industrial discharge permit or pre-treatment permit.
(k) **Hazardous Substances.** Tenant will not treat, store or dispose of any hazardous substance at the Leased Premises, unless Tenant possesses the necessary permits from the agencies with jurisdiction and such activities are performed in compliance with applicable regulations and the terms and conditions of the permit. Tenant will not generate or store any hazardous substance or waste at the Leased Premises without first obtaining the necessary permits from the local and federal agencies with jurisdiction. The generation and storage of hazardous substances shall be conducted in compliance with applicable environmental laws, regulations and permits. Also, Tenant shall not store hazardous waste at the Leased Premises, without first giving notice to Landlord of the location of the storage area and providing evidence of compliance with state and federal regulations as well with the measures Landlord considers necessary to protect the Leased Premises. At no time shall Tenant dispose of any hazardous substances or waste at the Leased Premises. No storage of hazardous substances shall be permitted except to the extent necessary to support the Permitted Use (Section 1.7).

(l) **Non-hazardous Solid Waste.** Non-hazardous solid waste generated from the operations at the Leased Premises shall be stored, handled, transported and disposed of in accordance with the applicable local and federal laws and regulations and the hazardous Waste Control Regulations. Tenant must obtain the applicable permit for a Non-hazardous Waste Generating Activity (DS-3), when it generates more than fifteen (15) cubic yards of non-hazardous solid waste weekly during construction activities. Tenant, at its own cost and expense, shall keep the grounds clean and free of solid wastes, rubbish, garbage and debris.

(m) **Equipment or Materials containing Polychlorinated Biphenyls (PCB).** Tenant shall not install or introduce equipment or materials containing PCB’s at the Leased Premises.

(n) **Reports to Landlord** - In addition to any other information or document that may be required hereunder, Tenant shall provide Landlord with the following:

1. Written notice, within forty-eight (48) hours, of any event that requires verbal or written notice to the Environmental Protection Agency, the Environmental Quality Board or any entity designated by them, together with, a copy of any order, communication or report regarding the event. This includes, but is not limited to, any notice required under the provisions of the “Emergency Planning and Community Right to Know Act.”

2. Written notice within forty-eight (48) hours of any change to the hazardous materials handled at the Leased Premises, or if Tenant observes or has any knowledge of an environmental problem at the Leased Premises even if such problem is not a result of Tenant’s activities.

3. A copy of any permits mentioned as previously stated.

(o) **Audits and Access to the Property.** Landlord reserves the right to inspect the Leased Premises and to authorize the local and federal agencies from time to time, during the Term of this Lease Agreement as deemed necessary, to enter the premises for the purpose of evaluating.
the environmental condition of the Leased Premises, and as to Tenant’s compliance with federal and state environmental regulations and the provisions of this Article XII. Tenant, for this purpose, will provide Landlord with access to all areas or structures on the Leased Premises. Tenant shall provide access to all the books, registers, documents or instruments that Landlord deems necessary to determine the environmental condition of the Leased Premises, or compliance with environmental regulations. Such inspection shall be carried out with the minimum interruption of the maritime operations conducted at the Leased Premises.

In the event that Landlord believes, based upon any inspection performed on the Leased Premises, that Tenant, as a result of Tenant’s operations at the Leased Premises, is in material violation of a federal or local environmental law or regulation, Landlord shall request Tenant to perform, at Tenant’s cost, the environmental site assessments necessary to determine the existence and extent of contamination at the Leased Premises, if any and all activities of removal, mitigation and remediation needed to correct any environmental problem, whether caused by the Tenant or not at the Leased Premises. Tenant, upon Landlord’s request, at the termination of this Lease Agreement, shall submit an environmental site assessment, Phase I and/or Phase II, of the environmental condition of the Leased Premises prepared by an environmental consultant of proven experience. The assessment shall determine whether the activities performed by Tenant affected the conditions of the Building and the lot. The assessment shall be performed following the standards established for preparing such reports by the scientific community (ASTM). The assessments shall be signed and certified by an engineer or geologist licensed to practice in Puerto Rico.

In the event that an environmental audit or inspection reveals an environmental deficiency or condition at the Leased Premises, Tenant shall submit an action plan to remedy such situation together with a bond or guarantee to secure payment of the remediation. The plan shall be reviewed, and its execution coordinated with Landlord.

(p) Emergency Remediation Response Action. In the event of any hazardous substance spill, leak, or escape or any other occurrence during the period of Tenant’s operations at the Leased Premises which requires the removal of hazardous substances or environmental remediation, Tenant shall be responsible to remedy it immediately. Tenant shall be responsible for hiring, at its own expense, those companies with proven experience and reputation to perform said removal activities and/or environmental remediation and shall carry out all the necessary negotiations to accomplish said removal and/or remediation. Except in emergent circumstances, prior to the formation of any contractual agreement with any company or consultant for the removal and/or remediation, the company or consultant must be approved by Landlord. The scope of work prepared by the Landlord authorized company shall be submitted to Landlord for its approval. In the event of any violation or contamination caused by Tenant’s operations of the Leased Premises, Landlord may request Tenant to remain in the Leased Premises and to continue paying Rent until the Leased Premises are in compliance with local and federal regulations. At all times, Tenant shall be obligated to immediately notify Landlord in writing upon occurrence of any event that requires removal of contaminants or environmental remediation and shall coordinate with Landlord any clean-up, contamination removal, or environmental remediation before commencement thereof provided that if the event which requires removal of contaminants or environmental remediation should occur during non-working periods, in which case (such as
weeks or holidays) Tenant shall immediately notify Landlord the next working day. The notice to Landlord by Tenant in the event of a spill, leak or escape does not release Tenant of its obligation to notify the pertinent governmental agencies as required by law, regulation, municipal ordinance, judicial order, executive order, administrative order or by any other legal requirement.

Should any environmental mishap occur, such as, but not limited to, a spill, release or leak that poses an imminent danger to human health or to the environment, in addition to taking all such protective measures, responses and notifications as are required by environmental laws, regulations, and permits, Tenant shall, in the immediate area of mishap, cease its operations if Tenant’s operations are the direct cause of said environmental mishap until said mishap is controlled and all risk to human life or to the environment is suppressed.

(q) Environmental Conditions Liability. Tenant shall be liable for any environmental damage and the necessary or remedial action resulting from Tenant’s operations. Tenant shall indemnify, defend, and hold harmless Landlord for any lawsuit, civil or criminal action, administrative action, fine, claim, remedial action, loss, expense or cost arising from or related to corrective action necessitated by the release or threatened release of any hazardous substance or pollutant or contaminant and/or clean-up and/or pollutant removal action, toxic or hazardous substance or waste as defined in local and federal laws and regulations, which may arise as a result of Tenant’s operations or during Tenant’s occupation of the Leased Premises. The term Hazardous Substance, pollutant, and contaminant include those substances defined in, 42 U.S.C. 9601 (14), (33) and include petroleum and its derivatives, asbestos, PCBs, PFOS and PFOA. Tenant shall also be liable and shall indemnify, defend, and hold harmless Landlord for any complaint, civil or criminal action, administrative action, fine or claim that arises as a result of any violation of any law, regulation, rule, Administrative Order, Executive Order or environmental requirement of any local or federal governmental entity that arises from or is related to Tenant’s operations or during the term Tenant occupied the Leased Premises, including Tenant’s activities during its exercise of the Access Agreement. Tenant’s liability toward Landlord and its obligation to indemnify Landlord shall survive the termination of this Lease Agreement. Tenant will not be liable for preexisting environmental conditions, nor any environmental condition related to adjoining properties, except to the extent of Tenant’s causation, creation of exacerbation of such preexisting environmental condition.

(r) Tenant recognizes that the Roosevelt Roads Premises are currently undergoing a process of redevelopment and environmental remediation and will not interfere with said processes. Furthermore, Tenant recognizes that the Roosevelt Roads Premises are being redeveloped to maximize the resources located within, take full advantage of the commercial and touristic value that the Roosevelt Roads Premises offer and to comply with the purposes set forth in that certain “Roosevelt Roads Redevelopment Addendum to the 2004 Reuse Plan” (the “Reuse Plan”).

(s) Tenant shall comply with all land restrictions established in the Quitclaim Deed and the EDC. LIFOC may have been replaced with the deed, both of which were provided by Landlord to Tenant by electronic means. Specifically, Tenant shall comply with the land restrictions established for SWMU 74; SWMU 55; LUC11; SWMU 23 which are present in portions of the Leased Premises and are identified in Exhibit D.
(t) Tenant will submit an Environmental Certification Report of the Leased Premises sixty (60) days before the termination of this Lease Agreement. Tenant acknowledges that at the termination of this Lease Agreement, if any environmental remedial situation related to Tenant’s occupation of the premises is incomplete in the Leased Premises, Tenant must continue to pay the monthly rental obligation as agreed, until all activities related with the remediation are completed to the satisfaction of the local or federal governmental agencies having primary jurisdiction over the remediation.

This obligation to pay rent will remain active regardless of the reasons for termination of the Lease Agreement or if the Tenant had delivered possession of the Leased Premises to Landlord, unless the environmental remedial situation does not interfere with the Landlord’s ability to offer and make available, in whole or in part, the Leased Premises to third parties. In the event that any remediation activities related to Tenant’s operation or occupation of the Leased Premises only encumber part of such premises, Tenant shall be only responsible for rent payment of its proportionate share of the rent corresponding to the area under active environmental remediation.

Once Landlord issues written certification acknowledging the completion of the remediation activities the rent payment obligation will be ceased.

**ARTICLE XIII**
**DESTRUCTION OF PREMISES**

13.1 **Notice of Event.** Tenant shall immediately notify Landlord after any fire, explosion, spill of hazardous wastes or pollutants (except as otherwise provided in Article XII and Section 13.6 hereof) or any other kind of accident or extraordinary event which causes or threatens damage to the Leased Premises.

13.2 **Landlord’s Duty to Repair.** Should the Leased Premises be damaged by fire, explosion or any other casualty covered by the insurance policies and not caused by the act or omission of Tenant as required by this Lease Agreement, Landlord shall repair or restore the Leased Premises to a condition substantially similar to that before the accident or event, provided that:

(a) Landlord has received the corresponding insurance proceeds from the insurance company and the amount of any deductible from Tenant; and

(b) the accident or event causing the damage is not attributable to or did not occur as a consequence of negligence, an omission, or intentional act of Tenant or any of its employees, agents, visitors or representatives; nor as a result of acts by any of them in violation of a federal, state, or municipal law regulation, order, ordinance, or breach of any obligation or condition under this Lease Agreement.

Tenant recognizes that Landlord’s duty to repair damage or destruction to the Leased Premises is limited to those repairs made possible by the proceeds received as a result of the insurance policies required hereunder, and that Tenant shall be responsible for the deductibles or the amount in excess
of the insurance proceeds necessary to cover the costs to repair, reconstruct, or replace the Leased Premises.

13.3 Lease Agreement Termination. Notwithstanding the provisions of Section 13.2 hereof, Landlord shall have the option to terminate this Lease Agreement in any of the following circumstances:

(a) should the insurance policy as required by this Lease Agreement not provide coverage for the accident or event which damages the Leased Premises;

(b) the damage suffered by the Leased Premises is such that it exceeds the cost of replacement;

(c) if the Building and other structures of the Leased Premises, in the opinion of Landlord, cannot be repaired in a period of one hundred twenty (120) days from the day the accident or event occurred;

(d) should the damage to the Building be so extensive that Landlord decides to demolish it; or

(e) should the accident or event occur at any time during the last two (2) years of the Term of this Lease Agreement.

In any of the above circumstances Landlord may terminate this Lease Agreement by written notice to Tenant within ninety (90) days from the date the accident or event occurred, in which case both parties are released of any further liability under this Lease Agreement as of the effective date of termination except for those that survive termination pursuant to Article XII hereof.

13.4 Restoration. Should Landlord have the obligation to repair or restore the Leased Premises according to Section 13.2 hereof, or should Landlord not terminate this Lease Agreement as provided in Section 13.3 hereof, and proceeds to repair or restore the Leased Premises, Tenant shall hold Landlord harmless for the loss of any equipment, machinery or any other property that Tenant had placed, joined, built-in or installed, or kept at the Leased Premises.

13.5 Rent Adjustment. Should the Leased Premises be damaged or destroyed and Landlord elects to repair (provided that the cause of the fire or accident is not the result of any negligence, omission, or any intentional act of Tenant, its employees, agents, guests or representatives, nor the violation by any of them of any federal, state, or municipal law, regulation, order, ordinance, nor the failure to comply with any obligation or condition under this Lease Agreement), Tenant shall have a right to adjust the Basic Rent in proportion to the total area of the Leased Premises that becomes untenantable during the repair period (i.e., from the date of the accident or event until the date Landlord finishes the repair work). Should Landlord terminate this Lease Agreement due to any of the causes set forth in Section 13.3 hereof, the Rent shall be due until the date of the casualty or destruction.
ARTICLE XIV
WAIVER OF CLAIMS; INDEMNIFICATION

14.1 Indemnification. Tenant shall defend, indemnify and hold harmless Landlord, its directors, officers, employees, invitees, representatives, successors and assignees of liability from any loss, claim, fine, penalty, action or complaint of any type or kind, including any incidental expense or cost (including, but not limited to, defense costs, settlement and attorney fees) in relation to or as a consequence of any damage to a third party (including death), or any damage, loss or destruction of any third party’s property, (a) in or around the Leased Premises due to any act or omission of the Tenant or any of its employees (whether or not said act is within the scope of employee’s job), agents, authorized persons, visitors, successors or assignees, or caused wholly or in part by any act or omission of any of the former or (b) due to the use or occupation of the Leased Premises by Tenant, its agents, employees, invitees, or visitors; (ii) violation of any federal or state law or regulation, or municipal ordinance, or of any judicial or administrative order, as a direct or indirect consequence of the use or occupation of the Leased Premises by Tenant; or (iii) due to breach of any of the obligations under this Lease Agreement. The provisions of this Article XIV shall survive and remain in full force after the expiration of the Term or the termination of this Lease Agreement.

