

BEFORE THE PUBLIC UTILITIES COMMISSION



IN RE: PETITION FOR EXTENSION)
OF THE TERM OF THE)
LEASE AGREEMENTS FOR)
PIPELINE AND RFO)
STORAGE WITH TRISTAR)
TERMINALS GUAM, INC. BY)
GUAM POWER AUTHORITY)
_____)

GPA DOCKET 22-16

ALJ REPORT

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the August 3, 2022 Petition (hereinafter referred to as the “Petition”) for review and approval of the Tristar Terminals Guam Inc. (“Tristar”) contracts related to the Tristar pipeline and residual fuel oil (“RFO”) storage lease. GPA seeks PUC approval to extend the Tristar contracts for an additional three years.¹

BACKGROUND

Tristar is the current manager of the Port Authority of Guam’s F-1 Fuel Pier Facility dock (hereinafter referred to as the “F-1 Dock”).² At the F-1 Dock, petroleum products, like gasoline and oil, and non-petroleum products are offloaded, discharged, and distributed.³ A certain Dock Facility User Agreement between GPA and Tristar allows GPA to discharge from, or load fuel onto, GPA’s vessels at the F-1 Dock.⁴

¹ Petition, p. 1.

² See PUC Order, GPA Docket 13-11, p. 1 (July 30, 2013).

³ See PUC Order, PAG Docket 21-01, p. 1 (Jan. 28, 2021).

⁴ See PUC Order, GPA Docket 13-11, p. 1.

Under GPA's Pipeline Agreement with Tristar, GPA has non-exclusive use of Tristar's "B Pipeline" for fuel resupply from the F-1 Dock to the Navy Valve Pit, for further transfer by GPA from the Navy Valve Pit through the GPA controlled pipelines, and to the GPA storage and power generating facilities at Cabras Island.⁵ Additionally, Tristar maintains and operates a storage facility known as the "Agat Terminal," which GPA leases through a certain RFO Storage Lease Agreement.⁶

According to GPA, it has negotiated extensions of both the Pipeline Agreement and RFO Storage Lease Agreement with Tristar for an additional three years.⁷ On July 26, 2022, the CCU issued GPA Resolution No. 2022-22, which approved the three-year extensions of these contracts with Tristar, and authorized GPA to seek PUC approval of the contract extensions.⁸

DISCUSSION

1. GPA's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, GPA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GPA'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

⁵ See PUC Order, GPA Docket 13-11, p. 2.

⁶ See PUC Order, GPA Docket 13-11, p. 2; GPA Resolution No. 2022-22 (hereinafter referred to as the "Resolution"), issued by the Consolidated Commission on Utilities (the "CCU"), pp. 1-2 (July 26, 2022).

⁷ Resolution, p. 1.

⁸ Resolution, p. 2.

Protocol, GPA Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, GPA's Contract Review Protocol provides that "GPA must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold." *Id.*, p. 3.

2. Scope of Services

A. September 1, 2013 Pipeline Agreement

Pursuant to the Pipeline Agreement between GPA and Tristar, GPA has a "continuing non-exclusive right to cause its oil and other petroleum products to be transported through the B Pipeline from the F-1 Dock to the Navy Valve Pit for connection to the pipeline to GPA's Cabras storage and power generating facilities."⁹ In addition, pursuant to "[Amendment] No. 1" to the Pipeline Agreement executed in 2018, the parties negotiated a \$566,350.34 annual usage fee (or \$47,195.86 monthly) for the period of September 2021 through August 2022.¹⁰

B. September 1, 2013 Storage Agreement

Pursuant to the September 1, 2013 RFO Storage Lease Agreement, Tristar has agreed to provide GPA with storage tanks for storing fuel oil.¹¹ Specifically, Tristar provides GPA with a total of 422,150 barrels of storage for fuel oil, which Tristar maintains and operates.¹² In addition, pursuant to "[Amendment] No. 1" to the RFO Storage Lease Agreement, executed in 2018, the parties agreed to a \$1,933,820.14 annual

⁹ Pipeline Agreement, p. 2 (attached hereto as "Exhibit A").

¹⁰ [Amendment] No. 1 to Pipeline Agreement, p. 1.

¹¹ Storage Agreement, p. 2 (attached hereto as "Exhibit B").

¹² Storage Agreement, p. 2.

storage fee (or \$161,151.68 monthly) for the period of September 2021 through August 2022.¹³

3. Extension of Contract Terms and Costs

According to GPA, the fees under the extended Pipeline Agreement will remain at the prevailing rate of \$47,195.86 per month, and \$566,350.34 annually, which is the rate negotiated back in 2018.¹⁴

In addition, the fees under the extended RFO Storage Lease Agreement shall also remain at the prevailing rate of \$1,933,820.14 per year, based on a storage capacity of 422,125 barrels of fuel.¹⁵ However, according to GPA, this annual lease fee is anticipated to be reduced to \$1,844,309.67 for the first year of the extension, based on a reduced storage capacity of 402,610 barrels of fuel; and then further reduced to \$1,275,776.17 for the second and third years of the extension, based on a reduced storage capacity of 278,500 barrels of fuel, owing to GPA's transition to .2% Ultra Low Sulfur Fuel Oil.¹⁶

GPA submits that the contracts will be funded internally through its operations budget.

4. CCU Approval

On July 26, 2022, the Consolidated Commission on Utilities (the "CCU") issued GPA Resolution No. 2022-22 (the "Resolution"), which approved the contract extensions for both the Pipeline Agreement and the RFO Storage Lease Agreement, along with the

¹³ [Amendment] No. 1 to Pipeline Agreement, p. 1.

¹⁴ [Amendment] No. 1 to Pipeline Agreement, p. 1.

¹⁵ Resolution, pp. 1-2.

¹⁶ Resolution, pp. 1-2.

corresponding costs for the extensions.¹⁷ In the Resolution, the CCU indicated that the “contract extension . . . for the 2 Agreements will serve the best interest of the Authority and its ratepayers by ensuring uninterrupted supply of fuel to GPA through the use of Tristar’s fuel handling facilities.”¹⁸

RECOMMENDATION AND CONCLUSION

Based on the documentation provided, the ALJ finds that the subject contracts are reasonable and necessary, and that the extensions of the contracts referred to herein are prudent. As indicated by GPA, the contracts referred to in this matter are vital since they ensure the “uninterrupted supply of fuel to GPA.”¹⁹ Indeed, this Commission has previously held that any disruption to the safe distribution of fuel resources to GPA, for example, “could be a potential threat to the public health, welfare and safety of our island.”²⁰

Significantly, too, the fees under the extended Pipeline Agreement will remain the same during the three year extension period, which is the same fee that was negotiated back in 2018.²¹ Moreover, the fees under the extended RFO Storage Lease Agreement will also remain the same, and in fact, may lessen, based on the reduction of leased storage during the three year period, owing to GPA’s transition to .2% Ultra Low Sulfur Fuel

¹⁷ Resolution, p. 2.

¹⁸ Resolution, p. 2.

¹⁹ Resolution, p. 1.

