



BEFORE THE PUBLIC UTILITIES COMMISSION

**IN RE: PETITION FOR APPROVAL)
OF CONTRACT AWARD)
FOR MANAGEMENT AND)
OPERATIONS OF THE F1)
FUEL PIER AND FACILITY)
WITH TRISTAR TERMINALS)
GUAM, INC. BY PORT)
AUTHORITY OF GUAM)**

PAG DOCKET 21-01

ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the January 8, 2021 Petition (hereinafter referred to as the “Petition”) for review and approval of the Tristar Terminals Guam Inc. (“Tristar”) contract related to the management and operation of the F-1 Fuel Pier Facility, filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”). PAG seeks PUC review and approval of this professional services contract with Tristar.¹

BACKGROUND

The F-1 Fuel Pier Facility is a dock constructed on submerged land that is located adjacent to the “fingertip portion of the Cabras Island Industrial Park” and owned by PAG.² Based on the RFP documents, the facility includes pilings, a deck, dolphins, walkways, a dock shed, pipelines, valves and manifolds. A generator, mooring hooks, storage tanks, and an office building also sit on the facility. This fuel pier is where petroleum products, like gasoline and oil,

¹ The 2014 F-1 Fuel Pier Facility Management and Operations Agreement is attached hereto as “Exhibit A.”

² PAG Request for Proposal No. RFP-PAG-019-004 (the “RFP”), p. 4 (Apr. 4, 2019).

and non-petroleum products are offloaded, discharged, and distributed.³ There, 7,000,000 to 10,000,000 barrels of petroleum products are imported and exported through the facility each year.⁴ In addition, based on the RFP documents, there are presently three (3) users of the fuel pier.

On April 5, 2019, PAG issued RFP-PAG-019-004 (the “RFP”), which sought services related to the management and operations of the F-1 Fuel Pier Facility.⁵ Three firms submitted proposals, which were evaluated and ranked by a PAG Evaluation Committee.⁶ Thereafter, the Evaluation Committee reviewed the submissions and identified IP&E Holdings, LLC dba IP&E Guam (“IP&E”) as the highest ranked proposal and, therefore, recommended that IP&E be given an opportunity to negotiate a contract with PAG.⁷ The Evaluation Committee identified Tristar as the second ranked proposal.⁸

According to PAG, after several sessions of cost negotiations with IP&E, PAG terminated negotiations with IP&E on the basis that such negotiations were unsuccessful.⁹ As a result, PAG began negotiations with Tristar, the next ranked offeror, on March 19, 2020.¹⁰

³ Petition, p. 1 (Jan. 8, 2021).

⁴ RFP, p. 4.

⁵ Petition, p. 1.

⁶ Petition, p. 1.

⁷ Memorandum from the Contract Management Administrator to the General Manager, “Evaluation Analysis and Recommendation—RFP No. PAG-019-004 M&O of F1 Fuel Pier and Facility” (“Evaluation Analysis”), p. 2 (Sept. 13, 2019).

⁸ Evaluation Analysis, p. 2.

⁹ See Petition, p. 1. (According to PAG, “after our initial cost negotiations meeting and two (2) counter-offers by the Port, IP&E failed to respond to our 2nd counter-offer.”).

¹⁰ Petition, p. 1.

On November 9, 2020, PAG and Tristar arrived at mutually agreeable terms and costs. On December 22, 2020, through Resolution No. 2020-18, PAG's Board of Directors approved the contract award to Tristar and authorized PAG to seek PUC approval of the contract.¹¹

DISCUSSION

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval" Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold." *Id.*, p. 3.

2. Scope of Services

The RFP provides that the contractor must operate and manage the F-1 Fuel Pier, maintain and secure the pier, respond to emergencies, as well as perform related bunkering pier duties.¹² In particular, the contractor is required to receive imports of fuel oil, jet fuel, diesel,

¹¹ PAG Board of Directors Resolution No. 2020-18, p. 1 (Dec. 22, 2020).

¹² See RFP, Attachment No. 1.

motor gasoline and liquid petroleum products; deliver fuel for export; bunker fuel oil and marine gas oil; and coordinate with ship masters and harbor pilots to ensure safe dockage.¹³

In addition, the contractor is tasked with providing preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the F-1 Dock; and conducting maintenance repairs required for operations.¹⁴ Further, the contractor is tasked with providing operational access by scheduling operations of the facility by uses; and collecting the Port's user fees.¹⁵

As part of its responsibilities, the contractor is also tasked with responding to emergencies, such as fuel spills; and preparing and securing the facility in the event of an anticipated storm or weather disturbance and storm recovery.¹⁶ The contractor is further required to perform any duties related to bunkering as may be required from time to time.¹⁷

3. Contract Terms

According to PAG, the 2014 F-1 Fuel Pier Facility Management and Operations Agreement shall generally serve as the proposed contract, with most terms remaining in place.¹⁸ For instance, the default termination provisions that are contained in the 2014 contract shall remain the same. In addition, the scope of the agreement will still include managing vessels that are not petroleum related; the contractor securing liability insurance for \$100 million coverage;

¹³ RFP, Attachment 1.

¹⁴ RFP, Attachment 1.

¹⁵ RFP, Attachment 1.

¹⁶ RFP, Attachment 1.

¹⁷ RFP, Attachment 1.

¹⁸ Petition, p. 3.

and a thirty percent (30%) fee will still be assessed on the assigned value of the contract where the contractor assigns it to a third party.¹⁹

With regard to compensation, for the first two years of the contract, the contractor will be paid a throughput rate of \$0.162 per barrel on the first four million barrels of imported petroleum products.²⁰ This amount reflects a \$0.04 (or 29.6%) increase in the throughput rate, which is currently \$0.125 per barrel for the first three million barrels, and \$0.10 per barrel thereafter.²¹ With respect to years three, four, and five, this fee will increase another three percent (3%) each year, compensating the contractor at a rate of \$0.167, \$0.172 and \$0.177, for the third, fourth and fifth years, respectively.²² All products in excess of four million barrels shall be subject to the rate of ten cents per barrel, which is the same rate provided under the current agreement.

