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July 12, 2013

VIA HAND DELIVERY

Honorable Shawn-Michael Malone
President
30th Legislature
Capitol Building
St. Thomas, Virgin Islands 00802

Re: Transmittal of Legislation Ratifying the Fourth Amendment to the HOVENSA Concession Agreement

Dear Mr. President:

Enclosed for consideration by the 30th Legislature is a bill ratifying the Fourth Amendment to the HOVENSA Concession Agreement (the "Fourth Amendment" or "Amendment"), which requires the owners of HOVENSA to initiate a bona fide process to sell the HOVENSA oil refinery—a process that I believe offers the best chance of identifying a new owner who will restart the refinery, and with it, the engines of job creation on St. Croix and economic growth in the Territory as a whole. The Amendment sets forth the terms and conditions under which HOVENSA's owners must undertake a defined and arms-length process to sell the refinery and its related facilities to a willing operator. I believe the Amendment provides a major opportunity for the Territory to heal its economic wounds and allow our people to move forward to a brighter future. Upon full consideration by the Legislature, I strongly urge you and your distinguished colleagues to approve the bill and pass it into law.

The Fourth Amendment, which has been executed among the Government, HOVENSA, HOVIC and PDVSA VI, is the most recent proposed modification to the Concession Agreement originally ratified by this body on September 1, 1965, which authorized the construction of the refinery, and which (as amended from time to time) has governed the Territory's relationship with HOVENSA, its owners, and their predecessors for nearly 50 years. That 1965 agreement, and the world-class refinery it brought to St. Croix, has produced economic benefits for the

Territory worth billions of dollars — in the form of well-paid, professional jobs and the substantial economic activity and tax revenue generated thereby.

In the past, the Government and the refinery's owners have come together to modify their agreement when economic circumstances required it, for the mutual benefit of all involved. This time, HOVENSA initially spurned that well-established, mutual process and sought to impose new terms on the Government unilaterally; but through patience and an unbending insistence on the Government's contractual rights and economic interests, we have brought HOVENSA back to the negotiating table and reached an agreement.

The driving purpose of the Fourth Amendment is to achieve the economic benefits of an operating refinery with a new owner and thereby renew the economic health of St. Croix and the rest of the Virgin Islands.

BACKGROUND—ORIGINS OF THE FOURTH AMENDMENT AGREEMENT

As you and your colleagues know, the precipitating event for the proposed Amendment was the abrupt announcement on January 18, 2012, by HOVENSA and its owners, of the imminent termination of refining operations on St. Croix and the planned conversion of the facility into an oil storage terminal. That announcement was followed by the actual shutdown of the facility just three weeks later. The sudden loss of the Territory's largest employer, the bulk of its industrial sector, and thousands of jobs threw the Territory into crisis.

Navigating and emerging from that crisis has been my highest priority for the past 18 months. Almost immediately after announcing the refinery closure, HOVENSA unilaterally proposed a series of drastic modifications to the Concession Agreement—one-sided modifications designed to permit them to essentially mothball the refinery while allowing the company to operate an oil terminal business on just a portion of its facilities. HOVENSA's proposal to use the facility as a storage terminal would likely require fewer than 100 employees, whereas an operating refinery—even one of reduced scale and scope utilizing only the most efficient portions of the existing facility—would require far closer to 1,000 employees. Moreover, HOVENSA's proposal would also have relieved the company of many of its obligations under the Concession Agreement, while leaving the Government with no guarantee or expectation that the refinery would ever be restarted or put up for sale. In addition, HOVENSA demanded agreement to its terms and ratification by this body no later than April 30, 2012 — far too short a time for us to thoroughly assess the situation and make informed decisions about the best course of action for the Territory. In the fearful and uncertain atmosphere of those days, I faced enormous pressure to agree to HOVENSA's proposed terms, while our community remained troubled and concerned about its future.

To obtain the time necessary to safeguard the Territory's interests, I negotiated an interim agreement permitting HOVENSA to operate an oil storage terminal business on a temporary basis, in exchange for nine additional months of discounted fuel for the Virgin Islands Water and Power Authority ("WAPA") and an additional three months to consider and respond to

HOVENSA's proposed modifications to the Concession Agreement. By securing WAPA's fuel-oil supply for the remainder of 2012, we gave WAPA time to identify, negotiate and execute an agreement with a new supplier and solidify its path for a long-term solution to our energy costs. At the same time, the Government had given additional time to analyze our claims and assess our legal options. During this time, we retained experienced industry consultants at Duff & Phelps to assist in our analysis and to identify the "highest and best use" for the refinery site.

The Government used the additional time to its advantage. By August 2012, WAPA had identified and was negotiating a supply contract with a new fuel supplier, Trafigura, and had begun exploring a conversion to less-expensive liquefied propane gas ("LPG") or liquefied natural gas ("LNG") fuel that would greatly reduce the Territory's energy costs by the last quarter of 2014. The Attorney General, working with outside counsel, had thoroughly analyzed the Government's legal options. Most important, Duff & Phelps had completed its analysis and produced an exhaustive, detailed report concluding that only one activity at the HOVENSA site could create the level of economic activity and employment approaching that previously associated with the refinery: restarting and resuming refining operations.