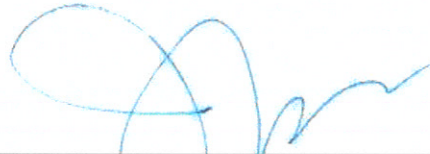
²⁰ PUC Order, PAG Docket 21-01, p. 7 (Jan. 28, 2021).

²¹ [Amendment] No. 1 to Pipeline Agreement, p. 1.

Oil.²² Accordingly, these contracts will potentially provide savings for the ratepayers as the fees lessen each year.

Based on the documentation provided by GPA in this docket, and for the other reasons set forth herein, the ALJ recommends that the PUC approve the contract extension with Tristar, at an annual cost of \$566,350.34 for the Pipeline Agreement; and \$1,933,820.14 for the RFO Storage lease agreement, which will lessen as GPA reduces its storage needs. A proposed Order for the PUC is attached hereto for the PUC's consideration.

Respectfully submitted this 26th day of September, 2022.



JOEPHET R. ALCANTARA
Administrative Law Judge

P223040.JRA

²² Resolution, pp. 1-2.

EXHIBIT A

PIPELINE AGREEMENT TTGI-PA-2013

THIS PIPELINE AGREEMENT is made as of this **1st** day of **September 2013**, and is made by and between **TRISTAR TERMINALS GUAM INC.**, a Guam Corporation, whose address is 414 West Soledad Avenue, GCIC Building, Suite 604 Agana, Guam 96910 (hereinafter referred to as "Tristar") and **GUAM POWER AUTHORITY**, an autonomous agency of the Government of Guam, whose address is P.O. Box 2977, Agana, Guam 96932 (hereinafter referred to as "GPA").

RECITALS

WHEREAS, Tristar operates the facility at the Commercial Port of Guam known as the F-1 Dock under and F-1 Management Agreement between Tristar and the Port Authority of Guam; and

WHEREAS, Tristar and GPA have entered into an F-1 Dock User Agreement dated **1st of September, 2013**; and

WHEREAS, Tristar has manifolding equipment located on the F-1 Dock and pipelines (the Tristar Pipelines), which run through Port Authority of Guam leases and easements (the PAG Easements) from the F-1 Dock to a point of intersection commonly referred to as the Navy Valve Pit; and

WHEREAS, GPA has GPA controlled pipelines which run from the Navy Valve Pit to storage and power generating facilities of GPA in Cabras, Guam; and

WHEREAS, the Tristar Pipelines include a pipeline designated and known as the B Pipeline; and

WHEREAS, the parties desire to enter into an agreement for the non-exclusive use of the B Pipeline by GPA for fuel resupply and transfer from the F-1 Dock to the Navy Valve Pit for further transfer by GPA from the Navy Valve Pit through the GPA controlled pipelines to the GPA storage and power generating facilities referred above.

WHEREAS, parties have entered into a Storage Agreement dated the date hereof, providing for the non-exclusive use by GPA of storage facilities provided by Tristar at the Agat Terminal (as described in the Storage Agreement) and the use of additional portions of B Pipeline extending between the Navy Valve Pit and the Agat Terminal, and an additional use, related to the Storage Agreement, of the portion of the B Pipeline subject to this Agreement.



**PIPELINE AGREEMENT
TTGI-PA-2013**

NOW, THEREFORE, it is hereby agreed as follows:

1. GRANT OF USE

Subject to the terms and provisions herein contained, Tristar does hereby grant unto GPA a continuing non-exclusive right to cause its oil and other petroleum products to be transported through the B Pipeline from the F-1 Dock to the Navy Valve Pit for connection to the pipeline to GPA's Cabras storage and power generating facilities.

2. TERM

This Agreement shall remain in effect within the period of **September 1st, 2013** and **August 31st, 2018**.

3. TERMINATION

This agreement may be terminated sooner than **August 31st, 2018**:

- (a) Upon written agreement of the Parties, which agreement shall provide, among other things, the effective date of termination; or
- (b) Upon loss of use by Tristar of its pipeline easement to the Navy Valve Pit referenced herein.

4. CONSIDERATION

For and in consideration of the use as aforesaid, GPA shall pay to Tristar the following amounts:

CONTRACT YEAR	PERIOD	MONTHLY FEE	ANNUAL FEE
1	September 2013 - August 2014	\$ 34,848.54	\$ 418,182.53
2	September 2014 - August 2015	\$ 36,142.49	\$ 433,709.83
3	September 2015 - August 2016	\$ 37,488.19	\$ 449,858.22
4	September 2016 - August 2017	\$ 38,887.71	\$ 466,652.55
5	September 2017 - August 2018	\$ 40,343.22	\$ 484,118.65

The annual payment due will be invoiced by Tristar in twelve (12) equal monthly installments due and payable in advance by the first of each month. Invoices not paid on or before the due date shall bear interest at the rate of one and one half percent (1.5%) per month.



**PIPELINE AGREEMENT
TTGI-PA-2013**

5. GPA RESPONSIBILITY FOR PORT AND OTHER CHARGES

Separate from the consideration specified in Section 4, GPA shall be responsible for and shall pay to the appropriate parties all taxes, duties, and charges, including but not limited to Port charges, levied against GPA's fuel oil as it relates to the performance of the Pipeline Agreement, including under the F-1 User Agreement.

6. CONDITION OF PIPELINE

GPA acknowledges that it has been utilizing said pipeline and GPA accepts the same in its present condition as suitable for GPA's use. Tristar shall provide GPA with a copy of the pipeline integrity report to the commencement of the contract.

7. ORDINARY MAINTENANCE & REPAIR

Any and all ordinary repairs and maintenance to the portion of the pipeline affected by this Agreement shall be promptly done by Tristar at Tristar's expense. For purposes hereof ordinary repairs and maintenance shall be scheduled inspections and testing (including ultrasonic thickness testing, radiographic examination, and magnetic flux), repacking valve glands, cathodic protection repair, and painting.

8. EXTRAORDINARY MAINTENANCE OR REPLACEMENT

In the event Tristar becomes aware of any items of extraordinary repair, maintenance or replacement to the portion of the pipeline affected by this Agreement which are necessary for the continued safe use of the pipeline, or which may be required by statutory, regulatory, or agency requirements which could include, any lowering, raising or repositioning, or relining thereof, Tristar shall give GPA at least two (2) months notice in advance thereof of this intention to undertake such extraordinary item of maintenance repair or replacement. If at the conclusion of the two (2) month notice period GPA disagrees that such extraordinary maintenance or replacement is required and Tristar and GPA are unable to reach agreement on the need to perform such work, then, GPA shall either be entitled to terminate this Agreement forthwith or if GPA does not elect to terminate, an independent consultant acceptable to both sides shall be hired at GPA's cost to provide a recommended course of action and that decision shall be final and binding on both parties.

