



425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

Antonio R. Villaraigosa Mayor, City of Los Angeles

Board of Harbor
Commissioners

Cindy Miscikowski
President

David Arian
Vice President

Robin M. Kramer

Douglas P. Krause

Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.

Executive Director

August 21, 2012

Honorable Members of the
City Council of the
City of Los Angeles

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

SUBJECT: RESOLUTION NO. 12-7344 – FOREIGN-TRADE ZONE GENERAL PURPOSE
OPERATING AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR
DEPARTMENT AND LAXFUEL CORPORATION, FTZ 202, SITE 25

Pursuant to Section 373 of the City Charter and Section 10.5 of the Los Angeles Administrative Code, enclosed for your approval is the Foreign-Trade Zone General Purpose Operating Agreement between the City of Los Angeles Harbor Department and LAXFUEL. The Foreign-Trade Zone Operating Agreement, assigned Harbor Department Agreement No. 12-3074, was approved at the June 21, 2012 meeting of the Board of Harbor Commissioners.

RECOMMENDATION:

1. The City Council approve the proposed Agreement No. 12-3074 between the City of Los Angeles Harbor Department and LAXFUEL Corporation;
2. Adopt the determination by the Los Angeles Harbor Department that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully Submitted,

KORLA G. TONDREAULT
Commission Secretary

cc: Trade, Commerce, & Tourism Committee
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Councilman Buscaino, encs.
Christine Yee Hollis, CLA, encs.

Alvin Newman, CAO, encs.
Lisa Schechter, CD4, encs.
Aaron Gross, Government Affairs, encs.
Robert Henry, encs.
Mandy Morales, Mayor's Office, encs.

RECOMMENDATION APPROVED;
RESOLUTION NO. 12-7344 ADOPTED; AND
AGREEMENT NO. 12-3074 APPROVE
BY THE BOARD OF HARBOR COMMISSIONERS



June 21, 2012

Korla H. Tomdrault
SECRETARY

Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JUNE 12, 2012

FROM: BUSINESS & TRADE DEVELOPMENT

SUBJECT: RESOLUTION NO. 12-7344 APPROVAL OF FOREIGN-TRADE ZONE GENERAL PURPOSE OPERATING AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND LAXFUEL CORPORATION, FTZ 202, SITE 25

SUMMARY:

The City of Los Angeles Harbor Department (Harbor Department), as Foreign-Trade Zone (FTZ) grantee, establishes General Purpose Operating Agreements with FTZ operators to oversee their FTZ operations. The Harbor Department received a request from LAXFUEL Corporation (LAXFUEL), Los Angeles, California to activate its Site 25 within FTZ 202, for the storage and delivery of jet fuel servicing the Los Angeles International Airport (LAX). Site 25 consists of various liquid bulk terminal refineries, storage tanks, and pipelines totaling 710.8 acres. Please note that the pipelines and refineries are not owned by the Harbor Department. Site 25 includes three liquid bulk terminals located on Harbor Department property at Berths 118, 119, 167, 168, 169, 188, and 189. In August 2011, the FTZ Board approved Board Order 1779 establishing Site 25 as a new site within FTZ 202. LAXFUEL will be operating its facilities under FTZ procedures. The proposed FTZ Operating Agreement (Agreement) will provide a term of five years with three, five-year renewal options.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the proposed Foreign-Trade Zone Operating Agreement between the City of Los Angeles Harbor Department and LAXFUEL Corporation;
2. Direct the Board Secretary to transmit the proposed Foreign-Trade Zone Operating Agreement to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;

DATE: JUNE 12, 2012

PAGE 2 OF 5

SUBJECT: GENERAL PURPOSE OPERATING AGREEMENT WITH LAXFUEL CORPORATION, FTZ 202, SITE 25

3. Upon approval by the City Council, authorize the Executive Director to execute and the Board Secretary to attest to the proposed Foreign-Trade Zone Operating Agreement; and
4. Adopt Resolution No. 12-7344.

DISCUSSION:

Background – The Foreign-Trade Zone Act of 1934, as amended (19 U.S.C. 81a-81u), was established to support U.S. commerce and create jobs by reducing import duties or excise taxes by deferring payment of duties, thereby making it attractive for companies to perform some work on their products in the U.S. rather than offshore. The definition of a FTZ is a restricted access site located in the U.S. Customs and Border Protection territories. The importer may defer payment of duties and other fees until the merchandise is brought into the U.S. market for consumption.

The purpose of FTZ 202, Site 25 (Transmittal 2) is to provide the means for international carriers at LAX to use jet fuel free of customs duties and fees. The only imported product will be jet fuel. LAXFUEL will store the fuel and deliver it to the airport for use on international flights. The LAXFUEL FTZ site does not include any petroleum refineries and no manufacturing will occur in the FTZ.

The main benefits of FTZ status for LAXFUEL is the ability to commingle imported jet fuel with domestic fuel in storage and use storage tanks more efficiently. In the past, the LAXFUEL storage facilities have been in customs bonded status (and those tanks will remain in bonded status until the FTZ is activated). Within the bonded system, the imported jet fuel is free of customs duties and taxes, so there is no additional savings for LAXFUEL when they convert to FTZ status. However, under the rules for bonded storage, the imported fuel must be physically segregated from the domestic fuel. This is costly because it imposes artificial limits on tank storage capacity. Under FTZ law and regulations, foreign and domestic merchandise may be commingled so long as adequate inventory records of each are maintained.

DATE: JUNE 12, 2012

PAGE 3 OF 5

SUBJECT: GENERAL PURPOSE OPERATING AGREEMENT WITH LAXFUEL CORPORATION, FTZ 202, SITE 25

LAXFUEL acknowledges that this proposed Agreement has no bearing on any lease or other agreement it has with the City of Los Angeles. This proposed Agreement cannot be construed as granting any right under, or expectation in connection with, any other agreement, including any leases or permits, held by LAXFUEL.

Need for Agreement – The Harbor Department, as the grantee, is required by the FTZ Board to have an operating agreement with FTZ site operators. LAXFUEL has 38 full-time employees to run its airport operations. The total acreages of the jet fuel delivering system are 710.8 acres including refineries, terminals, pipelines and office space. All operators shall follow rules and procedures as outlined in the Department of Homeland Security's FTZ manual, such as providing a secured area within the FTZ.

Need for Approval – LAXFUEL is requesting approval from the Harbor Department to execute the proposed Agreement (Transmittal 1) to operate Site 25 as a FTZ jet fuel delivering system for their customers serving LAX. LAXFUEL, Site 25 is a FTZ Board approved site located within FTZ 202.

If LAXFUEL does not obtain approval as an operator with FTZ status from the Harbor Department, they potentially have the choice of going to another FTZ in California such as Long Beach and Palmdale. Since FTZ facilities exist in every state, LAXFUEL can potentially shift its employees to work elsewhere as a result of seeking FTZ status in another location.

Harbor Department Fiscal Requirements – This proposed Agreement will not require funding by the Harbor Department. LAXFUEL has paid the \$5,000 activation application fee and will pay an annual fee of \$5,000 to the Harbor Department for each year of the five-year term of the proposed Agreement for a total of \$25,000.

DATE: JUNE 12, 2012

PAGE 4 OF 5

SUBJECT: GENERAL PURPOSE OPERATING AGREEMENT WITH LAXFUEL CORPORATION, FTZ 202, SITE 25

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an agreement with LAXFUEL for the activation of their site within FTZ 202, Site 25. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

Approval of the proposed Agreement will have no employment impact.

FINANCIAL IMPACT:

If the proposed Agreement is approved, the Harbor Department will receive from LAXFUEL \$5,000 (per FTZ Tariff No. 1) in FTZ fees per year for five years. Should the renewal options be exercised subsequent to the completion of the initial term of the proposed Agreement, compensation will also be \$5,000 per year. Although, there is no direct cost to the Harbor Department arising from this proposed Board action, the Harbor Department does incur FTZ-related expenses. During calendar year 2011, approximately \$80,000 was spent on outside FTZ-related consulting services while \$149,000 in revenues was collected from all of the Harbor Department's FTZ operators.

Approving the proposed Agreement with LAXFUEL creates an entity that confers among other advantages, tax and operating benefits to the operator, and provides a tool for economic development. As the Harbor Department is a designated grantee of FTZs under the State of California enabling legislation, granting FTZ status to LAXFUEL allows more efficient operations and allows LAXFUEL to remain competitive.

