

AN ORDINANCE 2006-03-30-0413

**AUTHORIZING THE CITY MANAGER, AS GRANTEE FOR FOREIGN TRADE ZONE (FTZ) NO. 80, TO EXECUTE AN OPERATING AGREEMENT WITH PROTRANS INTERNATIONAL, INC. FOR OPERATION OF FREE TRADE ZONE BUSINESS ACTIVITIES AT 1510 CORNERWAY BOULEVARD IN THE CORNERSTONE BUSINESS AND INDUSTRIAL PARK.**

\* \* \* \* \*

**WHEREAS**, the Foreign Trade Zone (“FTZ”) Program was created by the passage of the FTZ Act in 1934 for the purpose of facilitating international trade and increasing the global competitiveness of companies operating in the U.S.; and

**WHEREAS**, the FTZ Program (the “Program”) serves as an economic development tool for attracting, developing and growing manufacturing and distribution operations in San Antonio; and

**WHEREAS**, a designated FTZ site is an area within the United States where foreign and domestic merchandise is considered to be outside the country or U.S. Customs territory; and

**WHEREAS**, the benefits of operating in an FTZ include the delay, deferral or elimination of duties on foreign merchandise admitted into an FTZ site and companies operating in an FTZ can reduce importing costs and improve efficiencies in their supply chain; and

**WHEREAS**, the types of operations permitted in an FTZ include assembly, distribution, manufacturing, repackaging, relabeling, storage, display, and repair; and

**WHEREAS**, the City of San Antonio received a Grant from the U.S. Department of Commerce FTZ Board to establish FTZ No. 80 on September 16, 1982 and as a result, the City is the Grantee for FTZ No. 80 with the program administered through the Economic Development Department (“EDD”); and

**WHEREAS**, the initial FTZ grant included the establishment of three sites and has since been expanded twice to include a total of ten designated FTZ sites; and

**WHEREAS**, in 2004, the City of San Antonio contracted with Free Trade Alliance San Antonio (the “FTA”) for assistance in marketing and administering the Program under the oversight of EDD and the International Affairs Department; and

**WHEREAS**, there is currently one activated site in FTZ No. 80, with an FTZ operator known as VTech Communications, Inc. located within Site No. 8 at the Coliseum Distribution Center with operations including assembly, packaging and distribution of phones imported from China, posting annual savings from FTZ operations estimated at \$1,000,000; and

**WHEREAS**, ProTrans International, Inc. (“ProTrans”) has requested activation within Site No. 4 in the Cornerstone Business and Industrial Park and approval of an Operating Agreement, a signed copy of which is attached hereto as Attachment I; and

**WHEREAS**, ProTrans is a leader in the logistics industry providing transportation, warehousing, distribution, and custom brokerage services in the U.S. and Mexico, generating \$90,000,000 in annual sales, with 289 employees located at 14 U.S. locations, including an FTZ operation in El Paso, and another 5 operating locations in Mexico; and

**WHEREAS**, ProTrans is leasing 30,000 sq. ft. of a 549,000 sq. ft. facility at 1510 Cornerway Boulevard with intentions of initially activating 2,400 sq. ft. for FTZ operations with room for expansion, offering a variety of services including kitting, sorting, relabeling, storage and manipulation of products to potential FTZ clients; and

**WHEREAS**, the activation of this FTZ site supports the targeted industry of Logistics and Distribution and will help facilitate growth in international trade and commerce as well as providing the region with an activated FTZ site that is immediately available for those companies seeking the advantages of operating within an FTZ; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council authorizes and approves the terms of the Operating Agreement as reflected in Attachment I.

**SECTION 2.** The City Manager or her designee is authorized to execute the Agreement in Section 1 within 60 days from the effective date of this Ordinance.

