

**FOREIGN-TRADE ZONE NO. 94
USAGE DRIVEN SITE OPERATING AGREEMENT**

This Agreement is entered into as of _____, _____ by and between the **City of Laredo**, a home rule city, chartered pursuant to the Constitution and laws of the State of Texas (“GRANTEE”) and _____, a Texas corporation (COMPANY);

WITNESSETH, That:

WHEREAS, the Foreign-Trade Zones Act of June 18, 1934, as amended, authorized and empowered the Foreign-Trade Zones Board (FTZB) to grant to public and private corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States of America; and

WHEREAS, GRANTEE has been authorized by Sections 681.051 and 681.052 and Section 681.166 of Title 15, Subtitle C of the Texas Business and Commerce Code to apply for and accept a grant from the FTZB to establish, operate and maintain a Foreign-Trade Zone in Webb County, Texas; and

WHEREAS, the FTZB issued a Grant of Authority to the City of Laredo on November 22, 1983 (Board Order No. 235) establishing the Laredo Foreign-Trade Zone (hereinafter referred to as “FTZ No. 94”) with the City of Laredo as the Grantee; and

WHEREAS, GRANTEE filed an application with the FTZB to reorganize FTZ No. 94 under the Alternative Site Framework which was approved on August 29, 2012 (Board Order 1852); and

WHEREAS, GRANTEE desires to offer foreign-trade zone (hereinafter referred to as “FTZ”) utilization to entities located within its Service Area, as defined in Board Order 1852 (all of Webb County); and

WHEREAS, the parcel of land described and/or depicted on Exhibit A (hereinafter referred to as “the Usage Driven Site”) is located within the Service Area of FTZ No. 94; and

WHEREAS, the parties desire COMPANY to act as a Foreign-Trade Zone Operator, as defined at 19 C.F.R. 146.1, with respect to Zone activities to be conducted at the Usage Driven Site; and

WHEREAS, COMPANY, upon the terms and conditions herein set forth, is willing to assume the responsibilities of the Foreign-Trade Zone Operator and undertake the operational management of foreign-trade zone activities at the Usage Driven Site;

NOW, THEREFORE, the parties hereto, in consideration of the mutual agreements herein contained and promises herein expressed, and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, do hereby agree as follows:

1. DEFINITIONS

The following words shall have the following meanings when used in this Agreement:

1.1 "The Act" shall mean the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998-1003; 19 USC 81 81a-81u), as amended.

1.2 "The Regulations" shall mean collectively the Regulations currently published in the Code of Federal Regulations at Title 15, Part 400, and Title 19, Part 146, as such Regulations may be amended in the future.

1.3 "USCBP" shall mean United States Customs and Border Protection.

1.4 "The Operating Procedures" shall mean such operating procedures as may be required of COMPANY by USCBP.

2. AGREEMENT TO OPERATE

GRANTEE hereby grants, subject to all the terms, covenants and conditions set forth in this Agreement and to the provisions, conditions and restrictions of the Act and the Regulations and to other applicable law, permission to COMPANY to function as the Foreign-Trade Zone Operator at the Usage Driven Site. This is a non-exclusive grant of permission and other entities may be granted authority by GRANTEE to function as a Foreign-Trade Zone Operator at other sites within FTZ No. 94.

3. RESPONSIBILITY OF COMPANY

3.1 Authorization and General Responsibility - GRANTEE hereby authorizes COMPANY to provide, and COMPANY assumes full responsibility for providing, the operational management services at the Usage Driven Site. COMPANY agrees to conduct its operations at the Usage Driven Site in accordance with the terms and conditions of this Agreement and in compliance with the Act, Regulations, USCBP Directives and all other applicable laws and regulations during the term hereof, including any renewals. COMPANY has the right to engage the services of a subcontractor to undertake the operational management of foreign-trade zone activities on its behalf. If COMPANY engages the services of a subcontractor, COMPANY agrees to remain primarily liable for the performance of all obligations herein.