DATE: JUNE 12, 2012

PAGE 5 OF 5

SUBJECT: GENERAL PURPOSE OPERATING AGREEMENT WITH LAXFUEL CORPORATION, FTZ 202, SITE 25

CITY ATTORNEY:

The City Attorney's Office has prepared and approved the proposed Agreement as to form and legality.

TRANSMITTALS:

1. Proposed FTZ Operating Agreement for LAXFUEL FTZ 202, Site 25
2. LAXFUEL FTZ 202, Site 25 map

FIS Approval: JK (initials)

CA Approval: TRM (initials)



KRAIG JONDLE
Director of Business & Trade Development



KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

M. Morimoto

Harbor Department
Agreement 12-3074
City of Los Angeles

LOS ANGELES FOREIGN-TRADE ZONE
OPERATING AGREEMENT

by and between

THE CITY OF LOS ANGELES

and

LAXFUEL CORPORATION

TABLE OF CONTENTS

	Page
ARTICLE I. - DEFINITIONS	1
ARTICLE II. - AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT	3
2.01 Authority Granted	3
2.02 Authority Accepted	3
2.03 Term of Agreement	3
ARTICLE III. - CONSTRUCTION, REPAIR AND MAINTENANCE	3
3.01 Construction	3
3.02 Repair and Maintenance of Facilities	4
ARTICLE IV. - USE OF NAME AND ADVERTISING	4
4.01 Advertising	4
ARTICLE V. - ESTABLISHMENT OF TARIFFS	4
5.01 Foreign-Trade Zone Regulations and Rate Schedules	4
ARTICLE VI. - ADMINISTRATION AND OPERATION OF ZONE	4
6.01 Federal, State and Local Laws and Regulations	4
6.02 Availability of Zone Site	4
6.03 PierPass	4
6.04 Wilmington Truck Route	4
ARTICLE VII. - CHARGES AND FEES	5
7.01 Processing/Application Fees	5
7.02 Annual Administrative Charges	5
ARTICLE VIII. - CUSTOMS EXPENSES	6
8.01 U.S. Customs and Border Protection Personnel	6
8.02 U.S. Customs and Border Protection Bond	7
8.03 Customs Charges	7
ARTICLE IX. - ACCESS TO SITE	7
9.01 Right of Entry and Inspection	7

ARTICLE X.	-	RESPONSIBILITY FOR AND ACCESS TO BOOKS AND RECORDS	7
		10.01 Reports to the Foreign-Trade Zones Board, Customs and Grantee	7
		10.02 Confidential Information	8
ARTICLE XI.	-	NONDISCRIMINATION	8
		11.01 Nondiscrimination and Equal Opportunity	8
		11.02 Small Business Development Program.....	8
ARTICLE XII.	-	TERMINATION AND DEFAULT	8
		12.01 Termination for Cause	8
		12.02 Performance	9
		12.03 Total or Partial Destruction of Zone Site	10
		12.04 Termination For No Cause	10
		12.05 Waiver	11
		12.06 Discontinuance of Trade Name	11
		12.07 Breach of Contract	11
ARTICLE XIII.	-	DEACTIVATION OF ZONE SITE	11
		13.01 Deactivation of Zone Site	11
ARTICLE XIV.	-	INDEMNIFICATION AND INSURANCE	12
		14.01 Indemnity for General Liability	12
		14.02 Back-to-Back Bond	12
		14.03 General Liability Insurance	12
		14.04 Automobile Liability Insurance	13
		14.05 Workers' Compensation	13
		14.06 Carrier Requirements	13
		14.07 Notice of Cancellation	13
		14.08 Copies of Policies	14
		14.09 Modification of Coverage	14
		14.10 Renewal of Policies	14
		14.11 Right to Self-Insure	14
		14.12 Accident Reports	15
		14.13 Notification of Miscellaneous Obligations.....	15
ARTICLE XV.	-	INTEREST OF PARTIES	15
		15.01 Independent Contractor Status	15
		15.02 Sublease and Assignment	15
		15.03 Disclosure of Interest	16

ARTICLE XVI. - MISCELLANEOUS PROVISIONS	17
16.01 Mandatory Operator Training	17
16.02 Past Due Obligations	17
16.03 Time of Essence	17
16.04 Construction of Terms and Conditions	18
16.05 Counterparts	18
16.06 Further Instruments and Actions	18
16.07 Headings	18
16.08 Conflict of Interest	18
16.09 Integration	18
16.10 Separability	18
16.11 Notices to the Parties	19
16.12 Legal Action	19
16.13 Governing Law/Venue	19
16.14 Waiver of Claims	19
16.15 Wage and Earning Assignment Orders/ Notices of Assignment	20
16.16 State Tidelands Grants	20
16.17 City's Business Tax Ordinance - BTRC Number	20
16.18 Equal Benefits Policy	20

////
 ////
 ////
 ////

AGREEMENT NO. _____

FTZ OPERATING AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
LAXFUEL CORPORATION

THIS AGREEMENT is made this ____ day of _____, by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Grantee") and LAXFUEL CORPORATION, ("Operator").

RECITALS:

WHEREAS, the Grantee has received permission from the United States Foreign-Trade Zones Board to establish a foreign-trade zone, designated as Foreign-Trade Zone No. 202, at various locations in or adjacent to the Los Angeles Customs port of entry; and

WHEREAS, the Operator desires to make use of foreign-trade zone status and wishes to activate the site located at Fuel tanks at 9900 LAXFUEL Road, Los Angeles, CA and refineries, storage tanks, and pipe lines connection Port of Los Angeles and Los Angeles International Airport as depicted and more fully described in Exhibit "A", attached hereto and made a part hereof Site 25, ("Zone Site"), which is within the boundaries of Foreign-Trade Zone No. 202; and

WHEREAS, the Grantee deems it practicable to limit its participation in the everyday operations of the Zone Site and to place the operation of the Zone Site under the supervision of Operator; and

WHEREAS, upon the terms and conditions herein set forth, Operator desires to undertake the development and operational management of a foreign-trade zone at the Zone Site accordance with standards of construction and operation approved by the Grantee and the Foreign-Trade Zones Board, including those related to occupancy and use.

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

ARTICLE I. - DEFINITIONS

In this Agreement and in any amendment or supplement hereto (except as otherwise expressly provided or unless context otherwise requires), terms used as defined terms in the recitals hereto shall have the same meanings throughout this Agreement and, in addition, the following terms shall have the meanings specified below:

- A. "Act" shall mean the Foreign-Trade Zones Act of 1934, as amended, (19 U.S.C., 81a et. seq.).

- B. "Activation" shall mean initiation within Foreign-Trade Zone No. 202 of any activity authorized by the United States Foreign-Trade Zones Board and by the United States Customs Service to be conducted at the Zone Site.
- C. "Agreement" shall mean this Los Angeles Foreign-Trade Zone Operating Agreement by and between the City of Los Angeles and LAXFUEL CORPORATION.
- D. "Bond" shall mean a bond or bonds paid for by the Operator and issued by a surety company authorized to conduct business in the State of California and approved by Customs, to insure against any loss of duty, taxes or other sums from operations within the Zone Site and in an amount satisfactory to Customs and the Grantee.
- E. "City" shall mean the City of Los Angeles, a municipal corporation.
- F. "Contract Documents" shall mean this Agreement, and all other documents executed on behalf of the Operator in conjunction with this Agreement.
- G. "Customs" shall mean the U.S. Customs and Border Protection or any successor body or agency of the United States.
- H. "Executive Director" shall mean the General Manager of the Los Angeles Harbor Department.
- I. "Grantee" shall mean the City of Los Angeles Board of Harbor Commissioners, to which the privilege of establishing, operating and maintaining Foreign-Trade Zone No. 202 has been granted by the Foreign-Trade Zones Board.
- J. "Operator" shall mean LAXFUEL CORPORATION, the entity designated by the Grantee to conduct foreign-trade zone activities at the Zone Site.
- K. "Operator of a Multi-User Zone Site" shall mean that the Zone Site is available for use by companies other than the Operator.
- L. "Operator of a Single-User Zone Site" shall mean that the Operator is the sole user of the Zone Site, including Operators of subzone sites.
- M. "Port Director" shall mean the Port Director of the U.S. Customs and Border Protection Agency of Los Angeles.
- N. "Regulations" shall mean all applicable federal, state and local statutes, ordinances and regulations including the rules, statutes, regulations, orders, decisions, ordinances or decrees of any governmental body, including judicial bodies, having jurisdiction over the Los Angeles Foreign-Trade Zone No. 202, the Operator, or the operations conducted therein.