Notwithstanding the requirements of the foregoing, both parties agree that should repairs be of an emergency nature which would render either party unable to reasonably carry out their business the two (2) month period referred to above shall be waived and expeditious repairs shall be undertaken by Tristar and be reimbursed. Should GPA

**PIPELINE AGREEMENT
TTGI-PA-2013**

dispute the need for such repairs, GPA shall advise Tristar in writing giving reasons for such objection no later than four (4) working days after receiving any written notice from Tristar.

9. REIMBURSEMENT OF COSTS

On completion of any such repair, maintenance, relocation, or lowering, carried out under Clause 8, GPA shall reimburse Tristar for the costs incurred. Payment terms will be thirty (30) days from invoice date. Thereafter, the invoice amount shall bear interest at the rate of one and one half percent (1.5%) per month.

10. FORCE MAJEURE

No failure or omission by TRISTAR to provide Facility services or by GPA to comply with the terms of these conditions of use shall give rise to any claim by one party against the other if the same shall be caused by or arise out of (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 workers, 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 Article.



**PIPELINE AGREEMENT
TTGI-PA-2013**

11. QUALITY

Tristar makes absolutely no representations and has no responsibility with regard to the quality of GPA's fuel in the pipeline or deterioration thereof except degradation due to contamination after discharge and before loading of the vessel or transfer to or from the Terminal, or any negligent acts of Tristar or its agents, which shall be Tristar's responsibility. If GPA desires any quality testing while the fuel oil are in the pipeline, Tristar will perform, or cause to be performed, the tests as requested. All such tasks shall be at GPA's cost, and shall be billed at the normal rate for such test. If GPA's fuel specification changes in nature whilst in the pipeline, Tristar will take action on all requests by GPA with regard to GPA's fuel oil at GPA's risk and expense.

12. INDEMNIFICATION

Each party agrees to indemnify the other against, and to hold it harmless from, any damage, cost or expense either of them may incur by reason of any claim, action or suit caused by or arising out of the willful act or negligence of the party. Damage, cost, and expense, as provided above shall include reasonable attorney's fees adjudged against either party, or which either party may incur by reason of said claim, action or suit. In the event of the assertion of any claim, action, suit or assessment for penalty, or regulatory action against Tristar by reason of any liability or assertion thereof of the Oil Pollution Act of 1990, in addition to the foregoing, the parties hereby agree that Tristar shall have full control over the defense of such matters, including without limitation, the choice of counsel and settlement for which it shall be entitled to indemnity for the cost thereof as above provided.

13. INSURANCE

- a. Upon the execution of this Agreement, Customer shall secure and maintain at its own expense the following insurance:
 - i) Property Insurance for Customer's product stored at the Agat Terminal and pipelines.
 - ii) Oil spill and spill clean-up insurance in an amount of not less than One Hundred Million and No/100 Dollars (\$100,000,000.00) which shall insure against damages and expenses of any kind regardless of cause, including but not limited to the clean-up expenses resulting from the spill or leakage of fuel oil of Customer at any point between Customer's ship loading flange to the point of interconnection to **B Line** of the internal pipelines inside the Agat Terminal.



**PIPELINE AGREEMENT
TTGI-PA-2013**

- iii) Public liability insurance in minimum amounts of One Hundred Million and No/100 Dollars (\$100,000,000.00) for loss from an occurrence resulting in bodily injury to or death of one person; One Hundred Million and No/100 Dollars (\$100,000,000.00) for total personal injury and death loss from any one occurrence; and One Hundred Million and No/100 Dollars (\$100,000,000.00), for loss and damage of any kind of property, including but not limited to, Tristar's pipeline and equipment between Customer's ship loading flange to the point of interconnection **B Line** of the internal pipelines inside the Agat Terminal, arising in and any manner from Customer's use and benefit of the Tristar tanks and pipeline and manifold equipment pursuant to this Agreement. Customer confirms that its public liability insurance policy includes contractual liability coverage and that lease, license and use agreements are not excluded thereunder.
- b. In the event Tristar agrees in writing to allow Customer to assign its rights and under this Agreement, it may satisfy the foregoing requirements by having its Assignee supply the foregoing insurance provided that Tristar is made an additional insured and proof thereof and if said coverage is given to Tristar.
- c. In the event additional insurance is required by law to be carried by Customer or its Assignee, Customer or its Assignee shall promptly acquire the same.
- d. Within fifteen (15) days of securing the required policy of insurance and not later than thirty (30) days prior to the expiration of any policy of insurance and in case of additional insurance not later than the effective date of such requirement, Customer or its assignee shall provide Tristar with a certificate of insurance evidencing compliance with foregoing provisions.
- e. Customer shall procure from its insurer, in form satisfactory to Tristar, a waiver of the insurer's rights of subrogation against Tristar arising by reason of any payment made under Customer's insurance policy.
- f. The foregoing provision shall apply so long as the Storage Agreement shall remain in effect. In the event of the Storage Agreement shall be terminated, and this Agreement remains in effect the foregoing insurance provision shall be appropriately adjusted so that coverage in the same amounts at the same limits as described above are maintained, but portions of the additional pipelines to and storage facilities at the Agat Terminal provided under the Storage Agreement are no longer in use by GPA by reason of the termination of the Storage Agreement, are appropriately excluded from coverage.



**PIPELINE AGREEMENT
TTGI-PA-2013**

14. ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties with respect to the matters herein contained and supersedes and replaces in its entirety any pre-existing agreements, whether written or otherwise and in the contemporaneous oral agreements.

15. MODIFICATION

This Agreement may be modified or amended only by document in writing, signed by each of the parties.

16. NOTICE

For purposes of any notice to be given hereunder by one party to the other, following shall be respective address and facsimile numbers:

Tristar: 414 West Soledad Avenue
GCIC Building, Suite 604
Hagatna, Guam 96910
Facsimile No.: 477-1077

GPA: Post Office Box 2977
Hagatna, Guam 96932
Facsimile No.: 648-3290

Any notice required to be given hereunder may either be physically delivered to the other party, or delivered by facsimile transmission from one party to the other provided that the facsimile machine of the sending party is able to confirm that the receiving party received the same and provided that notice thereof be thereupon mailed by United States regular mail, postage pre-paid. Any such notice by facsimile shall be deemed to have been given on the date of the facsimile transmission, provided that such transmission shall have been a business day.

17. ATTORNEY'S FEES

In the event action or suit is brought to construe or enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of its attorney fees by the opposing party in such amounts as are determined by the court to be reasonable, whether determined at trial or upon appeal, and together with cost therein incurred.



**PIPELINE AGREEMENT
TTGI-PA-2013**

18. ASSIGNMENT

Tristar shall have the right to assign this Agreement to a third party. GPA, however, may only assign this Agreement upon the proper written consent to Tristar.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

DATED this 1, September, 2013

TRISTAR:

TRISTAR TERMINALS GUAM INC.

By: 

Name: Kazhakuttam Vikraman

Title: General Manager

GPA:

GUAM POWER AUTHORITY

By: 

Name: Joaquin Flores

Title: General Manager

**AMENDED NO. 1
PIPELINE AGREEMENT**

This Amendment No. 1 to the Storage Agreement ("1st Amendment") is made by and between **TRISTAR TERMINALS GUAM, INC.**, a Guam corporation whose address is P.O. Box 8210, Agat, Guam 96918, and **GUAM POWER AUTHORITY**, a public corporation of Guam, whose address is P.O. Box 2977, Hagatna, Guam 96932.