In addition, there are a few other changes, such as a reduction in the fee for bunkering petroleum products, which will be \$0.33 per barrel, as opposed to the current fee of \$0.66. There is also a new crane rental fee, which is fixed at \$140,000.00 per year.²³

With regard to routine maintenance, PAG will reimburse the contractor up to \$70,000.00 per year for labor and materials for such work, as opposed to the \$60,000.00 cap contained in the current agreement. Lastly, the proposed contract provides for a five-year term.

¹⁹ Petition, p. 3.

²⁰ Petition, p. 2.

²¹ Petition, p. 2.

²² Petition, p. 2.

²³ Petition, p. 2.

4. Cost

PAG estimates annual cost for the management fee is \$650,000.00,²⁴ for an estimated total of \$3,250,000.00 for the full five-year term. The annual estimate is based on Tristar handling four million barrels of imported petroleum products per year. PAG submits that the contract will be funded internally through its O&M budget.

5. Tristar

According to its Proposal, Tristar was specifically formed to manage fuel operations in Guam.²⁵ Tristar presently owns and operates the Agat Bulk Fuel Terminal and petroleum cargo lines, which extends from the Agat terminal to the F-1 dock.²⁶ In addition, Tristar's workload includes the storage, transfer, and management of jet fuel for the U.S. Department of Defense.²⁷ Further, Tristar is the current manager and operator of the F-1 facility.²⁸ It has been PAG's contractor for this facility for almost ten (10) years.²⁹ Accordingly, Tristar submits that it has the technical experience and capabilities to manage, operate, and maintain the F-1 Pier and service the operations there.³⁰

6. Board Approval

At the December 22, 2020 meeting, PAG's Board of Directors approved the contract award to Tristar. In the Resolution, the Board indicated that after a series of cost

²⁴ Petition, p. 3.

²⁵ Technical Proposal in Response to RFP-PAG-019-004 ("Tristar Proposal"), p. 3 (Aug. 8, 2019).

²⁶ Tristar Proposal, p. 13.

²⁷ Tristar Proposal, p. 13.

²⁸ Tristar Proposal, p. 14.

²⁹ Tristar Proposal, p. 14.

³⁰ Tristar Proposal, p. 6.

negotiations, discussions, and counteroffers, PAG and Tristar reached an agreement that seemed “fair and reasonable” to PAG.³¹ Accordingly, the Board authorized PAG management to petition the PUC for approval of the award to Tristar.³²

RECOMMENDATION AND CONCLUSION

Based on the documentation provided, the ALJ finds that the subject contract is reasonable and necessary. The operation and management of PAG’s F-1 Fuel Pier Facility is indeed crucial to PAG’s operations. As indicated by PAG, the contract is vital since “Guam imports all its fuel resources.”³³ As a result, “[a]ny disruption to the safe distribution of our fuel resource could be a potential threat to the Public Health, Welfare and Safety of our island.”³⁴ Further, this contract is “revenue generating” for PAG and, as PAG stated, this contract ensures that “Guam’s fuel resources are distributed throughout our island efficiently and uninterrupted.”³⁵

Based on its experience, expertise, work history, and network, as well as the fact that Tristar currently manages and operates the F-1 facility, it is clear that Tristar is qualified to provide the services set forth in the RFP.

In addition, PAG has demonstrated due diligence in negotiating initially with IP&E for eleven months, and then subsequently with Tristar. In fact, the record reflects that PAG has been engaged in cost negotiations with Tristar since March of last year. The

³¹ Resolution, p. 1.

³² Resolution, p. 1.

³³ Petition, p. 1.

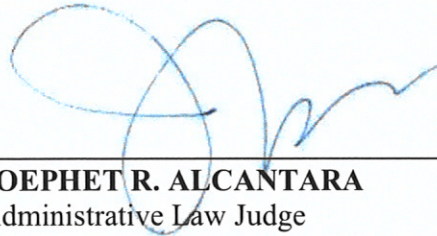
³⁴ Petition, p. 1.

³⁵ Petition, p. 3.

procurement record reflects an initial proposal of \$0.297 per barrel. PAG was, therefore, able to lower the fee to the rate structure discussed in Part 3 above.

Based on the documentation provided by PAG in this docket, and for the other reasons set forth herein, the ALJ recommends that the PUC approve the award to Tristar, along with the proposed F-1 Fuel Pier Facility Management and Operations Agreement, at an annual cost of \$650,000.00. A proposed Order for the PUC is attached hereto for the PUC's consideration.

Respectfully submitted this 26th day of January, 2021.



JOEPHET R. ALCANTARA
Administrative Law Judge

P213006.JRA

EXHIBIT A

F-1 FUEL PIER FACILITY MANAGEMENT AND OPERATIONS AGREEMENT

THIS AGREEMENT, made this first day of April 2014, by **TRISTAR TERMINALS, INC.**, a Guam corporation whose address is Agat Terminal Station, Sta. Rita Industrial Drive, Route 2; Agat, Guam 96915, (hereinafter referred to as the Manager or Tristar), and the **JOSE D. LEON GUERRERO COMMERCIAL PORT** (also known as the PORT AUTHORITY OF GUAM), a public corporation and autonomous instrumentality of the Government of Guam ("PAG"), whose address is Suite 201, 1026 Cabras Highway, Piti, Guam, 96915.

RECITALS

WHEREAS, the parties have and/or their predecessors in interest entered into that certain Fingertip Lease Agreement dated June 13, 1969, which was extended by that First Extension Agreement dated December 22, 1988, recorded under Instrument No. 411342, and that Second Lease Extension Agreement dated December 1, 2006, recorded under Instrument No. 748594, pursuant to which Tristar has the right to use and occupy the fingertip portion of the Cabras Island Industrial Park, and the off loading dock and related facilities located on the parcel of submerged land lying within Apra Harbor, Guam, which is more particularly described in Exhibit "A" and "B" hereto (the "Facility"); and, shall have continued use of the Facility including responsibility for its management and operation.

WITNESSETH

In consideration of the mutual promises and covenants herein contained, PAG and Manager agree:

1. Appointment of Manager.

A. PAG appoints the Manager as the exclusive operator of the Facility and Manager accepts such appointment. This Agreement is the result of the PAG's Request for Proposal No. PAG-013-003 for the Management and Operation of the F-1 Fuel Pier Facility.