- O. "Zone" shall mean those areas in or adjacent to the Los Angeles Customs Port of Entry designated by the Foreign-Trade Zones Board as Foreign Trade Zone No. 202.
- P. "Zone Site" shall mean those areas within the Zone that Operator may operate and maintain as a foreign-trade zone.

ARTICLE II. - AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT

2.01 Authority Granted

The Grantee gives and grants to Operator for the term hereof and for any extensions as hereinafter provided, the non-exclusive authority to conduct foreign-trade zone activities at the Zone Site as an Operator of a Multi-User Zone Site, subject to the terms, conditions, agreements and restrictions herein set forth.

2.02 Authority Accepted

Operator agrees during the term of this Agreement to exercise its rights and powers in accordance with the terms and conditions of this Agreement and hereby assumes responsibility for the operation and management of said Zone Site.

2.03 Term of Agreement

A. Term and Renewal. Unless terminated as herein provided, this Agreement shall remain in effect for five (5) years, provided that Operator has performed to the satisfaction of Grantee as required herein, commencing on the first day of the month subsequent to City approval of this Agreement and shall, after such five year period, be renewed for three periods of five years each upon terms and conditions to be negotiated prior to the end of the then current five-year term. Any such renewal must be approved in advance or subsequently ratified by the Board of Harbor Commissioners. If the parties cannot agree on the terms and conditions prior to the end of the then current five-year period, the Agreement shall terminate at the end of such term.

B. Initiation of Operations. Operator hereby agrees to initiate operations at the Zone Site, as soon as practicable following approval by the Foreign-Trade Zones Board and Customs or such other time as may be mutually agreed upon in writing by the Grantee and Operator. Operator shall not initiate operations at the Zone Site without first receiving, pursuant to 19 C.F.R. 146.6(b)(5), a written letter from the Grantee concurring in the initiation of operations.

ARTICLE III. - CONSTRUCTION, REPAIR AND MAINTENANCE

3.01 Construction

A. Operator agrees that it will construct at its expense the improvements and facilities at the Zone Site required by the Foreign-Trade Zones Board and Customs.

B. Operator further agrees that it will not construct any additional Zone Site facility or make any substantial alterations to the improvements referred to in Section 3.01.A, which materially affect operation of the Zone Site, unless plans for such alterations or additional improvements are first submitted to Grantee, for the concurrence of the Grantee, Foreign-Trade Zones Board and Customs, and appropriate federal, state and local agencies, as required by law.

3.02 Repair and Maintenance of Facilities

A. Operator, at its own expense, shall at all times repair and maintain the structures and other facilities that Operator leases or owns within the Zone Site in a condition satisfactory to the Grantee and consistent with the nature of the operations in the particular foreign-trade zone so as not to endanger the life and health of employees of the United States and others who may enter the Zone Site for any reason whatsoever. Accepted sanitary practices shall be followed in the construction, equipment, and operation of such buildings and other structures. Operator, in a timely manner, shall make such repairs or alterations as may be ordered by the Foreign-Trade Zones Board or the Grantee.

B. Operator agrees to provide at the Zone Site its own expense proper containers for trash to keep the Zone Site free and clear of rubbish, debris and litter at all times, and to keep and maintain the Zone Site in a safe, clean, wholesome and sanitary condition under Regulations. No offensive refuse matter or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health shall be permitted to be or remain on the Zone Site, and Operator shall exercise reasonable care to prevent such material or matter from being or accumulating upon the Zone Site.

C. All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire protective or extinguishing systems or appliances which have been or may be installed at the Zone Site shall be maintained by Operator at its own expense in an operative condition at all times.

D. Operator shall be liable and shall make immediate payment of any fine, penalty, liquidated damage or other charge or assessment imposed by the Foreign-Trade Zones Board, Customs, Grantee or City for failure to make repairs or alterations as ordered, pursuant to procedures herein provided.

ARTICLE IV. - USE OF NAME AND ADVERTISING

4.01 Advertising

So long and only so long as this Agreement shall remain in force and effect, Operator, in operational management of the Zone Site, may advertise its operations as being within "Los Angeles Foreign-Trade Zone No. 202"; however, no designs, advertising, signs or forms of publicity (including form, color, number, location and size) shall be used upon or with respect to the Zone Site or other place of related business unless the same shall have been first approved in writing by the Grantee as meeting its standards. The

Grantee, or its authorized agents, may at any time after five days' notice to Operator, enter the Zone Site and remove any unapproved signs or advertising media, and may keep or destroy such signs or other media without paying therefor, and without being deemed guilty of trespass or other tort.

ARTICLE V. - ESTABLISHMENT OF TARIFFS

5.01 Foreign-Trade Zone Regulations and Rate Schedules

This Agreement shall be subject to the rates, terms and conditions of the Foreign-Trade Zone No. 202 Tariff as it now exists or may be amended or superseded. Operator acknowledges it has received, read and understands the rates, terms and conditions of Tariff and agrees to be contractually bound by these rates, terms and conditions as if these terms were set forth in full herein except as may be modified by this Agreement. Operator understands it is responsible for maintaining a complete copy of the current Tariff and assumes responsibility for doing so.

ARTICLE VI. - ADMINISTRATION AND OPERATION OF ZONE

6.01 Federal, State and Local Laws and Regulations

In the performance of activities required and permitted by this Agreement, Operator agrees to comply with Regulations, the Tariff and the terms of this Agreement.

6.02 Availability of Zone Site

If applicable as an operator of a Single-User Zone Site, Operator confirms that the Zone Site will be used only for the conduct of the business of the Operator and its affiliates. For purposes of this paragraph, the term "affiliates" means wholly-owned subsidiaries of the Operator and subsidiaries and partnerships in which the Operator has a greater than 50% interest.

6.03 PierPASS

Operator acknowledges that truck traffic congestion is a serious problem on roads and freeways leading into and out of the Port of Los Angeles. Therefore, the Operator shall, whenever it is reasonably feasible in light of its overall operations, utilize the PierPASS Program or other programs to reduce daytime truck operations. Operator shall use its best efforts to encourage its zone users to consider using the PierPASS and/or other programs to reduce daytime operations. Further, the Operator shall make available to its zone users PierPASS informational material provided to it by the City. Operator shall provide to City, at least annually, a report concerning its nighttime operations and PierPASS utilization.

6.04 Wilmington Truck Route

It is recognized by both parties that the Operator does not directly control the trucks serving the Port. However, the Operator shall notify truck drivers, truck brokers and trucking companies that trucks serving FTZ warehouses and originating in the Port of Los Angeles must confine their route to the designated Wilmington Truck Route of Alameda

Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached as Exhibit "B," which may be modified from time to time at the sole discretion of the Executive Director with written notice to Operator.

ARTICLE VII. - CHARGES AND FEES

7.01 Processing/Application Fees

Upon execution of this Agreement, the Operator shall pay to Grantee a one-time non-refundable Operator's processing fee (in anticipation of activation) in the amount specified in the Foreign-Trade Zone No. 202 Tariff in effect at the time of the execution of this Agreement. The parties agree that this amount is fair and reasonable compensation for the services to be rendered by Grantee in assisting Operator with the processing of this Agreement and anticipated activation of the Zone Site. In addition, Operator shall pay to Grantee an application fee when the Grantee must return to the Foreign-Trade Zones Board on Operator's behalf for approval of (a) an expansion to include a new Zone space or Zone site, (b) a boundary modification to accommodate expanded operations, or (c) manufacturing authority or scope requests, which fees shall be those specified in the Foreign-Trade Zone No. 202 Tariff in effect at the time of the application. Such fees shall be paid to Grantee at such time that Grantee is required to return to the Foreign-Trade Zones Board for (a), (b) or (c). In each of the three above referenced situations, Operator will be responsible for the total expense of preparing the application or request to be filed with the Foreign-Trade Zones Board.