WHEREAS, a Pipeline Agreement with the reference "TTGI-PA-2013" between the parties dated 1st September, 2013 expires on 31st August, 2018, and the parties want to extend and continue the said Agreement.

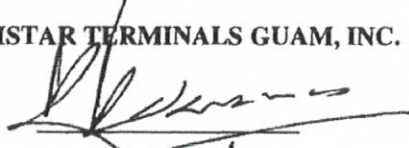
NOW, THEREFORE, the parties agree:

1. The said Agreement is extended on a year-to-year basis upon expiration of the original term on August 31, 2018 for a period not exceeding four (4) successive yearly extensions.
2. The storage fee for the extended period will be:

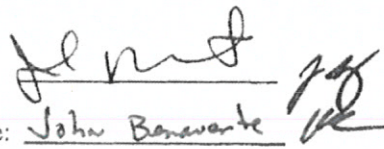
Extended Period Year	Period	Monthly Fee	Annual Fee
1	September 2018 - August 2019	\$ 41,956.95	\$ 503,483.39
2	September 2019 - August 2020	\$ 43,635.23	\$ 523,622.72
3	September 2020 - August 2021	\$ 45,380.64	\$ 544,567.63
4	September 2021 - August 2022	\$ 47,195.86	\$ 566,350.34

3. Except as stated herein all other terms and condition of the Pipeline Agreement and Amendments thereto shall remain in effect.

TRISTAR TERMINALS GUAM, INC.

By: 
Name: K. K. VIKRAMAN
Title: General Manager
Date: 3/13/2018

GUAM POWER AUTHORITY

By: 
Name: John Benavente
Title: General Manager
Date: 9/3/18

**STORAGE AGREEMENT
TTGI-SA-2013**

EXHIBIT B

This **STORAGE AGREEMENT** is made as of this **1st** day of **September 2013**, by and between **TRISTAR TERMINALS GUAM INC.**, a Guam Corporation, whose address is 414 West Soledad Avenue, GCIC Building, Suite 604, Agana, Guam 96910, hereinafter referred to as "Tristar" and **GUAM POWER AUTHORITY** whose address is P.O. Box 2977, Agana, Guam 96932, hereinafter referred to as "GPA".

RECITALS

WHEREAS, Tristar operates the facility at the Commercial Port of Guam known as the F-1 Dock under an F-1 Management Agreement between Tristar and the Port Authority of Guam; and

WHEREAS, Tristar and GPA have entered into an F-1 Dock User Agreement dated **1st of September, 2013**; and

WHEREAS, Tristar has manifolding equipment located on the F-1 Dock, and pipelines (the Tristar Pipelines), which run through the Port Authority of Guam leases and easements (the PAG Easements) from the F-1 Dock to a point of intersection commonly referred to the Navy Valve Pit; and

WHEREAS, GPA has GPA controlled pipelines which run from the Navy Valve Pit to storage and power generating facilities of GPA in Cabras, Guam; and

WHEREAS, the Tristar Pipelines include a pipeline designated and known as the B Pipeline; and

WHEREAS, the parties entered into an Agreement (the Pipeline Agreement) for the non-exclusive use of the B Pipeline by GPA for fuel resupply and transfer from the F-1 Dock to the Navy Valve Pit for further transfer by GPA from the Navy Valve Pit through the GPA controlled pipelines to the GPA storage and power generating facilities referred above; and

WHEREAS, Tristar holds a Perpetual Pipeline Easement (the Tristar DoD Easement) granted by the United States Department of Defense which extends from the Navy Valve Pit to Tristar facilities commonly known as the Agat Terminal and the Tristar Pipelines, including the B Pipeline, run through the Tristar DoD Easement to connect the Navy Valve Pit with the Agat Terminal so as to provide a continuous connection from the F-1 Dock to the Agat Terminal; and

WHEREAS, GPA has stored fuel under Storage Agreements at the Agat Terminal between 1 February 1998 through 31 August 2013; and

WHEREAS, the B Pipeline is used to transmit oil from the F-1 Dock to GPA's line at Navy Valve Pit and to the Agat Terminal; and

WHEREAS, GPA resupplies its Pit storage facility using fuel stored at the Agat Terminal; and

WHEREAS, GPA desires to continue the storage of low and high sulfur fuel oil at the Agat Terminal and Tristar has the capacity and is willing to provide petroleum product storage for GPA, subject to the terms and conditions herein contained; and



**STORAGE AGREEMENT
TTGI-SA-2013**

WHEREAS, GPA desires to sell excess fuel oil stored at the Agat Terminal to third parties for fuel oil bunkering purposes, which requires GPA to engage in fuel oil bunkering to vessels at the F-1 Dock from fuel stored at the storage tanks to be provided GPA hereunder at the Agat Terminal.

NOW THEREFORE, It is hereby agreed as follows:

1. STORAGE

Tristar agrees to provide storage tanks to GPA with a total of four hundred twenty two thousand one hundred fifty (422,150) barrels for the storage of fuel oil. The storage capacity available is hereinafter referred to as Available Storage. All references to volumes herein are to the normal tank capacity (Schedule "A") for Tanks capacity. Tanks provided for GPA's storage shall be maintained and operated in accordance with all applicable laws and regulations throughout the term of the Agreement at Tristar's sole cost.

2. GRANT OF USE OF PIPELINES

Tristar does hereby grant unto GPA a continuing non-exclusive right to cause its oil and other petroleum products to be transported through the B pipeline from the F-1 Dock to the Navy Valve Pit and from the Navy Valve Pit to the storage tanks provided to GPA hereunder located at the Agat Terminal and from the storage tanks to the Navy Valve Pit for resupply to GPA's Cabras storage tanks and power generating facilities.

3. ADDITIONAL FUEL BUNKERING USE OF PIPELINES FROM AGAT TERMINAL TO F-1 DOCK

- a. To facilitate the desire of GPA to sell excess fuel oil and to engage in fuel oil bunkering as described in the last recital to this agreement, and as an additional use of the pipelines to those otherwise provided in the Pipeline Agreement and this Storage Agreement, and subject to the additional terms and provisions contained in this section, including payment of the additional fee provided in this section, Tristar does hereby grant to GPA a continuing non-exclusive right to cause its fuel oil to be transported through the B Pipeline from the storage tanks at the Agat Terminal to GPA's fuel oil purchaser's ship's manifold at the F-1 Dock. For purposes of this use, the "customer" under the Facility User Agreement shall include fuel purchasers of GPA.
- b. For and in consideration of such additional use, GPA shall pay to Tristar (in addition to any consideration under the Pipeline Agreement and any other consideration hereunder) the amount of US Ten Cents (10¢) per gallon of fuel oil transferred to the purchaser's ships as measured from the down gauge of the tank at the Agat Terminal where the fuel oil was withdrawn.