**SECTION 3.** Fees generated by this ordinance will be deposited into Fund 11001000, General Fund, Internal Order 216000000000, CONTRACTS-ADMIN SVCS, General Ledger 4401260, Svc Charge - Foreign Trade Zone.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance shall be effective on the tenth (10th) day after passage.

**PASSED AND APPROVED** this 30th day of March, 2006.

  
M A Y O R

**PHIL HARDBERGER**

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

## **ATTACHMENT I**



## I. DEFINITIONS

The following words are defined below for purposes of this Agreement:

- 1.1 "The Act" shall mean the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998-1003; 19 USC 81 81a-81u), as amended.
- 1.2 "The Board" shall mean the U.S. Department of Commerce, Foreign-Trade Zones Board, which was established by the Act.
- 1.3 "The Regulations" shall mean collectively the regulations currently published in the Code of Federal Regulations at Title 15, Part 400, and Title 19, Part 146, as such regulations may be amended in the future.
- 1.4 "CBP" shall mean the U.S. Customs and Border Protection.
- 1.5 "CBP Directives" shall mean the Directives issued by the U.S. Customs and Border Protection.
- 1.6 "The Operating Procedures" shall mean such operating procedures as may be required of Operator by the CBP.

## II. AGREEMENT TO OPERATE

Grantee hereby grants, subject to all the terms, covenants and conditions set forth in this Agreement and to the provisions, conditions and restrictions of the Act and the Regulations and to other applicable law, permission to Operator to manage and operate the Zone Site with regard to its own merchandise and merchandise of certain customer where title and risk of loss do not transfer to PROTRANS.

## III. RESPONSIBILITY OF OPERATOR

- 3.1 Authorization and General Responsibility - Grantee hereby authorizes Operator to provide, and Operator assumes full responsibility for providing, the operational management services at the Zone Site. Operator agrees to operate and manage the Zone Site in accordance with the terms and conditions of this Agreement and in compliance with the Act, Regulations, CBP Directives and all other applicable laws and regulations during the term hereof, including any renewals.
- 3.2 Specific Responsibility - Operator will be responsible for providing operational management services. These operational management services include, but are not limited to the following:
  - (a) establishing and implementing Operating Procedures to be followed at the Zone Site which will satisfy the regulatory requirements of the CBP;

- (b) collecting in-bond documentation (Customs Forms 7512) from bonded carriers, where applicable;
- (c) printing Customs Forms 214 to be utilized at the Zone Site;
- (d) signing Customs Forms 214 so as to admit its merchandise into the Zone Site;
- (e) filing Customs Forms 214 and applicable documentation with CBP;
- (f) entering into an agreement, where necessary, with the United States Census Bureau regarding the furnishing of statistical copies of Customs Forms 214 (Customs Form 214A) and other statistical information;
- (g) keeping tallies of all the merchandise admitted into and delivered from the Zone Site and entered into consumption from the Zone Site;
- (h) preparing the annual report for the activities conducted at the Zone Site to be filed by Grantee with the Board and providing said report to Grantee no later than December 1 of each year;
- (i) preparing any and all documentation required by the CBP and the Board to be prepared by a Foreign-Trade Zone Operator;
- (j) ensuring that the proper Customs Form 301 Foreign-Trade Zone Operator's bond is maintained and kept current with CBP covering Operator's activities at the Zone Site;
- (k) providing the physical security required by the CBP in order to ensure the safekeeping of the merchandise at the Zone Site;
- (l) establishing an electronic interface with the CBP through its automated commercial system, when the specifications and requirements of that interface have been developed and implemented by the CBP.

3.3 Operator will be responsible for the receipt and verification of all merchandise admitted to the Zone Site. Furthermore, Operator shall ensure that the proper Customs Forms and handling of all merchandise is conducted in accordance with the Regulations. Operator further agrees not to allow removal of any merchandise located within the Zone Site sites without the prior approval from the CBP under the applicable laws, rules and regulations of the CBP.

3.4 Performance - Operator agrees to use its best efforts to immediately initiate its operations with respect to the Zone Site.