B. Manager acknowledges the reserved rights of the United States of America to use the Facility as are set forth in the Quitclaim Deed dated June 21, 1989 (a copy of which is attached as Exhibit "B"). Manager agrees that all use of the Facility shall be consistent with the terms of the Deed and that the reserved rights of the United States shall be honored, including the obligation to obtain the written approval of the Secretary of the Navy for certain uses.

1. The dock is constructed on submerged land concerning which Shell's predecessor in interest, Guam Oil & Refining Company, Inc. ("GORCO") obtained an easement from the United States of America on June 24, 1969 (the "easement"). GORCO sold the dock and assigned its rights under the easement to Shell on November 29, 1983. The United States of America transferred its interest in the submerged land which is encumbered by the easement and its rights and obligations under the easement to PAG on June 21, 1989.

2. Term.

The term of this Agreement shall be for a period of five (5) years, commencing on **April 1, 2014**, and expiring on **March 31, 2019**. After the expiration of said term, Manager shall be entitled to use the Facility in common with all other Facility users in accordance with PAG rules and regulations. At the expiration of the term, Tristar Terminals Inc. may remain as the Manager under the same terms and conditions herein, on a month-to-month basis, subject to the written consent of the parties.

3. Scope of Agreement.

This Agreement, RFP, Manager's Proposal and Payment Terms collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Manager and the Port each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

In the event of a contradiction between the provisions of any one or more of the documents collectively comprising this Agreement, RFP, Manager Proposal and Payment Terms the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time) and third, to the provisions of the Manager Proposal and Payment Terms (as they may be clarified or amended from time to time).

4. Manager's Duties.

During the term hereof, Manager shall perform the following services:

A. Operation.

Manager shall be responsible for the safe and efficient operation of the Facility. Manager shall oversee the operation of the loading and unloading of petroleum and non petroleum products through the Facility so that those activities are conducted in a safe and efficient manner in accordance with the American Petroleum Industry Standards. Manager shall at all times be cognizant of and observe all federal and Guam laws and regulations applicable to the operation of the Facility.

At any time that there exists any inconsistency between said Federal and Guam provisions having to do with aspects of the Facility operation that could affect the health, safety or welfare of the people of Guam, Manager shall observe the standard which imposes the higher standard of care.

The parties agree that the Facility has a common use and that Manager must make the Facility available to third-party users for loading and off-loading of petroleum and non-petroleum products on a nondiscriminatory basis; provided, however, that Manager shall be authorized to establish, consistent with Sections 6 and 7 below, operating procedures for the use of the Facility by third-party users. Manager shall, from time to time, provide such trade fixtures as are necessary to fulfill its duties.

B. Routine Maintenance.

i. Standard of and Manager's Duty to Perform.

Routine maintenance shall be that maintenance reasonably necessary and consistent with general petroleum industry standards to ensure continuing utility and operational safety of the facility and the property on which it is situated. All routine maintenance shall be performed by Manager on behalf of PAG.



ii. Description and Compensation.

Routine maintenance to be performed by Manager is set forth in Exhibit "C" to this Agreement. PAG shall reimburse Manager up to a maximum amount of Sixty Thousand Dollars (\$60,000.00) per year for the term of this Agreement, which amount is intended to cover the cost of labor and materials incurred by Manager for routine maintenance. Each month Manager shall submit its request for reimbursement for the previous month's routine maintenance expenses supporting the same with payroll records, receipts, invoice; and other records, to substantiate the labor and material expenses incurred by Manager for routine maintenance.

Should Manager identify required maintenance which is in addition to that described on Exhibit "C", then Manager shall notify PAG of such need in writing. PAG, in its sole discretion, may either approve or disapprove the requested additional maintenance and shall not reimburse Manager for the additional maintenance unless it is approved; provided, however, that in the event PAG denies any such request for recommended additional maintenance, then Manager shall have no responsibility for any damage or injury which may result from the failure to perform such additional maintenance. PAG may, from time to time, identify additional maintenance which Manager shall complete and for which PAG shall reimburse Manager.

PAG shall reimburse Manager, within thirty (30) days of its receipt of a reimbursement request for routine maintenance and for approved additional maintenance including (a) materials used in the performance of such maintenance; and (b) the actual cost of labor expended for such maintenance. "Actual cost of labor" shall mean gross wage plus thirty percent (30%) thereof for reimbursement payments which are not paid within thirty (30) days of submission, the PAG shall pay interest to the Manager in accordance with the provisions of the Prompt Payment Act, 5 GCA §§ 22502-22506.

C. Replacement and Renovation of Capital Improvements.

- i. The parties recognize that portions of the existing Facility may from time to time need to be replaced or substantially renovated. Examples of possible replacements or renovations of capital improvements to the Facility are set forth in Exhibit "D". The cost of these replacements and substantial renovations shall not be considered "routine maintenance" as provided for in Section 4(b) above.
- ii. In the event Manager determines that existing elements of the Facility should be replaced or substantially renovated or if Manager should desire to install new capital improvements to the Facility, Manager shall submit to PAG a written request for approval and for payment of such work.
- iii. PAG shall promptly review and respond to Manager's requests to renovate, replace or add to the existing capital improvements at the Facility. PAG will authorize, subject to funding availability, to maintain the Facility in a condition consistent with America Petroleum Industry Standards.
- iv. Manager shall also have the right, at its option, (but not the duty) to install new or to renovate any existing capital improvements of the Facility at Manager's sole



cost and expense. Manager shall give PAG written notice of any such improvements prior to the commencement of their construction.

- D. Expenses. Except as otherwise provided herein, Manager shall be solely responsible for all expenses incurred in the performance of services under this Agreement.

5. Manager's Compensation.

A. As compensation for the services to be rendered by Manager herein, PAG shall compensate Manager at the rate of Twelve and one-half of a cent (\$0.125) per barrel for the first three (3) million barrels of imported petroleum products and ten and one-tenths of a cent (\$0.1001) per barrel for every activity thereafter of imported petroleum products which pass through the Facility.

B. The import fee for importing and offloading petroleum products driven by Tristar or affiliate operations shall be calculated at the rate of \$0.23/bbl.

