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### **BY ELECTRONIC MAIL**

July 1, 2024

Mr. Josué Menéndez Agosto  
Executive Director  
Puerto Rico Maritime Transportation Authority

#### **Re: HMS Ferries – Puerto Rico, LLC**

Dear Mr. Menéndez Agosto,

In accordance with the Contract Review Policy (the “Policy”) of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the proposed amendment to the contract between the Puerto Rico Maritime Transportation Authority (the “MTA”) and HMS Ferries – Puerto Rico, LLC (the “Proposed Amendment”).

After reviewing the Proposed Amendment, the Oversight Board concludes “Approved with **Conditions.**” Conditions and observations related to the Proposed Amendment are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Amendment with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the Oversight Board does not constitute a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local; and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local.

In addition, the Oversight Board has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Amendment or the original contract must be submitted to the Oversight Board for review and approval **prior to execution.**

**Date:** 7/1/2024

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**Recipient:** Mr. Menéndez Agosto

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information the Oversight Board was not directed to when the review was conducted. In addition, during the course of our review, we may receive information that we may refer to the relevant authorities.

This letter is issued only to the MTA and solely with respect to the Proposed Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JA A', with a stylized flourish extending to the right.

Jaime A. El Koury  
General Counsel

## APPENDIX A

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MTA – HMS FERRIES – PUERTO RICO, LLC

### Fiscal Plan Alignment

This review covers the Proposed Amendment to the contract between the MTA and HMS Ferries – Puerto Rico, LLC (the “Operator”).

The original contract (2021-000016) (the “Contract”) was approved with conditions by the Oversight Board on September 30, 2020. It stems from a competitive procurement process issued on April 30, 2019 for the operation and maintenance of MTA’s ferry system between (i) San Juan and Cataño, and (ii) Ceiba, Vieques and Culebra. Specifically, the Operator was selected pursuant to a public private partnership organized by MTA in collaboration with the Puerto Rico Public-Private Partnerships Authority pursuant to Act 29-2009.

The Contract has an estimated aggregate cost of **\$750,866,668** and a term of **23 years**, from its date of execution of October 27, 2020 to **October 27, 2043**, which is divided into two phases. Phase 1 constitutes a 3-year period in which MTA will transfer the operation and management of the ferry system to the Operator. Phase 2 comprises the 20-year period, whereby the Operator will provide all the ferry services.

Section 2.6 of the Contract sets forth certain conditions, precedent to the commencement of Phase 2. Such conditions must be satisfied within the third year of the Phase 1 commencement deadline,<sup>1</sup> unless waived by the MTA and/or the Operator, extended due to a Force Majeure event, or upon mutual agreement by the parties.

The first amendment to the Contract, which was approved by the Oversight Board on February 5, 2024, extended the Phase 2 commencement deadline (which coincides with the end of Phase 1) from January 25, 2024 to June 30, 2024, with the option to further extend upon mutual agreement, without altering the maximum payable amount. We remind MTA that in the event it intends to exercise any additional extensions under the Contract, such extensions must be submitted to the Oversight Board for review and approval prior to execution in accordance with the Policy.

The Proposed Amendment, which constitutes the second amendment to the Contract, extends the Phase 1 commencement deadline for an additional three years to **June 30, 2027**, while reducing Phase 2 by this same amount to 17 years. It also sets forth the monthly operating budgets for the additional three years of Phase 1. The Proposed Amendment increases the maximum payable amount by \$58,621,834 to **\$809,488,502**, without altering the term.

Pursuant to the Proposed Amendment, MTA consents to the assignment of the Contract to HMS Global Maritime, LLC (“HMS Global”), the Operator’s parent company. As such, HMS Global shall have to satisfy all the Operator’s obligations under the Contract, as amended by the Proposed Amendment, whether arising in the past or future. The Operator shall have no further obligations to MTA upon the effectiveness of the assignment.

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<sup>1</sup> Section 2.4 of the Contract states that the Phase 1 commencement deadline is 90 days following the effective date.

## APPENDIX A

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According to the information submitted by MTA, the Proposed Amendment shall be covered entirely with General Funds allocated in **Account No. 102-50399001**. We note that, as of the date of this letter, the Fiscal Year 2025 Commonwealth budget is yet to be certified. Consequently, MTA must ensure that the costs associated with the Proposed Amendment are incorporated into the Fiscal Year 2025 Commonwealth budget to ensure consistency therewith. Moreover, once the Fiscal Year 2025 Commonwealth budget has been certified, MTA must submit to the Oversight Board an updated Fund Availability Certification by **August 30, 2024** in the format set forth in Appendix A to the Policy (Contract Submission Questionnaire), including accurate information for the corresponding account.

Further, MTA must submit a budgetary reprogramming request through the Office of Management and Budget to reprogram \$16.788 million of the maximum payable amount necessary to fund the Proposed Amendment. The Oversight Board's review indicates that, upon its review and approval of the budgetary reprogramming request, MTA shall have sufficient funds to cover the cost of the Proposed Amendment.

Finally, we note that the Operator and various of its affiliates are currently undergoing a Chapter 11 restructuring proceeding in the Southern District of Texas. According to the MTA, the Proposed Amendment is scheduled as an executory contract, which will be assumed and assigned to HMS Global as part of the Chapter 11 restructuring. The Operator's plan of reorganization was confirmed by the Bankruptcy Court on June 7, 2024. As such, the Proposed Amendment is **conditioned** upon the formal assumption and assignment becoming effective and on MTA providing the Oversight Board with the Operator's formal notice of the effectiveness of the assumption and assignment as issued in its Chapter 11 case.

MTA is expected to inform the Oversight Board of any budgetary differences other than those specified in Appendix A and to request a re-review of the Proposed Amendment should any changes occur.

*This review was conducted on the basis of information submitted by the MTA. The Oversight Board has not independently verified the information included in the submission. Should the Oversight Board become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.*