#### IV. RESPONSIBILITIES OF GRANTEE

- 4.1 Foreign-Trade Zone Forms - Operator is authorized to execute in its own name Customs Forms 214 and 216 in its operation of the Zone Site. Without limiting Grantee's rights to inspect and audit as provided herein, the Parties specifically recognize that Grantee is not obligated to, and does not intend to, monitor the day-to-day activity of the Zone Site.
- 4.2 Annual Report - Grantee is responsible for furnishing the Annual Report to the Board from the information given to it by Operator pursuant to paragraph 3.2(h) of this Agreement. Operator shall be responsible for preparing a narrative as required for the annual report to the Board.

#### V. RECORDKEEPING, INSPECTION AND AUDIT

- 5.1 Operator agrees to submit to Grantee, at the end of each Federal fiscal year, reports containing data required by the Board with respect to its operations at the Zone Site. All such statements shall be signed by Operator, certifying the accuracy of the reports. All financial and operations information concerning the Zone Site shall be kept confidential except that which is required to be made public by the Board or by law.
- 5.2 Operator agrees to cause all financial and accounting records concerning the operations of Users at the Zone Site to be retained for the period of time required by the regulations. Grantee shall have the right upon reasonable notice and during normal business hours at any time and from time to time, at its own cost and expense, to conduct inspections and audits of Operator's records in connection with its operation on behalf of Users of the Zone Site. Operator, its employees and agents shall cooperate fully in connection therewith, and at no extra cost to Grantee, such cooperation to include but not be limited to making available to Grantee for on-site physical inspection or copying the books, records and accounts which Operator is required to keep for the Zone Site by the CBP, and answering inquiries to be made in such manner or form as Grantee deems appropriate (including personal interviews) covering any aspect of Operator's operations under this Agreement at the Zone Site. Nothing herein is intended to preclude Operator from asserting against Grantee a claim of privilege or confidentiality regarding its records that Operator could assert against the CBP, the Board or a successor agency, but nothing herein is intended to preclude Grantee from contesting such claims.
- 5.3 Notwithstanding any of the foregoing, any information regarding Operator shall be kept confidential by Grantee and shall not be disclosed to any other person, except for such information as shall be determined by Grantee to be public information under federal, state,

or local laws. In addition, any and all operating procedures, manuals, computer programs, computer reports, and systems designs developed or used by Operator shall be the sole property of Operator and will not be disclosed by Grantee to any other entity except as may be required by law.

- 5.4 Operator shall promptly notify Grantee of any other reports requested by any government agency, and shall, upon request, provide copies of all such reports and investigative documentation to Grantee. In the event that any audit, inspection or examination by the CBP, the Board, or Grantee discloses that books, records or operational procedures of Operator are not in conformity with the requirements of this Agreement, Operator shall take all actions necessary to correct such deficiencies.
- 5.5 All written communications with the Board concerning operations at the Zone Site are to be made through the Grantee.