If there is skepticism on this point, let me assure you: a reopened refinery is an attainable goal. It is true that HOVENSA has been losing money on its refining operations for several years. But as recently as 2008 it was extremely profitable. Duff & Phelps' analysis concluded that the refinery's current problems—most notably, its high energy costs—can be remedied, and that it can be profitable again in the hands of an owner committed to the refining business and willing to make reasonable capital investments consistent with that commitment.

HOVENSA is not such an owner. Not only did it shutter the St. Croix refinery last year, but one of its parent companies, Hess Corporation, has publicly announced its intention to exit the refinery business altogether, and the other, Venezuela's national oil company has indicated no interest in making new investments in the refinery. Although HOVENSA has not publicly admitted it, it seems all but certain that, under its current ownership, the St. Croix refinery will never reopen.

In short, during the window created by the interim agreement executed in the spring of 2012, the Government determined that the highest and best use of the refinery site is refining operations; that with some modifications and investments, the refinery can be restarted and returned to profitability; and that there is likely a viable market for the refinery. Accordingly, on August 6, 2012, I informed HOVENSA and the public of the Government's position: The company must either restart the refinery or sell it to someone who will. Implicit in that statement was another message: if HOVENSA did not take either of those actions, the Government would vigorously pursue all of its remedies under the law.

When HOVENSA responded, it made a substantial concession: it would agree to put the refinery up for sale, on the condition that the Government first enter into an amended concession agreement that — if the refinery did not sell — would permit HOVENSA to shed most of its obligations under the existing Concession Agreement and still operate its oil storage terminal business on highly favorable terms. I refused: Any permanent modification of the Concession Agreement would reduce HOVENSA's incentives to sell the refinery and would simply transfer value from the Government to HOVENSA, which, if the refinery were ever sold, would use the more favorable terms to extract a higher price for the refinery. Accordingly, I continued to insist that any amendment to the Concession Agreement during the sales process be temporary.

The parties remained at impasse from mid-December 2012 to late January 2013. In my State of the Territory address, I reiterated that the Government would accept no long-term use for the HOVENSA facility other than oil refining, and that if HOVENSA were unable or unwilling to restart operations or sell the facility to a willing operator, the Government would require HOVENSA to take down the refinery and remediate the site. Shortly thereafter, with the end of the parties' interim agreement approaching at the end of February, HOVENSA reached out with a new offer that accepted the Government's last major condition — HOVENSA would agree to sell the refinery and would accept a temporary modification of the Concession Agreement to facilitate the sale.

The parties moved to detailed negotiations to flesh out the agreement. By late March 2013, those negotiations resulted in the Fourth Amendment Agreement now before you for consideration. Although unexpected events in Venezuela caused final execution of the Amendment by PDVSA to be delayed, all parties have now signed the agreement. The final step before HOVENSA can begin its sales process and move St. Croix toward a better, more prosperous future, is ratification by this Legislature.

THE FOURTH AMENDMENT AGREEMENT—STRUCTURE

The basic structure of the Fourth Amendment is as follows: HOVENSA will undertake a bona fide sales process administered by a reputable and experienced investment banking firm. In exchange, the Government will *temporarily* permit HOVENSA to operate the refinery site as an oil storage terminal, on terms consistent with the smaller economic output of such an operation — including temporarily reduced payments in lieu of property tax ("PILOT"). If the refinery is sold to an acceptable buyer, who will want to negotiate a new agreement with the Government and which this body must also ratify, HOVENSA may be released from its obligations under the Concession Agreement, and HOVENSA will pay the Government a portion of the sales proceeds. If the refinery does not sell, HOVENSA will resume its obligations under the Concession Agreement and repay to the Government all deferred payments in lieu of property tax.

The agreement is structured to give HOVENSA powerful incentives to sell. The sales process will commence upon ratification of the Fourth Amendment Agreement and terminate no later than August 15, 2014 — ample time, according to our industry experts, for a thorough process, but not enough to give HOVENSA any time, or incentive, to delay. And at the end of the sales process period, if the refinery is not sold, HOVENSA will face four unpalatable consequences. First, most of its obligations under the Concession Agreement will resume—including the obligation to bid to supply WAPA with heavily discounted fuel oil. Second, it will be forced to repay any PILOT payments deferred during the agreement. Third, although HOVENSA will be permitted to continue storing oil pursuant to contracts entered into during the sales process, it will no longer be permitted to enter into new storage contracts, meaning that it can no longer contract with new customers or expand its terminal business. And fourth, the Government will retain all of its legal rights under the existing Concession Agreement, including the right to assert breach-of-contract claims for the periods before and after the end of the sales process.

In short, if HOVENSA fails to sell the refinery, it faces the prospect of resumed Concession Agreement obligations, a substantial repayment of deferred taxes, a limited revenue-producing oil terminal, and a lawsuit. These facts strongly suggest that HOVENSA will make every conceivable effort to finalize a sale within the allotted time. That — in addition to information the Government has received from its consultants, from third parties, and from HOVENSA itself suggesting that there will be an active market for the refinery — creates a high likelihood that by the fall of 2014, the refinery will be in the hands of a new operator, and the Territorial economy will have begun its recovery. That has been my goal from the beginning of the HOVENSA crisis, and I believe the attached Amendment offers the best opportunity to reach that goal, for the benefit of the entire Territory and our people.