The amount due will be invoiced by Tristar on a monthly basis and shall be payable within thirty (30) days from receipt by GPA of the Invoice. Invoices not paid on or before the due date shall bear interest at the rate of one and one half percent (1.5%) per month.

- c. Use of the pipelines for this additional purpose shall be subject to a minimum volume of 30,000 gallons for each transport of fuel. If volume of any transport is less than 30,000, charge for such transport shall be based on such minimum amount.

**STORAGE AGREEMENT
TTGI-SA-2013**

4. CONDITION OF PIPELINE

GPA acknowledges that GPA has been utilizing the B Pipeline and GPA accepts the same in its present condition as suitable for GPA's uses hereunder. Prior to the commencement of the Agreement, Tristar shall provide GPA a copy of the latest pipeline integrity test report to establish a baseline for the suitability of the pipeline for GPA's use.

5. TERM

This Agreement and the use of the Storage Tanks and pipelines as contemplated under this Agreement shall remain in effect within the period of **September 1, 2013** and **August 31, 2018**, inclusive

6. STORAGE FEE

a. The storage fee for the contracted capacity will be:

CONTRACT YEAR	PERIOD	MONTHLY FEE	ANNUAL FEE
1	September 2013 - August 2014	\$ 117,751.96	\$ 1,413,023.47
2	September 2014 - August 2015	\$ 122,462.03	\$ 1,469,544.41
3	September 2015 - August 2016	\$ 127,360.52	\$ 1,528,326.18
4	September 2016 - August 2017	\$ 132,454.94	\$ 1,589,459.23
5	September 2017 - August 2018	\$ 137,753.13	\$ 1,653,037.60

Terms for calculation of fees in case of tank substitution shall be as set out in Section 26.

The fee shall be payable in arrears by wire transfer or check within thirty (30) days of receipt of an invoice by the GPA.

b. Late payment fees

Thereafter, the invoice amount shall bear interest at the rate of one percent (1.5%) per month.

7. TERMINATION

This Agreement may be terminated sooner than **August 31, 2018**:

- a. Upon written agreement of the Parties, which agreement shall provide, among other things, the effective date of termination; or
- b. By the Party not in default upon the occurrence of an Event of Default, in accordance with the provisions of Section 30; or
- c. Upon closure of Tristar's Agat Terminal or termination of any of its pipeline easements; or



**STORAGE AGREEMENT
TTGI-SA-2013**

- d. In accordance with Section 14d) occurrence of any Force Majeure Event or compulsory acquisition, governmental requisition, expropriation, intervention by relevant authorities or any similar occurrence which results in the closure of Tristar's Agat Terminal or termination of its pipeline easements or which materially and adversely affects the ability of the Parties to continue with this Agreement or the ability of Tristar to operate the Agat Terminal and/or related pipelines.
- e. In case of a change of law as provided under Section 23.

In the event of termination, the Parties shall in good faith and as soon as practicable endeavor to agree on the manner of winding down. Until the effective date of termination, the Parties shall continue to have and carry out all their rights and obligations as stated in this Agreement. Termination of this Agreement for any reason shall not be deemed a waiver of any of the Parties' rights and obligations existing before the effective date of termination.

8. TAXES

GPA shall be responsible for all liquid fuels taxes, environmental taxes and any other taxes that may be assessed on the GPAs oil arising out of or relating to the performance by GPA of the transactions contemplated by this Agreement. Tristar agrees to use its commercially reasonable efforts to assist GPA in preparing such returns if requested to do so. Tristar shall be responsible for all taxes on its facilities or the operation thereof.

9. FACILITY USER AGREEMENT F-1 DOCK

This Storage Agreement shall not affect the existing F-1 User Agreement between the parties with respect to the use of the F-1 Dock or the obligations for payment of User Fees contained in that Agreement for unloading or loading fuel (including fuel oil bunkering by GPA under Section 3).

10. PRODUCT LOSS

Quantity determination for each discharge from the ship to Tristar's facility shall be based on the shore tanks up gauge plus line fill as determined by an independent surveyor resident on Guam nominated by GPA and at the expense of GPA. Quantity determination for each discharge from Tristar's facility by pipeline transfer shall be based on the shore tank(s) down gauge plus line fill as determined by an independent surveyor resident on Guam nominated by GPA and at the expense of GPA.

Tristar shall be responsible for any Excess Product Loss as determined in March of each contract year, after the final export or transfer of a contract year that is over and above twenty-five one hundredths of one percent (.25%) of the quantity imported during the contract year. Excess product loss shall be defined as the beginning physical inventory at the start of the contract year, plus all volumes discharged from the ship to Tristar's facility, less all volumes discharged from Tristar's facility, during the contract year, less the ending physical inventory for the contract year, with all the volumes expressed in barrels at standard temperature of 60 degrees Fahrenheit. Such Excess Product Losses shall be paid for at the lost of the Product Price.

**STORAGE AGREEMENT
TTGI-SA-2013**

The Lost Product Price shall be at the actual product inventory cost on First-In-First-Out (FIFO) basis at the end of the physical year, September 30th. GPA's physical year is from 1 October to 30 September. At the termination of this Agreement all GPA's product in tank bottoms or pipelines which cannot be recovered at a commercially reasonable cost shall be considered as an acceptable product loss, not subject to the above percentage loss limitations. Tristar agrees to work with GPA to maximize the recovery.

Tristar shall not be responsible for the value of the products of the GPA that shall be lost due to Force Majeure.

11. DEMURRAGE

Tristar shall have no responsibility whatsoever for demurrage unless directly attributable to the failure of Tristar's facilities which include the tanks, pipelines and pumps at the Terminal and the pipelines between the Terminal and the dock in which event Tristar shall reimburse GPA for demurrage paid to the vessel owner by reason of such failure.

For purposes hereof, Tristar facilities shall be deemed to have failed when receiving a discharge from a vessel, the ship is unable to pump to the 24" fuel oil pipeline at the pressure specified in the charter party agreement at the ship's manifold into the facility due to a limiting condition at Tristar's facility. (The transfer pipelines have a working pressure of **one hundred (100) psi** in the charter documents for any vessel chartered to unload in Guam).

Demurrage fees attributable to pipeline integrity testing shall be borne by Tristar.

12. TRISTAR ASSISTANCE AND FACILITIES

Tristar further agrees to exercise commercially reasonable efforts to:

- a. Work with GPA to optimize the use of Tristar equipment pipelines and tanks to increase loading and unloading rates through optimization of loading sequences and tank and pipeline selection: and
- b. Endeavor to have vessels pump at their maximum capability.
- c. Work with GPA on deliveries and storage tank allocation to have tanks on Guam at other Terminals available to balance shipping and inventories where such arrangements are feasible.