## VI. ADMINISTRATIVE EXPENSE

- 6.1 CBP Expenses - Operator shall pay the full cost of any activation fee and annual fee imposed by the CBP attributable to Operator's operation of the Zone Site.
- 6.2 CBP Bond Expense - Operator shall pay the full cost of any CBP Bond required by the CBP for Operator's operation of the Zone Site. Alternatively, if Grantee obtains the CBP Bond C.F. 301, Operator will pay its proportionate share of the cost of said bond.
- 6.3 Reimbursement by Grantee - Grantee shall not be obligated to reimburse Operator for any expenses incurred by Operator in connection with its operations at or administration of the Zone Site, including, without limitation, expenses covering or relating to any of the following: assignment to the Zone Site of CBP employees; the obtaining of such surety bond as may be required of Operator by the CBP; keeping of books, records and accounts in the manner required by the Regulations; any costs incurred by Operator pursuant to the Regulations and any other expenses involving in any way the administration or operation of the Zone Site or Operator's compliance with the terms of this Agreement. All such expenses shall be the sole responsibility of Operator.
- 6.4 Reimbursement by Operator - Operator hereby agrees to pay to Grantee the fees set forth in Exhibit B within the timeframes set forth in Exhibit B. The Parties agree that this amount is fair and reasonable compensation for the services to be rendered by Grantee in assisting Operator with regard to marketing FTZ No. 80 and the Zone Site. Furthermore, Operator understands that the fees listed in Exhibit B are subject to change upon ninety (90) days notice from Grantee to Operator and Operator agrees to abide by any fee modifications that may occur.
- 6.5 Fines - Without limiting the generality of any other provision in this Agreement, Operator shall reimburse Grantee for any fine ultimately imposed on Grantee by CBP as the result of any act or omission of Operator under this Agreement. In the event any such fine is

imposed or if Grantee is informed that any such fine is contemplated, Grantee shall promptly notify Operator in writing and shall provide Operator the opportunity to defend against such fine.

- 6.6 Late Submission of Annual Report – Apart from, and in addition to, reimbursing Grantee for any fine imposed on Grantee as a result of an act or omission of Operator under this Agreement, Operator shall pay Grantee \$100 per day for each and every day after December 1 that the Annual Report for the activities conducted at the Zone Site is received from Operator by Grantee, unless Grantee has provided Operator with a written extension of time in which to produce such data.

## VII. RELATIONSHIP BETWEEN GRANTEE AND OPERATOR

Grantee and Operator 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 except as set forth in this Agreement. Operator and Grantee agree not to represent to any one that they are agents of one another or have any authority to act on behalf of one another except as set forth in this Agreement.

## VIII. INDEMNIFICATION

- 8.1 OPERATOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to Operator's activities at or in connection with the Zone Site and under this CONTRACT, including any acts or omissions of OPERATOR, any agent, officer, director, representative, employee, consultant or subcontractor of OPERATOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the Parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. OPERATOR shall promptly advise the CITY in writing of any claim or demand against the CITY or OPERATOR known to OPERATOR related to or arising out of Operator's activities under this CONTRACT and shall see to

the investigation and defense of such claim or demand at Operator's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving OPERATOR of any of its obligations under this paragraph.

- 8.2 It is the EXPRESS INTENT of the Parties to this CONTRACT, that the INDEMNITY provided for in this section (Section 8), is an INDEMNITY extended by OPERATOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the City's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. OPERATOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

#### IX. INSURANCE

- 9.1 Operator shall furnish a completed Certificate of Insurance to the Economic Development Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Such certificate shall have been delivered to the Grants Management Officer, and no officer or employee shall have authority to waive this requirement.
- 9.2 The City reserves the right to review the insurance requirements of this section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the City allow modification whereupon the City may incur increased risk.
- 9.3 Operator's financial integrity is of interest to the City, therefore, subject to Operator's right to maintain reasonable deductibles in such amounts as are approved by the City, Operator's shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Operator's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-(vii) or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
a. Workers' Compensation	Statutory
Employers' Liability	1,000,000.00/\$1,000,000.00/\$1,000,000.00

- b. Commercial General (public) Liability Insurance to include coverage for the following:
  - a. Premises/Operations Combined Single Limit
  - \* b. Independent contractors for Bodily Injury and
  - c. Products/completed operations Property Damage of
  - d. Contractual liability \$1,000,000.00 per occurrence
  - e. Broad form property damage, or its equivalent, with an  
to include fire legal liability aggregate of not less than
  - f. Personal Injury \$2,000,000.00
  
- c. Excess Liability (umbrella form) \$3,000,000.00 each  
(Excess liability insurance shall occurrence and  
follow the form of the Primary \$3,000,000.00 aggregate  
insurance).
  