THE FOURTH AMENDMENT AGREEMENT — SPECIFIC CONCERNS

I would also take this opportunity to address some concerns about particular aspects of the Fourth Amendment Agreement.

Deferred property-tax payments will be minimal, and will likely be recouped.

Several Senators have expressed concerns with the Amendment's partial deferral of HOVENSA's payments in lieu of property tax. Under the Concession Agreement, current PILOT payments are set at $14 million per year. Under the Fourth Amendment, they will be temporarily reduced to $7 million per year beginning on October 1, 2013 and extending through 2019, or for so long as HOVENSA operates an oil storage terminal. The deferred amount may be as little as $7 million (if the refinery is sold as planned in 2014) but no more than $42 million (if the refinery is not sold and HOVENSA continues to operate its storage terminal for the full period allowed by the Agreement).

But the Amendment is structured so the Government is almost certain to be made whole for all of those amounts.

- If the refinery is not sold, the Government will recoup *every dollar* of foregone revenue, plus interest.
- If the refinery is sold during the sales process period, the foregone revenue cannot exceed $7 million—a very small price to pay for a restarted refinery, which will contribute hundreds of millions of dollars to the Territorial economy.

And in any event, even that $7 million will almost certainly be recouped from the Government's share of the sales proceeds, as explained below.

The Government's share of the refinery sales proceeds should greatly exceed any foregone tax revenue.

Upon sale of the refinery, the Government will receive 20% of the sales proceeds, capped at $50 million. This means that even if the refinery's sales price is just $35 million (at the very low end of its estimated value), the Government's share will fully offset the $7 million in foregone PILOT.

By contrast, if the refinery sells for the mid-range estimate of its value—$250 million—the Government would not only recoup the $7 million in foregone PILOT, but would receive an additional $43 million. That $43 million would be *in addition to* the economic benefits that would flow from a restarted refinery.

Forbearance from collecting import/export duties on stored fuels will result in no loss of revenue.

The Government's other obligation under the Amendment is its promise to forbear from collecting import duties on petroleum shipments to and from HOVENSA's (temporary) oil storage terminal. The Government has been advised by its industry consultants that its forbearance on import duties is necessary for any import/export activity to occur at all especially given the number of more established participants in this niche within the Caribbean region. If the Government charged the 6% duty on shipments to and from HOVENSA's storage terminal, the additional cost would make the terminal non-competitive with Gulf Coast and other Caribbean terminal operators. For that reason, the Government's forbearance will not result in any lost revenues: to the contrary, by permitting the terminal to operate on competitive terms, the Government's forbearance ensures that the terminal will continue to operate at some commercial level, ensuring a level of employment through this transition period to a more permanent economic activity, as well as allowing the company to continue to provide needed storage to supply the community's fuel needs.

The Fourth Amendment does not alter HOVENSA's environmental obligations.

Nothing in the Amendment alters HOVENSA's obligations under the Clean Air Consent Decree and federal and Territorial environmental laws and regulations. In fact, the Amendment specifically requires that HOVENSA comply with all applicable environmental laws and regulations, consent decrees, and orders.

The Fourth Amendment does not prevent the Government from bringing its breach-of-contract claims in the event the refinery does not sell.

Finally, it is important to emphasize that absolutely nothing in the Amendment absolves HOVENSA for any breaches of the Concession Agreement that occurred prior to the execution of the Amendment or after the sales process period ends. To the extent HOVENSA has breached its obligation to (for example) bid to supply fuel to WAPA at discounted prices through 2022, nothing in the Amendment affects the Government's right to seek damages for that breach (and all other breaches) for all contract years following the end of the sales process. If the refinery does not sell, all of the Government's legal options remain on the table.

* * *

In short, it is my view that ratification of the Fourth Amendment Agreement is critical to the economic well-being of the Territory and strongly in the public interest. We cannot afford to have 2,000 acres of a rusting metal façade sitting idle in the middle of St Croix providing neither jobs nor economic activity necessary for our well-being. This is not the original course that HOVENSA and its owners wanted, but it is the best course for the long term interest of our community: we allow a company to exit that no longer wants to be here, we explore the preferred alternatives, and then we negotiate a new agreement with new terms and conditions that are best for our Territory.

I hope that you will join me in ushering a new era of industry, employment, and economic success on the south shore of St. Croix that will be beneficial to the entire Virgin Islands. I look forward to working with you to make that happen.

Sincerely,

John P. de Jongh, Jr.
Governor

Enclosures

pc: Hon. Vincent F. Frazer, Esq., Attorney General, Department of Justice

BILL NO. 30- _____

THIRTIETH LEGISLATURE OF THE UNITED STATES VIRGIN ISLANDS

REGULAR SESSION

2013

To ratify the "Fourth Amendment Agreement" between the Government of the Virgin Islands, HOVENSA, LLC, Hess Oil Virgin Islands Corporation and PDVSA, V.I., Inc. and for other related purposes.