C. Tracking of Volume Throughput:

1. First (1st) Year – April 1 2014 to September 30, 2014.
2. Second (2nd) Year – October 1, 2014 and ends on September 30 of the following year and every year thereafter until the end of the contract term.

D. Manager shall be authorized to deduct its compensation, on a monthly basis, from the User Fees upon collection in accordance with Section 6 below.

6. Facility User Fees.

A. PAG has required and Manager has agreed, as a term for Manager's continued use of the Facility, that Manager and its customers, which store petroleum products at Manager's Agat tank farm, or other users of the Dock, commencing April 1, 2014, shall be charged the following Facility User Fees:

- i. A fee of fifty Cents (\$0.50) per barrel for all petroleum products which are off-loaded at the Facility by Manager, its customers or other users.
- ii. A fee of twenty-four Cents (\$0.24) per barrel for petroleum products which are on-loaded to vessels at the Facility for export by Manager, its customers or other users.
- iii. a fee of sixty-six Cents (\$0.66) for bunkering of petroleum products.
- iv. PAG agrees to adjust the manager's throughput fees at levels consistent with corresponding adjustments to the Tariff rate structure as it pertains to fuel.

B. Except to the extent otherwise provided in subsection (a) above, PAG may establish and modify Facility user fees in accordance with the requirements of Guam law.

C. It shall be the duty of the Manager, as agent for and on behalf of PAG, to collect from every Facility user, including Manager, all Facility user fees imposed by this Agreement. All fees assessed by Manager on behalf of PAG, less Manager's compensation as provided in Section 4 above, shall be remitted to PAG, or to the paying agent designated by PAG, no later than the thirtieth (30th) day

of the month following the month in which the fees are accrued and no later than the 5th of the next month. It is the intention of the parties that no gross receipt or other business privilege tax shall accrue on Facility user fees because all said fees are PAG's property. In the event that the Department of Revenue & Taxation should rule that Manager is liable to pay a gross receipts tax or other business privilege tax on the user fees it collects on PAG's behalf, excluding, however, Manager's compensation, then PAG shall reimburse Manager for this expense.

D. It is understood that the fees which are established by Section 6(a) shall have no application to the fees which Manager may establish and charge for the use of its pipeline network which connects to the Facility.

7. Third Party Use.

Any importer or exporter of petroleum and non petroleum products (a "user") may off load or on load petroleum and non petroleum products at the Facility provided that it enters into a Facility user agreement in form and substance as set forth in Exhibit "E", as the same may be amended from time to time by PAG and Manager. The user agreement shall contain the following requirements:

A. The user shall secure appropriate and adequate insurance coverage for potential liabilities, including loss of its own inventory, in accordance with the requirements set forth in Exhibit "E" hereto. All insurance policies relating to F-1 Fuel Pier Facility shall name Manager and PAG as co-insured, and provided that the insurer shall notify Manager and PAG of any policy changes or termination not later than thirty (30) days prior to such change or termination. Certificates of insurance evidencing such coverage shall be provided to Manager and PAG prior to the user's use of the Facility.

B. The user shall agree to indemnify PAG and Manager (relating to liabilities arising out of its use of the Facility) in a form consistent with the requirements set forth in Exhibit "E" hereto. Such agreement shall include provisions that:

- (i) all damages to the Facility caused by such use may be repaired by Manager and user shall be liable for all such expenses;
- (ii) user shall indemnify, defend and hold Manager and PAG harmless from all claims, injury, demands and liability arising out of the use of the Facility by user, its agents, and employees or representatives, whether such liability arises directly or from claims by third parties;
- (iii) user shall indemnify and hold Manager and PAG harmless from all liability arising from product contamination or air or water pollution including claims made by subsequent users of contaminated products and fines and penalties imposed by government authorities unless such contamination or pollution results from an intentional act or omission by Manager;
- (iv) interest shall be paid to Manager on the unpaid portion of amounts due hereunder at the rate of one percent (1%) per month; and
- (v) Manager shall be reimbursed by user for reasonable attorneys' fees incurred in enforcing the terms of the Facility user agreement. Such agreement may require, at Manager's discretion, a bond or other form of financial assurance acceptable to Manager be provided to ensure that sufficient funds will be available to cover all liabilities of user arising out of the use of the Facility.



C. The user shall agree to pay fee such use as are established by PAG, such fees to be paid to Manager as agent for PAG no later than the fifteenth (15th) day of the calendar month following the month in which such fees are incurred.

D. The Facility shall be made available to vessels subject to the priorities set out in the operating procedures which are contained in Exhibit "E" hereto, or as the same may be amended from time to time by Manager and PAG. Scheduling of vessels calling at the Facility shall be done in coordination with PAG's Harbor Master. With respect to all fees payable by user, no allowance, deduction or set off shall be allowed to any user who elects to employ its own personnel in connection with the loading or unloading of any vessel, such personnel being at all times subject to Manager's supervision in the carrying out of such activities and Manager shall in such eventuality remain responsible for the operation of the Facility.

E. A user may not transfer any interest in or right to use the Facility.

8. Personal Property, Trade Inventory and Trade Fixtures.

Attached hereto is Exhibit F which identifies the current property located at the Facility and to whom each item belongs. All personal property, product inventory and trade fixtures which Manager purchases with its own funds and installs at the Facility shall be the sole property of Manager who shall have the right to remove them not later than sixty (60) days after the expiration or termination of this Agreement. PAG may elect to purchase any such trade fixture or personal property (other than inventory) by giving Manager notice of its intent to do so within said sixty (60) day period. PAG shall pay the Fair Market Value thereof which shall be determined by mutual agreement of the parties, or if they are unable to agree within thirty (30) days of the notice, then by arbitration as set forth in Section 13. Trade fixtures are defined as those items of personal property brought to the Facility by Manager which are necessary either to carry on Manager's obligations hereunder or for the operation of Manager's own pipelines. Trade fixtures include without limitation cargo hoses, forklifts and other vehicles, and office equipment.

