

CONSIDERATION OF OPERATING AGREEMENT BETWEEN THE OXNARD HARBOR DISTRICT AND TRADE ZONE OPERATIONS, INC., TO ACT AS OPERATOR FOR KIA MOTORS AMERICA ON A PORTION OF THE SEAPORT SITE ON NAVAL BASE VENTURA COUNTY, PORT HUENEME.

BACKGROUND

Trade Zone Operations, Inc. (TZO) is seeking foreign trade zone activation of 74.5 acres (Parcels 1, 2, 3 &4) located on Naval Base Ventura County, Port Hueneme on a portion of the Seaport Site in Foreign Trade Zone #205. This is land that is currently being used by Global Auto Processing Services, Inc. (GAPS) to process and store automobiles. TZO will be the foreign trade zone operator of the site on behalf of Kia Motors America (KMA). Additionally, Parcels 13 & 14 will be designated in the Agreement to be activated at no additional costs to TZO and KMA if and when these parcels are incorporated into the GAPS lease agreement with the USN.

SUMMARY

District staff has prepared the Operator Agreement attached.

CALIFORNIA ENVIRONMENTAL QUALITY ACT ACTIONS

None required.

FISCAL IMPACT

Income:	
Activation Fee (one time)	\$5,000.00
Annual Fee	\$5,000.00

Attachment

RECOMMENDATION: Approve the Foreign Trade Zone Operator USE Agreement Between the Oxnard Harbor District and Kia Motors of America / Trade Zone Operations, Inc., FTZ #205 on a portion of the Seaport Site on Naval Base Ventura County, Port Hueneme.

FOREIGN TRADE ZONE OPERATING AGREEMENT

BETWEEN

OXNARD HARBOR DISTRICT

AND

TRADE ZONE OPERATIONS, INC.

FTZ # 205

SEAPORT SITE
ON NAVAL BASE VENTURA COUNTY
PORT HUENEME

FOREIGN TRADE ZONE OPERATING AGREEMENT

This AGREEMENT entered into this 9th day of November, 2009, by and between Oxnard Harbor District, 333 Ponomo Street, Port Hueneme, California, 93041 (hereinafter "GRANTEE") and TRADE ZONE OPERATIONS, INC. , a Texas corporation, P.O. Box 9047, Newport Beach, CA 92658-1047 (hereinafter "OPERATOR")

WITH REFERENCE TO THE FOLLOWING RECITALS:

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

WHEREAS, GRANTEE, a harbor district duly organized and existing under the laws of the State of California, by Resolutions # 730, as amended by Resolution # 745, made application to the Foreign - Trade Zones Board to establish, operate, and maintain a foreign-trade zone (FTZ) within the Port of Hueneme Port of Entry; and

WHEREAS, the United States of America (hereinafter "NAVY") has land located in the industrial/mobilization area of the Naval Base Ventura County, Port Hueneme, CA which has been included as part of the Oxnard/Port of Hueneme FTZ # 205; and

WHEREAS, the Oxnard Harbor District and the NAVY have entered into a "Foreign Trade Zone Designation Agreement" attached as Exhibit "A"; and

WHEREAS, GRANTEE has been granted by the Foreign - Trade Zones Board the privilege of establishing, operating, and maintaining Foreign-Trade Zone # 205 (hereinafter referred to as FTZ # 205); and

WHEREAS, OPERATOR has requested to enter into a Foreign Trade Zone OPERATOR Agreement for the purpose of handling motor vehicles located on the "Seaport Site" of the Oxnard/Port Hueneme Foreign Trade Zone located on the parcels identified in Exhibit B and shown on the map attached as Exhibit C and leased from the United States of America by Global Auto Processing, Inc. (GAPS) on the Naval Base Ventura County, Port Hueneme, California;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **TERM:** GRANTEE provides to the OPERATOR the nonexclusive authority to conduct operations within the FTZ # 205 subject to the terms and conditions, agreements and restrictions hereinafter set forth and the terms and conditions of the Lease or Agreement by and between the NAVY and GAPS ("The Lease") as to each parcel identified on Exhibits B and C. The term of this Agreement shall be concurrent with the term of the LEASE or Agreement for use of NAVY land.

2. **LOCATION:** OPERATOR is authorized to operate the locations designated on Exhibits B and C of this agreement as part of FTZ # 205.

3. **ACTIVATION FEE:** Within fourteen (14) days of activation by and for the benefit of, OPERATOR of the site identified in paragraph 2 above, the OPERATOR shall pay to the GRANTEE a one-time activation fee of five thousand dollars (\$ 5,000.00). It is the sole responsibility of OPERATOR at

FTZ Agreement -TZO/KIA

its cost and expense to take all steps necessary to obtain activation of the site. GRANTEE will cooperate with OPERATOR in obtaining activation of the site.