7.02 Annual Administrative Charges

A. Annual Administrative Charges. In consideration of the granting of this authorization to operate the Zone Site, Operator agrees to pay to the Grantee an annual fee as specified in the Foreign-Trade Zone No. 202 Tariff in effect at the time the execution of this Agreement. The parties agree that this amount is fair and reasonable compensation for the services to be rendered by Grantee in assisting Operator with its operation of the Zone Site and in providing its oversight responsibilities of the Zone. This annual fee is payable upon the execution of this agreement and on every October 1 thereafter, so long as the agreement remains in effect. The initial annual fee is to be prorated from the date of the execution of this agreement to the following October 1.

B. Operator's Expenses. Operator further agrees to pay, or cause to be paid, all costs, expenses, and taxes (if any) of the Zone Site operation, including, but not limited to, construction, installation, improvements, security, maintenance and personnel, and as otherwise provided herein.

ARTICLE VIII. - CUSTOMS EXPENSES

8.01 U.S. Customs and Border Protection Personnel

It is understood that from time to time it may become necessary for Customs personnel to be located at the Zone Site. In such event, the Operator shall be responsible

for all charges for personnel billed by Customs. Grantee shall request that Customs bill Operator directly for any Customs personnel expense attributable to such foreign-trade zone operations at the Zone Site. In the event that such direct billing to Operator is not acceptable to Customs upon receipt of any billing for personnel expense by Grantee, Grantee shall promptly present the bill to Operator for payment. Operator agrees to make such payments promptly.

8.02 U.S. Customs and Border Protection Bond

Operator shall pay the full cost of any Bond required by Customs for all operations of the foreign-trade zone at the Zone Site.

8.03 Customs Charges

Operator shall be responsible for the payment of all Customs charges or exactions including but not limited to duties, taxes, charges, fines, penalties, interest, attorney, user and other fees, costs, liquidated damages, or expenses assessed due to the operation of the Zone Site.

ARTICLE IX. - ACCESS TO SITE

9.01 Right of Entry and Inspection

Representatives of Customs, the Foreign-Trade Zones Board, Grantee and any other authorized federal, state or local officials shall have the right to enter upon the Zone Site at any time for the authorized and lawful purpose of examining such Zone Site and merchandise contained therein and conferring with Operator, its agents, invitees, and employees on such Zone Site, inspecting and checking operations, supplies, equipment and merchandise, conducting financial and compliance audits and determining whether the business is being conducted in accordance with Regulations. All such entries shall be in accordance with usual security procedures.

ARTICLE X. - RESPONSIBILITY FOR AND ACCESS TO BOOKS AND RECORDS

10.01 Reports to Foreign-Trade Zones Board, Customs and Grantee

Operator shall submit to Grantee at its own expense data sufficient to allow the Grantee to compile its annual report to the Foreign-Trade Zones Board and that such information be provided to the Grantee not later than December 1 of each year (for the preceding period of 10/1-9/30). The submittal of all such data shall be signed by an appropriate official of Operator, certifying to the accuracy of the records for the specified accounting period. Apart from, and in addition to, reimbursing Grantee for any fine imposed upon Grantee as a result of an act or omission of Operator under this Agreement, Grantee may demand and Operator, upon such demand, shall pay Grantee \$100 per day for each and every day after December 15 that the annual report data is received by Grantee, unless Grantee has provided Operator with a written extension of time in which to produce such data. All records maintained for preparation of all data and those required under the accounting system shall be retained in the Operator's place of business for at least five

years after the merchandise covered by such records has been forwarded from the Zone Site except as required by Regulations.

All written communications with the Foreign-Trade Zones Board concerning operations within Foreign Trade Zone No. 202 are to be made through the Grantee.

10.02 Confidential Information

Details of business operations of individual firms operating and using the foreign-trade zone at the Zone Site shall be kept confidential except for such information as shall be determined to be public information under federal, state, or local laws. Any procedures manual, computer programs, computer report format, and any other related systems developed by Operator for said foreign-trade zone operation shall be the sole property of Operator and will not be disclosed to any other entity without the express written permission of Operator except as required under federal, state or local laws.

ARTICLE XI. - NONDISCRIMINATION

11.01 Nondiscrimination and Equal Opportunity

Operator agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's marital status, sexual orientation, medical condition, race, religion, national origin, ancestry, sex, age or physical handicap. All assignments, subleases and transfers of interest in this Agreement under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached Exhibit "C" are incorporated herein and made a part hereof.

11.02 Small Business Development Program

It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Operator shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBE's, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBE's, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement.

ARTICLE XII. - TERMINATION AND DEFAULT

12.01 Termination for Cause

A. The breach of any provision of this Agreement or the failure to perform any obligations, duty or to accept liability established herein by act of commission or omission for whatsoever cause by a party hereto shall be a default. The non-defaulting party shall give written notice of intent to terminate this Agreement by

registered or certified mail to the defaulting party stating the specific default or breach committed.

B. The non-defaulting party shall have the option to terminate the Agreement after expiration of the time periods as follows:

1. If the default can be cured by payment or posting of money, bond or other security for money due to the other party, the defaulting party shall have seven (7) days after receipt of the notice to terminate in order to pay over such money or, if the payment be contested, to post such amount with the other party pending final determination of liability, in cash or security in such form as approved by the non-defaulting party.

2. If the default cannot be cured by payment or posting of money or security to the other party as provided in subsection (1) above, the defaulting party shall have twenty-one (21) days after receipt of written notice to terminate in which to cure the default.

3. If the default is one, which by its nature cannot be reasonably cured within twenty-one (21) days, then the defaulting party shall have a reasonable time period in which to cure the default. Such time period shall include, but shall not exceed the time period provided by statutes, laws, ordinances, rules and regulations, or order of the Foreign-Trade Zones Board and shall include the time required for the completion of all administrative and all judicial procedures, including appellate procedures, as provided for by law. Upon the request of the non-defaulting party, the defaulting party shall submit to the non-defaulting party a written schedule of performance and supporting documentation indicating the shortest period in which such default can be cured by defaulting party.

12.02 Performance

In addition to any default arising under the provisions of Section 12.01, Operator hereby acknowledges that Operator's failure to perform any of the following duties and obligations to the reasonable satisfaction of the Grantee shall constitute a default which shall permit the Grantee to initiate termination proceedings pursuant to Section 12.01.

A. Maintenance of a uniform system of accurate books, records and accounts prepared in accordance with Generally Accepted Accounting Principals and capable of producing the following results, to the extent such results are required under the customs laws of the United States:

1. Accounting for all merchandise, including merchandise that is of domestic status, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a Zone Site;

2. Producing accurate and timely reports and documents;
 3. Identifying shortages and overages of merchandise in the Zone Site in sufficient detail to determine the quantity, description, tariff classification, Zone Site status, and value of the missing or excess merchandise;
 4. Providing all information necessary to make entry for merchandise being transferred to the Customs territory; and
 5. Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from the Zone Site by a Customs authorized inventory method.
- B. Proper operation of the Zone Site in accordance with applicable federal, state and local laws, regulations, rules, and operational management procedures approved by the Grantee, Customs and the Foreign-Trade Zones Board.
- C. Preparation and timely submission of all reports to the Grantee.

12.03 Total or Partial Destruction of Zone Site

In the event that the Zone Site or the accommodation of foreign-trade zone business at the Zone Site is totally destroyed or partially destroyed and thereby terminates 33 and 1/3 percent or more of the activities within the Zone Site, based on a comparison of income derived, exclusive of insurance recovery, upon written demand from Grantee by registered or certified mail, Operator shall provide Grantee with general building and financial plans for the restoration of the Zone Site or the accommodation of foreign-trade zone business within thirty (30) days from receipt of such demand. If Operator does not provide any plans for restoration or accommodation of foreign-trade zone business at the Zone Site, Grantee shall have the option to immediately notify Operator of its intent to terminate, which shall be effective twenty (21) days after receipt of such notice by registered or certified mail.