GPA further acknowledges the transfer pipeline is six (6) miles long and has a static head lift requirement of one hundred eight-three feet (183'). GPA further acknowledges that the berth, which is owned by the Port of Authority of Guam, and managed by Tristar, will accept vessels based on the PORT & BERTH RESTRICTIONS/MAXIMUM & MINIMUM VESSEL CRITERIA section of the **Agat Terminal Port and Terminal Information Handbook**, which is reviewed, updated and issued by Tristar from time to time and copies of which are provided to the GPA and its Fuel Supplier. The latest edition of this Handbook, dated December 01, 2009, has the following information:

Maximum LOA	237 meters
Maximum breadth	45 meters
Maximum vessel draft alongside	14.8 meters
Maximum Displacement	120,000 tonnes

**STORAGE AGREEMENT
TTGI-SA-2013**

13. OPERATING PROCEDURES

a. Inventory required for Operation

GPA accepts that a product inventory is required to enable the facility to be operated, including inventory to fill the pipelines. The working inventory shall be recovered and returned to GPA on termination of this Agreement at Tristar's expense.

b. Working Ullage

It is an expense condition that GPA shall provide ullage of 10,000 Barrels at either Agat or at their tanks in Pftl to enable pipeline displacement operations to take place, where more than one grade at FO is stored at Agat.

c. Operational Practicalities

GPA undertakes to work with Tristar to ensure that all operations requested are possible, without affecting the ability of Tristar to undertake whatever other normal operations Tristar would need to undertake.

d. Main Transfer Pipeline Product Ownership

Tristar will be responsible for management of the B pipeline fuel inventory.

14. FORCE MAJEURE

In case of a Force Majeure event preventing use of Tristar's facilities, Tristar would endeavor to facilitate product receipt or transfers via alternate facilities including either military or other commercial import or export dock facilities. That operation would be subject to constraints of those facilities. If due to such an event terminal operations prevent continuation of GPA's business, monthly fees as per Section 7 would be ceased on a daily pro rata basis until business could be resumed.

- a. Force Majeure is defined as any cause beyond the reasonable control of a Party including natural disasters, typhoons and other acts of God, strikes, lock-outs, labor disputes, civil disruption, demonstrations, protests, blockades, terrorism, acts of war, and voluntary or involuntary compliance with any law or governmental order, rule, regulation or direction.
- b. The obligations of each of the parties to this Agreement, other than the obligations to make payments of money, shall be suspended during the period and extended to the extent that such party is prevented or hindered from complying with them by Force of Majeure.
- c. In such event of Force Majeure, the affected party shall give notice of suspensions as soon as reasonably possible to the other party stating the date and extent of suspension and the cause. Any party whose obligations have been so suspended shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause shall to notify the other party.
- d. Any event which causes or results in Tristar's loss of or interruption with Tristar's access to or use of the pipelines and/or Tristar's Agat Terminal shall be deemed a Force Majeure Event. In the event that a Force Majeure Event prevents, or is reasonably expected to prevent, Tristar from the use or access to the pipelines and/or Tristar Terminal for a period longer than three (3) months, then Tristar shall have the right to terminate this Agreement by giving sixty (60) days prior written notice to GPA.

**STORAGE AGREEMENT
TTGI-SA-2013**

15. OIL SPILL RESPONSE

a. GPAs Vessels

GPA shall contract with the vessel on terms requiring the vessel to comply with all applicable oil pollution response laws and regulation and of a size that is equal to or smaller than the specifications in Section 9.

b. Oil Spill Response Operations Company

Every vessel which carries petroleum products in bulk to Guam is required by United States Law to have in place a contract with an Oil Spill Response Operations Company (OSROCO) to provide oil spill response. GPA or its assignee is the importer of the oil stored under this agreement.

If a member of the OSROCO, GPA or its assignee agrees to report the volume imported as being imported by them in their annual submission of volume share to OSROCO. Tristar shall not provide contract coverage to OSROCO for vessels chartered by GPA or its supplier. Tristar, as operator, remains responsible for ensuring the oil spill response capability with respect to the Agat storage facility is in accordance with the approved

16. QUALITY

Tristar makes absolutely no representations and has no responsibility with regard to the quality of GPA's fuel or deterioration thereof, except any degradation due to contamination after discharge and before loading of the vessel or a transfer to or from the Terminal, and periods of storage inactivity while the products are under the custody of Tristar which shall be Tristar's responsibility. Tristar represents and warrants that the tanks listed in Schedule A are suitable for the storage of fuel oil. The parties shall test the quality of GPA's product upon any quality degradation. If GPA desires any quality testing while the products are in storage, Tristar will perform, or cause to perform, the tests as requested. All such tasks shall be at GPA's cost, and shall be billed at the normal rate for such test. If GPA's product specification changes in nature whilst in storage, Tristar will take action on all requests by the GPA with regard to the GPA's product at GPA's risk and expense.

GPA may at its sole option, risk, and cost, add additives to product stored at the Terminal. Tristar will endeavor to assist such operations, and provide any facilities which exist at the Agat Terminal for that purpose. GPA agrees to pay to Tristar any out of pocket expense incurred by Tristar in undertaking such corrective works.

GPA has the right to have an independent local inspector affiliated with an international inspection company certify the tanks cleanliness prior to storage or product. The expense of such certification shall be borne equally by GPA and Tristar.

17. ENVIRONMENTAL LIABILITY

Any and all liability resulting from any release or discharge of GPA's product from the oil tanks at the Agat Terminal and the internal pipelines inside the Agat Terminal commencing at the point where the pipelines connect to the fuel oil tanks and ending at the interconnection to the 24" diameter RFO pipeline between F-1 Dock and the Agat Terminal (hereinafter called "**B Line**"), shall be that of Tristar and Tristar shall save and hold GPA harmless from any and all claim, action, or administrative proceeding resulting



**STORAGE AGREEMENT
TTGI-SA-2013**

therefrom as well as any and all damage, costs, fines, or other expense, including attorney's fees incurred by GPA, resulting therefrom.

Any and all liability resulting from any release or discharge of GPA's product at any point other than the tanks at the Agat Terminal and the internal pipelines inside the Agat Terminal commencing at the point where the pipelines connect to the fuel oil tanks and ending at the Interconnection **B Line**, shall be that of the GPA and the GPA shall save and hold Tristar harmless from any and all claim, action, or administrative proceeding resulting therefrom as well as any and all damage, costs, fines, or other expenses, including attorney's fees incurred by Tristar, resulting therefrom.

18. TITLE

The title and ownership of GPA's stored product shall, at all times, remain with GPA or its assignee or GPA.

19. VESSEL SPECIFICATION

GPA agrees to charter vessels or cause its Fuel Oil Supplier and Fuel Oil Purchasers to charter vessels on the basis that they shall be United States Coast Guard Approved and that on this basis such vessels shall also meet any and all financial responsibility requirements as necessitated by operating in the United States waters.

GPA also agrees to charter vessels or cause its Fuel Oil Supplier and Fuel Oil Purchasers to charter vessels that meet Tristar's vessel vetting requirements and be pre-approved by Tristar. Vessels will be evaluated and accepted on their last two SIRE/CDI records and are required to have a satisfactory current SIRE/CDI report on record within the last twelve months (six months for vessels with age over 15 years) subject to the vessel remaining under the same management and no outstanding Port State Inspection deficiencies. Tristar's approval of vessels will not be reasonably withheld. Any comments or non-approval by Tristar on the nominated vessel will be made in a timely basis to allow GPA or its Fuel Oil Supplier or Fuel Oil Purchaser to have the vessel shortfalls corrected or have another vessel nominated and ensure that a suitable vessel is cleared for timely delivery or receipt of cargo to or from GPA."