9. Hazard Insurance.

Manager, at its own expense, shall insure for PAG at all times during the term of this

Agreement, the Facility, including all buildings, fixtures and other improvements against loss or damage by fire and the risks covered by the Standard Extended Coverage endorsement now in general use in the Territory of Guam in an amount not less than one hundred percent (100%) of the full replacement cost of the Facility and all improvements. Manager will pay all premiums thereon when due, and will furnish to PAG a certificate of insurance and evidence of the payments for such insurance premiums. In case such buildings, fixtures or other improvements, or any part thereof, shall be destroyed or damaged by fire or other casualty herein required to be insured against, then, and as often as the same shall happen, all proceeds of such insurance shall be available for and used with all reasonable dispatch by Manager in rebuilding, repairing or otherwise reinstating the Facility and all improvements as shall be approved in writing by the parties hereto.

10. Liability Insurance.

Manager shall maintain, with companies approved by PAG, insurance against liability arising from its management and operation of the Facilities in the amount of One Hundred Million Dollars (\$100,000,000.00) for both bodily injury and property damage liability. All premiums on such insurance shall be paid by Manager. Such policy or policies shall name PAG as an additional insured and certificates of insurance shall be deposited with PAG evidencing such coverage. The adequacy of the

coverage afforded by said liability insurance shall be subject to review by PAG from time to time, and if it appears in such a review that a prudent business-person operating a similar facility would increase the limits of the liability insurance, then Manager shall, upon written notice from PAG, increase its coverage to that extent provided, however, that such coverage is reasonably available.

11. Environmental Conditions.

A. Definition. For the purpose of this Agreement, the term "Hazardous Materials" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyl), pollutants, contaminants, hazardous wastes. Toxic substances or related materials and any substances defined as or including in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substance" under the following laws, ordinances and regulations ("Hazardous Materials Laws"): Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, any similar Guam and local laws, and regulations now adopted, accomplished and promulgated pursuant thereto applying to the Facility or any portion thereof.

B. Manager's Representations. Manager hereby represents to PAG that insofar as Manager is aware, as of the commencement date of this Agreement:

- i. The Facility is free of Hazardous Materials.
- ii. No enforcement, cleanup, remedial or other governmental or regulatory action has been instituted pursuant to any Hazardous Materials Laws affecting the Facility.
- ii. The Facility has not been nor is it now being used in any manner which violates any Hazardous Materials Laws.

C. In the event of any spill of petroleum products or hazardous materials at the Facility by a third-party user, Manager shall administer the cleanup, disposal and any other required corrective action and shall have full authority on behalf of PAG to pursue claims and rights against such third-party users and their insurers for the actual performance of such work. Manager shall have no responsibility for any damage or cleanup resulting from any petroleum product or hazardous materials spill caused by PAG's negligent acts or omissions.

12. Default and Termination.

A. Monetary Default. Manager shall be in default of this Agreement if it fails to pay when due a fee or charge owed to PAG pursuant to this Agreement ("monetary default"). In the event of a monetary default, PAG shall give Manager written notice of the total amount due, a detailed breakdown of the total amount due and the due date. Manager shall pay such fee or charge and the accumulated interest thereon within fourteen (14) days after having received written notice of such default. In the event that Manager fails to pay such fee or charge within fourteen (14) days of such notice, PAG may terminate this Agreement by written notice to Manager and take immediate control of the Facility. Manager may, however, pay a disputed charge or fee under protest and then adjudicate the dispute pursuant to Section 13 herein below.

B. Non-Monetary Default. In the event Manager fails to observe or perform any term, condition or covenant under this Agreement of any kind other than the nonpayment when due of a fee or charge owed to PAG ("non-monetary default"), PAG shall give Manager written notice of the nature of the non-monetary default and Manager shall have thirty (30) days after receipt of PAG's notice to either cure the non-monetary default or to commence reasonable efforts towards the cure of any such default which cannot reasonably be cured within the thirty (30) day notice period. In the event Manager abandons the Facility, or fails to cure or commence to cure a material non-monetary default within thirty (30) days of notice, then PAG may terminate this Agreement by written notice to Manager and take immediate control of the Facility. A "material non-monetary default" means an act or omission which substantially impairs the safety of physical condition of the Facility, substantially impairs the use of the Facility by third party suppliers, or which exposes PAG to substantial potential liability.

C. Rights on Termination. All of Manager's rights as Manager shall terminate upon receipt of due written notice of termination from PAG, which PAG may issue upon Manager's failure to cure a default in the manner discussed in subsections (a) and (b) above. Notwithstanding any provision of this Agreement to the contrary, in the event of a termination under this Section 12(c), PAG may then assume or assign to a party of its choice all of Manager's duties under this Agreement. Termination shall not relieve Manager from the payment of any sum then due to PAG or from any claim for damages previously accrued, then accruing or resulting from the termination. Manager shall be liable to PAG for all such damages and the reasonable attorneys' fees expended by it in the enforcement of its rights under this Agreement

D. PAG Cure. PAG may cure any default on behalf of Manager, in which case Manager shall be liable to PAG for all such damages and the reasonable attorney's fees expended by it in the cure of the default and the enforcement of its rights under this subsection (d).

E. Title to Inventory. Notwithstanding Manager's failure to cure a default, title to all of Manager's products and inventory at the Facility at the time of the default shall remain with Manager, subject however, to any claim of lien lawfully asserted by PAG. In the event of Manager's default, PAG shall have a lien in all of Manager's equipment and fixtures located at the Facility for all amounts due it and the same shall be a set-off against any purchase price established pursuant to Section 8.

F. Trade Fixtures and Non-inventory Personal Property. Subject to the provisions contained in Section 8 above, PAG shall have the right to use any trade fixtures and non-inventory personal property for sixty (60) days after the expiration or termination of this Agreement.

G. Remedies Cumulative. All of PAG'S remedies in the event of a default by Manager are cumulative and are in addition to any other remedy that may exist by law.