12.04 Termination For No Cause

In the event either party for any reason wishes to terminate its participation in foreign-trade zone activities and terminate its rights and obligations under this Agreement, at least one hundred eighty (180) days prior written notice must be delivered to the other party. If the Grantee wishes to terminate, the Operator shall have the right, directly or through another entity, to assume the rights and obligations of the Grantee subject only to the approval of the Foreign-Trade Zones Board. If the Operator wishes to terminate, Operator is obligated to deactivate the Zone Site prior to the date of termination and must ensure that all foreign status merchandise has either been subject to the payment of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

Operator acknowledges that this Agreement has no bearing on any lease or other agreement it has with the City of Los Angeles. This Agreement cannot be construed as granting any right under or expectation in connection with any other agreement, including any leases or permits, held by the Operator. In the event that

Operator's agreement, lease or permit concerning the facilities where the foreign trade zone operates expires or is terminated, the Grantee may assist Operator in obtaining necessary approvals from the Foreign-Trade Zone Board and/or Customs to establish its foreign trade zone at a different location.

12.05 Waiver

No waiver by either party at any time of any of the terms, conditions or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, conditions, covenant or agreement herein contained nor of the strict and prompt performance thereof by the party obligated to perform. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default nor subsequent acceptance of compensation then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No option, right, power, remedy or privilege of either party hereto shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all the rights, powers, options or remedies given to the parties herein by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law and that the exercise of one right, power, option or remedy by a party shall not impair its rights to any other right, power, option or remedy.

12.06 Discontinuance of Trade Name

Upon the termination of this Agreement for any cause, the Operator shall, deactivate the Zone Site as of the date of expiration of the term of the Agreement and immediately discontinue all use of trade names, trademarks, signs and forms of advertising and other indicia of operation within the foreign-trade zone at the Zone Site, specifically referring to the Los Angeles Foreign Trade- Zone, and if the Operator shall fail or omit to make, or cause to be made, such changes, within ten (10) days after written notice, then the Grantee shall have the right to enter upon the Zone Site without being deemed guilty of or liable for trespass or any other tort or offense, and to make or cause to be made such changes at the expense of the Operator, which expense the Operator agrees to pay on demand.

12.07 Breach of Contract

Failure of any party to perform the obligations required by this Agreement or incorporated herein by reference shall constitute a material breach of this Agreement and the other party shall be entitled to pursue any and all remedies available at law or equity in addition to other rights and remedies specifically provided herein.

ARTICLE XIII. - DEACTIVATION OF ZONE SITE

13.01 Deactivation of Zone Site

Upon the expiration of the term of this Agreement, if no new agreement is entered into, Operator is obligated to deactivate the Zone Site as of the date of expiration of the term of the Agreement. Prior to deactivating the Zone Site, Operator must ensure that all

foreign status merchandise has either been subject to the payment of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

ARTICLE XIV. - INDEMNIFICATION AND INSURANCE

14.01 Indemnity for General Liability

Except for the sole negligence or willful misconduct of City, Operator shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Operator, its boards, officers, agents, employees, or subcontractors regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Operator's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000.00), (2) notwithstanding the limitation in (1), Operator shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

14.02 Back-to-Back Bond

Operator shall, if requested to do so by the Grantee, furnish and pay the premium for a bond in a sum equal to the amount of the Customs Form 301 Foreign-Trade Zone Operator's bond required by Customs pursuant to the Regulations, conditioned upon the full, faithful and prompt performance of and compliance with, on the part of the Operator, all the covenants, terms and conditions of this Agreement on its part to be fulfilled, kept, performed and observed. The bond so furnished shall be in a form acceptable to the Grantee, and shall be effective throughout the term of this Agreement and shall be made either by a surety company or companies qualified to carry on a surety business in the State of California and satisfactory to the Grantee.

14.03 General Liability Insurance

Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Operator. The insurance provided shall contain a severability of interest clause and shall provide that any

other insurance maintained by Department shall be excess of Operator's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "D."

14.04 Automobile Liability Insurance

Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement automobile insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its board, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "E."

14.05 Workers' Compensation

Operator shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the Operator shall comply with such provisions before commencing the performance of the tasks under this Agreement. Operator shall submit Workers' Compensation policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. See Exhibit "F."

14.06 Carrier Requirements

All insurance which Operator is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

14.07 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

14.08 Copies of Policies

Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.

14.09 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance Operators to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Operator.

14.10 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Operator shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Operator neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Operator.

14.11 Right to Self-Insure

Upon written approval by the Executive Director, Operator may self-insure if the following conditions are met:

A. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.

B. Operator agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

C. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

D. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.

E. Operator provides the name and address of its claims administrator.

F. Operator submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.

G. Operator agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.

H. Operator has complied with all laws pertaining to self-insurance.

14.12 Accident Reports

Operator shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Operator's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Operator, its officers or managing agents.

14.13 Notification of Miscellaneous Obligations

Operator shall be liable and responsible for satisfaction where applicable of assessments, charges, fees, damages, penalties or fines imposed by the Foreign-Trade Zones Board, or any federal, state or local agency resulting from any activity, act or omission to act in the maintenance and operation of the foreign-trade zone at the Zone Site of same. The Operator shall advise the Grantee within three (3) days of any investigations commenced or reports requested by any government agency that pertain to the operation of the Zone Site, other than routine requests for information received from the U.S. Customs Service. Where requested to do so by Grantee, Operator shall provide to Grantee a copy of any report or notice issued by a government agency that pertains to an investigation by that agency of the operations of the Zone Site.

ARTICLE XV. - INTEREST OF PARTIES

15.01 Independent Contractor Status

Operator is an independent contractor in the performance of all activities and functions pursuant to this Agreement. Operator and Grantee are not and shall not be considered as joint venturers, partners or agents of each other and neither shall have the power to bind or obligate the other. Operator's officers, employees, agents and subcontractors shall not be considered as officers, employees or agents of the Grantee. Grantee and Operator hereby agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another.

15.02 Sublease and Assignment

A. Assignments/Subleases Prohibited. Except as provided in subsections (D) and (E), no assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance of this Agreement, or any interest therein or any right

or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Operator, or accomplished in any other manner, whether voluntary or by operation of law (hereafter collectively referred to as "transfer"), shall be valid for any purpose. For purposes of this subsection, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Operator's assets in the hands of a receiver or trustee; or (2) a transfer by Operator for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Operator or of a general partner of a Operator (except as provided in subsection (E) below). Admission or withdrawals of airlines as members of LAXFUEL shall not be deemed an assignment or transfer under this section.

B. Right to Terminate. Notwithstanding any other provision of this Agreement, any transfer or attempted transfer by Operator of this Agreement or interest granted by the Agreement in violation of any subsection of this Section shall entitle the Executive Director to terminate this Agreement after first providing Operator seven (7) calendar days notice of termination.

C. Transfers of Stock.

1. If Operator is either a privately held corporation or a corporation whose stock is not listed on the New York, American, NASDAQ, or Pacific Stock Exchange and more than twenty five percent (25%) of the outstanding shares of voting stock of Operator is traded (whether in one transaction or a series of transactions) during any twelve (12) month period, Operator shall notify Executive Director in writing within ten (10) days after the transfer date. If a transfer of more than twenty five percent (25%) of the outstanding shares of voting stock of Operator occurs, Grantee, at its option, may terminate this Agreement.

If Operator is a corporation whose stock is listed on the New York, American, or NASDAQ Stock exchanges, Operator shall notify Grantee in writing if more than fifty percent (50%) of the outstanding shares of voting stock of Operator are transferred pursuant to a merger or stock purchase agreement. Operator shall provide such notice no later than ten (10) days after the transfer date. If a transfer of more than fifty percent (50%) of the outstanding shares of voting stock of Operator occurs, Grantee, at its option, may terminate this Agreement.

2. If Operator is a partnership, any transfer or attempted transfer by any general partner of Operator of more than twenty-five percent (25%) of its partnership interest in Operator, shall be a prohibited assignment of Operator's interest in this Agreement within the meaning of the preceding subsections. Notwithstanding the foregoing, any such transfer of a general partner's interest consequent upon the death of a general partner to the immediate members of his or her family who will be immediately and personally involved in the operation of the partnership shall not be deemed a transfer within the meaning of this Section.

3. Grantee shall have the authority - but no obligation - to modify the foregoing conditions based on the facts of a particular case.

D. Subleases. Operator's right to sublease the Zone Site is conditioned upon the prior written approval of the Grantee.

E. Miscellaneous Conditions. Any consent given by City to Operator to transfer this Agreement or any interest therein or right or privilege thereunder shall not be construed as consent to any other such transfer. Moreover the City's consent to such a transfer shall not alter Operator's obligation to be at all times primarily responsible for compliance with all covenants, conditions and provisions of this Agreement.