14.2 Waiver of Claims. Landlord shall not be liable, and Tenant releases Landlord and waives any claim against Landlord, for any damage to or loss of any property located at the Leased Premises which belongs to Tenant and/or its agents, employees, invitees and/or visitors, and for any other damage or loss suffered by Tenant, or any damage or loss to Tenant which arises from fire, steam, or smoke; short circuit; water, electricity, gas or other utility failure; rain, storms, hurricanes or other weather conditions; flood or leakage; defects in pipes, cables, appliances, plumbing and/or air conditioning systems, regardless if such damage or inconvenience is the result of the condition or working order of the Leased Premises, or any part of it. Landlord shall not be liable for any damage or loss suffered by Tenant and/or its agents, employees, invitees and visitors as a result of criminal conduct, intentional acts, and/or negligent or intentional acts of a third party or of Tenant, its agents, employees, invitees and/or visitors. Tenant waives and shall be barred from filing any claim against Landlord for any damage or loss at the Leased Premises for any cause other than gross negligence by Landlord.

14.3 Tenant Responsible for Personal Property. Tenant recognizes that Landlord shall not be liable and waives any claim for any damage to personal property in the Leased Premises that belongs to Tenant, or for the theft or misappropriation thereof. Tenant bears all risk for any damage or loss of any personal property of Tenant.

ARTICLE XV
INSURANCE

15.1 Insurance. Upon the commencement of the construction works Tenant shall have the insurance policy in place and continue during the full term of this agreement. After the execution
of the present agreement and before the commencement of the construction works Tenant shall require Landlord authorization to visit the premises.

Tenant shall maintain in force the following insurance policies:

(a) commercial general liability, including contractual liability, with limits of not less than $1,000,000 for bodily injury (including death) and $1,000,000 for property damage, per occurrence, which will insure Tenant against any claim for accidents in or around the Leased Premises due to use or occupation of the Leased Premises by Tenant. This insurance shall include Landlord and its agents, officers, directors and employees as additional insured, and said policy shall include a $100,000.00 “fire legal liability” endorsement;

(b) property insurance with “All Risk” coverage, for one hundred percent (100%) real property replacement cost, including foundations (form 1410), with an extended coverage endorsement, which names Landlord as beneficiary in case of loss. This insurance shall include coverage for fire, hurricanes, floods, earthquakes and other events of a similar nature, vandalism and malicious mischief, boilers and machinery (if applicable) in building format and content, including all changes, alterations, extensions and improvements made by Tenant to the Leased Premises. The property includes the area detailed in the Exhibit A.

The deductibles of the insurance policies herein required shall be Tenant’s responsibility and, should Landlord undertake any repairs after loss or damage to the Leased Premises, Tenant is responsible for paying the policy deductible. The acceptable deductibles are $250 All Perils, Windstorm 2% and Earthquake 5%;

(c) Pollution Liability is required by type of the operations carried on by Tenant. If there is no base to acquire this coverage, the Tenant has to include a deposit of one hundred thousand dollars ($100,000) to be used in case or circumstance of contamination.

(d) Environmental Liability Policy - Due to the nature of the operations to be carried out on the Leased Property, Tenant will subscribe to the following coverage: Tenant is obligated to subscribe to and uphold a policy with public liability coverage for environmental events. Such policy shall have a limit of no less than one million dollars ($1,000,000.00) per event or occurrence and shall remain in force during the term of this Lease Agreement and any extension thereof. Failure by Tenant to keep the policy may be sufficient cause to terminate the Lease Agreement, without releasing Tenant from any liability. In the aforementioned policy of public liability for environmental events, Landlord must be included as an additional insured and as a loss payee. If the policy limit described hereabouts is not adequate to satisfy any claim against the Landlord, Tenant shall in turn be liable for the overclaimed amount, if any; and

(e) Yacht insurance with limits of no less than one million dollars ($1,000,000.00), where Landlord is an additional insured. Insurance to the boats used in Tenant in the maritime operation at the Leased Premises must include Landlord as an additional insured against any claim of damages caused by the boats and their operation.

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All contractors that provide services to Tenant in the maritime operation have to include Landlord as an additional insured.

15.2 Insurance During Construction. During any construction period at the Leased Premises, including the work to be performed by Tenant described in Exhibit C, if any, Tenant must have in force the following insurance policies:

(a) “builders risk” insurance which provides coverage for any construction work estimated to be over $500,000.00;

(b) Tenant must, at Tenant’s own cost and expense, provide Landlord with a performance bond from a surety company recognized and approved by Landlord with an A.M. Best’s rating of not less than “A-”, or other satisfactory guarantee acceptable to Landlord, in a sum equal to the estimated cost of said construction to guarantee completion of any construction within a reasonable time. At Landlord’s option, instead of Tenant’s obtention of a separate bond or guarantee for each project that may be in process at any given time, Tenant shall provide Landlord with one bond or guarantee that covers all alterations, changes, additions or improvements and other construction occurring at the same time; and

(c) Workers’ Compensation from the State Insurance Fund Corporation in such coverage amounts as required by law.

15.3 Insurance Policy Increase. Tenant will pay any premium increase required by an insurance company to cover additional risks resulting from any alteration, change, addition or improvement made by Tenant to the Leased Premises.

15.4 General Requirements. All insurance policies required of Tenant under this Article XV must comply in form and substance to Landlord’s requirements, and must provide the following: (i) that the insurance coverage may not be reduced, canceled or not renewed by the insurance company without written notice to Landlord and Tenant at least sixty (60) days in advance (unless said cancellation is due to failure to pay premium, in which case notice must be sent at least thirty (30) days in advance); and (ii) that the policy shall be immediately renewed by Tenant on or before its expiration date. Tenant must obtain said policies from insurance companies duly authorized to do business in Puerto Rico, and acceptable to Landlord. Said insurance companies shall have a classification of not less than “A-” and a financial rating of “IV” or better, as rated by A.M. Best and Company.

15.5 Evidence of Insurance Coverage. Before the Date of Delivery of Possession Tenant shall submit to Landlord the policies (or certified copies) of same required under this Article XV with all the mentioned endorsements, and certificates of insurance which evidence the required coverage by Sections 15.1 and 15.2 of this Lease Agreement. Tenant expressly recognizes Landlord’s right not to deliver the Leased Premises to Tenant until two (2) days after the policies (or certified copies) and the insurance certificates have been submitted to Landlord, as required in this section.
15.6 **Evidence of Payment; Renewal of Policies.** Tenant must deliver to Landlord satisfactory evidence of payment of the insurance premiums within fifteen (15) days of the respective renewal dates of the respective policies and at the same time submit the corresponding insurance certificate or certified copy of each renewed policy.

15.7 **Claims.** Tenant shall cooperate with Landlord in the collection of claims against the corresponding insurance companies in those cases where Landlord handles such claims, including the preparation of damage reports and other documents required to process the claim. In the event Tenant does not provide said documents, Landlord, as Tenant’s agent and attorney-in-fact, shall, in addition to any other remedy available to Landlord, execute and submit any evidence of loss and/or any other document necessary for collection of the claim.

15.8 **Periodic Reviews.** Landlord reserves the right to review and demand periodically increases in the limits of the coverage required in this Lease Agreement as results from the uses of the leased premises and of inflation.

15.9 **Penalties.** Notwithstanding the provisions of Section 22.8, and without affecting the general terms of the matters stipulated therein, should Tenant breach its duty to obtain any of the policies required in Article XV, which as a result renders it necessary for Landlord to obtain said policies, in addition to reimbursement for the premium paid for said policies, Tenant shall pay Landlord a sum equal to twelve percent (12%) of the cost of the policies obtained by Landlord to cover Landlord’s administrative costs.

15.10 **Waiver of Subrogation.**

   **(a)** Landlord and Tenant agree that all fire, PLL, and any other property damage insurance carried by either of them in relation to the Leased Premises shall be endorsed with a clause providing that any release from liability or waiver of claim for recovery from the other party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder, provided that the insurer waives all rights of subrogation which such insurer might have against the other party. Any release or any waiver of claim shall not be operative in any case where the effect of such release or waiver is to invalidate any insurance coverage or invalidate the right of the insured to recover thereunder. Should any waiver of subrogation result in a premium increase, Tenant shall, within ten (10) days of notice, pay said increase in order to maintain the effectiveness said release or waiver.

   **(b)** Neither Landlord nor Tenant shall be liable to the other or the insurance company that provided the coverage for any loss or damage to any building or structure of the Leased Premises for the loss of income either through subrogation or any other form, regardless if such loss or damage be, in whole or in part, caused by a negligent act or omission of the other party, its agents, officers, directors or employees, to the extent that such loss or damage is covered by insurance policy in favor of the affected party.
ARTICLE XVI
LANDLORD’S RIGHTS

16.1 Access to Leased Premises. Landlord shall be entitled to enter the Leased Premises for
the purposes of inspection to perform any repairs or work required pursuant to the provisions of
this Lease Agreement, or for those repairs or work which Tenant has failed to do despite being
responsible therefore under this Lease Agreement, or to show the Leased Premises to persons
interested to lease or acquire the same. This right to access is subject to the following conditions:
(a) if due to any emergency situation, which Landlord shall determine at its discretion, Landlord
shall have full access to the Leased Premises at any time; (b) under any other circumstances
Landlord shall have access to the Leased Premises during normal business hours; and (c) Landlord
must maintain at a minimum any interruption to Tenant’s operations during any exercise of its
rights under this Article.

ARTICLE XVII
TENANT BANKRUPTCY

17.1 Lease Agreement Assumption Requirements. The following provisions shall apply upon
commencement of a voluntary or involuntary case under Title 11, United States Code, wherein
Tenant is a debtor under 11 U.S.C. §§101 et. seq. (the “Bankruptcy Code”), and only insofar as
the Bankruptcy Code applies or affects the provisions of this Lease Agreement.

(a) Should the trustee or “debtor in possession” not elect to assume this Lease
Agreement within a period of sixty (60) days from the commencement of proceedings under the
Bankruptcy Code, this Lease Agreement shall be deemed rejected and terminated as provided
under Article XVI of this Lease Agreement (including any provisions as to damages) giving
Landlord the immediate right to repossess the Leased Premises.

(b) Any assumption and/or assignment of this Lease shall not take effect unless there
is compliance with the following:

1. all Tenant’s defaults have been cured and Landlord has been provided with adequate
   and reasonably satisfactory assurances of Tenant’s future performance; if the Lease
   Agreement is assigned, Tenant shall provide (1) any guarantee and/or deposit
   reasonably required, and (2) any other reasonable assurance that there will be sufficient
   funds and personnel available to operate the Leased Premises in strict compliance with
   the provisions of this Lease Agreement;

2. neither the assumption of this Lease Agreement nor the operation of the Leased
   Premises after this Lease Agreement has been assumed or assigned, in the reasonable
   opinion of Landlord, will cause or result in breach or violation of any of its provisions
   or of any other applicable contract with Landlord;

3. the assumption, and if applicable, the assignment of this Lease Agreement fully
   complies with the provisions of the Bankruptcy Code, including, but not limited to
   Sections 365(b)(1) and (3) and 365(f)(1) and (2) thereof; and

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4. the assumption and/or assignment has been ratified and approved through an order of the Bankruptcy Court or any other court having jurisdiction.

(c) No assignment of this Lease Agreement by the trustee or the “debtor in possession” shall be valid unless the proposed assignee has also satisfied the conditions provided in paragraphs (b) (i), (ii), (iii) and (iv) of this section, and all other requirements established in this Lease Agreement which further Landlord’s public policy of promoting employment and the industrial development of Puerto Rico, which is accomplished by observing the capitalization, investment and employment levels stated in Section 1.8 and the continuance of operational requirements set forth in Section 4.2 of this Lease Agreement.

(d) Whenever a “debtor in possession” is required under the Bankruptcy Code to comply with its obligations as Tenant under this Lease Agreement, the Basic Rent and the other charges identified in this Lease Agreement as Additional Rent shall not be subject to adjustment and must be paid in full as provided in the pertinent sections of this Lease Agreement.

(e) Pursuant to Section 22.1 of this Lease Agreement, except where the provisions of the Bankruptcy Code mandate otherwise, the assignment of this Lease Agreement is prohibited.

(f) Unless agreed to by Landlord, under no circumstances will this Lease Agreement be renewed if the Term has expired or the Lease Agreement has terminated according to its provisions. No bankruptcy procedure shall annul, postpone or affect the expiration or termination of the Term of this Lease Agreement as provided in Article XVII or prevent Landlord from recovering possession of the Leased Premises at the expiration of the Term or upon earlier termination of this Lease Agreement.