4. **FTZ OPERATOR:** OPERATOR shall function as the FTZ Operator for Kia Motors America, (USER) to handle the day-to-day FTZ operations of USER at the location designated on Exhibits B and C in accordance with the terms and conditions of this agreement.

5. **ANNUAL FEE:** OPERATOR shall pay to the GRANTEE an annual fee for the GRANTEE's limited oversight of OPERATOR's operations and to perform reporting requirements established by the Foreign - Trade Zones Board. The annual fee shall be Five Thousand Dollars (\$ 5,000.00) and shall be due and payable upon the activation of the Seaport site for the utilization of OPERATOR and each year thereafter that OPERATOR utilizes FTZ # 205. The annual fee shall be fair and reasonable compensation for the GRANTEE to recover its direct costs associated with its limited oversight and reporting requirements and the fee may be adjusted from time to time by the Board of Harbor Commissioners based upon changes in oversight and reporting requirements.

6. **U.S. CUSTOMS AND BORDER PROTECTION COST:** OPERATOR shall pay the full cost of all U.S. Customs and Border Protection charges attributable to the OPERATOR within FTZ #205, including the full cost of any U.S. Customs and Border Protection Bond required by the U.S. Customs and Border Protection for the OPERATOR within the zone. GRANTEE and NAVY shall have no responsibility for the collection and payment of tariffs, charges, fines, and penalties arising out of and related to the use or operation of FTZ #205 located on NAVY property.

7. **ANNUAL REPORT:** OPERATOR shall submit to the GRANTEE a report containing such data and in such form as may be required for the GRANTEE to make an annual report to the US Foreign - Trade Zones Board. OPERATOR shall also submit to the GRANTEE in a timely manner, upon request, such additional data as may be required of the GRANTEE by the Foreign - Trade Zones Board, US Department of Commerce, U.S. Customs and Border Protection and/or US Treasury Department. Records shall be kept in accordance with Foreign - Trade Zones Board and U.S. Customs and Border Protection rules and regulations.

8. SPECIAL TERMINATION:

(a) Should the GRANTEE be prevented from continuing the operation of FTZ # 205 or for the parcels identified in Exhibits B and C or any of them for any reason, including but not limited to by statute, legal regulations or order of any court, the GRANTEE may terminate this agreement by written notice to OPERATOR. OPERATOR shall have standing at its sole cost and expense 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 court or administrative body of competent jurisdiction ruling that the GRANTEE is not prevented from continuing the operation of the FTZ #205 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 thereunder as if said termination had never taken place.

(b) Upon a breach of this Agreement by OPERATOR which, if curable, is not cured within fourteen (14) days of service of a notice of such breach and diligently prosecuted to its completion, or when cure requires more than fourteen (14) days from the service of notice of such breach, and OPERATOR has failed to commence the cure of such breach, GRANTEE may terminate this Agreement. Such notice shall be personally served on OPERATOR or mailed to OPERATOR by certified mail, postage prepaid, addressed to the address of OPERATOR shown on the introductory paragraph to this Agreement. Notices by mail shall be deemed served forty-eight (48) hours after deposit in the United States mail. The notice of breach shall specify the nature of the breach.

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(c) This agreement may be terminated on twenty-four (24) hours notice upon request by NAVY to GRANTEE to deactivate the Foreign - Trade Zone Seaport Site or any portion thereof covered by this agreement.

9. **COMPLIANCE:** This agreement shall be governed by and construed in accordance with Foreign - Trade Zones Act, (19 U.S.C. 81a - 81u), regulations adopted by the Foreign - Trade Zones Board (15 CFR Part 400), U.S. Customs and Border Protection regulations governing Foreign Trade Zones (19 CFR 146) and Oxnard Harbor District Port Terminal Tariff No. 7, any amendments thereto, the laws of the United States and the State of California, and OPERATOR shall comply therewith.

10. **MODIFICATION:** This agreement may be modified, altered, or changed, at anytime, and as to any matter subject to mutual agreement of the parties. Any such modification, alteration, or change shall be made only by written modification of this agreement signed by both the GRANTEE and OPERATOR.

11. **NAVY AGREEMENT:** This agreement is subject to all of the terms and conditions set forth in the Foreign-Trade Zone Designation Agreement between the Oxnard Harbor District and the Department of the Navy, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, and OPERATOR shall comply therewith.