15.03 Disclosure of Interest

Prior to execution of this Agreement, Operator shall furnish Grantee with copies of its Articles of Incorporation, its by-laws, its most recent annual report, and its most recent Form 10(k). At the time of its annual reporting of information to Grantee as required by paragraph 10.01, Operator shall provide to Grantee copies of changes to its Articles of Incorporation or by-laws, if any such changes have occurred since the initial or most recent filing of documents under this paragraph, and also shall provide Grantee, at that time, with a copy of its most recent annual report and Form 10(k), if not previously provided.

ARTICLE XVI. - MISCELLANEOUS PROVISIONS

16.01 Mandatory Operator Training

The Operator's FTZ designee shall attend at least eight (8) hours per year of professional training that is related to foreign-trade zone operation. Training will be offered from time to time at the Zone, and other Grantee-approved programs may be used to meet this requirement. The Grantee and Operator agree that educational sessions on foreign-trade zone operations conducted at seminars and conferences of the National Association of Foreign-Trade Zones may be used to meet this requirement.

16.02 Past Due Obligations

Any and all amounts required hereunder to be paid by Operator to Grantee, or which are to be paid "with interest" or which Grantee advances on behalf of Operator, which are not paid when due shall bear interest at the following rate: the legal rate provided by law for judgments in California plus three percent (3%), or the posted announced prime rate of the Bank of America, Los Angeles, California on the date payment is due, plus one percent (1%), whichever is greater. The interest rate shall be per annum from the due date until paid, unless otherwise specifically provided herein but the rate shall be modified from time to time as the legal rate or prime rate change.

16.03 Time of Essence

Time is of the essence of this Agreement and of every term, covenant and conditions hereof.

16.04 Construction of Terms and Conditions

This Agreement shall be governed by and construed in accordance with the Act, regulations promulgated thereunder and all amendments thereto and the applicable laws of the State of California.

16.05 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.

16.06 Further Instruments and Actions

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

16.07 Headings

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

16.08 Conflict of Interest

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

16.09 Integration

This Agreement contains the complete statement of all the arrangements between the parties with respect to its subject matter and cannot be changed or terminated orally. No waiver of the provisions of this Agreement shall be valid unless in writing signed by the party against whom such waiver is sought to be enforced.

16.10 Separability

If any provision of this Agreement is declared void or defective, that declaration will not effect the validity of any other provision of this Agreement.

16.11 Notices to the Parties

All notices, demands or other writings in this Agreement provided to be given, made or sent by either party hereto to the other shall be deemed to have been fully given, made or sent when made in writing and deposited in the United States mail postpaid registered or certified and addressed as follows:

For the Grantee To: City of Los Angeles
 Harbor Department
 425 S. Palos Verdes Street
 San Pedro, California 90733
 ATTN: Masa Morimoto, Marketing Division

For the Operator To: LAXFUEL Corporation
 9900 LAXFUEL Road
 Los Angeles, CA
 ATTN: Mr. Lawrence M. McMahon, Vice President

The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided.

16.12 Legal Action

Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services of the Office of City Attorney or house counsel of Operator.

16.13 Governing Law/Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

16.14 Waiver of Claims

Operator hereby waives any claim against City and Grantee and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

16.15 Wage and Earning Assignment Orders/Notices of Assignments

The Operator or any subs is obligated to fully comply with all applicable state and federal employment reporting requirements for the Operator and/or sub's employees.

The Operator and/or subs shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally. The Operator or subs will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code § § 5230 et. seq. The Operator or subs will maintain such compliance throughout the term of the Agreement.

16.16 State Tidelands Grants

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Operator agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

16.17 City's Business Tax Ordinance - BTRC Number

If the Operator is operating a site within the City of Los Angeles, then the Operator represents that is has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 et seq., of the Los Angeles Municipal Code). If applicable, the Operator will, upon request, provide evidence that said certificate has been obtained. If required, the Operator shall maintain, or obtain as necessary, all such certificates required by it under the ordinance and shall not allow such certificate to be suspended or revoked.

16.18 Equal Benefits Policy

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Operator shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Operator and pursue any and all other legal remedies that may be available.

////

////

////

IN WITNESS WHEREOF, the parties have executed this Agreement on the dated first hereinabove written.

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT

Date: _____, 2012

By: _____
Executive Director

Attest: _____
Board Secretary

LAXFUEL CORPORATION

Date: May 9, 2012

By: [Signature]
JEFF CUMPARA - LAXFUEL CHAIRMAN
(Print/Type Name and Title)

Attest: [Signature]
LARRY McMANON - ASST VICE-PRESIDENT - AGENT FOR
(Print/Type Name and Title) LAXFUEL

APPROVED AS TO FORM

[Signature], 2012
CARMEN A. FRUTANICH, City Attorney
THOMAS A. RUSSELL, General Counsel

By: [Signature]
CHRISTOPHER B. BOBO, Assistant

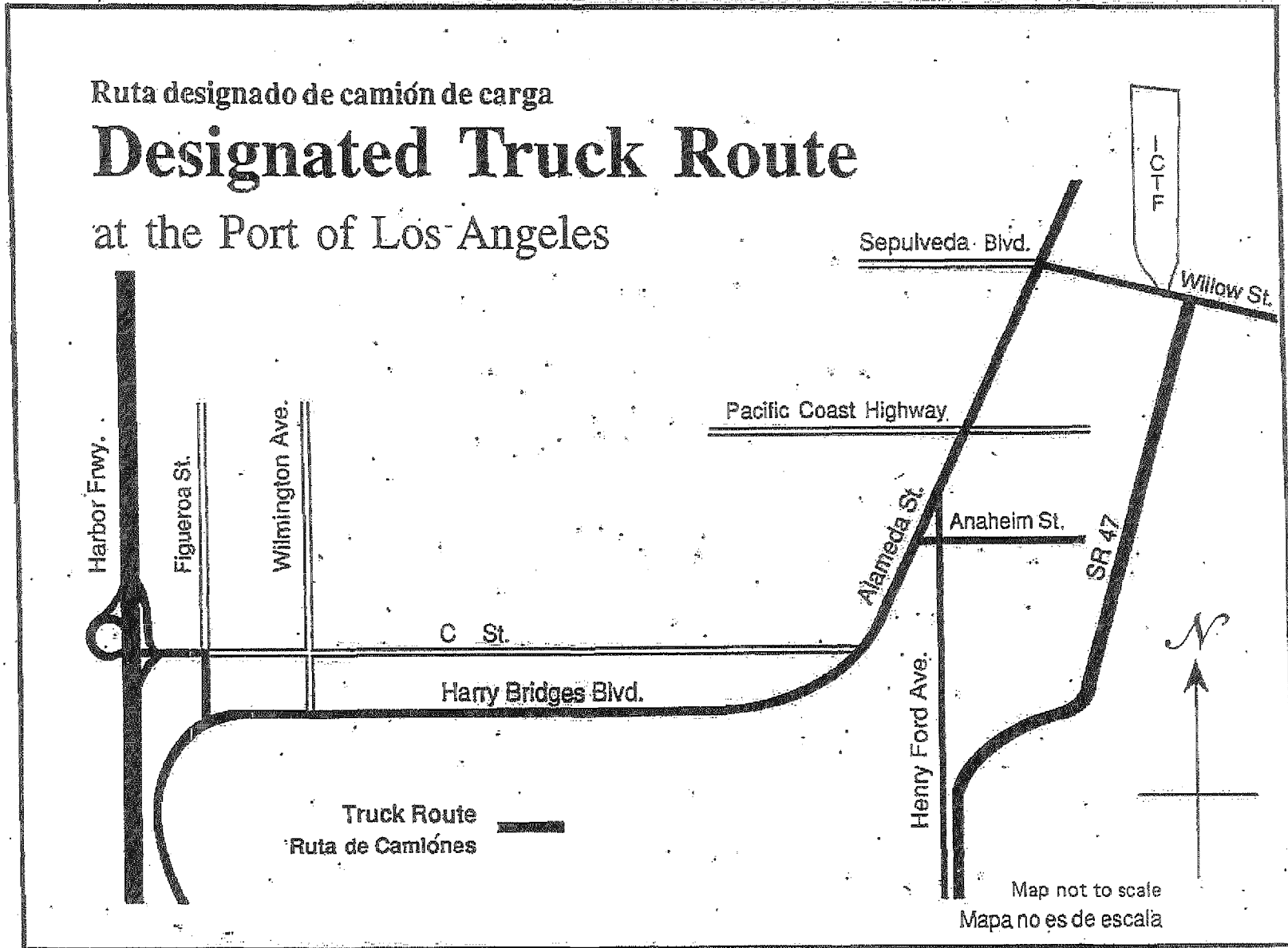
CBB:aeb
05/07/12
Attachments

TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.
CAMIONES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.