ARTICLE XVIII
TERMINATION BY BREACH

18.1 Breach by Tenant as Cause for Termination. In addition to, and separate from, any other cause for termination set forth in this Lease Agreement or available under applicable law, each of the following events or acts shall be considered a breach and constitute cause for termination, which termination will be effective upon written notice to Tenant:

(a) Tenant’s failure to pay the Rent to Landlord within the term provided in Section 5.1 of this Lease Agreement, or upon failure to pay any other sum required to be paid hereunder within thirty (30) days after its due date;

(b) Tenant’s failure to pay the Rent to Landlord on or before the first day of the month, or failure to pay any other amount when due, on three or more occasions within any consecutive twelve (12) month period;

(c) Tenant’s abandonment of the Leased Premises (as defined in Section 18.3 of this Lease Agreement), upon certification of such abandonment by the procedure provided in clause (b) of Section 18.3;
(d) if Tenant encumbers, assigns or transfers this Lease Agreement, in whole or in part, except as otherwise provided in this Lease Agreement;

(e) if Tenant makes a general assignment of its assets in benefit of its creditors;

(f) if Tenant fails to take physical possession of the Leased Premises within fifteen (15) days following the Date of Delivery of Possession;

(g) Failure to abide by applicable restrictions

(h) Failure to obtain and maintain required insurance in amounts and material terms deemed adequate by Landlord in its sole discretion.

Tenant’s failure to cure any of the defaults set forth in this Section 18.1 (excepting such events set forth in Subsection (a) and (b), which have their own cure period), within forty-five (45) from Tenant’s receipt of notice of Landlord related to such default, Landlord may proceed to perform any of its options set forth in Section 18.5 hereof.

18.2 Other Causes for Termination. In addition to the causes for termination set forth in Section 18.1, Landlord may terminate this Lease Agreement if Tenant fails to comply with any of Tenant’s principal obligations hereunder within sixty (60) days of receipt of written notice from Landlord requesting performance of any principal obligation. However, if Tenant shall have begun efforts toward performance within said sixty (60) day period and continues to act diligently and makes every reasonable effort to perform, said period of sixty (60) days may be extended by Landlord for a maximum period of ninety (90) days, as necessary for Tenant’s performance of any principal obligation. Principal obligations under this Lease Agreement include, but are not limited to, the following:

(a) The obligation to comply with Section 1.8 of the present agreement.

(b) The obligation to comply with the milestones established in the project schedule here included as Exhibit B of the present agreement.

(c) the obligation of Tenant, when required hereunder, to submit any plans for Landlord’s approval or any other information in connection with improvements and alterations to be made by Tenant to the Leased Premises;

(d) the compliance by Tenant of the environmental provisions of Article XII of this Lease Agreement; and

(e) the prohibition to use or allow the Leased Premises or any part thereof to be used for illegal purposes or for a use that is not permitted by Section 1.7.

18.3 Abandonment. Tenant recognizes that the delivery to Landlord of the keys to the Leased Premises constitutes conclusive proof of Tenant’s intention to abandon the Leased Premises and
any equipment, machinery, furniture or other property found within. Tenant also recognizes the fact that the voluntary abandonment of property at the Leased Premises through the delivery of the keys is incontrovertible evidence of Tenant’s decision to forsake such property and renounce ownership thereof, giving Landlord the absolute right to dispose of said property, as established in clause (b)(ii) below.

(a) For the purposes of this Lease Agreement Tenant has abandoned the Leased Premises upon the occurrence of any of the following events:

1. should the Tenant deliver to Landlord the keys to the Leased Premises;
2. should the Tenant cease operations and close down the Leased Premises (unrelated to a Force Majeure), notwithstanding that equipment, machinery, furniture or other property remain thereat; and/or
3. Tenant removes or transfers its operations, personnel or equipment at the Leased Premises to another location, without the consent of Landlord.

(b) The following procedure is adopted by the parties hereto to confirm the act of “abandonment” by Tenant under clause (a) of this Section 18.3:

1. If Tenant has incurred in any act of abandonment described in Section 18.3(a) hereof, Landlord will send Tenant, by certified mail, return receipt requested, a notice which will describe the act of abandonment committed by Tenant. From the date of said notice, Tenant shall have fifteen (15) days to discontinue the abandonment or to dispute in writing the information contained in Landlord’s notice. Should the act of abandonment notified by Landlord continue for more than the fifteen (15) days provided herein, Landlord shall send a second notice to reconfirm the act of abandonment, which notice will be effective at the time the notice is sent.

2. Once the act of abandonment is reconfirmed as provided in clause (b)(i) above, Landlord may declare this Lease Agreement terminated by notice to Tenant and such termination shall be effective as of the date mailed. The notice will contain a request to Tenant to remove within ten (10) days all equipment, machinery furniture or other property remaining at the Leased Premises, and contain a warning to Tenant that if such property is not removed in that time period, Landlord may either remove and store said property, at its own discretion, at the expense and cost of Tenant, or dispose freely of said property as it deems convenient and Tenant will have no right to claim or be compensated for the value of the abandoned property or for any damage or loss caused by such removal by Landlord.

Subject to the performance of the procedure previously described, Tenant waives any claim and releases and holds Landlord harmless from any damage or loss that Tenant may suffer as a
consequence of the removal and disposal of the property that Tenant has abandoned at the Leased Premises.

18.4 **Termination by Tenant.** Tenant may terminate this Lease Agreement at any time, without penalty, should any of the following events occur:

(a) Tenant moves its operations to another of Landlord’s premises having greater capacity or to another government property, for the purpose of augmenting its operations in terms of capitalization, investment, or employment, if at such time Tenant is in compliance with the terms and conditions of this Lease Agreement; provided, however, that all expenses related to or resulting from said relocation shall be Tenant’s responsibility.

(b) Tenant’s site plan and building permits are rejected without possibility of reconsideration by the government agencies with jurisdiction.

18.5 **Landlord’s Options.**

(a) Landlord may terminate this Lease Agreement upon Tenant’s breach of any of its obligations hereunder, or upon occurrence of any of the events of termination set forth in Sections 18.1 and 18.2 hereof. Said notice shall be given by certified mail with return receipt requested. The termination of this Lease Agreement shall become effective on the date indicated in said notice.

(b) Notwithstanding subsection (a), Landlord may always compel specific performance of the terms and conditions of this Lease Agreement and demand and protect its rights under this Lease Agreement through legal proceedings in law or equity to obtain the faithful performance of the covenants and obligations hereunder, including the payment of all amounts due under this Lease Agreement.

(c) Should any cause for termination arise, Landlord shall have available all the rights and remedies provided herein, which are separate and independent. Landlord’s resort to any particular right and/or remedy will not deprive Landlord of any other right or remedy available at law or in equity.

(d) In the event Landlord terminates this Lease Agreement, Tenant’s economic and environmental obligations and any other obligations of Tenant hereunder shall survive the termination and remain in effect until they are complied with to Landlord’s satisfaction.

18.6 **Damages.** If Landlord elects to terminate this Lease Agreement in accordance with Section 18.5 hereof Tenant shall be responsible for payment of the following:

(a) all Rent due and unpaid up to the date of termination;

(b) all losses, damages and costs incurred by Landlord as a consequence of the early termination of this Lease Agreement including, but not limited to expenses related to any notices by Landlord to terminate this Lease Agreement; collection costs; attorneys’ fees during the
termination process; and the costs of court proceedings, if any; the costs to repair and clean the Leased Premises in order to restore them to the condition in which Tenant would have been obligated to deliver the premises had an early termination not been effected; and expenses incurred by Landlord to relet the Leased Premises in accordance with Section 18.7 of this Lease Agreement; and

(c) damages equivalent to the total amount of Basic Rent corresponding to the unexpired portion of the Term (i.e., the Basic Rent for the period between the date of termination and the expiration date of the Term in accordance with Sections 1.9 and 3.1 hereof), that Landlord would have received had the Lease Agreement not been terminated.

18.7 Right to Relet. (a) At any time after Landlord recovers possession of the Leased Premises or any portion thereof, whether or not this Lease Agreement is terminated pursuant to Section 18.5, Landlord may, but is not obligated to, relet the Leased Premises or part thereof, in Tenant’s name (as a sublease) or in Landlord’s own name, as Landlord deems it convenient. The reletting of the Leased Premises, or part thereof, shall be for a term and under conditions as Landlord, in its own discretion, determines advisable; including that the term of any relet may be for a period longer or shorter than the remaining balance of the Term hereunder. Any relet may include special provisions, such as rent credits, a rent lower than that fixed under this Lease Agreement, or no rent. Tenant acknowledges that the damages formula under Section 18.6 is not subject to adjustments should Landlord elect not to relet the Leased Premises or because the Leased Premises or part thereof is leased to a third party at a rent lower than that of this Lease Agreement.

ARTICLE XIX
RETURN OF LEASED PREMISES

19.1 Surrender of Possession. Upon termination of this Lease Agreement, at the expiration of the Term or otherwise, Tenant must vacate and surrender the Leased Premises to Landlord in good condition, reasonable wear and tear excepted, including all improvements, changes, or alterations made thereto with Landlord’s consent and which Landlord does not require to be removed.

19.2 Holding Over. Tenant should not remain in possession of the Leased Premises after the expiration of the Term, without a new lease agreement with Landlord.

19.3 Inspection of Leased Premises. Upon expiration of the Term or termination of this Lease Agreement and prior to Landlord’s acceptance of possession, the Leased Premises shall be inspected by Landlord, who shall certify in an inspection report the physical and environmental condition of the Leased Premises. The inspection report shall identify any deficient physical or environmental condition(s) of the Leased Premises that must be corrected, remedied, or repaired at Tenant’s cost as a condition precedent to Landlord’s acceptance of possession of the Leased Premises. Should Tenant fail take the corrective action required by the deficient condition of the Leased Premises as indicated in the inspection report within a reasonable time, Landlord may, but is not obligated to, perform the same, and Tenant shall reimburse Landlord for the cost of the corrective action.
19.4 **Equipment, Machinery, and Furniture Not Removed.** Any equipment, machinery, furniture or other property of Tenant remaining at the Lease Premises after termination of the Term or the termination of this Lease Agreement may be removed by Landlord and stored in another location, and Tenant will be responsible for the removal and storage costs. In no event shall Landlord be liable for the value, preservation, or care of said property. Any sum that Landlord must pay or spend for removal and storage of the property shall be reimbursed by Tenant. Any equipment, machinery, furniture or other property not claimed within a term of thirty (30) days after the expiration or termination of this Lease Agreement, shall be deemed abandoned by Tenant. At Landlord’s option, the property deemed abandoned by Tenant shall be transferred to Landlord without any other formality or document, and Landlord shall be entitled to freely dispose of the same without Tenant having any right or claim to any payment or consideration for said property.

19.5 **TENANT’s Liabilities.** Neither the expiration or termination of this Lease Agreement, nor the repossession of the Leased Premises or part thereof, nor the reletting of the Leased Premises or any part thereof, pursuant to the provisions hereof, shall release the TENANT of its financial or other obligations under this Lease Agreement, which obligations shall survive the expiration or termination of this Lease Agreement, as well as repossession or reletting of the Leased Premises.

**ARTICLE XX**

**LEGAL REQUIREMENTS**

20.1 **Legal and Insurance Compliance.**

(a) Tenant, at its own cost and expense, shall observe and comply with: (i) any requirement or condition under any federal, state or municipal law or regulation (including any executive order or municipal ordinance) applicable now or in the future to the Leased Premises, or to the use of the Leased Premises (including but not limited to any federal, state or local law, regulation or ordinance applicable to air and water quality, toxic or hazardous materials or substances, waste disposal, emissions or any other environmental matter); (ii) all requirements or conditions to obtain, maintain, and when appropriate, renew all permits and endorsements necessary to use the Leased Premises for the purposes allowed by this Lease Agreement and by the use permit issued by the Puerto Rico Permits Office (OGPe) for the Leased Premises; (iii) the requirements of the insurance companies having issued policies for the Leased Premises as provided by Article XV of this Lease Agreement; (iv) any real estate condition, lien or encumbrance affecting the Leased Premises; (v) all zoning and land use requirements; and (vi) any other requirement imposed by law that compels any duty or obligation with respect to the use or occupation of the Leased Premises.

(b) Tenant’s compliance with any requirement described above shall be at Tenant’s cost and expense, including, but not limited to, any other expense related to improvements or installations required by any agency or government instrumentality with jurisdiction, as a condition to the issuance or renewal of a permit or endorsement for the operations that Tenant is to carry out at the Leased Premises.
(c) Tenant, upon request of Landlord, shall submit evidence of its compliance with the above requirements or of the validity of permits and endorsements of the administrative agencies Tenant requires for its operations at the Leased Premises.

ARTICLE XXI
ASSIGNMENT AND SUBLEASE.

21.1 Assignment and Sublease. Unless otherwise permitted in Section 21.3, Tenant shall not (i) assign this Lease Agreement, sublet the Leased Premises or any part thereof, mortgage its leasehold right over the Leased Premises or otherwise place a lien upon its right or any interest in this Lease Agreement in favor of any person or entity; (ii) allow by operation of law the constitution of any lien over Tenant’s leasehold right over the Leased Premises or the transfer of Tenant’s leasehold right over the Leased Premises to a third party; (iii) allow the use or occupation of the Leased Premises, or part thereof, by any person or entity that is not Tenant, its agents or employees. Except as provided in Article XVII of this Lease Agreement, under no circumstances may this Lease Agreement be assigned in a voluntary or involuntary bankruptcy proceeding, and under no circumstances shall this Lease Agreement or the rights or privileges granted to Tenant herein constitute an asset of Tenant under a bankruptcy, insolvency or reorganization proceeding.

21.2 Change of Control. The transfer of the Tenant’s voting stock, a change of control in Tenant or change in the persons or entities having direct or indirect interest in a Tenant that is not a corporation, shall be considered as an assignment for the purposes of this Article XXI except that, as long as Tenant’s Parent Company retains direct control of the Tenant, any change in the control of Tenant, shall not be considered a change of control or an assignment for the purposes of this Article XXI.

