

**PAYMENT IN LIEU OF TAXES AGREEMENT
FOREIGN-TRADE ZONE SITE**

THIS AGREEMENT (“Agreement”) is entered into by and between _____, a _____ Company (“the Operator”), and Harris County, acting on behalf of **itself, Harris County Flood Control District, and Harris County Hospital District**, (“the County”).

A. RECITALS

- Port of Houston Authority (PHA) is Grantee of Foreign-Trade Zone (“FTZ”) No. 84.
- The Operator desires participation in the FTZ program through the expansion of Foreign-Trade Zone #84 to include space located on tract(s) comprising a total of _____ acres at _____ in Harris County, Texas _____, **as** described in Exhibit B (the “FTZ Site”), for which the Operator seeks **designation** by the Foreign-Trade Zones Board (the “Board”) of the United States Department of Commerce, and/or **activation** by the Bureau of Customs and Border Protection of the United States Department of Homeland Security (“Customs”).
- The Operator is operator of the subject FTZ Site.
- The Operator seeks an executed Letter of Non-Objection (“Letter”) from the County which is required to achieve **designation and/or activation**, which the County shall provide only if the Operator contractually commits that no financial harm and/or lost revenue shall be incurred by the County as a result of **designation and/or activation** of the subject FTZ Site.
- 19 U.S.C. § 81o(e) may provide a federal exemption from state and local ad valorem taxes for tangible personal property imported from outside the U.S. and held in a FTZ for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing; and tangible personal property produced within the United States and held in a FTZ for exportation, either in its original form or as altered by any of the above processes.
- Inventory qualifying under 19 U.S.C. § 81o(e) and held in any activated FTZ may be exempt from state and local ad valorem taxes.
- The Interlocal Agreement entered into between Harris County and PHA, on May 21, 2013, assured the County that the Grantee will not give its required approval to any designation and/or activation of the FTZ Site, unless the County has approved and delivered a Letter of Non-Objection to such designation and/or activation. Furthermore, PHA will provide in its Operators Agreement with the Operator within such subject FTZ Site, a requirement that the Operator comply with the terms of this Agreement, and that the Operator’s default under its Payment in Lieu of Taxes (“PILOT”) Agreement with the County for such subject FTZ Site will, upon notice of such default by the County to PHA, also be a default under the Port's Operators Agreement and result in the initiation by PHA of Deactivation and/or Deauthorization (as applicable) proceedings for such subject FTZ Site.

- The Operator and the County desire that **designation and activation** of the FTZ Site cause no financial harm or lost revenue to the County.
- Any inaccuracy of the Affidavit, as described in Exhibit E, should constitute grounds for the immediate termination of this Agreement and initiation of proceedings for Deactivation and/or Deauthorization of the subject FTZ Site as applicable.

In consideration of the mutual commitments expressed in this Agreement, the parties agree to the following:

B. DEFINITIONS

When used herein, the listed words have the following meanings:

“Board” means Foreign-Trade Zones Board within U. S. Department of Commerce.

“DEEO” means Harris County Department of Economic Equity & Opportunity.

“Customs” means Bureau of Customs and Border Protection within U.S. Department of Homeland Security.

“FTZ Exemption” means 19 U.S.C. § 810(e) federal exemption for certain inventory and any other potential exemptions from taxation for inventory in a FTZ.

“FTZ Inventory” means any inventory held in the FTZ Site that may qualify for the FTZ Exemption and that would otherwise be taxable by the County.

“FTZ Site” means the tract(s) described in Exhibit B.

“HCAD” means the Harris County Appraisal District.

“Interest” means interest payments on delinquent amounts owed to the County.

“Letter” means executed Letter of Non-Objection from the County issued on behalf of the Operator.

“Payment” means the amount equal to all property taxes on FTZ Inventory that would have been due and payable to the County from the Operator if the FTZ Site had not been designated and activated.

C. OBLIGATIONS

The Operator understands that if any FTZ Inventory receives the FTZ Exemption, the County will suffer lost revenue. Therefore, the Operator agrees to the following:

- a) The Operator agrees to make Payment(s) to the County each year for all FTZ Inventory stored in the FTZ Site as it relates to ad valorem taxes that would have been levied by the County but for the FTZ Exemption. The Operator’s obligation for Payment(s) to the County shall extend to all inventory, whether owned by itself or owned by an affiliated or unaffiliated third-party storing inventory within the FTZ Site. The Operator agrees to disburse such Payment(s) to Harris County in the form of a check payable to “Harris County,” in the amount equal to the ad valorem taxes that would have been due on all FTZ Inventory in the FTZ Site

for the preceding tax year, and before the date such ad valorem taxes would have become delinquent under the Texas Property Tax Code had the Operator, or any other party owning FTZ Inventory in the FTZ Site, not received the FTZ Exemption under 19 U.S.C. §81o(e).