H. Prohibitive Insurance Costs. In the event the insurance, which is required to be maintained by Manager in Sections 9 and 10 herein, becomes either (i) unavailable or (ii) the annual premiums for that insurance shall have increased by more than thirty percent (30%) from the average premiums incurred by Manager for the same insurance coverage, using the same deductibles, self-insurance provisions, exclusions, riders and other terms, for the prior calendar year, unless a change in limits or coverage is required by law, then the parties will use their best efforts to negotiate amendments to said sections in order to continue this Agreement in full force and effect and may reimburse Manager for the increased premium costs through either increased user fees or increased compensation to Manager. If a change in limits or coverage is required by law, then the premium shall reflect such change. If the parties are unable to agree within ninety (90) days of Manager's written request to negotiate, then Manager may, at its option, elect to terminate this Agreement. For the purposes of determining increased premiums under Section 12(h)(ii) above, the first calendar year shall end March 31, 2015 and, therefore,

only those increases in Manager's insurance premiums which commence after that date shall give rise to Manager's rights under this Section 12 (h). In the event of an occurrence described in either Section 12 (h) (i) or (ii), Manager shall promptly provide PAG with such insurance policies, communications and other documents as are necessary for a full disclosure.

I. Excessive Equipment Cost. In the event that additional equipment is required to be acquired by Manager for the Facility or to be kept at the Facility, by reason of the Oil Pollution Act of 1990, any rules or regulations thereunder, any plan adopted pursuant thereto, or future legislation, then the Manager shall promptly provide notice of the occurrence of that event to PAG and shall, in good faith, attempt to cooperatively share in the cost of acquiring such equipment with the other users of similar PAG facilities, whether by co-operative or otherwise. In the event that Manager shall reasonably determine that its share of the cost of participating in any oil pollution cooperative is commercially unreasonable, then PAG and Manager shall negotiate necessary amendments of this Agreement, including increased user fees or increased compensation to Manager. In the event the parties are unable to agree Manager may, on ninety (90) day notice, elect: to terminate this Agreement.

13. Disputes

A. All controversies between the territory and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within 60 days after written request by the contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision, within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

B. The Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

C. Any such decision shall be final and conclusive, unless fraudulent, or: (i) the contractor appeals the decision with the Office of Public Accountancy.

D. The contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of the contract by the territory; provided, however, that in any event the contractor shall proceed diligently with the performance of the contract where the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency has made a written determination that continuation of work under the contract is essential to the public health and safety.

14. Agreement Not an Interest in Real Property.

This Agreement shall not be deemed at any time to be an interest in real estate or a lien of any nature against the Facility.

15. Termination.

A. By the Port. The Port reserves the right to cancel or terminate this Agreement prior to its completion:



- (i) **Termination without Cause:** The Port may terminate this Agreement, without cause, upon the delivery of written notice to the Manager at least thirty (30) days prior to the intended date of termination;
- (ii) **Termination in the Best Interest of the Government of Guam:** The Port may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the Manager and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Manager's successful completion of services under this Agreement to the satisfaction of the Port.
- (iii) **Termination for Cause/Default:** The Port shall notify Manager in writing of deficiencies or default in the performance of its duties under this Agreement. The Manager shall have ten (10) days, which period may be extended by the Port (said extension not to be unreasonably denied), to correct the deficiency or cure the default or to request, in writing, a hearing from the Port. The Port shall hear and act upon same within thirty (30) days from receipt of said request and shall notify the Manager of said action. The action by the Port shall be either to confirm, in whole or in part, the specified deficiencies or default, or find that there are no deficiencies or default, or such action as deemed necessary in the judgment of the Port. Failure of Manager to remedy said specified default in notice by the Port within ten (10) days of receipt of such notice of such action, or such time reasonably necessary to correct the deficiency and/or cure the default, shall result in the termination of this Agreement, and the Port may be relieved of any and all responsibilities and liabilities under the terms and provisions of this Agreement.
- (iv) **Effects and Responsibilities of Parties for Early Termination by the Port:** In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the Manager agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Following an Early Termination under paragraphs (i) and (ii) by the Port, the Port shall pay the Manager for all satisfactory services rendered up to that point. The Port reserves all rights at law and equity in the event of an early termination, including arising out of a default or for other causes.

B. **Termination/Modification for Lack of Funds.** The Port may terminate or modify this Agreement based upon a lack of funding. In such an event, the Port shall promptly provide notice to Manager and within twenty (20) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to Section 15 of this Agreement as applicable.

C. **Preservation of Property.** Notwithstanding any termination of this Agreement, and subject to any directions from the Port, the Manager shall take timely and reasonable and necessary action to protect and preserve the property in the possession of Manager in which the Port has an interest.

D. **Additional Provisions.** In the event that either party effects an Early Termination, it is expressly provided that the Port may issue a new Request for Proposal with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defense with

respect to rights to either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

E. By Manager.

- i. If Manager is unable to use any portion of the Cabras pipelines, easements and F-1 Dock due to a Force Majeure event (as defined in Section 27 below); or
- ii. If Manager is unable to use the Agat Terminal owned by Tristar Terminals, which loss of use is due to events outside of the Manager's control; or
- iii. If the Agat Terminal is closed and no longer operating as a fuel storage terminal, and Tristar the Manager gives the PAG six (6) month notice of its intent to close the terminal; or
- iv. Pursuant to Section 3(c) hereinabove, the PAG fails to provide the necessary funds to pay for reasonably necessary capital improvements, and the parties are unable to reach a mutually acceptable solution within ninety (90) days; or
- v. If PAG defaults under this Agreement and fails to cure such default, Manager shall give PAG written notice of the nature of the default and the PAG shall have thirty (30) days after receipt of Manager's notice to either cure the default or to commence reasonable efforts towards the cure of any such default which cannot reasonably be cured within the thirty (30) day notice period.

16. Confidentiality.

A. Information. The Manager hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Manager to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Manager shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by the Port. All of the Information shall be returned promptly after use to the Port and all copies or derivations of the Information shall be physically and/or electronically destroyed. Manager shall include a letter attesting to the return of Information and documenting the destruction of copies and derivations with the returned Information.

The Manager shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of the Port, and then only if the Manager requires the third party (ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party (ies) only for purposes of enabling the Manager to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a



party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Manager to liability, including all damages and injunctive relief.

17. Conflicts of Interests/Ethics

A. The Manager warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Manager is a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement. Manager agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this or any other Agreement with the Manager without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Manager agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to the Port and provide such statement to the Port.