21.3 Permitted Assignments and Subleases. As an exception to the general rule established in Section 21.1 and 21.2 of this Lease Agreement, Tenant may assign its rights under this Lease Agreement, or sublease the Leased Premises or a part thereof, to a third party with whom Tenant has a Partnership Agreement, as defined in Act 29, including but not limited to the Operator under the MTOMA, subject to Landlord’s approval. Landlord has approved the sublease proposed to be entered into by Tenant and the Operator identified in the MTOMA pursuant to the Agreement of Sublease presented to and approved by Landlord. It is a condition precedent to any assignment, transfer or sublease of the Leased Premises, in whole or in part, to not unreasonably interrupt the cargo and passenger service provided at the Leased Premises.

ARTICLE XXII
GENERAL PROVISIONS

22.1 Signs and Advertising. Tenant shall not install or permit to be installed or erected any poster, sign or structure of any kind on the roof or exterior walls of the Building or in any other part of the Leased Premises without previous written consent of Landlord.

Landlord will provide Tenant with Landlord’s Roosevelt Roads Branding. Tenant shall include in its Signs Landlords Brand.
22.2 **Parking.** Should the number of parking spaces available at the Leased Premises not satisfy Tenant’s requirements, Landlord shall not be responsible for Tenant’s parking requirements, and Tenant hereby releases Landlord of any duty or responsibility with respect to parking.

22.3 **Attorneys’ Fees.** Tenant shall pay all of Landlord’s charges and expenses, including court costs and attorneys’ fees in any action (a) commenced by Landlord in order to obtain Tenant’s compliance with any of its obligations and commitments under this Lease Agreement, or said charges and expenses incurred by Landlord in any action filed by Tenant in which Landlord prevails. Tenant shall pay all charges and expenses including court costs and attorneys’ fees incurred by Landlord in any litigation, negotiation, or transaction in which Tenant requires Landlord’s intervention or participation, where no fault or negligence is claimed against Landlord.

22.4 **Successors and Assignees.** This Lease Agreement shall bind and inure to the benefit of each of the parties, in their respective capacities as Landlord and Tenant, and their respective successors and assigns; provided, however, should title to the Leased Premises be transferred, either voluntarily or by operation of law, the entity or natural person acquiring title shall take title free of all liability to perform this Lease Agreement, unless the entity or natural person expressly assumes and accepts the obligations as Landlord under this Lease Agreement by means of a written instrument in which the new titleholder and Tenant appear.

22.5 **Landlord’s Obligations to Lease.**

   (a) The mere delivery to Tenant of an unsigned draft of this Lease Agreement for Tenant’s review and consideration does not create in Tenant a right of option nor does it bind Landlord in any way to lease the Leased Premises to Tenant. Landlord’s obligation to lease under this Lease Agreement shall not be binding until Landlord has executed same upon approval by Landlord’s Board of Directors or Landlord’s Executive Director, as the case may be.

   (b) Tenant shall have ten (10) days after receipt of the final lease agreement prepared for the Leased Premises to execute same. Should Tenant not execute and return the lease agreement to Landlord within ten (10) days after receipt, Landlord shall have no obligation to lease, and any rights Tenant possessed in and to the Leased Premises shall be extinguished.

22.6 **Definition of the Term “Tenant”.** The term “Tenant” as used in this Lease Agreement shall be construed as plural if there be more than one person or entity appearing and executing this Lease Agreement as Tenant. All changes and grammatical adjustments required to make the provisions of this Lease Agreement apply equally to corporations, partnerships or other entities, or individuals shall, in all instances, be construed as incorporated into the text of the document. Whenever Tenant consists of two or more persons or entities each shall be jointly and severally bound hereunder.

22.7 **Headings.** The headings of the articles and sections of this Lease Agreement are for convenience only and do not limit, expand, or define the contents of the articles and sections hereof.
22.8 Late Charges.

(a) All payments that Tenant is obligated to make under this Lease Agreement, including without limitation, the Deposit, the Basic Rent, the Additional Rent, and any adjustment thereto, shall bear interest from its due date until payment in full, at a rate of six percent (6%) over the prime rate charged by the principal commercial banks in the city of New York as of the date the payment is due. Should the interest be held as usurious, then interest shall be deemed to have accrued at and continue to accrue the maximum rate of interest permissible, as established by the Interest Rate and Finance Charges Regulatory Board created by Act No. 1, of October 15, 1973, as amended (P.R. Laws Ann. Tit 10, sec. 998), or any future law or regulation.

(b) Should Tenant fail to make a Rent payment within ten (10) days after its due date, then Tenant shall also pay to Landlord a penalty to recover Landlord’s administrative expenses and collection costs equal to (i) one hundred dollars ($100.00) per day, or (ii) for each day the amount owed is past due, one half of one percent (0.05%) of the overdue amount, whichever is greater. Anything contained in this section regarding the payment of overdue amounts shall not constitute an extension of the due date of any amount Tenant is obligated to pay under this Lease Agreement, nor or shall it constitute a waiver of Tenant’s obligation to pay such amounts as provided in this Lease Agreement.

22.9 Performance. Whenever a requirement, obligation, or liability is imposed upon one of the parties hereto, the concerned party shall comply with or satisfy said requirement, obligation or liability at its own expense, unless specifically provided to the contrary.

22.10 Entire Agreement. This Lease Agreement, along with its Exhibits contains all the terms, conditions, agreements and covenants between the parties with respect to the Leased Premises; it substitutes and nullifies any other lease agreement or other agreement, oral or written, between the parties regarding the occupation and use of the Leased Premises by Tenant, including any letter of agreement that governed the relationship between the parties prior to and during the negotiation of this Lease Agreement. This Lease Agreement shall only be modified, amended, altered, or canceled by a written document subscribed by both parties.

22.11 Force Majeure. In the event that Landlord and/or Tenant (or Operator under the MTOMA) shall be hindered or delayed in the performance of any of its obligations or commitments under this Lease Agreement by reason of Force Majeure, the performance of such act shall be excused for the period of time which it is reasonably understood that said act or event hinders its performance. Force Majeure is understood as any incident or occurrence beyond any appearing party’s control (including Operator), including, but not limited to, lock-outs, strikes, shut downs or labor disputes; inability to obtain necessary materials; riots, acts of war and insubordination; fires, explosions, accidents and acts of sabotage; lack of electricity or fuel; floods, earthquakes, torrential rains and hurricanes; administrative, governmental or court orders or injunctions; federal, state or municipal laws and regulations; state or nation declared emergencies, including without limitation, pandemic declarations and state or national lockdowns; the revocation, modification or suspension of a permit, license or other necessary authorization; matters of national security; acts or occurrences directly or indirectly caused by the other party hereto (its agents, employees, contractors, or invitees). In said situation, the period of time for Landlord and/or Tenant (including
the Operator) to comply with any obligation or commitment shall automatically be extended for a period equivalent to the period of duration of such Force Majeure.

22.12 Safety Programs. Tenant agrees to cooperate, assist and participate in any program Landlord develops or adopts to address any emergency or occurrence constituting Force Majeure.

22.13 Estoppel Certificate. Tenant, upon Landlord’s request, shall provide Landlord with an Estoppel Certificate wherein Tenant certifies that (i) this Lease Agreement is unmodified and in full force and effect (or if any modifications, Tenant will specify such modifications and certify that this Lease Agreement as modified is in full force and effect); (ii) the date upon which Tenant began paying Basic Rent and the dates in which all Rent payments were made; (iii) that Landlord is not in default under any provision of this Lease Agreement (or if in default specify such default); (iv) that the work by Landlord to the Leased Premises, was completed as agreed and that Tenant is in possession of the Leased Premises, (iv) Tenant has no claims against Landlord under this Lease Agreement,( or specify the claims) and (vi) that there is no petition, whether voluntary or otherwise, pending as to Tenant under the bankruptcy laws of the United States.(or specify the petition)

22.14 Tenant’s Duties; Landlord’s Rights. All obligations and agreements which Tenant is to perform or carry out under the terms of this Lease Agreement, shall be done exclusively at Tenant’s expense, and without a right to set-off or adjustment against Rent. Should Tenant breach or fail to perform any of the obligations under this Lease Agreement, and said default persists for more than ten (10) days from the delivery by hand or the U.S. Mail of Landlord’s notice demanding performance thereof, Landlord shall be entitled, but shall not be obligated, to act as required to remedy said situation, without waiving or releasing Tenant from its liability with respect to said obligation. Any sum paid or expense incurred by Landlord in said efforts shall accrue interest pursuant to the provisions of Section 22.8 hereof and must be paid by Tenant to Landlord upon demand.

22.15 Relationship Between the Parties. The relationship existing between the parties hereto is that of Landlord and Tenant exclusively, and nothing provided for in this Lease Agreement shall be interpreted as creating a partnership, joint venture, principal and agent relationship or any other type of relationship between parties.

22.16 Nullity or Partial Invalidity. If any term, clause, section or article of this Lease Agreement, or the application or enforceability thereof, be declared null, invalid or unenforceable by a final order or judgment from a court having jurisdiction, the remainder of the Lease Agreement, or the application of said term, clause, section or article to persons or circumstances other than those against whom the nullity, invalidity or unenforceability was declared, shall not be affected by said order or judgment, and each term and condition in this Lease Agreement shall be valid and enforceable to the extent permitted by law and consistent with said order or judgment.

22.17 Accord and Satisfaction. No payment by Tenant, or the acceptance by Landlord of an amount less than the Rent herein stipulated shall be deemed to be other than a payment toward the stipulated Rent, nor shall any endorsement or statement on any check or any letter or other communication accompanying any check or payment as Rent be deemed an accord and
satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or pursue any other remedy provided in this Lease Agreement or at law or equity.

22.18 **Applicable Law.** This Lease Agreement is executed, and its terms and conditions shall be construed and enforced, in accordance with the laws of the Commonwealth of Puerto Rico.

22.19 **Jurisdiction and Competency.** The parties agree that any action, proceeding, claim, counterclaim or any other kind of judicial action that either of the parties initiates against the other regarding (i) any matter that arises out of or related to this Lease Agreement; (ii) the legal relationship existing between Landlord and Tenant; (iii) the use or occupation of the Leased Premises by Tenant; (iv) any claim for damages; and/or (v) any statutory remedy, shall be filed and litigated before the Court of First Review of Puerto Rico.

22.20 **Net Lease.** Tenant recognizes and admits, without limiting the meaning of any other terms and conditions of this Lease Agreement, and as otherwise provided in this Lease Agreement, that the intentions of the parties in this Lease Agreement are that all Rent to be paid by Tenant to Landlord under this Lease Agreement, must be paid to Landlord, without deduction or setoff of any kind, and that any and all expenses incurred regarding the Leased Premises, or regarding Tenant’s operations in the Leased Premises, including any assessments, taxes, municipal operating licenses, charges, special license and permit fees, insurance premiums, electricity, water, gas, telephone bills and other similar services, cost of repair, maintenance and operation of the Leased Premises or Property, together with all such fixtures that are placed on, attached to, installed or contained in the Leased Premises, shall be paid by Tenant.

22.21 **Notices.** All notices, claims or communications between the parties referred to or required by this Lease Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the addresses of the parties set forth in Sections 1.2 and 1.4 of this Lease Agreement. Any address change shall be notified to the other party in writing not less than thirty (30) days before the effective date of said change.

22.22 **Non-Waiver.** The failure of either party to demand strict performance of any of the provisions of this Lease Agreement upon default of any provision by the other party shall not constitute nor may it be construed as a waiver of said party’s right to demand performance of any provision in the future if the default continues, or if the other party should later repeat the default with respect to the same provision. The receipt or acceptance by Landlord of the Rent or any other amount payable by Tenant under this Lease Agreement, with or without knowledge of Tenant’s default on any obligation or condition under this Lease Agreement, shall not be deemed as release by Landlord in favor of Tenant from compliance with said obligation or condition, nor a waiver of Landlord’s rights or remedies under this Lease Agreement with regard to said default. The consent or approval given by Landlord for any act by Tenant which requires said consent or approval, is solely and exclusively limited to the act or event for which said consent or approval was given and should not be understood as a waiver of any requirement for prior consent or approval for a similar act by Tenant in the future.
22.23 Cumulative Remedies. The rights and remedies of each of the parties in this Lease Agreement are independent, separate and cumulative. The exercise, or failure to exercise any right or remedy, shall not be interpreted or deemed to exclude or bar the exercise of any other right or remedy of either party under this Lease Agreement or under any law or regulation.

22.24 Liquidated Damages Calculated. Tenant understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of Landlord regulations will result in damage to Landlord, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the security deposit for the following concerns:

(a) Premises Restoration. Each failure to properly restore the premises or to correct related violations of specifications, regulations or standards within 15 business days of having been notified by Landlord to correct such defects - $500 per day. Such amount is in addition to any cost Landlord may incur to restore the premises or correct the violation.

(b) Records Availability. Each failure to make Tenant books and records available as required by this Agreement and such failure continues for 15 business days after receipt of notice of failure to provide from Landlord- $250 per day.

(c) Unauthorized Transfer. Any unauthorized partial or total transfer of this Agreement-$4,000 per transfer.

(d) Material Action. Each material instance of any action or non-action by Tenant contrary to the terms of this Agreement that is not cured after 30 days’ notice-$500 per day.

(e) Insurance Certificate. Failure to provide a valid Certificate of insurance as required by this agreement that is not cured after five days’ notice-$50 per day.

22.25 Assessment. If Landlord concludes that Tenant may be liable for liquidated damages, Landlord shall issue to Tenant a Notice of Intention to Assess Liquidated Damages and allow Tenant an opportunity to cure in the time period specified in Sections 22.24 a through e. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. Tenant shall pay the liquidated damage amount within 10 business days of receipt or Landlord shall deduct the amount from the security fund. Tenant shall have 30 days of receipt of such notice to pay the liquidated damage amount or give Landlord notice contesting the assertion of noncompliance.