PROPOSED BY THE GOVERNOR

WHEREAS, the Government of the Virgin Islands ("Government"), HOVENSA, LLC, ("HOVENSA"), Hess Oil Virgin Islands Corporation ("HOVIC") and PDVSA, V.I., Inc. ("PDVSA VI") are parties to a Concession Agreement relating to the construction and operation of the Oil Refinery and Related Facilities in St. Croix, U.S. Virgin Islands, approved by the Legislature of the U.S. Virgin Islands (the "Legislature") on September 1, 1965 and subsequently amended, supplemented and clarified at various times, most recently on April 15, 1998, by mutual agreement of the parties (the "Concession Agreement"); and

WHEREAS, pursuant to the Third Amendment and Extension Agreement dated April 15, 1998 (the "Third Extension Agreement"), the Concession Agreement's effective period currently runs through the year 2022; and

WHEREAS, on January 18, 2012, HOVENSA announced its intention to cease refining operations at the Oil Refinery and Related Facilities, and ceased such operations on or about February 16, 2012; and

WHEREAS, HOVENSA desires to convert the Oil Refinery and Related Facilities to an oil storage terminal operation; and

WHEREAS, the Concession Agreement obligates HOVENSA to continue refinery operations at the Oil Refinery and Related Facilities through the end of the effective period, and does not permit HOVENSA to operate a stand-alone oil storage terminal business; and

WHEREAS, while the Government acknowledges that HOVENSA has reported significant operating losses in recent years, the Government strongly believes that the economic well-being of the United States Virgin Islands depends upon the operation of an oil refinery at the Oil Refinery and Related Facilities; and

WHEREAS, the Government, in consultation with industry experts, has determined that refining operations remain the highest and best use of the refinery site, and that no other commercial activity could generate economic benefits comparable to those generated by an operating refinery; and

WHEREAS, the Government believes that the economic well-being of the U.S. Virgin Islands depends on the resumption of refining operations at the Oil Refinery and Related Facilities, and

WHEREAS, the Government prefers that the Oil Refinery and Related Facilities be sold to a new owner who will resume refining operations; and

WHEREAS, in the interest of reaching a mutually acceptable resolution, the parties entered into an interim agreement on or around April 3, 2013 (the "Interim Agreement") providing that in exchange for the agreement by HOVENSA's owners to undertake a bona fide sales process (the "Sales Process") to sell the Oil Refinery and Related Facilities to a third party buyer on an arm's length basis and for other consideration given, the Government would, among other consideration, forbear for a limited period of time from collecting certain import duties and other taxes on shipments of petroleum products into the Oil Refinery and Related Facilities; and

WHEREAS, it is the Government's position that the Interim Agreement offers the best opportunity to achieve a sale of, and the re-start of refining operations at, the Oil Refinery and Related Facilities, and thus is in the public interest.

NOW, THEREFORE, *Be it enacted by the Legislature of the Virgin Islands:*

SECTION 1. The Interim Agreement, dated April 3, 2013, entitled "The Fourth Amendment Agreement" between the Government of the Virgin Islands (the "Government"), HOVENSA, LLC ("HOVENSA"), Hess Oil Virgin Islands Corporation ("HOVIC") and PDVSA, V.I., Inc. ("PDVSA VI"), having been executed by the Governor of the United States Virgin Islands, the General Manager for HOVENSA, the Vice President of HOVIC, and the President of PDVSA VI, respectively, is hereby ratified, and a copy thereof is appended hereto as Appendix I and made a part hereof.

FOURTH AMENDMENT AGREEMENT

April 3, 2013

AGREEMENT

THIS FOURTH AMENDMENT AGREEMENT, herein called the "Fourth Amendment Agreement", is hereby entered between the GOVERNMENT OF THE VIRGIN ISLANDS (the "Government"), HOVENSA, LLC ("HOVENSA"), a limited liability company existing under the laws of the U.S. Virgin Islands, HESS OIL VIRGIN ISLANDS CORP. ("HOVIC"), and PDVSA V.I., INC. ("PDVSA VI"), corporations existing under the laws of the U.S. Virgin Islands and the sole members of HOVENSA.

WITNESSETH:

WHEREAS, the Government, HOVENSA, HOVIC, and PDVSA VI are parties to a Concession Agreement relating to the construction and operation of the Oil Refinery and Related Facilities in St. Croix, U.S. Virgin Islands, approved by the Legislature of the U.S. Virgin Islands (the "Legislature") on September 1, 1965 and subsequently amended, supplemented and clarified at various times, most recently on April 15, 1998, by mutual agreement of the parties (the "Concession Agreement"); and

WHEREAS, pursuant to the Third Amendment and Extension Agreement dated April 15, 1998 (the "Third Extension Agreement"), the Concession Agreement's effective period currently runs through the year 2022; and

WHEREAS, on January 18, 2012, HOVENSA announced its intention to cease refining operations at the Oil Refinery and Related Facilities, and ceased such operations on or about February 16, 2012; and

WHEREAS, HOVENSA desires to convert the Oil Refinery and Related Facilities to an oil storage terminal operation; and

WHEREAS, the Government believes that the economic well-being of the U.S. Virgin Islands depends on continued refining operations at the Oil Refinery and Related Facilities and prefers that said facilities be sold to a new owner who will resume refining operations; and

WHEREAS, in the interest of reaching a mutually acceptable resolution of the situation, the parties entered into an interim agreement (the "Interim Agreement") providing that in exchange for consideration given, the Government would, among other consideration, forbear from collecting certain import duties and other taxes on shipments of petroleum products into the Oil Refinery and Related Facilities.