18. Prohibition Against Gratuities and Kickbacks

A. Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

B. Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

19. Compliance with Laws.

A. In General. The Manager shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Manager represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Manager agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to

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cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

20. Retention and Access to Records and Other Review.

The Manager, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by the Port. The Port agrees to comply with reasonable requests of Manager to provide access to all documents and Port property reasonably necessary to the performance of Manager's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

21. Liability.

A. Indemnification. Manager shall indemnify and hold harmless the Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Manager or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

B. The Port not Liable. The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Manager and/or the Manager's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of the Port. In addition, no Board member, officer, agent, or employee of the Port shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the Port assumes no liability for any accident or injury that may occur to Manager's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

22. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.

The Port shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Manager. The Port shall have the power to make changes in the Agreement and to impose new rules and regulations on the Manager under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. The Port shall give the Manager notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Manager. In the event the Port materially alters the obligations of the Manager, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Manager, then the Manager or the Port shall be entitled to an adjustment in the rates and charges established under the Agreement. Manager shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The Port and the Manager agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to the Agreement, the Port and the Manager

shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Manager directly and demonstrably due to any modification in the Agreement under this clause.

23. Manager and its Employees.

A. Status of Manager. The Manager and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the Port, and are not employees of either the Port or the Government of Guam. The Manager and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Manager agrees that Manager and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Manager and the Port a relationship of partnership, agency, association, joint venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the Port or the Manager.

B. Liability. The Manager assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Manager is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Manager and Manager's employees or agents under this Agreement or the compensation paid to Manager for services performed under this Agreement. Furthermore, Manager shall maintain at the Manager's expense all necessary insurance for its employees including but not limited to Worker's Compensation, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Manager agrees to hold harmless and indemnify the Port, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortious acts of Manager or Manager's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Manager's failure to comply with terms of this subparagraph B.

24. Disclosure.

The Manager hereby represents that it has disclosed to the Port all matters regarding Manager which if not disclosed to the Port would materially affect the Port's decision to enter into this Agreement with Manager.

25. Employment of Persons Convicted of a Sex Offense.

Manager warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex

Offender Registry shall provide services on behalf of the Port while on the Port or Government of Guam property, with the exception of public highways. If any employee of Manager is providing services on government or Port property and is convicted subsequent to an award of a contract, then Manager warrants that it will notify the Port of the conviction within twenty-four (24) hours of the conviction, and will remove immediately such convicted person from providing services on government or Port property. If Manager is found to be in violation of any of the provisions of this paragraph, then Manager shall take corrective action within twenty-four (24) hours of the notice from the Port, and Manager shall notify the Port when action has been taken. If Manager fails to take corrective steps within twenty-four (24) hours of the notice from the Port, then the Port in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

26. Vetting Of Third Party Vessels.

Manager shall have the right to require all vessels using or docking at F-I Pier to be subject to the SAFETTM vessel vetting system. The SAFETTM vessel vetting system is proprietary to Shell. The SAFETTM vessel vetting system imposes the equivalent or higher standards than nationally recognized vessel vetting standards. In the event the PAG implements its own vessel vetting system, Manager agrees that the vessel vetting system implemented by Manager shall have equal or higher standards than the vessel vetting standards imposed by the PAG.

27. Force Majeure.

No failure or omission by Manager to carry out or observe any of the terms or conditions of this Agreement shall give rise to any claim against Manager or be deemed a breach of this Agreement if such failure or omission is from "force majeure." "Force majeure" shall mean and include the use by the United States Navy or other agency or department of the United States, of "H" Wharf: also known as Hotel Wharf, or any other loading facilities to load or unload explosives from any munitions vessel or other vessel or any related operations ("Ammo Operations") which in turn affect operations at the Facility. "Force majeure" shall mean and include:

- (i) War, etc. War, hostilities, acts of public enemies or belligerents, sabotage, blockade, revolution, insurrection, riot, disorder, terrorism;
- (ii) Restraints Arrest or restraint of princes, rulers or peoples, or seizure under legal process;
- (iii) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (iv) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (v) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (vi) Acts of God. Act of God, fire, earthquake, typhoon conditions of category rated two or greater, lightning, tide, tsunami, or peril of the sea, accident of navigation or breakdown or injury of vessels:



- (vii) Loss of Storage Tanks. Loss of storage tanks due to action by belligerents or to governmental taking whether or not by formal requisition:
- (viii) Accidents. Accidents to vessels or to adjuncts of shipping navigation (unless within the scope of liability provided herein):
- (ix) Disease. Epidemics or quarantine:
- (x) Strikes. Strikes or combinations of workmen, lockouts, or other labor disturbances;
- (xi) Explosions. Explosions, accidents by fire or otherwise to the Dock Facility, pipes, storage facilities, installations, machinery:
- (xii) Naval Operations. Operations by the Navy, including, but not limited to, weapons operations, which require that the dock facility not be used;
- (xiii) Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth which by the exercise of due diligence that party concerned is unable to overcome, whether or not said occurrence is reasonably foreseeable. Each party shall promptly notify in writing the other upon the occurrence of any contingency excusing its non-performance or delay under this Section.

28. Attachments, Exhibits, Schedules, and Entire Agreement.

This Agreement, including its Attachments, Exhibits and Schedules, constitute the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

29. Scope of Agreement.

This Agreement, RFP, Manager's Proposal and Payment Terms collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Manager and the Port each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

In the event of a contradiction between the provisions of any one or more of the documents collectively comprising this Agreement, RFP, Manager Proposal and Payment Terms the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time) and third, to the provisions of the Manager Proposal and Payment Terms (as they may be clarified or amended from time to time).

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30. Computation of Time.

Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam holidays are to be included in the computation.

31. Severability.

If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

32. Fees and Expenses.

Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

33. Notices.

All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, which occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO THE PORT:

Joanne M. S. Brown, General Manager
JOSE D. LEON GUERRERO COMMERCIAL PORT
1026 Cabras Highway, Suite 201
Piti, Guam 96925

A copy shall be provided to the Port's Legal Counsel of Record.

TO MANAGER:

Mr. Kazhakuttam K. Vikraman, General Manager
Tristar Terminals Guam Inc.
Agat Terminal Station, Sta. Rita Industrial Drive, Route 2
Agat, Guam 96915

34. Attorneys' Fees.

Should a breach of this Agreement by either party result in litigation or arbitration, the prevailing party shall be entitled to recover, in addition to any other relief, its reasonable attorneys' fees and costs from the non-prevailing party.