Ruta designado de camión de carga

Designated Truck Route

at the Port of Los Angeles



D5-93

AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

AFFIRMATIVE ACTION PROGRAM PROVISIONS

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

AFFIRMATIVE ACTION PROGRAM PROVISIONS

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;

AFFIRMATIVE ACTION PROGRAM PROVISIONS

4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
GENERAL LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insured's with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>_____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>	<p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <p>Includes (check as applicable):</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Broad Form Property Damage</td> <td><input type="checkbox"/> Contractual Liability</td> </tr> <tr> <td><input type="checkbox"/> Personal Injury</td> <td><input type="checkbox"/> Owned Automobiles</td> </tr> <tr> <td><input type="checkbox"/> Independent Contractors</td> <td><input type="checkbox"/> Non-Owned Automobiles</td> </tr> <tr> <td><input type="checkbox"/> Premises-Operations</td> <td><input type="checkbox"/> Hired Automobiles</td> </tr> <tr> <td><input type="checkbox"/> Explosion-Collapse Hazard</td> <td><input type="checkbox"/> Fire Legal Liability</td> </tr> <tr> <td><input type="checkbox"/> Underground Hazard</td> <td><input type="checkbox"/> _____</td> </tr> <tr> <td><input type="checkbox"/> Products/Completed Operations</td> <td><input type="checkbox"/> _____</td> </tr> </table>	<input type="checkbox"/> Broad Form Property Damage	<input type="checkbox"/> Contractual Liability	<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Owned Automobiles	<input type="checkbox"/> Independent Contractors	<input type="checkbox"/> Non-Owned Automobiles	<input type="checkbox"/> Premises-Operations	<input type="checkbox"/> Hired Automobiles	<input type="checkbox"/> Explosion-Collapse Hazard	<input type="checkbox"/> Fire Legal Liability	<input type="checkbox"/> Underground Hazard	<input type="checkbox"/> _____	<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> _____						
<input type="checkbox"/> Broad Form Property Damage	<input type="checkbox"/> Contractual Liability																				
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Owned Automobiles																				
<input type="checkbox"/> Independent Contractors	<input type="checkbox"/> Non-Owned Automobiles																				
<input type="checkbox"/> Premises-Operations	<input type="checkbox"/> Hired Automobiles																				
<input type="checkbox"/> Explosion-Collapse Hazard	<input type="checkbox"/> Fire Legal Liability																				
<input type="checkbox"/> Underground Hazard	<input type="checkbox"/> _____																				
<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> _____																				
<table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Type of Coverage</td> <td style="width: 25%;">Limits of Liability</td> <td style="width: 25%;">Policy Period</td> <td style="width: 25%;">Deductible \$ _____</td> </tr> <tr> <td></td> <td style="text-align: center;">From</td> <td></td> <td><input type="checkbox"/> Self-insured Retention \$ _____</td> </tr> <tr> <td></td> <td style="text-align: center;">To</td> <td></td> <td>For _____</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: center;">(Coverage)</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</td> <td></td> <td style="text-align: center;"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</td> </tr> </table>	Type of Coverage	Limits of Liability	Policy Period	Deductible \$ _____		From		<input type="checkbox"/> Self-insured Retention \$ _____		To		For _____				(Coverage)		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence	
Type of Coverage	Limits of Liability	Policy Period	Deductible \$ _____																		
	From		<input type="checkbox"/> Self-insured Retention \$ _____																		
	To		For _____																		
			(Coverage)																		
	<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence																		

Other Conditions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
AUTO LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insureds with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I, _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>	<p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <hr/> <p>Includes (check as applicable):</p> <p><input type="checkbox"/> All Autos</p> <p><input type="checkbox"/> Owned Automobile <input type="checkbox"/> Hired Automobile</p> <p><input type="checkbox"/> Non-owned Automobile <input type="checkbox"/> _____</p>																				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Type of Coverage</td> <td style="width: 25%;">Limits of Liability</td> <td style="width: 25%;">Policy Period</td> <td style="width: 25%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">From</td> <td></td> <td><input type="checkbox"/> Deductible \$ _____</td> </tr> <tr> <td></td> <td style="text-align: center;">To</td> <td></td> <td><input type="checkbox"/> Self-insured Retention \$ _____</td> </tr> <tr> <td></td> <td></td> <td></td> <td>For _____ (Coverage)</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</td> <td></td> <td style="text-align: center;"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</td> </tr> </table>	Type of Coverage	Limits of Liability	Policy Period			From		<input type="checkbox"/> Deductible \$ _____		To		<input type="checkbox"/> Self-insured Retention \$ _____				For _____ (Coverage)		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence	<p>Other Conditions:</p>
Type of Coverage	Limits of Liability	Policy Period																			
	From		<input type="checkbox"/> Deductible \$ _____																		
	To		<input type="checkbox"/> Self-insured Retention \$ _____																		
			For _____ (Coverage)																		
	<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence																		

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
WORKERS' COMPENSATION / EMPLOYER'S LIABILITY - SPECIAL ENDORSEMENT

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured unless checked below in which case only the following specific agreements with the City of Los Angeles Harbor Department are covered:

Agreement/Permit Number(s): _____

2. **CANCELLATION NOTICE.** With respect to the interests of the City of Los Angeles Harbor Department, this insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
 Harbor Division
 425 South Palos Verdes Street
 San Pedro, CA 90731

Board of Harbor Commissioners
 425 South Palos Verdes Street
 San Pedro, CA 90731
 Attn: Risk Manager

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

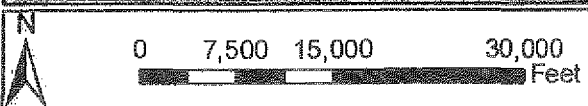
<p>_____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>	<p>Includes (check as applicable):</p> <p><input type="checkbox"/> Broad Form All States Endorsement</p> <p><input type="checkbox"/> Voluntary Compensation Endorsement</p> <p><input type="checkbox"/> United States Longshoremens and Harbor Workers Compensation Act</p> <p><input type="checkbox"/> Jones Act</p> <p><input type="checkbox"/> Other Continental Shelf Endorsement</p> <p><input type="checkbox"/> Waiver of Subrogation</p> <p><input type="checkbox"/> Employer's Liability</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p>
--	--

Type of Coverage	Limits of Liability	Policy Period
Workers' Compensation	Statutory	From
Employer's Liability		To

Other Provisions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

FTZ 202 - SITE 25 LAXFUEL CORPORATION



Harbor Department
 Planning and Economic Development
 Map Produced 05/2012



0150-09817-0000

TRANSMITTAL

TO Geraldine Knatz, Ph.D., Executive Director Harbor Department	DATE AUG 16 2012	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED FOREIGN TRADE ZONE OPERATING AGREEMENT NO. 12-3074
WITH LAXFUEL CORPORATION, FTZ NO. 202, SITE NO. 25**

Transmitted for further processing, including Council consideration.
See the City Administrative Officer report attached.


MAYOR

MAS:ABN:10130008t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

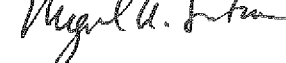
Date: August 10, 2012

CAO File No. 0150-09817-0000

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer 

Reference: Transmittal from the Harbor Department dated July 5, 2012; referred by the Mayor for report dated June 10, 2012

Subject: **PROPOSED FOREIGN TRADE ZONE OPERATING AGREEMENT NO. 12-3074 WITH LAXFUEL CORPORATION, FTZ NO. 202, SITE NO. 25**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 12-7344 authorizing the proposed Foreign Trade Zone (FTZ) Operating Agreement No. 12-3074 with LAXFUEL Corporation (LAXFUEL), in FTZ No. 202, in FTZ Site No. 25 within the Port of Los Angeles (POLA). The proposed operating Agreement with LAXFUEL is for an initial term of five years and three subsequent five-year renewal options, for a contract term up to a total of 20 years, subject to approval by the Board, Mayor and Council,. The FTZ Operator plans to activate Site No. 25 for the storage and delivery of jet fuel to serve the Los Angeles International Airport (LAX).