NOW, THEREFORE, the Government, HOVENSA, HOVIC and PDVSA VI hereby agree to enter into this Fourth Amendment Agreement, which temporarily suspends certain of the parties' contractual obligations under the Concession Agreement to facilitate a sale of the Oil Refinery and Related Facilities, on the following terms.

1. Effective Date; Effect on Existing Obligations

a. This Fourth Amendment Agreement shall take effect upon execution by all parties hereto and ratification by the Legislature (the "Effective Date"), and shall expire, except as provided herein, on August 15, 2014. The period between the Effective Date and the August 15, 2014 expiration date, which period may be extended by agreement of the parties in writing, is hereinafter referred to as the "Sales Process Period."

b. The Governor shall use his best efforts to secure ratification by the Legislature. If this Fourth Amendment Agreement is not ratified by the Legislature by August 15, 2013, the Interim Agreement shall expire and the Concession Agreement shall remain in full force and effect.

c. Prior to, during, and following the Sales Process Period, all the parties' existing rights, exemptions and obligations under the Concession Agreement shall remain in full force and effect, except as otherwise provided herein.

2. Sales Process

During the Sales Process Period, HOVIC and PDVSA VI shall undertake a *bona fide* process to facilitate a sale, directly or indirectly, of the Refinery and Related Facilities on an arm's-length basis (the "Sales Process"). The Sales Process shall proceed on the following terms:

a. Not later than 10 days following the Effective Date, HOVENSA shall retain a reputable investment bank experienced in the sale of oil and gas assets to conduct a *bona fide* Sales Process.

b. Prior to commencement of the Sales Process, HOVENSA shall arrange for the retained investment bank to brief the Governor of the U.S. Virgin Islands and his advisers, Duff & Phelps LLC ("D&P"), and explain the strategy and mechanics of the Sales Process and respond to questions posed by the Governor and D&P. Thereafter, the retained investment bank shall provide status briefings to D&P on a monthly basis, and on the occurrence of any event material (in the reasonable judgment of the retained investment bank) to the Sales Process.

c. Prior to issuance, all offering memoranda and/or teasers prepared by the investment bank or HOVENSA shall be provided to the Governor and D&P for review and comment, which comments shall be provided within three (3) business days of receipt of the memoranda and/or teasers.

d. Within fifteen (15) days following the initial briefing described in subsection 2(b) above, the Government shall provide guidance in writing to the investment bank regarding possible modifications of, or alternative approaches to, the existing Concession Agreement or replacement concession agreement that may be available to a purchaser of the Oil Refinery and Related Facilities. It is understood that any modification of, or alternative approach to, the existing Concession Agreement for the benefit of a purchaser would be subject to approval by the Legislature.

3. Government Obligations

The Government's rights and obligations under this Fourth Amendment Agreement shall be the same as *its rights and obligations under the Concession Agreement*, except that:

a During the Sales Process Period, the Government will suspend HOVENSA's obligation under Section 3 of the Third Extension Agreement to bid annually to supply the fuel needs of the Virgin Islands Water and Power Authority ("VIWAPA");

b. The Government shall reduce HOVENSA's obligation under Section 7 of the Third Extension Agreement to make payments in lieu of property taxes, as follows:

(i) HOVENSA shall pay $7 million annually for the fiscal year beginning October 1, 2013, and thereafter through the fiscal year ending September 30, 2019, for so long as HOVENSA is operating an oil storage terminal at the Oil Refinery and Related Facilities or until the Oil Refinery and Related Facilities are sold

(ii) If the Refinery and Related Facilties are not sold during the Sales Process Period, at such time as HOVENSA ceases to operate an oil storage terminal at the Oil Refinery and Related Facilities or on August 15, 2019, whichever is earlier, HOVENSA shall make a lump sum payment to the Government of such amount as is necessary for the Government to recoup the value of all payments foregone under Section 3(b)(i).

c. The Government shall forbear from the collection of import duties and other taxes on all oil storage contracts that (1) are entered into prior to or during the Sales Process Period, and (2) expire not later than the earlier of (i) five years following the effective date of such contracts, or (ii) August 15, 2019

4. HOVENSA Obligations

a **Continuing and Modified Obligations**. HOVENSA's rights and obligations under this *Fourth Amendment Agreement shall be the same as its rights and obligations under* the Concession Agreement, except as provided herein. Those obligations include (but are not limited to).

(i) Making available storage for sufficient fuels to meet the local needs of St Croix through August 15, 2019, so long as HOVENSA is operating an oil storage terminal on St. Croix;

(ii) Making fuels available to the Government and the public at the HOVENSA loading rack through March 31, 2014, after which date HOVENSA will assist the Government in securing responsible third-party suppliers and operators:

(iii) Making annual payments in lieu of property taxes in the amounts set forth above;

(iv) Paying all other applicable taxes, fees, and lease payments (including but not limited to the submerged lands lease and permits and Coastal Zone Management permits) at existing rates through August 15, 2019; and

(v) Complying with all applicable environmental laws, regulations, consent decrees (except to the extent hereafter amended), and orders.

b. **New Obligations.**

(i) Upon consummation of a sale of the Oil Refinery and Related Facilities, HOVENSA shall make a lump sum payment to the Government equal to the lesser of (1) 20% of the gross sale proceeds and (2) $50 million.