OXNARD HARBOR DISTRICT - (GRANTEE)

BY _____
President

BY _____
Secretary

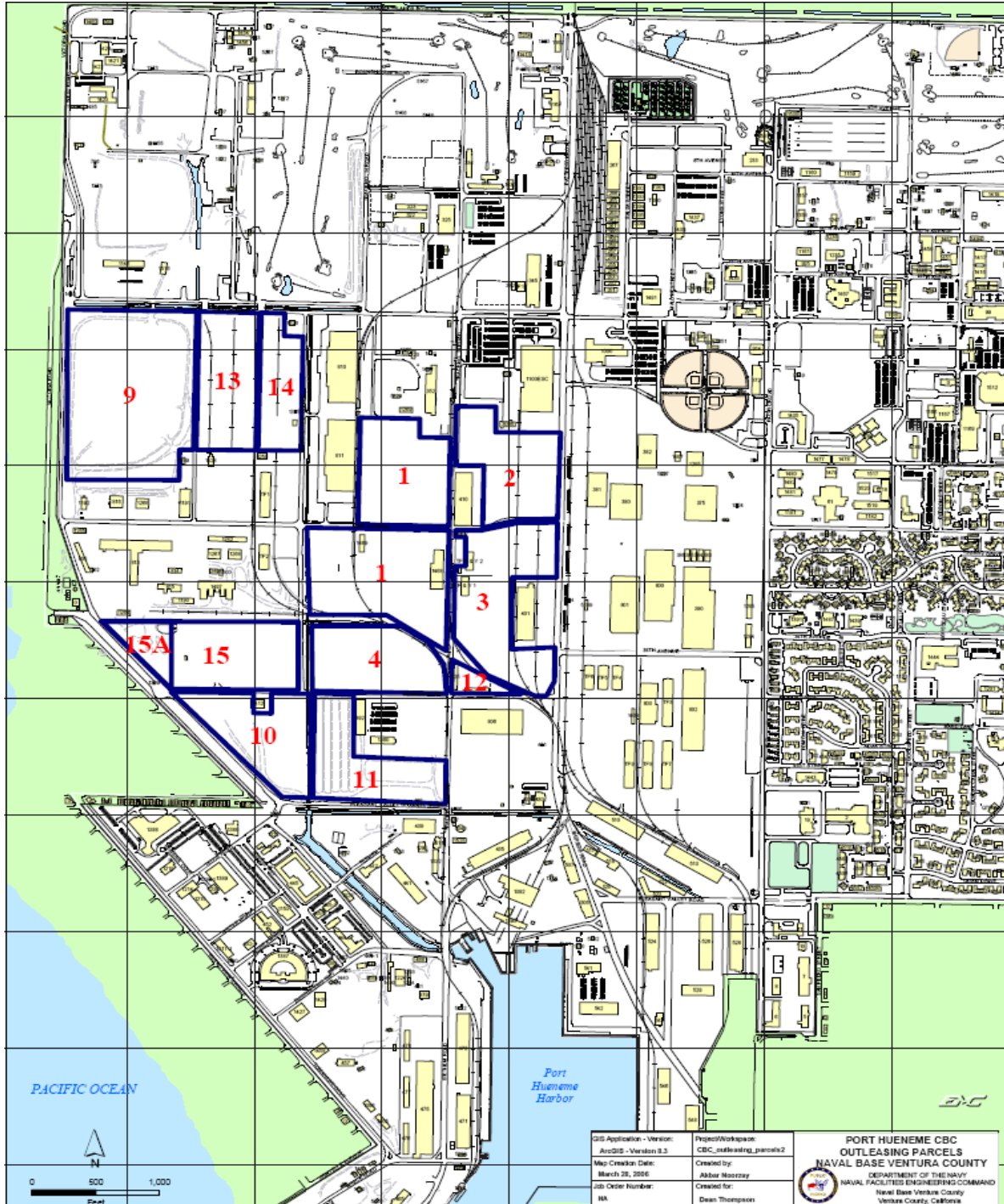
OPERATOR

BY _____

as A FOREIGN TRADE ZONE USER, KIA MOTORS AMERICA, Inc. agrees to comply with all the requirements of the forgoing Foreign Trade Zone OPERATOR Agreement.

BY _____
President

BY _____
Secretary



Property currently
Leased by USN to GAPS
for automobile uses
associated with FTZ to
be activated:

Parcel 1, 2, 3, and 4
Approximately 78.4
acres

Property not currently
Leased by USN to GAPS
but eligible for
inclusion within GAPS
lease and upon request
activation into the FTZ:

Parcels 13 and 14