- b) For any FTZ Inventory that does not receive the FTZ Exemption, PILOT Payment(s) shall not be owed to the County. However, if such FTZ Inventory does not initially receive the FTZ Exemption but is later granted the FTZ Exemption, the Operator agrees to disburse Payment(s) to the County in the amount of all ad valorem taxes that would have been due on all FTZ Inventory but for the FTZ Exemption, plus Interest calculated from the original due date and in accordance with “**D. MISCELLANEOUS PROVISIONS.**”
- c) No later than April 15 of each year, as long as this Agreement is in effect, the Operator agrees to furnish: (1) to DEEO, a notarized report detailing ALL inventories stored in the subject FTZ Site and; (2) to HCAD, a copy of such notarized report.
- d) Any additional information that may be requested by DEEO and/or HCAD must be furnished by the Operator within 15 business days thereafter.
- e) Upon execution of this Agreement, the County shall furnish its Letter of Non-Objection, in the form shown in Exhibit F, based on the commitments of the Operator herein that no County entity will suffer lost revenue given that the Operator agrees to forego the benefit of the FTZ Exemption under the FTZ law regarding the County ad valorem taxes and agrees to pay the County for any/all lost revenue for the applicable year(s).
- f) The Operator agrees to pay Interest on Delinquent Amounts. Interest will be calculated as described in “**D. MISCELLANEOUS PROVISIONS.**”
- g) The Operator agrees that this Agreement is necessary for the **designation and/or activation** of the FTZ Site. Therefore, any violation by the Operator or a determination of the invalidity of this Agreement would justify a reversal of the FTZ Site designation and/or activation by the Board and/or Customs. Furthermore, the Operator acknowledges that default under its PILOT Agreement with the County for such subject FTZ Site shall, upon notice of such default by the County to PHA, also be a default under the Operators Agreement, and result in the initiation by PHA of Deactivation and/or Deauthorization (as applicable) proceedings for such subject FTZ Site.
- h) As long as this Agreement is in effect, the Operator shall not modify its FTZ Site boundaries as described in Exhibit B, transfer ownership or leasehold rights in any part of FTZ Site or its operations, or otherwise take any action allowing any party whether affiliated or unaffiliated to operate in the FTZ Site, unless the County, by express action of its Commissioners Court, enters into a new or modified PILOT Agreement with the Operator allowing the boundary modification and/or with such party expressly allowing such transfer of operation.
- i) The amounts payable by the Operator to the County under this Agreement shall in no event exceed the amounts of ad valorem taxes that would have been payable to the County pursuant to the Texas Property Tax Code on FTZ Inventory in the FTZ Site had the Operator and/or any other party owning FTZ Inventory in the FTZ Site not received the FTZ Exemption under 19 U.S.C. §81o(e).

D. MISCELLANEOUS PROVISIONS

1. Governing Law. This Agreement will be interpreted under the laws of the State of Texas.

2. Interlocal Agreement between County and PHA. All definitions and terms set forth in the Interlocal Agreement are applicable to this Agreement, except as otherwise expressly provided in this Agreement.
3. Interest. Interest shall accrue on any Delinquent Amount under this Agreement at the rate provided for in the Texas Property Tax Code as though the Delinquent Amount is a tax payment.
4. Binding Effect. This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, and future occupants of the FTZ Site. It is agreed that each County entity is a beneficiary of this Agreement and shall be entitled to enforce its terms and seek damages for its breach.
5. Entire Agreement. This Agreement supersedes any prior understanding or agreements between the parties with respect to the subject matter hereof and constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and there are no agreements, understandings, restrictions, representations, or warranties among the parties with respect to the subject matter hereof other than those set forth herein or provided for herein.
6. This Agreement Does Not Affect Other Rights, Obligations or Agreements. This Agreement does not supersede, modify, or affect any other agreement that has been or may be entered into between the Operator and any other taxing jurisdiction or any other entity, except as otherwise expressly stated in this Agreement.
7. Modification of Agreement. This Agreement may be modified only by written consent of all parties.
8. Further Assurances. The parties covenant and agree that they will execute such other and further documents as are or may become necessary or convenient to effectuate and carry out the purpose of this Agreement.
9. Severability. To the extent permitted by law, a holding by any court that any part or any provision in this Agreement is invalid, illegal, or unenforceable in any respect, shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been a part of the Agreement.
10. Termination of Agreement. This Agreement shall terminate upon the revocation of FTZ Site status by the Board, but such termination shall not relieve the Operator from its obligation to pay damages as provided in this Agreement.
11. Counterparts. This Agreement may be executed in multiple identical counterparts and when taken together shall constitute one and the same instrument. A facsimile or similar transmission of a counterpart signed by a party hereto or a copy of a counterpart signed by a party hereto will be regarded as an original signed by such party for purposes hereof.
12. Affidavit. This Agreement shall terminate upon the determination by the County of any misrepresentation in the Affidavit and/or this Agreement which should constitute grounds for the immediate initiation of proceedings for Deactivation and/or Deauthorization of the subject FTZ Site, as applicable.
13. Notices. Any notice permitted or required to be given must be in writing delivered in person or by certified U.S. Mail, return receipt requested, to the applicable party addressed as follows:

Operator:

County:

Harris County Department of Economic Equity & Opportunity
Attention:
Judit Haracsek, Director of Economic Development
1001 Preston, Suite 670
Houston, Texas 77002
Phone: (713) 274-1400

EXECUTED on the dates set forth below, but effective as of the last date executed by all the Parties.

APPROVED AS TO FORM

HARRIS COUNTY

CHRISTIAN MENEFEE,
County Attorney

By: _____
Assistant County Attorney

By: _____
LINA HIDALGO
County Judge

Date: _____

Date: _____

By: _____
Signature (must be legally authorized
to sign on behalf of Operator)

Printed Name & Title

Date: _____

ATTEST

By: _____
Signature of Officer to Attest to
Officer's Execution of Agreement
(must be legally authorized
to sign on behalf of Operator)

Printed Name & Title

Date: _____