(ii) During the Sales Process Period, and for any period during which HOVENSA operates an oil storage terminal at the Oil Refinery and Related Facilities, HOVENSA shall:

(A) *On an annual basis, and subject to the execution of an* appropriate non-disclosure agreement, submit to the Office of the Governor a list of client names, contract end dates, and types of petroleum products stored for all contracts longer than two years in duration for storage at the Oil Refinery and Related Facilities;

(B) Invest a minimum of $500,000 annually in scholarships and/or career and technical education programs for United States Virgin Islands residents, and

Provide, on an as-is basis, the University of the Virgin Islands ("UVI") with access to the specialized classrooms, laboratories, and equipment at the HOVENSA Training School for use in UVI training programs. UVI will indemnify HOVENSA for any liabilities incurred because of its use of these facilities, and will reimburse HOVENSA for direct costs associated with UVI's use of those facilities.

5. Termination and Discharge Upon Sale

Upon completion of any arm's-length sale of the Oil Refinery and Related Facilities the rights and obligations of HOVENSA, HOVIC and PDVSA VI under the Concession Agreement shall be terminated and each of said parties released and discharged of such rights and obligations thereunder except as otherwise required by law.

AGREED on as of the Third Day of April, 2013.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

By:______________________________
John P. de Jongh, Jr.
Governor

APPROVED FOR LEGAL SUFFICIENCY:

By:______________________________
Vincent F. Frazer
Attorney General

AGREED on as of the Third Day of April, 2013.

HESS OIL VIRGIN ISLANDS CORP.

By:______________________ KAB
Larry Ornstein
Vice President

PDVSA, VI, Inc.

By:______________________
Jesus E. Luongo
President

HOVENSA, LLC

By:______________________
Sloan Schoyer
General Manager

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By:________________________________
Larry Ornstein
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Jesus E. Luongo
President

HOVENSA, LLC

By:________________________________
Sloan Schoyer
General Manager

DC:726683.13

AGREED on as of the Third Day of April, 2013.

HESS OIL VIRGIN ISLANDS CORP.

By:____________________________________
Larry Ornstein
Vice President

PDVSA, VI. Inc.

By:____________________________________
Jesus E. Luongo
President

HOVENSA, LLC

By:____________________________________
Sloan Schoyer
General Manager

HOVENSA
Fourth Amendment Agreement—Annotated
Dated: April 3, 2013

Provision	Text	Explanation
Section 1: Effective Date; Effect on Existing Obligations		
1.a	This Fourth Amendment Agreement shall take effect upon execution by all parties hereto and ratification by the Legislature (the "Effective Date"), and shall expire, except as provided herein, on August 15, 2014. The period between the Effective Date and the August 15, 2014 expiration date, which period may be extended by agreement of the parties in writing, is hereinafter known as the "Sales Process Period".	Limiting the sales process to approximately one year should be sufficient to substantially complete a thorough sales process. HOVENSA wanted a longer period, which would have reduced their incentive to move quickly to find a buyer. The end of the Sales Process Period also marks the end of the period during which important HOVENSA obligations (especially the WAPA subsidy) are deferred.
1.b	The Governor shall use his best efforts to secure ratification by the Legislature. If this Fourth Amendment Agreement is not ratified by the Legislature by August 15, 2013, the Interim Agreement shall expire and the Concession Agreement shall remain in full force and effect.	The August 15 date is designed to ensure both that the Legislature has sufficient time to consider and debate the new Agreement, and that the sales process will be launched as soon as possible, thus formally triggering the Sales Process Period and HOVENSA's obligations thereunder.
1.c	Prior to, during, and following the Sales Process Period, all the parties' existing rights, exemptions and obligations under the Concession Agreement shall remain in full force and effect, except as otherwise provided herein.	This is an extremely important provision, making clear that this Agreement does not relieve HOVENSA of any obligations except those specifically described in the Agreement.

Provision	Text	Explanation
Section 2: Sales Process		
2 (preamble)	During the Sales Process Period, HOVIC and PDVSA VI shall undertake a *bona fide* process to facilitate a sale, directly or indirectly, of the Refinery and Related Facilities on an arm's-length basis (the "Sales Process"). The Sales Process shall proceed on the following terms:	The sales process is the Government's best chance to keep an operating and profitable refinery on St. Croix, with the enormous financial benefits it brings — a new corporate entity, large-scale employment, and tax revenues. The Government's insistence that the sale be both "bona fide" and "arm's length" protects the Government from any kind of self-dealing by HOVENSA and its owners. The Sales Process will be administered by a reputable investment bank, not by HOVENSA or its owners themselves. The investment bank will be incentivized to perform a robust process to contact all potential buyers in order to achieve a successful sale. *See* Section 2.a. Additionally, periodic reports will be provided to the Governor and to the Government's industry experts.
2.a	Not later than 10 days following the Effective Date, HOVENSA shall retain a reputable investment bank experienced in the sale of oil and gas assets to conduct a *bona fide* Sales Process.	The 10-day time limit ensures that the Sales Process will begin quickly following ratification, because once the investment bank is engaged, HOVENSA and its owners will be paying for its services.
2.b	Prior to commencement of the Sales Process, HOVENSA shall arrange for the retained investment bank to brief the Governor of the U.S. Virgin Islands and his advisers, Duff & Phelps LLC ("D&P"), and explain the strategy and mechanics of the Sales Process and respond to questions posed by the Governor and D&P. Thereafter, the retained investment bank shall provide status briefings to D&P on a monthly basis, and on the occurrence of any event material (in the reasonable judgment of	This information-sharing provision ensures that the Government is fully engaged in the Sales Process, significant bids, and any other events that are material to the sale of the Refinery, particularly because renegotiation of the Concession Agreement may be an integral part of the sales process.