22.26 Brokers. Each party represents and warrants to the other party that it has not engaged nor used the services of a real estate broker or agent in connection with this lease, and that no real estate agent has participated at any time in the negotiation of this Lease Agreement. Notwithstanding the foregoing, the liability for the payment of any commission or compensation claimed by any real estate professional who may have rendered services to any party with respect to this Lease Agreement shall be borne by the party that engaged said real estate professional, and furthermore said party shall indemnify the other against any damages, liability, expenses and/or

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attorney’s fees, arising from any claim or lawsuit of any real estate professional for any commission allegedly owed for any service rendered.

**22.27 Representations.** Tenant expressly represents that neither Landlord nor its directors, officers, agents, employees or representatives has made any representations or promises with respect to the Leased Premises, except as expressly provided in this Lease Agreement.

**22.28 Financial Statements.** Upon request of Landlord, Tenant must to submit to Landlord, within ninety (90) days after the expiration of Tenant’s fiscal year, a certified financial statement issued by an authorized certified public accountant. The certified financial statement will include: (a) Tenant’s capital; (b) Tenant’s long-term debts and capitalization; (c) Tenant’s investment in machinery and its ability to provide employment; (d) taxes paid by Tenant, including Social Security payments; and (e) any other information that is required by this Lease Agreement. Should Tenant fail to deliver the certified financial statement, Landlord shall obtain this information at Tenant’s cost and Tenant shall permit Landlord access to Tenant’s books and records at Tenant’s main offices in Puerto Rico for this purpose.

Tenant acknowledges that Landlord can retain the professional service of a credit reporting agency in order to obtain credit references of its Tenants and that its results can be used for financial and credit evaluations.

**22.29 Additional Documents.** If Tenant is a corporation, Tenant agrees to submit to Landlord contemporaneously with the execution and delivery of this Lease Agreement (a) evidence of Tenant’s registration with the State Department of the Commonwealth of Puerto Rico, including the name and address of its resident agent; and (b) a certificate of corporate resolution of Tenant’s Board of Directors which authorizes or ratifies the execution of this Lease Agreement. If Tenant is a partnership, Tenant represents and warrants that this Lease Agreement has been subscribed by all managing partners or administrators representing Tenant, and that the same constitutes a valid and enforceable agreement for the partnership and each and every one of the partners, and also, that each and every one of Tenant’s present and future partners are now and shall remain at all times jointly and severally liable under this Lease Agreement. Tenant represents and warrants that the death, resignation or retirement of any partner shall not release said partner from its liability under the terms of this Lease Agreement without Landlord’s consent in writing.

**22.30 Fiscal Liabilities.**

(a) Tenant represents and warrants that, at the time of execution of this Lease Agreement (i) it has filed tax returns for the last five (5) years (ii) that Tenant has no outstanding tax debt with the Government of Puerto Rico nor with the United States Government (if applicable) that is not subject to a payment plan which is current as of the date of execution of this Lease Agreement; (iii) and has paid its unemployment taxes, disability and social security taxes (as applicable), or is in compliance with a payment plan therefor and in compliance with the terms and conditions thereof.

(b) Tenant expressly recognizes that the compliance with the provisions of this Section 22.30 is an essential condition of this Lease Agreement, and if any representation or
warranty is not accurate, in whole or in part, the same shall constitute cause for Landlord to terminate this Lease Agreement.

22.31 Debt Certification. Tenant warrants to Landlord that neither Tenant nor its partners (or if Tenant is a corporation, its directors, officers or stockholders) owe any amount to Landlord or to any agency or instrumentality of the Government of Puerto Rico, either personally or under this or any other corporate or partnership name.

22.32 Non-Conflict Certification. Tenant represents and warrants to Landlord that there is no conflict of interest, neither actual or potential, between Landlord and any of Tenant’s directors, officers, employees, partners and agents, as a result of business, labor, economic, or family relationships, or for any other reason. Tenant hereby covenants that upon Landlord’s request Tenant shall deliver to Landlord a sworn statement from any of its directors, officers, employees, and/or agents that will confirm the veracity of Tenant’s representation and warranty contained in this provision. The lease herein agreed shall not commence until the filing of this lease contract in the Puerto Rico Controller’s Office, according to the applicable By-Laws.

IN WITNESS WHEREOF, the parties subscribe this Lease Agreement on ___ of ___ of 2020.

[Signatures Appear on the Next Page]
LANDLORD:

AUTHORITY FOR THE REDEVELOPMENT OF THE LAND AND THE FACILITIES OF THE ROOSEVELT ROADS NAVAL STATION

By: ____________________________
Name: __________________________
Title: __________________________

TENANT:

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

Premises
ENVIROMENTAL EXCEPTIONS

1. Material Compliance with Environmental Laws and Authorizations.
   a. Old San Juan Terminal (Pier 2)
      (i) As disclosed in Appendix DD (Permit Exceptions).

   b. Cataño Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   c. Ceiba Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).
      (iii) Around August 2018, a contractor for the Authority caused certain damage to the US Navy environmental remediation well infrastructure as part of the ferry terminal construction project. On July 28, 2020, the Navy confirmed to the Puerto Rico Local Redevelopment Authority (LRA) in writing that it would assume responsibility for repairing all damages to the monitoring wells at the property and requested the LRA to reimburse all associated costs. In turn, the Authority is finalizing a Memorandum of Understanding with the LRA through which it will reimburse the LRA for the amount spent by the Navy.

   d. Culebra - Sardinas Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   e. Culebra - San Ildefonso Pier
      (i) As disclosed in Appendix DD (Permit Exceptions).

   f. Vieques - Isabel II Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   g. Vieques - Mosquito Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   h. Isla Grande Maintenance Facility
      (i) As disclosed in Appendix DD (Permit Exceptions).
2. **Storage, Treatment and Disposal of Hazardous Substance.**
   a. **Old San Juan Terminal (Pier 2)**
      (i) Small diesel AST without an Emergency Plan.
   b. **Cataño Pier and Terminal**
      (i) Small diesel AST without an Emergency Plan.
   c. **Ceiba Pier and Terminal**
      (i) Small diesel AST without an Emergency Plan.
   d. **Culebra - Sardinas Pier and Terminal**
      (i) Small diesel AST without an Emergency Plan.
      (ii) USFWS Culebra National Wildlife Refuge (Island of Culebra) is identified as a Federal Facility-Lead Cleanup under CERCLA SEMS.
      (iii) As disclosed in the Phase I ESA Report dated October 2019.
   e. **Culebra - San Ildefonso Pier**
      (i) As disclosed in Appendix DD (Permit Exceptions).
   f. **Vieques - Isabel II Pier and Terminal**
      (i) Emergency Generator Unit with Integrated Diesel reservoir without an Emergency Plan.
   g. **Vieques - Mosquito Pier and Terminal**
      (i) As disclosed in the Phase I ESA Report dated October 2019.
   h. **Isla Grande Maintenance Facility**
      (i) Diesel, solvents, oils and other petroleum products stored and handled on premises as part of vessel maintenance and fueling operations.
      (ii) Hazardous waste generator status not available.
      (iii) As disclosed in the Phase I ESA Report dated October 2019.

3. **Aboveground and Underground Storage Tanks; Underground Injection Facilities.**
   a. **Old San Juan Terminal (Pier 2)**
      (i) Small diesel AST without an Emergency Plan.
b. Cataño Pier and Terminal
   (i) Small diesel AST without an Emergency Plan.

c. Ceiba Pier and Terminal
   (i) Small diesel AST without an Emergency Plan.
   (ii) US Navy Leaking UST 02-89-0193 within ½ mile of the terminal.

d. Culebra - Sardinas Pier and Terminal
   (i) Leaking UST 02-96-0058 (Garaje Ricky) within ½ mile of the terminal.

e. Culebra - San Ildefonso Pier
   (i) As disclosed in the Phase I ESA Report dated October 2019.

f. Vieques - Isabel II Pier and Terminal
   (i) Emergency Generator Unit with integrated Diesel Reservoir located on premises without an Emergency Plan.

g. Vieques - Mosquito Pier and Terminal
   (i) Septic system located on premises.

h. Isla Grande Maintenance Facility
   (i) Five ASTs and two USTs located on premises.
   (ii) Emergency Generator Unit with diesel tank located on premises without an SPCC/Emergency Plan.
   (iii) As disclosed in the Phase I ESA Report dated October 2019.

   a. Old San Juan Terminal (Pier 2)
      (i) As disclosed in the Phase I ESA Report dated October 2019.

b. Cataño Pier and Terminal
   (i) On August 1, 2006, there was a spill into the Cataño Harbor of about 4 gallons of diesel fuel during transfer from the vessel bilges to a 55-gallon drum. The release was secured with booms and remediated with absorbent material.

c. Ceiba Pier and Terminal
(i) On May 30, 1993, there was a release of approximately 500 gallons of fuel oil into the harbor from the USNS Capable at Pier 2 due to equipment failure. Remedial action was implemented with skimmers.

(ii) On September 15, 1999, there was a release of a 3-4 gallons of an unknown substance into the harbor from a Brazilian submarine at Pier 2. Remedial action was implemented.

(iii) On November 13, 1992, there was a release of approximately 75 gallons of fuel oil into the harbor from the USCG Leguere at Pier 2. Remedial action was implemented.

(iv) On April 15, 1999, there was a release of approximately 100 gallons of an oily waste on the pier from the HMCS Toronto or St. Johns at Pier 2. Release was cleaned up.

(v) During late 2018, Ceiba’s Municipal Emergency Management Agency reports that there was a release of an unknown substance into the harbor from an active ship demolition facility on Pier 3.


(vii) The US Navy is in the process of remediating certain areas of contamination within the former Naval Station Roosevelt Roads. In relevant part, the Navy is remediating an area identified as Solid Waste Management Unit 55 (SWMU 55) – a former boat maintenance facility. SWMU 55 consists of a Trichloroethene (TCE) plume near the Tow Way Fuel Farm and is located south of Forrestal Drive near former Building 2314. Former Building 2314 was reportedly used for the storage and maintenance of small watercraft. The exact maintenance activities completed at this location, and specific materials stored in the building are unknown, and the source of TCE could not be determined based on available records. Former Building 2314 was destroyed by Hurricane Hugo in 1989.

The MTA Ceiba Terminal operation is located within SWMU 55, SWMU 23 and SWMU 74. The terminal’s main building is located approximately 50 m South of former Building 2314.

The proposed remedy at SWMU 55 includes a phased approach to address high-level TCE concentrations in the source area and in-situ bioremediation to enhance the naturally occurring processes to achieve reduction of TCE concentrations in the more dilute, downgradient portion of the TCE plume. Proposed remedial actions have not been initiated by the Navy at SWMU 55 as of July 2020. A network of monitoring wells is currently installed throughout the property and are assessed by the Navy on a regular basis.

The parcel is currently subject to Environmental Conditions, Covenants and Land Use Controls (LUCs) and other use restrictions, as further described in the documents entitled “Economic Development Conveyance Memorandum of Agreement between the United States of America acting by and through the Navy and the Local Redevelopment Authority for Naval Station Roosevelt Roads”, executed on December 20, 2011; the “Deed of Ratification and Conversion to Public Instrument
of Quitclaim Deed CDR Parcel 2 (SWMU 55)”, executed on January 26, 2012; and the “Lease in Furtherance of Conveyance between the United States of America and the Local Redevelopment Authority for Naval Station Roosevelt Roads”, executed on January 26, 2012.

d. Culebra - Sardinas Pier and Terminal
   (i) On April 6, 1998, there was a release of bilge slops with oil into the bay from M/V Cayo Norte.
   (ii) In the past, there was a release of petroleum product from Garaje Ricky due to an overflow or tank/line rupture.
   (iii) As disclosed in the Phase I ESA Report dated October 2019.

e. Culebra - San Ildefonso Pier
   (i) As disclosed in the Phase I ESA Report dated October 2019.

f. Vieques - Isabel II Pier and Terminal
   (i) As disclosed in the Phase I ESA Report dated October 2019.

g. Vieques - Mosquito Pier and Terminal
   (i) As disclosed in the Phase I ESA Report dated October 2019.

h. Isla Grande Maintenance Facility
   (i) According to USCG records, on December 29, 2002, and due to equipment failure, diesel fuel was released from the bilge of a ferry ship resulting in approximately 1 gallons of diesel spilled into San Juan Bay near the site. The release was secured by means of application absorbent material.
   (ii) On January 30, 2019, USCG was notified of an oil discharge in San Juan Harbor. USCG discovered at the site an on-going discharge from a diesel fuel line into a concrete culvert. A crack was discovered in the culvert that may have allowed diesel fuel to migrate beneath the Property. On February 28, 2019, the USCG issued an Administrative Order to the MTA to conduct a site assessment, monitoring and oil removal. Following cleaning of the fuel distribution system and repair of the spill, a persistent sheen was observed in the waterway. MTA commissioned Clean Harbors Environmental Services (CHES) to assess possible diesel migration routes, and the size of the oil plume beneath the Property using environmental drilling, sampling and testing. A final report was delivered on May 2019. Results showed fuel derived contaminants are distributed throughout the Property. However, the total extent of the contamination was not determined as the study area was limited to the southern portion of the Property.
   (iii) As disclosed in the Phase I ESA Report dated October 2019.