3.2 Specific Responsibility - COMPANY will be responsible for the handling of the day-to-day operations at the Usage Driven Site. These operations include, but are not limited to

the following:

- (a) Establish and implement Operating Procedures to be followed at the Usage Driven Site which will satisfy the regulatory requirements of USCBP;
- (b) Ensure the preparation and filing of the applicable documentation with USCBP for admission, processing and removal of merchandise at the Usage Driven Site;
- (c) Enter into an agreement, where necessary, with the United States Census Bureau regarding the furnishing of statistical copies of CBP Forms 214 (CBP Form 214A) and other statistical information;
- (d) Keep tallies of all merchandise admitted into and delivered from the Usage Driven Site;
- (e) Provide the Annual Report information and data covering activities COMPANY conducted at the Usage Driven Site;
- (f) Prepare all documentation required by USCBP and the FTZB to be prepared by a Foreign-Trade Zone Operator;
- (g) Ensure that the proper Customs Form 301 Foreign-Trade Zone Operator's Bond is maintained and kept current with USCBP covering COMPANY activities at the Usage Driven Site;
- (h) Ensure the physical security required by USCBP is implemented at the Usage Driven Site;
- (i) Establish an electronic interface with USCBP through its automated commercial system, when the specifications and requirements of that interface have been developed and implemented by USCBP.

COMPANY acknowledges that it has read, understands and reviewed the Act, Regulations, USCBP Directives and all applicable laws and regulations. COMPANY separately and independently covenants with GRANTEE that it shall, at all times conform to the requirements of the Act, Regulations, USCBP Directives, and all applicable laws and regulations.

3.3 Correspondence with FTZB. All correspondence to the FTZB concerning the activities conducted by COMPANY at the Usage Driven Site shall be done through GRANTEE. With the exception of the Annual Report that GRANTEE is required by the Act to file with the FTZB, GRANTEE shall provide COMPANY with copies of all correspondence GRANTEE intends to send to the FTZB concerning COMPANY and COMPANY shall approve

all such correspondence prior to its submission to the FTZB, with such approval not to be unreasonably withheld.

4. RESPONSIBILITIES OF GRANTEE

4.1 Foreign-Trade Zone Forms - COMPANY is authorized to execute in its own name CBP Forms 214 and 216 in its operation of the Usage Driven Site. Without limiting GRANTEE's rights to inspect and audit as provided herein, the parties specifically recognize that GRANTEE is not obligated to, and does not intend to, monitor the day-to-day activity of COMPANY at the Usage Driven Site and there shall be no representation that the GRANTEE has any knowledge, actual or constructive, of the quantity, character, status, designation, identification, or time of admission, transfer or release of goods into or from the Usage Driven Site and that any information is the representation solely of COMPANY and not of GRANTEE.

4.2 Annual Report - GRANTEE is responsible for furnishing the Annual Report to the FTZB from the information given to it by COMPANY pursuant to paragraph 3.2(e) of this Agreement. COMPANY shall deliver to GRANTEE within forty-five (45) days of the close of the reporting period as specified by the FTZB, through the Online FTZ Information System (OFIS) account established for COMPANY by GRANTEE, the data and information required to complete the Annual Report for the FTZB. In addition, COMPANY shall provide GRANTEE, by the above referenced date, a separate written certification signed by an authorized representative of COMPANY that to the best of his knowledge and belief, the data and information provided through the OFIS is true, correct and accurate. Unless GRANTEE has provided COMPANY with a written extension of time to submit the above information and data for the Annual Report, COMPANY shall pay GRANTEE \$100 per calendar day for each and every calendar day after the aforementioned submission date that said information and data is not submitted through OFIS by COMPANY for GRANTEE's review.

5. RECORDKEEPING, INSPECTION AND AUDIT

COMPANY agrees to promptly provide GRANTEE with any information concerning operations at the Usage Driven Site as GRANTEE may be required to submit to the FTZB, to USCBP, or to any other governmental agency. COMPANY warrants that all information provided to GRANTEE for submission to a governmental agency, will be true and correct in all material respects to the best of the COMPANY's knowledge at the time such information is provided. COMPANY agrees to promptly update any information provided to GRANTEE that is later determined to be or have become incorrect.

All financial and operations information concerning COMPANY's activities at the Usage Driven Site shall be kept confidential except that which is required to be made public by the FTZB or any other public agency. COMPANY agrees to cause all financial and accounting records concerning the operations at the Usage Driven Site to be retained for five (5) years after the act or occurrence recorded or after the merchandise covered by such records has been forwarded from the Usage Driven

Site and the CBP Form 214 File Folder has been closed, whichever is longer. GRANTEE shall have the right upon notice and during normal business hours at any time and from time to time, at its own cost and expense, to conduct inspections and audits of COMPANY's records in connection with its operations at the Usage Driven Site. COMPANY, its employees and agents shall cooperate fully in connection therewith, and at no extra cost to GRANTEE, such cooperation to include but not be limited to making available to GRANTEE for on-site physical inspection or copying the books, records and accounts which COMPANY is required to keep for the Usage Driven Site by USCBP, and answering inquiries to be made in such manner or form as GRANTEE deems appropriate (including personal interviews) covering any aspect of COMPANY's operations under this Agreement at the Usage Driven Site. Nothing herein is intended to preclude COMPANY from asserting against GRANTEE a claim of privilege or confidentiality regarding its records that COMPANY could assert against USCBP, the FTZB or a successor agency, but nothing herein is intended to preclude GRANTEE from contesting such claims.