Provision	Text	Explanation
	the retained investment bank) to the Sales Process.	
2.c	Prior to issuance, all offering memoranda and/or teasers prepared by the investment bank or HOVENSA shall be provided to the Governor and D&P for review and comment, which comments shall be provided within three (3) business days of receipt of the memoranda and/or teasers.	This information-sharing provision ensures that the sales materials used by HOVENSA and its bankers provide an accurate portrayal of the Refinery and Related Facilities, the terms of the existing Concession Agreement, and the benefits of doing business in the U.S. Virgin Islands.
2.d	Within fifteen (15) days following the initial briefing described in subsection 2.b above, the Government shall provide guidance in writing to the investment bank regarding possible modifications of, or alternative approaches to, the existing Concession Agreement or replacement concession agreement that may be available to a purchaser of the Oil Refinery and Related Facilities. It is understood that any modification of, or alternative approach to, the existing Concession Agreement for the benefit of a purchaser would be subject to approval by the Legislature.	The Government will provide guidance to prospective buyers about how a new Concession Agreement might work, so that buyers can prepare bids that realistically account for the terms on which the refinery will ultimately operate. The Government successfully resisted HOVENSA's strenuous effort to get the Government to agree to specific terms of an actual new Concession Agreement in advance — an event that would have effectively transferred value from the Government to the owners of HOVENSA in the form of higher bids. In its current form, this provision commits the Government to nothing, permitting it to negotiate with a purchaser on a clean slate. The provision also emphasizes the importance, and necessity, of the Legislature's approval of any agreement(s) ultimately negotiated with such a purchaser.

Provision	Text	Explanation
Section 3: Government Obligations		
3 (preamble)	The Government's rights and obligations under this Fourth Amendment Agreement shall be the same as its rights and obligations under the Concession Agreement, except that:	This preamble reiterates what § 1(c) already makes clear: that HOVENSA will be held to all its existing obligations unless those obligations are specifically deferred or relieved in this Agreement.
3.a	During the Sales Process Period, the Government will suspend HOVENSA's obligation under Section 3 of the Third Extension Agreement to bid annually to supply the fuel needs of the Virgin Islands Water and Power Authority ("VIWAPA");	HOVENSA originally demanded a complete release from any obligation to bid on WAPA's fuel oil needs, arguing that the revenues from its planned terminal operation would never be sufficient to support such a subsidy. This compromise limits the suspension of the obligation to just the Sales Process Period. The Government views this as acceptable, in light of the fact that (1) WAPA now has an arrangement in place that ensures continuing access to a fuel supply; (2) the supply contract for 2013 has already been awarded to another provider; (3) WAPA is moving quickly toward conversion to much less expensive LPG fuel, which WAPA maintains will substantially lower utility prices in the Territory. Moreover, the value generated by an operating refinery will vastly exceed any value foregone by suspending this obligation during the Sales Process Period. The value deferred should also be recouped in the event of a successful sale. *See* Section 4.b.(i).

Provision	Text	Explanation
3.b (preamble)	The Government shall reduce HOVENSA's obligation under Section 7 of the Third Extension Agreement to make payments in lieu of property taxes, as follows:	Deferral of HOVENSA's payments in lieu of property tax ("PILOT") is a major part of the business deal reflected in the Agreement and was critical to getting HOVENSA's owners to agree to the sales process. The most important part of this provision is HOVENSA's obligation to ***pay back*** all of the deferred amounts if the refinery does not sell, and to pay the Government up to $50 million out of gross proceeds if it does sell. *See* Sections 3.b.(ii) and 4.b.(i).
3.b.(i)	HOVENSA shall pay $7 million annually for the fiscal year beginning October 1, 2013, and thereafter through the fiscal year ending September 30, 2019, for so long as HOVENSA is operating an oil storage terminal at the Oil Refinery and Related Facilities or until the Oil Refinery and Related Facilities are sold.	HOVENSA will continue to pay $14 million in annual PILOT payments through the end of FY 2013. Thereafter, the annual PILOT payment is reduced to $7 million (1) until the Refinery is sold, at which time a new concession agreement will likely be negotiated with the purchaser, or (2) until the Refinery ceases to operate as an oil terminal. This deferral of PILOT payments permits HOVENSA to reduce its losses during the period in which it operates a terminal. As explained below, if the Refinery does not sell, HOVENSA is obligated to pay the Government 100% of the deferred amounts.