5. Government Investigations and Remediation.
   a. Old San Juan Terminal (Pier 2)
      (i) As disclosed in the Phase I ESA Report dated October 2019.
b. Cataño Pier and Terminal
   (i) On August 1, 2006, there was a spill into the Cataño Harbor of about 4 gallons of diesel fuel during transfer from the vessel bilges to a 55-gallon drum. The release was secured with booms and remediated with absorbent material.

c. Ceiba Pier and Terminal
   (i) On May 30, 1993, there was a release of approximately 500 gallons of fuel oil into the harbor from the USNS Capable at Pier 2 due to equipment failure. Remedial action was implemented with skimmers.
   (ii) On September 15, 1999, there was a release of a 3-4 gallons of an unknown substance into the harbor from a Brazilian submarine at Pier 2. Remedial action was implemented.
   (iii) On November 13, 1992, there was a release of approximately 75 gallons of fuel oil into the harbor from the USCG Leguere at Pier 2. Remedial action was implemented.
   (iv) On April 15, 1999, there was a release of approximately 100 gallons of an oily waste on the pier from the HMCS Toronto or St. Johns at Pier 2. Release was cleaned up.
   (v) US Navy is investigating and remediating a location known as Solid Waste Management Unit (SWMU) 55 that consists of a TCE plume near the Tow Way Fuel Farm.

d. Culebra - Sardinas Pier and Terminal
   (i) On April 6, 1998, there was a release of bilge slops with oil into the bay from M/V Cayo Norte.

e. Culebra - San Ildefonso Pier
   (i) As disclosed in the Phase I ESA Report dated October 2019.

f. Vieques - Isabel II Pier and Terminal
   (i) As disclosed in the Phase I ESA Report dated October 2019.

g. Vieques - Mosquito Pier and Terminal
   (i) As disclosed in the Phase I ESA Report dated October 2019.

h. Isla Grande Maintenance Facility
   (i) According to USCG records, on December 29, 2002, and due to equipment failure, diesel fuel was released from the bilge of a ferry ship resulting in approximately 1 gallons of diesel spilled into San Juan Bay near the site. The release was secured by means of application absorbent material.
(ii) On January 30, 2019, USCG was notified of an oil discharge in San Juan Harbor. USCG discovered at the site an on-going discharge from a diesel fuel line into a concrete culvert. A crack was discovered in the culvert that may have allowed diesel fuel to migrate beneath the Property. On February 28, 2019, the USCG issued an Administrative Order to the MTA to conduct a site assessment, monitoring and oil removal. Following cleaning of the fuel distribution system and repair of the spill, a persistent sheen was observed in the waterway. MTA commissioned Clean Harbors Environmental Services (CHES) to assess possible diesel migration routes, and the size of the oil plume beneath the Property using environmental drilling, sampling and testing. A final report was delivered on May 2019. Results showed fuel derived contaminants are distributed throughout the Property. However, the total extent of the contamination was not determined as the study area was limited to the southern portion of the Property.

(iii) As disclosed in the Phase I ESA Report dated October 2019.

6. Recordkeeping and Reporting.
   a. Old San Juan Terminal (Pier 2)
      (i) As disclosed in Appendix DD (Permit Exceptions).

   b. Cataño Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   c. Ceiba Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   d. Culebra - Sardinas Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   e. Culebra - San Ildefonso Pier
      (i) As disclosed in Appendix DD (Permit Exceptions).

   f. Vieques - Isabel II Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).

   g. Vieques - Mosquito Pier and Terminal
      (i) As disclosed in Appendix DD (Permit Exceptions).
h. Isla Grande Maintenance Facility  
   (i) Hazardous waste generator status not available.  
   (ii) As disclosed in Appendix DD (Permit Exceptions).  
   (iii) As disclosed in the Phase I ESA Report dated October 2019.

7. Enforcement.  
   a. Old San Juan Terminal (Pier 2)  
      (i) None.  

   b. Cataño Pier and Terminal  
      (i) None.  

   c. Ceiba Pier and Terminal  
      (i) EPA Administrative Order on Compliance under Clean Water Act.  

   d. Culebra - Sardinas Pier and Terminal  
      (i) None.  

   e. Culebra - San Ildefonso Pier  
      (i) None.  

   f. Vieques - Isabel II Pier and Terminal  
      (i) None.  

   g. Vieques - Mosquito Pier and Terminal  
      (i) None.  

   h. Isla Grande Maintenance Facility  
      (i) None.  
[INTENTIONALLY OMITTED]
APPENDIX II

ESCROW AGREEMENT

This ESCROW AGREEMENT (this “Agreement”), dated as of [●], [●], is made and entered into by and among PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico (the “Authority”), HMS FERRIES - PUERTO RICO, LLC, a limited liability company duly organized and existing under the laws of Puerto Rico (the “Operator”), HMS Ferries, Inc. (“Parent”), a corporation duly organized and existing under the laws of the State of Delaware, and [●], a [●], as escrow agent (the “Escrow Agent”). Each of the parties hereto are sometimes collectively referred to as the “Parties” and each, individually, as a “Party.”

WHEREAS, the Authority, the Operator and Parent entered into that certain Maritime Transport Operations and Maintenance Agreement on February [●], 2020, as amended (the “O&M Agreement”; capitalized terms not defined herein, shall have the meaning ascribed to such terms in the O&M Agreement).

WHEREAS, Parent has provided the Authority with a bond in the amount of Five Million Dollars ($5,000,000) to guarantee performance of the terms and conditions set forth in the O&M Agreement (the “Payment Bond”);  

WHEREAS, the Authority has the right to draw on the Payment Bond if, among other things, Parent fails to renew or substitute the Payment Bond at any time as required by the O&M Agreement; and

WHEREAS, to the extent the Authority draws on the Payment Bond solely due to Parent’s failure to renew or substitute the Payment Bond as required by the O&M Agreement, the Authority has agreed to deposit any and all amounts drawn from the Payment Bond in an escrow account until such time as (i) the Authority shall have the right to draw such amounts pursuant to the terms of this Agreement or (ii) Parent or Operator provide other Acceptable Operator Security.

NOW, THEREFORE, the Authority, the Operator, Parent and the Escrow Agent hereby agree as follows:

1. Appointment of the Escrow Agent; Deposit of Escrow Amount.

   (a) Appointment of Escrow Agent. The Authority, the Operator and Parent hereby constitute and appoint the Escrow Agent as, and the Escrow Agent hereby agrees to assume and perform the duties of, the escrow agent under and pursuant to the terms and conditions of this Agreement.

   (b) Deposit of Escrow Amount. If the Authority draws on the Payment Bond due to Parent’s failure to renew or substitute the Payment Bond as provided in the O&M Agreement, the Authority shall deposit with the Escrow Agent any and all amounts received from such draw (the “Escrow Amount”) promptly upon receipt of the funds from the surety providing the Payment Bond. The Authority shall deliver, or cause to be delivered, to the
Escrow Agent the Escrow Amount via wire transfer of immediately available funds to a separate account designated in writing by the Escrow Agent (the “Escrow Account”).

2. The Escrow Fund. The Escrow Amount, including all earnings thereon (collectively, the “Escrow Fund”), shall be held by the Escrow Agent as a trust fund in the Escrow Account maintained for the purpose, on the terms and subject to the conditions of this Agreement. The Escrow Fund shall not be subject to lien or attachment by any creditor of any party hereto (except as otherwise provided in this Agreement) and shall be used solely for the purpose set forth in this Agreement and the O&M Agreement. Amounts held in the Escrow Fund shall not be available to, and shall not be used by, the Escrow Agent to set off any obligations of any Party owing to the Escrow Agent in any capacity.

3. Investment of the Escrow Fund; Taxes.

(a) The Escrow Agent shall invest and reinvest the Escrow Amount and all other cash funds held from time to time as part of the Escrow Fund in a demand deposit account maintained by the Escrow Agent so that all amounts that remain in the Escrow Fund will be available in immediately available funds.

(b) All taxes in respect of earnings on the Escrow Fund shall be the sole obligation of and shall be paid when due by Parent or the Operator, who shall indemnify and hold the Escrow Agent harmless from and against all such taxes. The Escrow Agent shall not be liable in any circumstances for any such taxes.


(a) The Authority hereby agrees to deliver a written notice to the Operator and the Escrow Agent regarding each claim which, but for the One Hundred Thousand Dollar ($100,000) (the “Threshold Amount”) limit set forth in Section of 28.2(a)(ii) of the O&M Agreement, would be payable from the escrow pursuant to the terms hereof. Such notice shall contain (a) a reasonably detailed description of the event or circumstances giving rise to the claim, (b) a specification of the estimated dollar amount attributable to such claim, and (c) a certification that the information contained in the notice is being submitted in good faith; provided that the failure to provide any such notice shall not in and of itself affect the Authority’s right to indemnification under the O&M Agreement. To the extent that the Operator or Parent disagree that such claim should be attributable to the Threshold Amount, such disagreement shall be resolved pursuant to procedures set forth in Article 33 of the O&M Agreement as if such amounts were payable from the escrow.

(b) If the Authority makes a claim for Losses, damages, or indemnification pursuant to the terms of the O&M Agreement, the Authority, either on behalf of itself or on behalf of any other Indemnified Party, shall deliver to the Operator, with a copy provided to the Escrow Agent, a written notice (a “Notice of Claim”), describing one or more of such claims (each such claim, a “Claim”) against the Escrow Fund up to the date of (i) termination, cancellation or expiration of the O&M Agreement, or (ii) receipt by the Escrow Agent of written notice from the Authority and the Operator that this Escrow Agreement has been substituted for
another Acceptable Operator Security (the “Escrow Termination Date”). Such Notice of Claim shall contain (a) a reasonably detailed description, to the extent then known, of the event or circumstances giving rise to the Claim, and (b) a specification of the potential Losses for which indemnification may be claimed. Nothing herein shall be deemed to modify, supersede, or amend the provisions of the O&M Agreement as to the time periods, limits, methodology, or the like of making Claims for which recovery of Losses, damages, or indemnification may be sought.

5.  Disputed Claims. Within fifteen (15) Business Days of the Operator receiving a Notice of Claim, the Operator may dispute or object to any Claim, in whole or in part, by delivering to the Escrow Agent a copy of the Authority’s Notice of Claim and a written notice of objection (an “Notice of Objection”) stating:

    (a) that the Operator disputes or objects to such Claim and a description in reasonable detail of the reasons for such objection;

    (b) that the Operator has delivered a copy of the Notice of Objection to the Authority and the date on which such copy was delivered;

    (c) the portion of the Claim set forth in the Notice of Claim, if any, that is not disputed or objected to; and

    (d) that the Notice of Objection is made in a timely manner in accordance with this Agreement.

If a Notice of Objection is not delivered in a timely manner in accordance with this Section 5, the Operator shall be deemed to have given its consent to the entire amount of the Claim. In that case, both the Authority and the Operator authorize the Escrow Agent to immediately distribute to the Authority the amount of cash required to satisfy the Claim. The amount of cash to be released shall be calculated in accordance with this Agreement.

If the Escrow Agent receives a Notice of Objection from the Operator, the Escrow Agent shall not deliver any disputed amount of the Escrow Fund set forth in the Notice of Objection to the Authority until the Escrow Agent shall have received one of the following: (1) a certified copy of a final and unappealable order, degree or judgment issued or rendered by a court of competent jurisdiction or an arbitration award, as applicable, (a “Final Decision”), with respect to the Notice of Claim which is subject to the Notice of Objection; or (2) a joint written direction executed by the Authority and the Operator directing the distribution of the corresponding amount from the Escrow Fund.

6.  Payment of Claims. If the Escrow Agent receives from the Operator written notice of consent or agreement to all or part of a Claim, or receives notice of a Final Decision in favor of the Authority, the Escrow Agent shall thereupon promptly deliver to the Authority from the Escrow Fund an amount of cash equal to the aggregate amount of such Claim as specified in such written notice of consent or agreement from the Operator or in the Final Decision, as the case may be, such value to be determined as hereinafter prescribed. If the amount of cash on deposit in the Escrow Fund is not sufficient to satisfy in full such Claim (as consented or agreed
to by the Operator or as finally determined by a Final Decision), the Escrow Agent shall deliver to the Authority such amount of cash as is available.

7. Distribution of Escrow Fund. The Escrow Fund shall be distributed to the Operator after the Escrow Termination Date, but only after disbursements have been made to the Authority with respect to all resolved Claims and only after resolution of all pending unresolved Claims made prior to the Escrow Termination Date. The Escrow Agent shall remit the balance of the Escrow Fund then remaining to the Operator. The Escrow Agent shall continue to hold such portion of the Escrow Fund in dispute until the Escrow Agent receives written instructions signed by each of the Authority and the Operator directing the Escrow Agent to deliver the Escrow Fund (or any portion thereof) or until there is a Final Decision with respect to a disputed Claim directing delivery of the Escrow Fund (or any portion thereof), in which case the Escrow Agent shall deliver the Escrow Fund (or such portion thereof) in accordance with the Final Decision.

8. Duration of Escrow. The Escrow Agent shall hold all property constituting a part of the Escrow Fund until the Escrow Amount constituting a part thereof is delivered to the Operator or to the Authority, as the case may be, pursuant to the terms of this Agreement.