COMPANY shall promptly notify GRANTEE of any other reports requested by any government agency, and shall, upon request, provide copies of all such reports and investigative documentation to GRANTEE. In the event that any audit, inspection or examination by USCBP, the FTZB, or GRANTEE discloses that books, records or operational procedures of COMPANY are not in conformity with the requirements of this Agreement, COMPANY shall take all actions necessary to correct such deficiencies.

6. ADMINISTRATIVE EXPENSE

6.1 USCBP Expenses - COMPANY shall pay the full cost of any activation fee and annual fee imposed by USCBP attributable to the COMPANY operations at the Usage Driven Site.

6.2 USCBP Bond Expense - COMPANY shall pay the full cost of any USCBP Bond required by USCBP for the COMPANY operations at the Usage Driven Site.

6.3 Reimbursement by GRANTEE - GRANTEE shall not be obligated to reimburse COMPANY for any expenses incurred by COMPANY in connection with its operations at or administration of the Usage Driven Site, including, without limitation, expenses covering or relating to any of the following: assignment to the Usage Driven Site of USCBP employees; the obtaining of such surety bond as may be required of COMPANY by USCBP; keeping of books, records and accounts in the manner required by the Regulations; any costs incurred by COMPANY pursuant to the Regulations and any other expenses involving in any way the administration or operation of the Usage Driven Site or COMPANY's compliance with the terms of this Agreement. All such expenses shall be the sole responsibility of COMPANY.

6.4 Reimbursement by COMPANY - COMPANY will pay GRANTEE fees pursuant to the Zone Schedule for FTZ No. 94, a copy of which is attached as Exhibit B. The parties agree that these amounts are fair and reasonable compensation for the services to be rendered by the

GRANTEE in assisting COMPANY with regard to its operations within FTZ No. 94. The Fees (Sponsorship, Activation, Alteration and/or Annual) are on a per site basis so that should COMPANY, in the future, function as the Foreign-Trade Zone Operator at multiple sites, COMPANY will be responsible for each applicable Fee at each site. These fees are published in the FTZ No. 94 Zone Schedule and are subject to review and modification every year this Agreement remains in effect.

6.5 Fines - Without limiting the generality of any other provision in this Agreement, COMPANY shall reimburse GRANTEE for any fine ultimately imposed on GRANTEE by USCBP as the result of any act or omission of COMPANY under this Agreement. In the event any such fine is imposed or if GRANTEE is informed that any such fine is contemplated, GRANTEE shall promptly notify COMPANY in writing and shall provide COMPANY the opportunity to defend against such fine.

7. RELATIONSHIP BETWEEN GRANTEE AND COMPANY

GRANTEE and COMPANY are not and shall not be considered as joint ventures, partners, or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in this Agreement. COMPANY and GRANTEE agree not to represent to any one that they are agents of one another or have any authority to act on behalf of one another except as set forth in this Agreement.

8. INDEMNIFICATION

COMPANY shall indemnify and hold harmless GRANTEE and its City Council, officers, employees and representatives from all claims and demands of third persons, including, but not limited to, claims and demands for death, for personal injuries, for property damage and for other loss, arising out of or connected or related in any way to the activities of COMPANY, its agents, officers, representatives, employees or contractors at or in connection with the Usage Driven Site, or its responsibilities undertaken in connection therewith. Without limiting the generality of the foregoing, it is understood that COMPANY recognizes that this indemnity includes within its coverage all claims and demands by any governmental agency, department or other entity, including, without limitation, any claim or demand by USCBP for lost duty, penalties, fines and liquidated damages. COMPANY shall defend GRANTEE against any such claim or demand. In the event any claim or demand is asserted against GRANTEE in connection with the operation by COMPANY at the Usage Driven Site, GRANTEE shall promptly notify COMPANY in writing and shall provide COMPANY the opportunity to defend against such claim or demand.