35. Time.

Time is of the essence of this Agreement and every part thereof.

36. Barrel Defined.

As used herein, the term "Barrel" is a unit volume equal to forty-two (42) U.S. gallons, measured at ambient temperature.

37. U.S. Currency.

As used herein, the terms "Dollars" and "Cents" refer to currency of the United States.

38. Amendments/Modifications.

Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

39. Assignment/Subcontractors.

It is expressly acknowledged that Manager is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Manager utilizes one or more subcontractors for such purpose. The right and interest of Manager under this Agreement (including, but not limited to, Manager's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Manager, Manager agrees that any subcontractors retained by Manager or assignees shall be subject to all provisions of this Agreement. As consideration for PAG's consent, Manager agrees to pay to PAG thirty percent (30%) of the assigned value of this contract immediately upon the transfer/assignment to its transferee/assignee.

40. Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

41. Duty to Cooperate Upon Expiration or Termination.

Upon the expiration or termination of this Agreement, Manager shall cooperate with PAG and any third party designated in writing by PAG as caretaker or successor to Manager in the transition of responsibilities from Manager to the third party. Upon receipt of written notice from PAG of the designation of a caretaker or successor, Manager shall permit such third party to enter the Facility upon reasonable written notice to Manager for evaluation and testing and, when found to be necessary by PAG, construction, provided that such evaluation, testing or construction does not unreasonably interfere with Manager's obligations hereunder. Such third party shall enter into an indemnification agreement with Manager to indemnify Manager from all cost, loss or liability in connection with such third parties' activities at the Facility. On termination, the parties shall have those rights as set forth at Sections 11(c), (e) and (t).

42. Police Power of PAG, Right of Inspection of Facility.

The Facility being a part of the property of P AG, P AG shall exercise police powers over the Facility at all times. As provided by law, duly appointed peace officers employed by PAG or any other law officer acting within his or her jurisdiction and in accordance with law shall be entitled at any time

to enter the Facility, search any person or thing on, entering or departing the Facilities and to arrest any person pursuant to a warrant or probable cause of the commission of a felony, misdemeanor or violation. The General Manager of PAG or his or her designee may inspect the Facility at any time upon reasonable notice to Manager to assure its safe operation.

43. Manager to Provide Audit Information.

Manager shall provide PAG or other appropriate Government entity as authorized by law with such information as may be reasonably necessary for it to assure that Manager is faithfully complying with the provisions of this Agreement regarding the maintenance and capital improvement of the Facility and the imposition, collection and remittance of fees and charges due to PAG. Manager is aware that PAG is subject annually to its own examination by an independent auditor and that it is subject from time to time to examination by auditors of or employed by the Government of Guam, the Department of Interior, the Congress of the United States and other federal agencies. Manager agrees to cooperate with such agencies by disclosing to them such data as they may reasonably require as part of an examination of PAG.

44. Descriptive Headings.

The descriptive headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof:

45. Merger Provisions, Governing Law and Forum Selection.

This Agreement contains the entire agreement between the parties, supersedes all prior written and oral understandings and shall be governed by Guam law. Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

46. Claims of Prior Years.

Nothing in this agreement shall be construed or deemed a waiver of a party's rights, claims and defense; asserted or unasserted, with respect to any claims either party may have against the other. The parties hereby reserve all of their rights, claims and defenses.

***** ALL SIGNATURES APPEAR ON THE NEXT PAGE *****


IN WITNESS WHEREOF, the parties have duly caused this instrument to be executed and delivered on the date and year first hereinabove set forth.

**JOSE D. LEON GUERRERO COMMERCIAL
PORT AUTHORITY OF GUAM**


JOANNE M. S. BROWN
General Manager

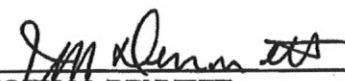
Date: 6/11/14

TRISTAR TERMINALS, INC


KAZHAKUTTAM K. VIKRAMAN
Manager

Date: 5/30/2014

TRISTAR TERMINALS, INC.


JOHN M. DENNETT
Attorney in Fact

APPROVED AS TO FORM:


PHILLIPS AND BORDALLO
Counsel for PAG

Exhibits:

- A. Fingertip Lease Agreement
- B. Extension Agreement
- C. Routine Maintenance List
- D. Capital Improvement List
- E. Facility User Agreement
- F. Personal Property, Trade Inventory (Equipment) and Trade Fixture



Attachment No. 1
SCOPE OF SERVICES

SCOPE OF SERVICES

The purpose of this RFP is to provide for the management and operation of the F-1 Fuel Pier Facility located on Cabras Island, Guam.

DESCRIPTION OF WORK

A. Operation of the F-1 Fuel Pier

1. Receive imports of fuel oil, jet fuel, diesel, motor gasoline and liquid petroleum products;
2. Delivery of fuel for export of jet fuel and diesel;
3. Bunker fuel oil and marine gas oil;
4. Maintain and ensure product quality by conducting field quality checks and maintaining fuel samples for dock customers;
5. Coordinate with ship masters and harbor pilots to ensure safe dockage.

B. Maintain the F-1 Fuel Pier

1. Provide preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the F-1 Dock,
2. Conduct maintenance repairs to ensure operational availability of this fuel dock,
3. Provide Quality Assurance inspections and controls schedule.

C. Secure the F-1 Fuel Pier

1. Ensure compliance with the American Petroleum Standards, ISGOTT, and all applicable Federal and Territorial laws.

D. Manage the F-1 Management Agreement

1. Provide operational access by scheduling operations of the facility for the co-use of same for the purpose other than petroleum,
2. Report and collect appropriate Port user fees,
3. Cite Best Management practices and methods for fee recovery.

E. Respond to Emergencies

1. Respond to Tier 1 spills and participate with Tier 2 and off-island Tier 3 responders,
2. Prepare and secure facility in the event of an anticipated storm or weather disturbance and maintain operational capabilities for post storm recovery.

F. Associated Duties

1. Perform related bunkering pier duties as may be required in addition to those mentioned above.

****** END OF SCOPE OF SERVICES ******