20. ARBITRATION

Any dispute arising hereunder shall be processed in accordance with the provisions of the Government Claims Act 5, §6000 et seq., and other applicable Guam law.

21. SUBSTORAGE

The GPA may make the storage available to third parties, in whole or in part, either by assignment or sub-contract. Should sub-storage operations add significantly to the complexity of the operations, GPA agrees to pay any defensible out-of-pocket claim by Tristar resulting from those operations. GPA shall not be relieved of responsibility hereunder to Tristar as a result of any sub-storage assignment or contract. Tristar agrees that, upon request by GPA, it will deal directly with GPA's counterpart under such assignment or subcontract with regard to Tristar's obligations hereunder, such as receipt of notices of payments for losses.



**STORAGE AGREEMENT
TTGI-SA-2013**

22.ASSIGNMENTS TO AFFILIATE/SUCCESSOR

Tristar may at any time assign or transfer its rights, interests and obligations under this Agreement to a Tristar affiliate by giving written notice of such assignment. An affiliate means a company which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Tristar. For this purpose, control means the director indirect ownership of in aggregate fifty per cent or more of voting capital. Any assignment or transfer by Tristar to a third party shall require the prior written consent of the GPA, which consent shall not be unreasonably withheld.

GPA may assign and delegate all of its rights and obligations hereunder in whatever form it determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of its assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon any such delegation and assumption of obligations, GPA shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. However, GPA may not assign or delegate all of its rights or obligations under this Agreement without Tristar's prior written consent, which shall not be unreasonably withheld, and any purported assignment or delegation absent such consent is void.

23.CHANGE OF LAW

Should U.S. or local law, rule or regulation change, either by reason of legislative or administrative mandate or judicial interpretation, in a manner that it would expose Tristar to a significant increase in operating costs (greater than \$100,000 per annum) or liabilities, then Tristar shall promptly provide written notice of occurrence or likely occurrence of that event to GPA and shall, in good faith, attempt to cooperatively share the costs of the change by amendment to this Agreement. In the event that the parties are unable to agree, Tristar may terminate this Agreement as of the effective date of the change without either party having further liability to the other, except for matters arising before the effective date of such termination.

24.APPLICABLE LAW

This Agreement shall in all respects be governed by the laws of the Territory of Guam. Nothing herein shall be construed so as to require the commission of any act contrary to law and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail but the provision of this document which is affected or curtailed and limited only to the extent necessary to bring it within the requirements of the law without invalidating or affecting the remaining provisions of this Agreement.

25.PUBLIC UTILITIES COMMISSION

The Parties recognize that considering that the total expense for the GPA for the entire term of this Agreement exceeds US\$1,500,000, this Agreement shall be subject to the review and approval of the Public Utilities Commission ("PUC"). If by September 1, 2013, said approval by the PUC has not yet been secured by GPA, this Agreement shall be deemed valid and enforceable on a month-to-month basis beginning September 1, 2013.



**STORAGE AGREEMENT
TTGI-SA-2013**

The GPA shall be solely responsible for securing the appropriate approval from PUC, and warrants that the month-to-month arrangement set forth above is allowed under applicable laws, rules and regulations. The GPA shall indemnify Tristar against, and hold Tristar harmless from any liability, damage, cost or expense it may incur by reason of claim, action or suit caused by or arising out of the failure of GPA to obtain PUC's approval or its failure to comply with applicable laws, rules and regulations.

26. TANK SUBSTITUTION FOR MAINTENANCE AND OTHER PURPOSES

Following the written request of Tristar and only with the subsequent written approval of GPA, Tristar may provide the Available Storage with tanks other than those detailed in the Agreement to enable Preventative Maintenance, Tank Cleaning and Internal Inspections, and Tank Farm optimization, provided:

- a. The Available Storage provided shall not be less than **278,500** barrels nominal capacity;
- b. The storage tank configuration proposed is determined by GPA to be entirely suitable for GPA's use, and no additional costs will arise in GPA's operations from the alternate configuration;
- c. Tanks are for GPA's sole use;
- d. All works associated with tank substitution, and expenditure on tanks shall be undertaken at Tristar's sole cost;
- e. During the execution of tank substitution works, GPA's product in tank bottoms or pipelines which cannot be recovered at a commercially reasonable cost shall be considered as an acceptable product loss, not subject to the Excess Product Loss provision in Section 11. Tristar agrees to work with GPA to maximize the recovery.
- f. Tristar will pay the cost of an independent surveyor to certify the equivalent suitability of substitute tanks for the intended service and to survey the quantities and quality of any transfers that take place during a tank change.
- g. Tristar and GPA agree that within the 2 year term of this contract, Tristar will substitute tanks as set out in Schedule B in order to conduct inspection and preventive maintenance on tank T1902.

27. FEES FOR TANK SUBSTITUTION

- a. The storage fee shall be adjusted pro-rated to the Available Storage versus the contracted capacity of **422,150** bbls. If substituted tanks have a capacity in excess of **422,150** bbls, then GPA are entitled to use the excess capacity at no additional cost. For example, if the Available Storage was reduced to **278,500** bbls, the monthly fee will be adjusted to **278,500/422,150** or **66%** of the applicable monthly fee.
- b. Where the Available Storage is substituted other than at the beginning of the month, the adjusted fee will be applicable for the number of days in the month that the

**STORAGE AGREEMENT
TTGI-SA-2013**

adjusted Available Storage was available for GPA's use. For example, if the Available Storage was changed to **278,500** starting from the 11th of the month, the adjusted fee will be applicable for the period 11th to the end of the month, while the original applicable will be applied for the first 10 days of the month.

28. TRISTAR FUEL OIL BUNKER BUSINESS

Tristar may store High Sulfur Fuel Oil (HSFO) in any other tank at the Agat Terminal Facility. This fuel may be stored for possible use as bunker fuel for vessels visiting and ported at Guam which uses HSFO, if Tristar wishes to continue to operate this bunkering business during the currency of this Storage Agreement. The storage of GPA's HSFO shall at all times be entirely segregated and sealed from Tristar's storage of HSFO. Common discharge pipelines and the pipeline to F-1 dock shall continue to be used by Tristar in undertaking the operation of this business. Tristar agrees that GPA may at GPA's sole cost employ an independent Auditor from a major audit firm to verify the accounting of Tristar's HSFO business, and further Tristar agrees to fully cooperate in any such Audit.