9. INSURANCE

COMPANY agrees to carry with an admitted insurance company or companies approved by GRANTEE, licensed to do business in the State of Texas and keep in effect during the term of this Agreement, liability insurance for the Usage Driven Site for the benefits of

GRANTEE and with GRANTEE shown as an additional insured, including the obligation of the insurer to defend GRANTEE, in any action covered by said insurance in the following amounts:

9.1 Commercial General Liability Insurance - Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage. Contractual Liability must be maintained covering the COMPANY obligations contained in the contract.

9.2 Commercial Automobile Liability Insurance - Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

9.3 Workers Compensation Insurance - Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

9.4 Additional Insured - GRANTEE shall be named as an additional insured with respect to General, and Auto Liability. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions. A waiver of subrogation in favor of GRANTEE shall be contained in the Workers' Compensation and all liability policies. All insurance policies shall be endorsed to require the insurer to immediately notify GRANTEE of any material change in the insurance coverage. All insurance policies, which name GRANTEE as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

9.5 Certificates of Insurance - Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing, warranting and setting forth all endorsements and insurance coverages according to requirements and instructions contained herein. The policies shall specifically set forth the notice-of-cancellation or termination provisions to GRANTEE. Upon request, COMPANY shall furnish GRANTEE certified copies of all insurance policies.

10. ADVERTISING

GRANTEE shall have, at all times hereunder, the right to use aggregate, general data concerning COMPANY operations at the Usage Driven Site in marketing FTZ No. 94. Without limiting any other provision of this Agreement, GRANTEE specifically reserves the right to respond to press inquiries concerning FTZ No. 94.

11. TERM AND RENEWAL

This Agreement is to become effective upon its execution by COMPANY and GRANTEE. Unless sooner terminated as herein provided, this Agreement shall remain in effect for an initial term of five (5) years from such effective date. Thereafter, this Agreement shall be automatically renewed for four (4) renewal terms of five (5) years each, unless either party has given written notice to the other party at least six (6) months prior to a renewal date that such party desires not to renew in which case this Agreement shall expire as of said renewal date if such notice has been given by GRANTEE or COMPANY.

12. RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

12.1 Termination by COMPANY - COMPANY shall have the right to terminate this Agreement and all rights and obligations hereunder upon ninety (90) days prior written notice to the GRANTEE.

12.2 Withdrawal of Grant - If the grant of authority for FTZ No. 94 shall be revoked or cancelled and as a result thereof GRANTEE permanently is without authority to maintain FTZ No. 94, this Agreement shall terminate and COMPANY shall have no claim against the GRANTEE by reason of such revocation or cancellation, and COMPANY shall have no further interest in the subject matter of this Agreement. Should GRANTEE be prevented from continuing the maintenance of FTZ No. 94 by statute, legal regulation or order of any court, GRANTEE may terminate this Agreement by written notice to COMPANY. COMPANY shall have standing to institute appropriate legal or administrative proceedings to contest the validity or applicability of said statute, legal regulation, or court order, or to file an appeal from said court order, and should said legal or administrative proceedings or appeal result in a decision by a court or administrative body of competent jurisdiction that GRANTEE is not prevented from continuing the operation of FTZ No. 94 by virtue of said statute, legal regulation, or court order, then this Agreement shall be reinstated in full force and effect and GRANTEE and COMPANY shall be restored to their former positions hereunder as if said termination had never taken place.

12.3 Termination by GRANTEE - GRANTEE shall have the right, if COMPANY is in breach of its obligations under this Agreement, to terminate this Agreement and all rights and obligations hereunder, provided that GRANTEE has given written notice to COMPANY regarding the breach of this Agreement and COMPANY fails to either pay any sums due within forty-five (45) days of receipt of such notice or, where correction of such deficiency requires a longer period and COMPANY has failed to commence to correct such deficiency within forty-five (45) days of receipt of such notice and to correct such deficiency within a reasonable period thereafter. Additionally, the GRANTEE shall have the right to terminate this Agreement immediately for cause due to cancellation of the COMPANY FTZ Operator's bond, the expiration of its liability insurance policy or the suspension of the grant by the FTZB.