- d. Business Automobile Liability \*
  - 1. Owned/leased vehicles Combined Single Limit for
  - 2. Non-owned vehicles Bodily Injury and Property
  - 3. Hired vehicles Damage of 1,000,000.00 per  
occurrence or its equivalent.

\* = if applicable

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Upon such request by the City, the Operator shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

9.5 Operator agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

9.5.1 List the City of San Antonio and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City of San Antonio, with the exception of the workers' compensation and professional liability policies;

- 9.5.2 The Operator's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under the contract with the City of San Antonio; and
- 9.5.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City of San Antonio.
- 9.6 Operator shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio  
Economic Development Department  
ATTN: Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

#### X. ADVERTISING

- 10.1 Grantee's Rights - Grantee shall have, at all times hereunder, the right to use aggregate, general data concerning the Zone Site in marketing FTZ No. 80. Without limiting any other provision of this Agreement, Grantee specifically reserves the right to respond to press inquiries concerning the Zone Site.
- 10.2 Operator's Rights - Operator shall have the right to advertise the FTZ designation of the Zone Site and its status as Operator so as to solicit Users for the Zone Site.

#### XI. 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 the Grantee as required herein, commencing on the first day of the month subsequent to Grantee 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. 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.

#### XII. RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

- 12.1 Termination by both Parties - Both Parties shall have the right, if the Zone Site is deactivated, to terminate this Agreement and all rights and obligations hereunder upon six (6) months prior written notice to the other Party.
- 12.2 Withdrawal of Grant - If the FTZ No. 80 grant shall be revoked or canceled and as a result thereof Grantee permanently is without authority to operate and/or maintain the Zone Site, this Agreement shall terminate and Operator shall have no claim against Grantee by reason of such revocation or cancellation, and Operator shall have no further interest in the subject matter of this Agreement except to receive such additional compensation as may be or become due to it pursuant to this Agreement, by virtue of services rendered or facilities furnished before the date of such revocation or cancellation.
- 12.3 Should Grantee be prevented from continuing the operation of a foreign-trade zone by statute, legal regulation or order of any court, Grantee may terminate this Agreement by written notice to Operator. Operator shall have the standing to institute appropriate legal or administrative proceedings to contest the validity or applicability of said statute, legal regulation, or court order, or to file an appeal from said court order, and should said legal or administrative proceedings or appeal result in a decision by a court or administrative body of competent jurisdiction that Grantee is not prevented from continuing the operation of a foreign-trade zone at the sites depicted on Exhibit "A" by virtue of said statute, legal regulation, or court order, then this Agreement shall be reinstated in full force and effect and Grantee and Operator shall be restored to their former positions hereunder as if said termination had never taken place.
- 12.4 Termination by Grantee - Grantee shall have the right, if Operator is in breach of its obligations under this Agreement, to terminate this Agreement and all rights and obligations hereunder, provided that Grantee has given written notice to Operator regarding the breach of this Agreement and Operator fails to pay any sums due within forty-five (45) days of receipt of such notice or where correction of such deficiency requires a longer period and Operator has failed to commence to correct such deficiency within forty-five (45) days of receipt of such notice and to correct such deficiency within a reasonable period thereafter. Additionally, Grantee shall have the right to terminate this Agreement immediately for cause for cancellation of Operator's bond, the expiration of its liability insurance policy or the suspension of the grant by the Foreign- Trade Zones Board.
- 12.5 If Operator shall default in mortgage, deed of trust or lease covering any of Operator's facilities or sites located within FTZ No. 80, be adjudicated bankrupt or make an assignment for the benefit of creditors, or if Operator shall default in the performance of any covenant or agreement made hereunder, as to standards of operations, failure to obtain consent from the Grantee where required hereunder, payments and amounts due hereunder or otherwise, and such defaults are not remedied within thirty (30) days after receipt of notice of such defaults by Operator, then Grantee may thereupon terminate this Agreement and all rights hereunder of Operator; but such termination shall not affect the obligations of Operator to take action or abstain from taking action after termination hereof, in accordance with this Agreement.