29. EVENT OF DEFAULT

An Event of Default shall be deemed to have occurred upon the happening of any one or more of the following events:

- (a) A Party commits a substantial breach of a material obligation under this Agreement;
- (b) A Party has caused the tanks and pipelines subject to the Agreement to be attached, levied, encumbered, or subject of writ of execution; or
- (c) If a Party shall be adjudged bankrupt, or become insolvent, or file for voluntary bankruptcy or be subjected to involuntary bankruptcy proceedings, enter receivership proceedings, or make an assignment for the benefit of creditors.

Upon the occurrence of an Event of Default, the Party not in default may serve written notice of default upon the Party in default. The Party in default shall be obligated to cure the default within the ninety (90) days from its receipt of the notice of default or, in the case of a default within ninety (90) days from its receipt of the notice of default or, in the case of a default which is capable of remedy but not within the said ninety (90) days, shall diligently proceed to cure the default by taking active, effective and continuing steps to do so until such default is in fact cured within a reasonable period of time. Otherwise, the Party not in default shall, without prejudice to its rights and remedies at law, have the right to terminate this Agreement, by serving on the Party in default a notice of termination, for cause, at least sixty (60) days prior to the effective date of termination.

30. INDEMNIFICATION

Notwithstanding the provisions of the other Sections in this agreement (Sections 10, 11, 16 and 17), the Pipeline Agreement dated March 01, 2013 Each party agrees to indemnify the other against, and to hold it harmless from, any damage, cost or expense either of them may incur by reason of any claim, action or suit caused by or arising out of the willful act or negligence of the other party. Damage, cost, and expense, as provided above shall include reasonable attorney's fees adjudged against either party, or which either party may incur by reason of said claim, action or suit. In the event of the assertion of any claim, action, suit or assessment for penalty, or regulatory action

**STORAGE AGREEMENT
TTGI-SA-2013**

against Tristar by reason of any liability or assertion thereof of the Oil Pollution Act of 1990, In addition to the foregoing, the parties hereby agree that Tristar shall have full control over the defense of such matters, including without limitation, the choice of counsel and settlement for which it shall be entitled to indemnity for the cost thereof as above provided.

31.INSURANCE

a. Upon the execution of this Agreement, GPA shall secure and maintain at its own expense the following Insurance:

- i) Property Insurance for GPA's product stored at the Agat Terminal and pipelines.
- ii) Oil spill and spill clean-up Insurance in an amount of not less than One Hundred Million and No/100 Dollars (\$100,000,000.00) which shall insure against damages and expenses of any kind regardless of cause, including but not limited to the clean-up expenses resulting from the spill or leakage of fuel oil of GPA at any point between GPA's ship loading flange to the point of Interconnection to **B Line** of the Internal pipelines inside the Agat Terminal.
- iii) Public liability Insurance in minimum amounts of One Hundred Million and No/100 Dollars (\$100,000,000.00) for loss from an occurrence resulting in bodily injury to or death of one person; One Hundred Million and No/100 Dollars (\$100,000,000.00) for total personal injury and death loss from any one occurrence; and One Hundred Million and No/100 Dollars (\$100,000,000.00), for loss and damage of any kind of property, including but not limited to, Tristar's pipeline and equipment between GPA's ship loading flange to the point of Interconnection **B Line** of the Internal pipelines inside the Agat Terminal, arising in and any manner from GPA's use and benefit of the Tristar tanks and pipeline and manifold equipment pursuant to this Agreement. GPA confirms that its public liability Insurance policy includes contractual liability coverage and that lease, license and use agreements are not excluded thereunder.
- iv) In the event Tristar agrees in writing to allow GPA to assign its rights and under this Agreement, it may satisfy the foregoing requirements by having its Assignee supply the foregoing Insurance provided that Tristar is made an additional insured and proof thereof and if said coverage is given to Tristar.
- v) In the event additional Insurance is required by law to be carried by GPA or its Assignee, GPA or its Assignee shall promptly acquire the same.
- vi) Within fifteen (15) days of securing the required policy of Insurance and not later than thirty (30) days prior to the expiration of any policy of Insurance and in case of additional Insurance not later than the effective date of such requirement, GPA or its assignee shall provide Tristar with a certificate of Insurance evidencing compliance with foregoing provisions.
- vii) GPA shall procure from its insurer, in form satisfactory to Tristar, a waiver of the insurer's rights of subrogation against Tristar arising by reason of any payment made under GPA's Insurance policy.

**STORAGE AGREEMENT
TTGI-SA-2013**

30. NOTICE

For purposes of any notice to be given hereunder by one party to the other, following shall be respective address and facsimile numbers:

Tristar: 414 West Soledad Avenue
GCIC Building, Suite 604
Hagatna, Guam 96910
Facsimile No.: 477-1077

GPA: Post Office Box 2977
Hagatna, Guam 96932
Facsimile No.: 648-3290

Any notice required to be given hereunder may either be physically delivered to the other party, or delivered by facsimile transmission from one party to the other provided that the facsimile machine of the sending party is able to confirm that the receiving party received the same and provided that notice thereof be thereupon mailed by United States regular mail, postage pre-paid. Any such notice by facsimile, shall be deemed to have been given on the date of the facsimile transmission, provided that such transmission shall have been a business day.

31. ATTORNEY'S FEES

In the event action or suit is brought to construe or enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of its attorney fees by the opposing party in such amounts as are determined by the court to be reasonable, whether determined at trial or upon appeal, and together with cost therein incurred.

32. ASSIGNMENT

Tristar shall have the right to assign this Agreement to a third party. GPA, however, may only assign this Agreement upon the proper written consent to Tristar.

33. TRISTAR GENERAL BUSINESS PRINCIPLES AND HSSE POLICY:

Tristar and GPA shall comply, and shall respectively ensure that any person employed by or under contract with it, including its GPAs, complies with Tristar's Health, Safety, Security and Environmental policy set out in Appendix A hereof while performing under this Agreement.

For the mutual benefit of both parties, Tristar and GPA shall respectively ensure that it and its GPAs' respective officers, employees and agents perform this Agreement in accordance with the provisions of the Tristar's Business Policy set out in Appendix B.

**STORAGE AGREEMENT
TTGI-SA-2013**

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

DATED this 1st September, 2013

TRISTAR:

TRISTAR TERMINALS GUAM INC.

By: 

Name: Kazhakuttam Vikraman

Title: General Manager

GPA:

GUAM POWER AUTHORITY

By: 

Name: Joaquin Flores

Title: General Manager

**STORAGE AGREEMENT
TTGI-SA-2013**

SCHEDULE A

Storage Tank Details

Tank No.	Diameter (FT)	Height (FT)	Nominal Capacity (bbls)	Maximum Safe Capacity (bbls)	Percent of Contracted Capacity (%)
T1902	240	56	450,000	422,150	100.0%
TOTAL			450,000	422,150	100.0%

Contracted Capacity is 422,150 bbls

SCHEDULE B

**Storage Tank
Details**

Tank No.	Diameter (FT)	Height (FT)	Nominal Capacity (bbls)	Maximum Safe Capacity (bbls)	Percent of Contracted Capacity (%)
T1903	196	56	300,000	278,500	66.0%
TOTAL			300,000	278,500	66.0%

Contracted Capacity is 422,150 bbls