9. Duties and Obligations of the Escrow Agent. The duties and obligations of the Escrow Agent shall be limited to and determined solely by the provisions of this Agreement and the certificates delivered in accordance herewith, and the Escrow Agent is not charged with knowledge of or any duties or responsibilities in respect of any other agreement or document. In furtherance and not in limitation of the foregoing:

(a) the Escrow Agent shall not be liable for any loss of interest sustained as a result of investments made hereunder in accordance with the terms hereof, including any liquidation of any investment of the Escrow Fund prior to its maturity effected in order to make a payment required by the terms of this Agreement;

(b) the Escrow Agent shall not be liable for any liability, loss, cost, damage or expense for any consequential, punitive or special damages, or economic or indirect loss of any kind whatsoever, in each case however caused or arising and whether or not foreseeable, even if advised of the possibility of such damage or loss;

(c) the Escrow Agent shall be fully protected in relying in good faith upon any written certification, notice, direction, request, waiver, consent, receipt or other document that the Escrow Agent reasonably believes to be genuine and duly authorized, executed and delivered by the parties hereto or their authorized signatories, whose names, specimen signatures and contact details are set forth in Schedule A attached hereto;

(d) the Escrow Agent shall not be liable for any error of judgment, or for any act done or omitted by it, or for any mistake in fact or law, or for anything that it may do or refrain from doing in connection herewith; provided, however, that notwithstanding any other provision in this Agreement, the Escrow Agent shall be liable for its intentional misconduct or gross negligence or breach of this Agreement;
(e) the Escrow Agent may seek the advice of legal counsel selected with reasonable care in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the opinion of such counsel;

(f) in the event that the Escrow Agent shall in any instance, after seeking the advice of legal counsel pursuant to the immediately preceding clause, in good faith be uncertain as to its duties or rights hereunder, it shall be entitled to refrain from taking any action in that instance and its sole obligation, in addition to those of its duties hereunder as to which there is no such uncertainty, shall be to keep safely all property held in the Escrow Fund until it shall be directed otherwise in writing by each of the parties hereto or by a final, non-appealable order of a court of competent jurisdiction;

(g) the Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through agents or attorneys selected with reasonable care, nothing in this Agreement shall be deemed to impose upon the Escrow Agent any duty to qualify to do business or to act as fiduciary or otherwise in any jurisdiction other than the Commonwealth of Puerto Rico and the Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Agreement or of any agreement amendatory or supplemental hereto;

(h) the Escrow Agent shall under no circumstances be required to make any payment or transfer from the Escrow Fund where doing so would create a negative balance in the Escrow Account;

(i) the Escrow Agent shall not be subject to, or required to comply with, (i) any other agreement between or among any or all of the Authority, the Operator and Parent, (the “Other Parties”) or to which any such party is a party, even though reference to such an agreement may be made herein, or (ii) any direction or instruction, other than those contained herein or delivered pursuant hereto;

(j) in no event shall the Escrow Agent be liable (whether by way of indemnity, damages or otherwise), and it shall be fully protected from all liability, loss, cost, damage or expense:

(i) for acting or omitting to act in accordance with or relying upon any order, instruction, notice, demand, certificate, affidavit, notice, opinion, instrument, document or other writing delivered to it hereunder without determining the authenticity of such document, the correctness of any fact stated therein, the propriety of the service thereof or the capacity, identity or authority of any party purporting to sign or deliver such document;

(ii) for any failure by the Other Parties to perform their obligations;

(iii) for any expense, loss or damage suffered by or occasioned to the Other Parties by the collection or deposit of invalid, fraudulent or forged property comprising the Escrow Fund which may be made in connection with this Agreement;

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(iv) for the form, execution, validity, value or genuineness of the property comprising the Escrow Fund deposited hereunder, or for any description herein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security, or endorsement;

(v) for not performing any act or fulfilling any duty, obligation or responsibility under this Agreement by reason of any occurrence beyond the control of the Escrow Agent (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God, war or terrorism, or the unavailability of any wire or communication facility);

(vi) for an amount in excess of the value of the Escrow Fund, valued as of the date of the deposit, provided that the Escrow Agent shall incur no liability whatsoever for its selection in accordance with the terms of this Agreement of any investment of the Escrow Fund, including, without limitation, any liability for the rate or timing of the returns thereof resulting from fluctuations in market conditions or otherwise, or for prices affected by the need to liquidate an investment prior to maturity;

(k) the Escrow Agent shall not be liable for any losses associated with the delivery of any certificates, notices or communications after the Escrow Agent has dispatched such certificates, notices or communications in accordance with this Agreement;

(l) the authorized signatories of the Authority, the Operator and Parent (“Authorized Signatories”) are the persons whose names, specimen signatures and contact details are set out in Schedule A, as may be updated from time to time, which must be attached to this Agreement, failing which the Escrow Agent shall not have any obligation to carry out any instruction under this Agreement;

(m) the Authority and the Operator undertake to give the Escrow Agent three (3) Business Days’ written notice of any amendment to its respective Authorized Signatories or contact details. Until five (5) Business Days after such new document is received, the Escrow Agent shall be fully protected in acting upon the instructions of the previously notified Authorized Signatories; and

(n) all executed instructions to the Escrow Agent to credit the Escrow Fund must be received by the Escrow Agent by noon (12:00 pm) at least two (2) Business Days prior to the date on which the credit is to occur.

10. Cooperation. The Authority and the Operator shall provide to the Escrow Agent all instruments and documents within their respective powers to provide that are necessary for the Escrow Agent to perform its duties and responsibilities hereunder.

11. Fees and Expenses; Indemnity. The Escrow Agent shall be entitled to a reasonable fee for its services rendered under this Agreement as set forth in Schedule B, and for reimbursement of extraordinary expenses necessary for, and incurred in the performance of its duties hereunder which expenses are not included in said fee. Unless agreed to otherwise in a writing signed by the Authority and the Operator, said fees and expenses shall be borne by the
Operator. Final distribution of the Escrow Fund shall be made net of any accrued fees and expenses then outstanding.

12. **Resignation and Removal of the Escrow Agent.**

   (a) The Escrow Agent may resign as such thirty (30) calendar days following the giving of prior written notice thereof to the Authority and the Operator. In addition, the Escrow Agent may be removed and replaced on a date designated in a written instrument signed by the Authority and the Operator and delivered to the Escrow Agent. Notwithstanding the foregoing, no such resignation or removal shall be effective until a successor escrow agent has acknowledged its appointment as such as provided in paragraph (c) below. In either event, upon the effective date of such resignation or removal, the Escrow Agent shall deliver the property comprising the Escrow Fund to such successor escrow agent, together with such records maintained by the Escrow Agent in connection with its duties hereunder and other information with respect to the Escrow Fund as such successor may reasonably request.

   (b) If a successor escrow agent shall not have acknowledged its appointment as such as provided in paragraph (c) below, in the case of a resignation, prior to the expiration of thirty (30) calendar days following the date of a notice of resignation or, in the case of a removal, on the date designated for the Escrow Agent’s removal, as the case may be, because the Authority and the Operator are unable to agree on a successor escrow agent, or for any other reason, the Escrow Agent may petition a court of competent jurisdiction to appoint a successor escrow agent and any such resulting appointment shall be binding upon all of the parties to this Agreement, provided that any such successor shall be a bank or trust company in the Commonwealth of Puerto Rico having capital and surplus of not less than US$100,000,000.

   (c) Upon written acknowledgment by a successor escrow agent appointed in accordance with the foregoing provisions of this Section 12 of its agreement to serve as escrow agent hereunder and the receipt of the property then comprising the Escrow Fund, the Escrow Agent shall be fully released and relieved of all duties, responsibilities and obligations under this Agreement, subject to the proviso contained in clause (d) of Section 9, and such successor escrow agent shall for all purposes hereof be the Escrow Agent.

13. **Notices.** All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given if delivered personally or by facsimile transmission or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers:

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If to the Authority, to:

Puerto Rico And The Island Municipalities Maritime Transport Authority
PO BOX 41118
San Juan, PR 00940
Attention: Executive Director

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

________________
________________
________________

If to the Operator, to:

HMS Ferries – Puerto Rico, LLC
222 Pearl Street
New Albany, IN 47150
Tel: (206) 780-1440
Fax: (812) 941-9994
Attention: Matthew Miller, President.

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

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If to the Parent, to:

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

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If to the Escrow Agent, to:

________________
________________
________________

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, (ii) if delivered by
facsimile transmission to the facsimile number as provided in this Section, be deemed given upon receipt, and (iii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

14. **Amendments, etc.** This Agreement may be amended or modified, and any of the terms hereof may be waived, only by a written instrument duly executed by or on behalf of the Authority and the Operator and, with respect to any amendment that would adversely affect the Escrow Agent, the Escrow Agent. No waiver by any party of any term or condition contained of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico applicable to a contract executed and performed in such jurisdiction, without giving effect to the conflicts of laws principles thereof.

16. **Miscellaneous.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

THE AUTHORITY:

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY

By: ____________________________
Name: __________________________
Title: __________________________

ESCROW AGENT:

[●]

By: ____________________________
Name: __________________________
Title: __________________________

THE OPERATOR:

HMS FERRIES – PUERTO RICO LLC

By: ____________________________
Name: __________________________
Title: __________________________

PARENT:

HMS FERRIES INC.

By: ____________________________
Name: __________________________
Title: __________________________
LIST OF AUTHORIZED SIGNATORIES

The Authority Authorized Signatories

<table>
<thead>
<tr>
<th>Name</th>
<th>Specimen Signature</th>
<th>Contact Details</th>
</tr>
</thead>
</table>

The Operator Authorized Signatories

<table>
<thead>
<tr>
<th>Name</th>
<th>Specimen Signature</th>
<th>Contact Details</th>
</tr>
</thead>
</table>

Parent Authorized Signatories

<table>
<thead>
<tr>
<th>Name</th>
<th>Specimen Signature</th>
<th>Contact Details</th>
</tr>
</thead>
</table>
SCHEDULE B

ESCROW AGENT FEES
DEPOSIT ACCOUNT CONTROL AND PLEDGE AND ASSIGNMENT OF DEPOSIT ACCOUNT AGREEMENT

DEPOSIT ACCOUNT CONTROL AND PLEDGE AND ASSIGNMENT OF DEPOSIT ACCOUNT AGREEMENT (“Agreement”), dated as [●], 2020, by and among BANCO POPULAR DE PUERTO RICO (together with its successors and assigns, the “Depository Bank”), a Puerto Rico banking corporation, PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY (the “Authority”), a public corporation and instrumentality of the Commonwealth of Puerto Rico and HMS FERRIES – PUERTO RICO, LLC (the “Operator”), a Puerto Rico limited liability company. The Depository Bank, the Authority and the Operator are sometimes collectively referred to as the “Parties” and each, individually, as a “Party”.

WITNESSETH:

WHEREAS, the Authority and the Operator have entered into a Maritime Transport Operations and Maintenance Agreement dated as of [●] (as the same may hereafter be amended or otherwise modified from time to time, the “OMA”);

WHEREAS, the Depository Bank maintains account number [●] (the “Deposit Account”) for use by the Authority;

WHEREAS, under the OMA, the Authority has an obligation to make payments to the Operator, including, without limitation, the Phase 1 Service Payments and the Phase 2 Fixed Fee, each as defined in the OMA (collectively, the “Obligations”), such Obligations to be secured by, among other things, all right, title and interest of the Authority in and to the following, whether now or hereafter existing or arising (collectively, the “Deposit Account Collateral”): (a) the Deposit Account, (b) moneys from time to time deposited or held in the Deposit Account, and (c) all interest, from time to time received, receivable or otherwise payable in respect of the moneys deposited in the Deposit Account; and

WHEREAS, in connection with the Authority’s Obligations under the OMA, the Operator requires that the Depository Bank and the Authority enter into this Agreement to establish certain rights and benefits with respect to the Deposit Account and the granting of a Lien to the Operator in the Deposit Account Collateral.

NOW, THEREFORE, in order for the Authority to comply with the requirements of the Operator set forth in the OMA, the Authority, the Depository Bank and the Operator agree as follows:

1. Definitions; Recitals. Reference is hereby made to the OMA for a statement of the terms thereof. All capitalized terms used herein that are not otherwise defined herein shall have the meanings set forth in the OMA. The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof with the same force and effect as if fully transcribed herein.
2. **Deposit Account Collateral.** The Depository Bank hereby represents, warrants and covenants with and to the Operator that: (a) the Depository Bank has established and will maintain the Deposit Account and has identified the Authority as the sole owner of the Deposit Account, subject to the rights of the Operator therein as provided herein; (b) the records of the Depository Bank do not reflect, and it has not received any notice of, any assignment or pledge of, or Lien in the Deposit Account or any of the other Deposit Account Collateral (other than the pledge to and Lien of the Operator referred to herein), or any notice of any adverse claim with respect to any of the same; (c) the Depository Bank has not entered and will not enter into any agreement with any person other than the Operator by which it is obligated for any reason to comply with instructions from such other person as to the disposition of funds in or from the Deposit Account or with respect to any other dealings with any of the Deposit Account Collateral; (d) the Depository Bank will not agree with any Person, other than the Authority or the Operator, to be the Depository Bank’s customer with respect to the Deposit Account; (e) this Agreement sets forth the correct and complete account number of the Deposit Account; (f) the Depository Bank acknowledges that it holds and will hold possession of the Deposit Account Collateral as bailee for the Operator and for no other Person; and (g) the Depository Bank is hereby irrevocably authorized, upon the request of the Operator, to change the designation of the customer on the Deposit Account to the Operator, but only after (A) the Operator delivers notice to the Depository Bank and to the Authority that an Authority Event of Default has occurred and is continuing, and (B) such notice of default is either (x) not disputed by the Authority within seven (7) days of the receipt by the Authority of the Operator’s notice of default, or (y) the right of the Operator to withdraw and retain the funds on deposit in the Deposit Account has been finally determined pursuant to the dispute resolution mechanisms in the OMA. The Authority covenants to the Operator and agrees that it will not close the Deposit Account prior to the termination of this Agreement, nor shall Depository Bank allow such action without the prior written consent of the Operator.