12.4 Continuing Obligations of COMPANY Upon Termination - Upon termination of this Agreement for any reason, COMPANY shall remain responsible for all

merchandise in zone status, and for compliance with all applicable Customs laws, regulations, and other requirements, until all Users' merchandise in zone status (except domestic status for which no permit is required) has been either removed from the Usage Driven Site or transferred to the FTZ Operator's Bond of another entity. In the event that activation of the Usage Driven Site is suspended or revoked for any reason, and the GRANTEE is not responsible for said suspension or revocation, COMPANY shall remain liable for reimbursement of all costs or expenses incurred by USCBP and or the FTZB in connection with the suspension or revocation of activation of the Usage Driven Site which are payable by COMPANY and or GRANTEE; and all costs or expenses incurred by the GRANTEE either directly or indirectly in connection with such suspension or revocation.

Additionally, upon any termination of this Agreement, whether pursuant to expiration of the term, upon default or for any other reason, COMPANY shall remain liable for all accrued but unpaid expenses or fees, all duties, taxes, charges, fees, penalties, fines, assessments and liquidated damages payable in connection with the merchandise of the Users and for any other amounts payable by COMPANY under this Agreement and pursuant to the indemnification provisions of paragraph 8.

13. NOTICES

All notices to GRANTEE shall be hand delivered or sent by certified mail, return receipt requested, addressed to:

**City Manager
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579**

with a copy to:
**Laredo International Airport
Foreign-Trade Zones No. 94
FTZ Program Manager
5210 Bob Bullock Loop
Laredo, Texas 78041**

or at such other address as the GRANTEE designates in writing.

All notices to COMPANY shall be hand delivered or sent by certified mail, return receipt requested addressed to:

or at such other address as COMPANY designates in writing.

The date of delivery shall be the date of hand delivery or as evidenced by the postal return receipt.

14. MISCELLANEOUS

14.1 Construction - This Agreement shall be governed by and construed in accordance with the Foreign-Trade Zones Act, the Regulations adopted thereunder and all amendments thereto, and the applicable laws of the State of Texas.

14.2 Counterparts - This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same Agreement.

14.3 Further Instruments and Actions - Each party shall deliver such further instruments and take such further action as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.

14.4 Headings - Headings and captions in this Agreement are solely for the convenience of reference and shall not affect its interpretation.

14.5 Integration - This Agreement is intended to set forth the precise relationship between the parties hereto as to Foreign-Trade Zones operations. This instrument contains the entire agreement of the parties, and no representation, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect.

14.6 Severability - If any provision of this Agreement is declared void or ineffective, that declaration will not affect the validity of any other provision of this Agreement.

14.7 Waiver - No failure of either party hereto to exercise any right or power given it hereunder, or to insist upon strict compliance by the other party of any obligation hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of the party's right to demand exact compliance with the terms hereof.

14.8 Gender - All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed construed to include any other number, singular or plural, any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require.

14.9 Binding Effect - This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Provided, however, that this paragraph is in no way to be construed as granting to COMPANY the right to assign this Agreement or any interest herein without the express prior written approval of GRANTEE. An assignment or transfer to an affiliate, including, but not limited to, a parent company or a wholly-owned or majority owned subsidiary of COMPANY shall not require prior written approval of

GRANTEE. COMPANY will provide prompt written notice to GRANTEE of any assignment of this Agreement. Any successor in interest of either party shall be subject to and bound by the terms of this Agreement.

14.10 Amendment - This Agreement cannot be changed orally but only by an agreement in writing by all parties hereto.

14.11 Exhibits - All exhibits or schedules referred to herein, or which from time to time may be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if fully set forth herein. Any exhibit or schedule incorporated herein may be adjusted without the necessity of formal amendment of this Agreement. Upon adjustment of any exhibit or schedule, a revised exhibit or schedule shall be prepared by GRANTEE and executed by the parties hereto. Each exhibit or schedule as of its effective date shall be deemed a part of this Agreement at all times so long as it bears the signatures or initials of both parties hereto.

SIGNED IN TRIPLICATE ORIGINALS on this the ____ day of _____.

CITY OF LAREDO

BY: _____
ROBERT A. EADS
CITY MANAGER

ATTEST:

BY: _____
JOSE A. VALDEZ
CITY SECRETARY

APPROVED AS TO FORM:

BY: _____
KRISTINA L. HALE
CITY ATTORNEY

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

BY: _____

NAME (PRINT) _____

TITLE (PRINT) _____

STATE OF _____)(

COUNTY OF _____)(

This instrument was acknowledged before me on the _____ day of _____,
_____, by _____, of _____

NOTARY PUBLIC