- 12.6 Upon termination of this Agreement for any cause, Operator will immediately discontinue all use of signs, forms of advertising and other indicia of operation of Foreign-Trade Zone business within Operator's facilities or sites within FTZ No. 80.
- 12.7 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.

### XIII. NOTICES

- 13.1 All notices to Grantee shall be sent by certified mail, return receipt requested, addressed to Grantee at the address stated herein or at such other address as Grantee designates in writing. All notices to Operator shall be sent by certified mail, return receipt requested, addressed to Operator at the address stated herein or at such other address as Operator designates in writing. The date of delivery as evidenced by the postal return receipt shall be deemed the date of service of the notice.
- 13.2 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Director  
Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

and

City Attorney's Office  
Government & Visitors Services  
City Hall  
P.O. Box 839966  
San Antonio, Texas 78283-33966

PROTRANS:

**Erin Yeary**  
**1510 Cornerway Blvd., Ste. 167**  
**San Antonio, TX 78219**

For Events of Default  
Attn: **Erin Yeary**  
**1510 Cornerway Blvd., Ste. 167**  
**San Antonio, TX 78219**

#### XIV. MISCELLANEOUS

- 14.1 Construction - This Agreement shall be governed by and construed in accordance with the Foreign-Trade Zones Act, regulations adopted by the Board thereunder and all amendments thereto, and the applicable laws of the State of Texas.
- 14.2 Counterparts - This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same Agreement.
- 14.3 Further Instruments and Actions - Each Party shall deliver such further instruments and take such further action as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.
- 14.4 Headings - Headings and captions in this Agreement are solely for the convenience of reference and shall not affect its interpretation.
- 14.5 Integration - This instrument contains the entire agreement of the Parties, and no representation, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect.
- 14.6 Separability - If any provision of this Agreement is declared void or defective, that declaration will not affect the validity of any other provision of this Agreement.
- 14.7 Waiver - No failure of either Party hereto to exercise any right or power given it hereunder, or to insist upon strict compliance by the other Party of any obligation hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of the Party's right to demand exact compliance with the terms hereof.
- 14.8 Gender - All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed construed to include any other number, singular or plural, any other gender, masculine, feminine, as the context or sense of this Agreement or any paragraph or clause herein may require.
- 14.9 Amendment - This Agreement cannot be changed orally but only by an agreement in writing by all Parties hereto.
- 14.10 Assignment - Operator is hereby prohibited from selling, transferring, assigning or subletting Operator's ownership in its entirety or any portion at any time, except for a sale, transfer, assignment, or subletting to a subsidiary within Operator's company, without the prior written approval of Grantee. Operator shall remain liable to Grantee under this Agreement in case of any sale, transfer, assignment or subletting, unless released in writing by Grantee.

- 14.11 Texas Law - This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.
- 14.12 Exhibits - All exhibits or schedules referred to herein, or which from time to time may be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if fully set forth herein. Any exhibit or schedule incorporated herein may be adjusted without the necessity of formal amendment of this Agreement. Upon adjustment of any exhibit or schedule, a revised exhibit or schedule shall be prepared by Grantee and executed by the Parties hereto. Each exhibit or schedule as its effective date, shall be deemed a part of this Agreement at all times so long as it bears the signatures or initials of both Parties hereto.
- 14.13 Entire Agreement - This Agreement constitutes the final and entire Agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the Parties.

EXECUTED IN DUPLICATE ORIGINALS this the 28th day of March, 2006.

CITY OF SAN ANTONIO  
(Grantee)

PROTRANS  
(Operator)

\_\_\_\_\_  
Sheryl Sculley  
City Manager

\_\_\_\_\_  
By: James J. E. [Signature]  
Title: CEO

ATTEST:

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
City Attorney