3. **Control and Dominion; Pledge and Assignment of Deposit Account.**

   (a) Notwithstanding any other agreement between the Depository Bank and the Authority, but subject to the provisions of Section 7 of this Agreement, the Deposit Account shall be under the exclusive control and dominion of the Operator, and the Depository Bank shall only comply with the instructions originated by the Operator regarding the disposition of funds in the Deposit Account or any of the other Deposit Account Collateral relating thereto without further consent of the Authority or any other Person; provided, however, that the Operator hereby instructs the Depository Bank that the Authority shall be permitted to make, from the moneys on deposit in the Deposit Account, the payments required to be made by the Authority to the Operator under the OMA, including, without limitation, those monthly payments required to be made under Section 5.1 and 5.2 of the OMA.

   (b) Except as contemplated in the provision set forth in Section 3(a) above, and subject to the provision of Section 7 of this Agreement, the Depository Bank shall not (i) permit the Authority or any Person, other than the Operator, to withdraw any amounts from, to draw upon or otherwise exercise any authority or power with respect to the Deposit Account or any Deposit Account Collateral, or (ii) honor any instructions with respect to the Deposit Account, other than those approved in writing by the Operator, nor accept or comply with any entitlement order from the Authority or any Person other than the Operator withdrawing any
financial asset from the Deposit Account, nor deliver any such financial asset to the Authority or any Person other than the Operator, nor pay any free credit balance or other amount owing from the Depository Bank to the Authority with respect to the Deposit Account.

(c) (i) The Authority hereby constitutes and grants a first priority Lien and security interest over and pledges, assigns, sets over and transfers to the Operator all of the rights, title and interest of the Authority in and to the Deposit Account Collateral. In addition, the Authority hereby pledges, assigns, sets over and transfers to the Operator and constitutes and grants a Lien to the Operator in all instruments of whatever nature which evidence the ownership and control of the Deposit Account hereby assigned. The assignment and transfer of the Deposit Account pursuant hereto shall not be deemed to constitute an absolute transfer and assignment, but rather a transfer and assignment as collateral security for the Obligations.

(ii) The Authority hereby agrees that a copy of this Agreement shall be sufficient as a financing statement and that the same may be filed as such in the corresponding offices of the Department of State of the Commonwealth of Puerto Rico. In addition, the Parties agree that the Operator shall be entitled to file UCC-1 Financing Statement(s) (and any amendments, continuations and terminations thereof) from time to time in connection with this Agreement.

(iii) This Agreement secures the payment of the Obligations under the OMA, in each case as such agreement may hereafter be amended or otherwise modified from time to time.

(d) The Operator agrees that it shall not be entitled to withdraw funds from the Deposit Account unless (i) the Authority fails to make any monthly payment due under Section 5.1 or 5.2 of the OMA within five (5) days from its due date and the Operator provides to the Depository Bank written evidence that it has provided written notice of such failure to the Authority, or (ii) the Operator has declared the Authority to be in default under the OMA, has terminated the OMA pursuant to Section 45.4(c), and the amount being withdrawn represents amounts then due by the Authority to the Operator.

4. **Indemnity: Depository Bank’s Responsibility.** The Authority agrees to indemnify, defend and hold harmless the Depository Bank against any loss, liability or expense (including reasonable fees and disbursements of counsel) incurred in connection with this Agreement, including any action taken by the Depository Bank pursuant to the instructions of the Operator, except to the extent due to the gross negligence or willful misconduct of the Depository Bank or breach by the Depository Bank of any of the provisions hereof. The Authority confirms and agrees that the Depository Bank shall not have any liability to the Authority for wrongful dishonor of any items as a result of any instructions of the Operator pursuant to the terms of this Agreement. The Depository Bank shall have no duty to inquire or determine whether the obligations of the Authority to the Operator are in default or whether the Operator is entitled to give instructions or withdraw moneys from the Deposit Account and the Depository Bank is fully entitled to rely upon such instructions from the Operator (even if such instructions are contrary or inconsistent with any instructions or demands given by the Authority).
5. **Statements, Confirmations and Notices of Adverse Claims.** At such time or times as the Operator or the Authority may reasonably request, the Depository Bank will promptly report to the Operator the amounts held in the Deposit Account and will furnish to the Operator and the Authority any copies of bank statements, deposit tickets, deposited items, debit and credit advices and other records maintained by the Depository Bank under the terms of its arrangements with the Authority (as in effect on the date hereof). The requesting Party will reimburse the Depository Bank for its reasonable expenses in providing such items to the Operator and the Authority. Upon receipt of notice of any Lien, encumbrance or adverse claim against any Deposit Account Collateral, the Depository Bank will promptly notify the Operator and the Authority thereof.

6. **Subordination of the Depository Bank’s Lien; Setoff Rights.**

   (a) In the event that at any time the Depository Bank has a Lien upon any of the Deposit Account Collateral, such Lien of the Depository Bank shall be subject and subordinate to the Lien of the Operator therein. The Depository Bank shall not for any reason charge, debit, deduct or offset, or exercise any Lien rights, against any checks, automated clearinghouse transfers or other form of remittances or any amounts at any time deposited in or credited to the Deposit Account, except that the Depository Bank may setoff against funds in the Deposit Account for all amounts due to the Depository Bank in respect of its customary fees and expenses for the routine operation of the Deposit Account that are unpaid and outstanding, and the amount of any checks, automated clearinghouse transfers or other form of remittance that have been credited to the Deposit Account and subsequently returned unpaid and any overdrafts arising as a result thereof.

   (b) (i) If the balances in the Depository Account are insufficient to compensate the Depository Bank for any Bank Fees, the Authority agrees to pay the Depository Bank on written demand the amount due to the Depository Bank.

   (ii) If the balances in the Depository Account are insufficient to compensate the Depository Bank for any Returned Item Amounts, the Authority agrees to pay the Depository Bank on written demand the amount due to the Depository Bank.

   (iii) Depository Bank is authorized, without prior notice and without regard to this Agreement or any other control agreement with the Operator, from time to time to debit any other account of that the Authority may have with the Depository Bank for the amount or amounts due to the Depository Bank under this Agreement or any other Account Related Agreement.

For purposes of this Agreement, the following terms shall have the meanings set forth below:

*Bank Fees* means the Depository Bank’s customary fees and charges relating to the Depository Account or associated with this Agreement

*Returned Item* means (i) any item deposited to the Depository Account and returned unpaid or otherwise uncollected, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or the occurrence or timeliness of any drawee’s notice
of non-payment; (ii) any item subject to, a claim against Depository Bank for breach of transfer or presentment warranty under the Uniform Commercial Code (as adopted in the applicable state), Regulation CC (12 C.F.R. §229), clearing house operating rules or the National Automated Clearing House Association as in effect from time to time; (iii) any ACH entry credited to the Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or adjustment; (iv) any credit to the Depository Account from a merchant card transaction, against which a contractual demand for chargeback has been made; and (v) any credit to the Depository Account made in error and any other adjustments including those due to encoding errors or other items posted to the Depository Account in error.

“Returned Item Amounts” means the face amount of each Returned Item.

7. **Termination; Amendment.**

(a) This Agreement may only be terminated either: (i) by the Depository Bank upon thirty (30) days prior written notice to the Authority and the Operator, (ii) by the Operator upon seven (7) days prior written notice to the Depository Bank (which the Operator agrees to give promptly following indefeasible payment in full of the Obligations), or (iii) by the Authority upon (A) the Authority having provided seven (7) days prior written notice to the Depository Bank and the Operator that the OMA has been terminated by the Authority, and (B) the Depository Bank not receiving any written notice from the Operator disputing the Authority’s notice of termination of the OMA within seven (7) days from the date of receipt of the Authority’s notice under subsection (a)(iii)(A) above by the Operator. In the event that for any reason this Agreement shall be terminated other than pursuant to clause (a)(ii) or (a)(iii) above, and as long as it is not contrary to any applicable law, regulation or judicial or administrative order, the Depository Bank will immediately transfer any funds in the Deposit Account to the accounts specified by the Operator (or, if such termination occurs after the Operator’s written confirmation that the Operator has received indefeasible payment in full of the Obligations or if the termination occurs pursuant to clause (a)(iii) above, to the account specified by the Authority), the Deposit Account will be closed and the Depository Bank will forward any related mail, deposits, automated clearinghouse transfers and other forms of remittances received after such termination to the Authority and the Operator (or, if such termination occurs after the Operator’s written confirmation that the Operator has received indefeasible payment in full of the Obligations or if the termination occurs pursuant to clause (a)(iii) above, to the Authority or to such address as the Authority may designate to the Depository Bank in writing).

(b) No amendment of this Agreement shall be effective unless the same shall be in writing and signed by the Operator, the Authority and (to the extent its rights or obligations hereunder are affected thereby) the Depository Bank.

8. **Notices.** All notices under this Agreement shall be in writing and sent (including via email transmission) to the parties hereto at their respective addresses or email addresses set forth below their respective signatures hereof (or to such other address or email as any such party shall designate in writing to the other parties from time to time).
9. **Customer Agreement.** This Agreement supplements any other agreements between the Authority and the Depository Bank with respect to the Deposit Account ("Account Related Agreement"). In the event of any inconsistency between this Agreement and the terms of such other agreements of the Authority or its Affiliates with the Depository Bank, the terms of this Agreement shall control.

10. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Puerto Rico.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by portable document format (.pdf) or other electronic communication shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of any such agreement by pdf or other electronic communication shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

12. **No Fiduciary Duty.** Nothing contained in the Agreement shall create any agency, fiduciary, joint venture or partnership between the Depository Bank, the Authority or the Operator.

13. **Successors and Assigns.** This Agreement shall be binding upon the Authority and the Depository Bank and their respective successors and assigns and inure to the benefit of the Operator and its successors and assigns.
[Signature Page Follows]

PUERTO RICO AND THE ISLAND MUNICIPALITIES MARITIME TRANSPORT AUTHORITY
as the Authority

By: ___________________________________
Name: Mara Pérez Torres
Title: Executive Director

[PLEASE ADD THE SECRETARY OF DTOP AS A SIGNATORY]
Address for Notices:

[●]
[●]
[●]
[●]
[●]
[●]

HMS FERRIES – PUERTO RICO, LLC
as the Operator

By: ___________________________________
Name: ________________________________
Title: ________________________________

Address for Notices:

[●]
[●]
[●]
[●]
[●]
[●]
Affidavit No.: ________

Acknowledged and subscribed before me in [●]. Puerto Rico, on this [●] day of [●], 2020 by the following persons who are personally known to me: Mara Pérez Torres, of legal age, [●], [●] and resident of [●], Puerto Rico, in her capacity as Executive Director of the Puerto Rico and the Island Municipality Maritime Transport Authority; [●], of legal age, [●], executive and resident of [●], in his capacity as [●] of HMS Ferries – Puerto Rico, LLC; and [●], of legal age, [●], executive and resident of [●], in his capacity as [●] of [●].

____________________________
Notary Public
REQUIRED ELEMENTS OF THE HANDBACK PLAN

Below are the minimum elements required to be included in the Handback Plan referred to in Section 46.4:

A. MTA Rights
- Audit
- Engagement of Subcontractors

B. Operator Rights
- Engagement of Subcontractors
- Use of Affiliate Personnel

C. MTA Responsibilities
- Establishment of New Bank Accounts for Fare Collection and other Expenses
- Notification of utilities and vendors of new accounts
- Timely payment of back-end transition fees
- Selection of surveyor for off-hire vessel and terminal surveys

D. Operator Responsibilities
- Provide access to Office Space, Terminals, Vessels, and Shipyards
- Cooperation with Owner
- Update and provide Health, Safety, Security, and Environmental Protection Plans
- Update and provide Emergency Response Plan
- Update and provide status report of vessels
  - COI status
  - Next dry docking
  - Main and auxiliary engine hours
  - Ship Systems condition
  - Outfit and Furnishings Condition
- Update and provide status report of terminal and shipyard facilities
  - Building and Fire Inspection Certificate Status
  - Structural condition
  - Distributed systems condition
  - Fixtures, Furnishings, and Equipment condition
- Update and provide status report of other vehicles and equipment
  - Inventory of vehicles and equipment
  - Vehicles and equipment condition
- Operations
  - Provide current vessel, crew, and staff schedules
  - Provide current customer service, vessel, terminal, and shipyard operating schedules and procedures
• Provide keys, access codes, and passwords for all facilities
• Provide vessel maintenance records
• Provide facility maintenance records
• Provide inventory of warehouse and storeroom parts and supplies

• Regulatory
  • Update and provide status of any regulatory reporting and compliance requirements and open discussion with the USCG
  • Update and provide status of pending inspections and USCCG-observed drills

• Human Resources
  • Provide current staff position titles, descriptions, and qualifications
  • Retention of senior management availability for six months
  • Provide current sick leave and personal leave balances for all staff

• Information Technology
  • Provide data security plan
  • Delivery of all computer programs and other intellectual property
  • Delivery of lists of files, access, and security codes
  • Delivery of system information and customer databases
  • Delivery of document and file management system

• Finance
  • Provide status of current budgets
  • Provide status of current accounts payable and receivable
  • Delivery of Financial Reports

• Notice of cancellation or endorsements of insurance policies

• Legal
  • Provide list of all legal proceedings involving contractors or subcontractors
  • Provide work products and Owner Intellectual Property
  • Assign contracts and licenses

• Supply Chain
  • Review of procurement manuals
  • Delivery of copies of all contracts and subcontracts
  • Terminal or assignment of contracts and subcontracts
  • Cessation of entering into new contracts
  • Transfer of title to special order items
  • Transfer of warranties

• Administrative
  • Removal of branding
  • Milestone reporting
  • Delivery of all books, records and other information
  • Delivery of a list of all assets
E. **Joint Responsibilities**
   - Develop and execute a handover checklist
   - Designating individuals in charge of transition process

F. **Actions to be taken on Termination Date**