Provision	Text	Explanation
3.b.(ii)	If the Refinery and Related Facilities are not sold during the Sales Process Period, at such time as HOVENSA ceases to operate an oil storage terminal at the Oil Refinery and Related Facilities or on August 15, 2019, whichever is earlier, HOVENSA shall make a lump sum payment to the Government of such amount as is necessary for the Government to recoup the value of all payments foregone under Section 3.b.(i).	This provision ensures that if the Refinery does not sell, the Government will get back 100% of the amounts deferred, and that the deferral does not reduce the magnitude of the Government's claims against HOVENSA. Note that because the provision guarantees recoupment of "the value of all payments foregone," it should be interpreted to require HOVENSA to pay interest on the deferred amounts.
3.c	The Government shall forbear from the collection of import duties and other taxes on all oil storage contracts that (1) are entered into prior to or during the Sales Process Period, and (2) expire not later than the earlier of (i) five years following the effective date of such contracts, or (ii) August 15, 2019.	This provision permits HOVENSA to operate an oil storage terminal business during the Sales Process Period, and, for contracts entered into during the Sales Process Period, for up to 5 years thereafter. Without this forbearance, it would not be possible to operate the terminal as customers would elect storage at one of the other Caribbean storage options where such forbearance is standard. This provision is in the Government's interest for several reasons: (1) without it, there would likely be no economic activity or employment at the HOVENSA site; (2) no storage of fuel for local use would be available from the site; and (3) the economic value of HOVENSA to potential buyers would be less (resulting in lower sales proceeds shared by the Government and increasing the risk of an unsuccessful sales process).

Provision	Text	Explanation
Section 4: HOVENSA Obligations		
4.a	**Continuing and Modified Obligations**. HOVENSA's rights and obligations under this Fourth Amendment Agreement shall be the same as its rights and obligations under the Concession Agreement, except as provided herein. Those obligations include (but are not limited to):	This provision again confirms that HOVENSA's obligations under the Concession Agreement remain in effect, except as specifically provided in the Agreement.
4.a.(i)	Making available storage for sufficient fuels to meet the local needs of St. Croix through August 15, 2019, so long as HOVENSA is operating an oil storage terminal on St. Croix;	This simply reiterates an obligation that already exists, and that HOVENSA has every reason to comply with anyway: "making available storage" is precisely what its oil storage terminal does.
4.a.(ii)	Making fuels available to the Government and the public at the HOVENSA loading rack through March 31, 2014, after which date HOVENSA will assist the Government in securing responsible third-party suppliers and operators;	This, again, reiterates an existing obligation, modifying it slightly to permit HOVENSA to contract out the operation of the rack.
4.a.(iii)	Making annual payments in lieu of property taxes in the amounts set forth above;	This merely cross-references Section 3(b).
4.a.(iv)	Paying all other applicable taxes, fees, and lease payments (including but not limited to the submerged lands lease and permits and Coastal Zone Management permits) at existing rates through August 15, 2019; and	This reiterates existing obligations.
4.a.(v)	Complying with all applicable environmental laws, regulations, consent decrees (except to the extent hereafter amended), and orders.	This reiterates existing obligations.
4.b.(i)	**New Obligations.** Upon consummation of a sale of the Oil Refinery and Related Facilities, HOVENSA shall make a lump sum payment to the Government equal to the lesser of (1) 20%	This provision gives the Government "upside" from the sale of the Refinery, and recoups some or all of deferred payments in lieu of property tax and

Provision	Text	Explanation
	of the gross sale proceeds and (2) $50 million;	WAPA subsidies, up to $50 million. Although it is possible that the Government's share of the sale price will be less than $50 million, a successful sale will bring economic benefits to the Territory vastly in excess of that amount.
4.b.(ii)	During the Sales Process Period, and for any period during which HOVENSA operates an oil storage terminal at the Oil Refinery and Related Facilities, HOVENSA shall: (A) On an annual basis, and subject to the execution of an appropriate non-disclosure agreement, submit to the Office of the Governor a list of client names, contract end dates, and types of petroleum products stored for all contracts longer than two years in duration for storage at the Oil Refinery and Related Facilities; (B) Invest a minimum of $500,000 annually in scholarships and/or career and technical education programs. for United States Virgin Islands residents; and [(C)][1] Provide, on an as-is basis, the University of the Virgin Islands ("UVI") with access to the specialized classrooms, laboratories, and equipment at the HOVENSA Training School for	Subpart (A) ensures that the Government will have sufficient information (in addition to that which is already available from the Customs Service) to monitor HOVENSA's compliance with the terms of the agreement. Subpart (B) continues HOVENSA's longstanding commitment to providing scholarships for USVI residents, and modifies it to include career and technical education programs. The final subpart (which should be designated subpart (C)) satisfies the UVI's request that it be given access to HOVENSA's training facilities. The indemnity and costs provisions were necessary to allay HOVENSA's concerns over potential liability for accidents or other injuries that might occur during UVI's use.

[1] This provision is supposed to be subsection (C); a formatting error led to its inclusion as it appears here.

Provision	Text	Explanation
	use in UVI training programs. UVI will indemnify HOVENSA for any liabilities incurred because of its use of these facilities, and will reimburse HOVENSA for direct costs associated with UVI's use of those facilities.	
Section 5: Termination and Discharge Upon Sale		
	Upon completion of any arm's-length sale of the Oil Refinery and Related Facilities the rights and obligations of HOVENSA, HOVIC and PDVSA VI under the Concession Agreement shall be terminated and each of said parties released and discharged of such rights and obligations thereunder except as otherwise required by law.	This simply confirms that a sale of the Refinery terminates the Concession Agreement and both parties' obligations under it. The Government will negotiate a new concession agreement with the new owner, in which it may ask for concessions and benefits of similar or greater value to those provided under the old agreement.