FTZ Site No. 25 consists of liquid bulk terminal refineries, storage tanks and pipelines on approximately 711 acres. According to the Port, the three liquid bulk terminals will be located on POLA property at Terminal Berths 118, 119, 167, 168 169, 188 and 189. Liquid terminals are normally used for petroleum, oil and chemical tanks and terminals. LAXFUEL will operate its designated land, facilities and storage centers under FTZ rules and regulations.

The United States (USA) Government's Federal FTZ Board has designated the Port as the Grantee/Administrator of FTZ 202 region for the City of Los Angeles and the surrounding region. A definition of an FTZ is a secure area located in or near the port of entry for US Customs and Border Protection Agency (Customs), but legally considered to be outside the Customs territory for the purpose of tariff laws and Customs entry procedures. All activities are performed in accordance with Federal FTZ procedures. The goal of the FTZ program and Port is to stimulate economic growth and development in the United States, facilitate efficient cargo transit and support the local, State and national economy. The FTZ does not generate a direct profit for the Port, but is provided by the Port as a service to its customers to promote international trade and commerce in the region and USA.

The proposed FTZ Agreement will authorize LAXFUEL to provide the means for international carriers at LAX to use jet fuel free of customs duties and fees. The Port states that jet fuel will be the only

imported product. LAXFUEL plans to use the FTZ site to store the fuel and deliver it to the LAX for use on international flights. LAXFUEL wants to use its FTZ site to combine and store imported jet fuel with domestic jet fuel in order to use storage tanks more efficiently. Previously, LAXFUEL has had to use separate storage facilities to store for the imported and domestic jet fuel because of the "customs bond" status of the imported jet fuel. Customs bonds are required by the US Customs Services for all importers that bring goods into the USA. A customs bond is a guarantee to the federal government that the importer will follow all laws and regulations governing the importation of merchandise. The bond is usually required for monetary compensation for failure to perform specified acts referenced in the agreement. According to the Port, the imported jet fuel is free of customs duties and taxes; however, imported fuel must be physically segregated from the domestic fuel. As a result, LAXFUEL's previous maintenance and support for separate storage facilities for the imported and domestic fuels were deemed to be too expensive because of the designated limits imposed on the tank facilities' storage capacity and requirements. Under FTZ rules for the designated site, LAXFUEL will be allowed to combine the imported and domestic fuel products as long as they separate and maintain the appropriate inventory records and operations for the FTZ. See the Attachment for an overview of FTZ policies and guidelines for this Agreement.

LAXFUEL states that its proposed FTZ Agreement is separate and apart from and will not affect any other leases, permits or contracts that it has with the Port. LAXFUEL employs approximately 38 full-time employees in its airport operations. The property of LAXFUEL's jet fuel delivering operation includes refineries, terminals, pipelines and office space and is located on approximately 711 acres of land.

LAXFUEL has agreed to pay an annual administrative fee of \$5,000 per year for a total of \$25,000 for the first five-year term and up to a maximum of \$100,000 over the proposed 20-year life of the Agreement. The FTZ Operator agreements will require no direct use of Port funds. Although there will be no additional direct cost, the Port states that it spends funds on indirect or outside expenses for FTZ-related administrative services. In 2011, the Port states that it spent approximately \$80,000 and collected approximately \$149,000 in revenue and fees from all FTZ operators.

The Port states that LAXFUEL has committed to use the Pier Pass program, which will reduce daytime truck traffic operations and allow them to open operations in the evenings. LAXFUEL will notify truck drivers, brokers and companies that trucks serving the FTZ site and Port's container terminals must confine their routes to the designated Wilmington truck route. The Port states that if the proposed Agreement is not approved, LAXFUEL has the option to move its facilities to another FTZ region in California, such as Long Beach or San Diego or another state. The Port states that approval of the proposed Amendment is in the best interest of the City and Port economically.

The proposed Amendment is in compliance with City requirements and has been approved as to form by the City Attorney. Pursuant to Charter Section 373 and the Los Angeles Administrative Code Section 10.5, Council approval is required because the cumulative contract term exceeds three years. The Port Director of Environmental Management has determined that this is an administrative action and is therefore exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III, Section 1 (14) of the Los Angeles City CEQA guidelines.

RECOMMENDATION

That the Mayor approve Harbor Department (Port) Resolution No. 12-7344 authorizing the proposed Foreign Trade Zone (FTZ) Operating Agreement No. 12-3074 with LAXFUEL Corporation (LAXFUEL), in FTZ Site No. 25, in the Port of Los Angeles, and return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

The proposed FTZ Operator Agreement with LAXFUEL Corporation (LAXFUEL) will have no impact on the City General Fund. LAXFUEL has paid the one-time application fee of \$5,000 and will pay an annual administrative fee of \$5,000 per year for the initial five-year term and three five-year renewal options, for a possible contract amount of up to a total of \$105,000 for the life of the contract. There will be no impact on the City General Fund. All Funds will be deposited in the Harbor Revenue Fund.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 373, "Long Term Contract Approved by Council," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes action disapproving a contract that is longer than three years within 60 days after submission to Council, the contract will be deemed approved.

MAS:ABN:10130008

Attachment

ATTACHMENT

OVERVIEW OF FOREIGN TRADE ZONES, OPERATING AGREEMENT

The Federal FTZ Board designated the Harbor Department (Port) as the Grantee/Administrator of FTZ No. 202 for the City of Los Angeles and the surrounding region. Below is an overview of FTZ policies and guidelines.

The FTZ Operating Agreements are entered into with various companies who have applied for FTZ status with the Federal FTZ Board and have been approved by the United States (U.S.) Department of Homeland Security Customs and Border Protection (Customs) to activate a site. Authority is granted by the Federal FTZ Board under the amended FTZ Act of 1934, which is administered through Federal FTZ and Customs Regulations. The FTZ Act was established to support U.S. commerce and create jobs by reducing import duties or excise taxes by deferring payment of duty thereby making it appealing for companies to perform work on their products in the U.S. instead of offshore. The goal of the Port and FTZ program is to stimulate economic growth and development in the U.S., facilitate efficient cargo transit and support the local, State and national economy.

An FTZ is a secure area located in or near the port of entry for Customs, but legally considered to be outside the Customs territory for the purpose of tariff laws and Customs entry procedures. It is the U.S. version of what are known internationally as free-trade zones. An FTZ is sponsored by qualified public or private companies, which may operate the facilities themselves or contract for the operation with public or private firms. The operations are conducted on a public use basis, which opens its services to the public, with published tariff rates. In this case, the published rates applicable are the Port Tariff (No. 1) rates, terms and conditions. These spaces and operations will be under the supervision of the Federal FTZ Board and Customs and will be required to operate within U.S. law.

The Port FTZ No. 202 is a multi-zone FTZ currently operating 23 sites with 15 contracted FTZ general purpose operators and five Subzone operators. The sites include facilities in the Port area, Los Angeles International Airport, nearby industrial parks and other outlying locations. The FTZ does not generate a profit for the Port, but is provided as a service to its customers to promote international trade in the U.S. These operations will be monitored by the Port, but under the supervision of the Federal FTZ Board and Customs and required to operate within U.S. law.

The FTZ Operator is normally required to pay an annual administrative operating fee of \$5,000 per year for a total of \$25,000 for the first five-year term. Upon approval by the Board of Harbor Commissioners (Board), the Port will be paid up to \$25,000 for each of three five-year renewal options, for an additional \$75,000, and a total contractual fee amount of \$100,000 over 20 years. The proposed Agreement renewal options will be subject to approval by the Board and based upon terms and conditions negotiated prior to the end of each five-year term. The proposed Agreement with the FTZ Operator will become effective the first of the month following Council approval and will remain in effect for an initial term of five years. Either the Port or FTZ Operator can terminate the proposed Agreement at the end of the each term or by submitting a 180-day prior written notice.