THE CITY OF MOBILE, ALABAMA

FINANCE DEPARTMENT

March 6, 2015

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Avenue, NW
Room 21013
Washington, DC 20230

Re: Application for waiver under 15 CFR 400.43(f)

Dear Mr. Mc Gilvray:

As the duly authorized representative of the City of Mobile, grantee of Foreign-Trade Zone No. 82, I am submitting the enclosed Application for waiver under 15CFR 400.43(f) on behalf of the Mobile Foreign-Trade Zone Corporation, which serves as the Zone Project Administrator of the FTZ No. 82 Zone project, and on behalf of the Foreign-Trade Zone Corporation – a "related person" under 15 CFR 400.43(d)(2)(e)(6).

As you may be aware, the Mobile Foreign-Trade Zone Corporation has served as the Zone Project Administrator for our Zone project for 29 years. I believe more information about the relationship of the Mobile Foreign-Trade Zone Corporation with the City and the trade community will help you see how its present operation is consistent with the aims of the Board in assuring easy access to the Zones program.

As of 2012, the economic output of Zone participants (about $7 billion) comprised roughly 30% of the total economic activity within Mobile and Baldwin Counties. I believe that this is indicative of the degree to which the Zones program has been successfully integrated into the area's economy. However, this was not always the case.

The City of Mobile received its grant of authority to establish, operate and maintain a Zone project on February 24, 1983. The City's original grant of authority created a 13-acre general-purpose Zone area within the Brookley Complex, a downtown airport and industrial site that formerly served as a U.S. Air Force base. There were no buildings or structures at the original general-purpose Zone site. The City designated the newly created Mobile Airport Authority as the Zone Operator and Administrator. During the first

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two years of the Zone's existence, it was neither activated nor utilized. In 1984, the Economic Development team of the local non-governmental organization, Leadership Mobile, took on the Foreign-Trade Zone as its project for study and recommendation. As one might imagine, the team's study, entitled "The Mobile Foreign Trade Zone: Boon or Boondoggle?" attracted some attention within the corridors of City Hall and the Airport Authority. To make matters even more sensitive, it was learned that foreign cargo was consistently arriving at the Port of Mobile, only to be transferred in-bond to an activated Zone more than 150 miles away. The City and the Airport Authority recognized that a number of the recommendations of the Leadership Mobile Economic Development Team were consistent with ideas that the City and Airport Authority were already considering. Among these recommendations were those to "Remove the administration of the foreign trade zone from a politicized environment," and to "Obtain professional foreign trade zone management for the administration and marketing of the zone."

Recognizing that development of the Zone project would require management that would be immune from local bureaucratic inertia, and would be motivated to see that the City delivers the Zones program to as many businesses as practically possible, the City published a Request for Proposals for management of the Zone project in 1985. Among the responses received was one from a public warehousing company that served as the exclusive Operator of another Zone project. Another was from Greg Jones, who was the sales manager of a local transportation and warehousing firm. He proposed that the Zone project should be managed by an entity that does not engage in the warehousing business, and whose object is to see that any company that needs the FTZ program is able to use it. He also asserted that the term "marketing" is a misnomer; that "education" of the business community was necessary to deliver the FTZ program to those who need it. Mr. Jones made it clear that finding a niche for FTZ warehousing would be the relatively fast and easy way for a company to make money from the local Zone project; but he preferred to operate in the administrative mode in order to avoid competing with the interests of those who might need the Zones program to enhance their own company's competitiveness. Naturally, this approach would be slower to develop and would require a period of subsidization. The City and the Airport Authority agreed that Mr. Jones' approach would provide the greatest chance by which the FTZ project would have the greatest influence on the local economy, and began subsidizing his company's management of the Zone project in January, 1986. After obtaining a minor boundary modification to the general-purpose Zone, its first Zone user was activated in November 1986. Beginning in 1988, a series of subzones were approved, and, after two expansions, a number of distribution and manufacturing operations were accommodated within the general-purpose Zone. The result is a Zone project that has not only served the competitive interests of existing businesses in the area, but has contributed to the success of a number of industrial recruitment efforts (*e.g.* Airbus, Aker Solutions, Austal USA, BAE Systems, and ThyssenKrupp).

We have learned that you recently gave a presentation in which it was indicated that third-party reviews of FTZ Operator compliance may constitute the "key function" of "Overseeing zone participants' operations on behalf of a grantee." Although each Zone participant of the FTZ No.82Zone project is responsible for conducting and overseeing

its own Zone operation, we believe it prudent to seek a waiver from your office in order to preclude any future questions that may arise concerning the ability of our Zone project and its Zone Project Administrator, the Foreign-Trade Zone Corporation, to conduct due diligence on our behalf, and also provide a full range of Zone-related services to members of the trade community that we serve.

As you know, the Foreign-Trade Zones Board recently granted a waiver to our Zone project that would allow for three-party Operator Agreements under certain "conditions or limitations." As noted in the attached Questionnaire, our City Council recently adopted a resolution that provides for two-party Operator Agreements (in which the Operator contracts directly with the City) that applies to all future Operators, and which will apply to all existing Operators through a transition process that will be completed before the 5-year time-limit of the May 30, 2014 waiver expires. The City's Administration understands the import of the statements in the May 28, 2014 Background Memorandum that accompanied the waiver approval documents in which you noted that an Operator cannot activate and enjoy Zone benefits until the Operator Agreement is concluded, and, that under the City's former Agreement arrangement, the conclusion of that Agreement depends upon the signature of the Mobile Foreign-Trade Zone Corporation. Although I am fully aware of the absurdity that would be attendant to any refusal of the Mobile Foreign-Trade Zone Corporation to execute an Operator Agreement, the City has elected to make the change to direct Operator Agreements between the City and each Operator in order to remove any doubt as to whether our Grantee organization is the <u>sole</u> party that controls access to our Zone project.

The City's Administration has taken all of the necessary steps – including the ratification by the City Council revise the City's relationship with the Mobile Foreign-Trade Zone Corporation -- because in order to retain the local capability of offering the entire range of expert services necessary for companies to <u>actually implement Zone procedures</u>. As noted in the City's waiver request of June 4, 2014, each Zone participant is free to make its own choice of Zone-related and/or other service providers. This paradigm has included Zone-related service providers (*e.g.* Arthur Andersen, Ernst & Young, Integration Point, Metro International Trade Services, Miller & Company), and also carriers, third-party warehousing companies, freight forwarders and Customs house brokers.

The Mobile Foreign-Trade Zone Corporation's conduct of due diligence activities on our behalf in no way controls access to our Zone project. Therefore, I respectfully request your permanent, unconditional approval of the enclosed waiver request.

For information about the attached Questionnaire, please feel free to contact Mr. Greg Jones at (251) 445-1372. If you have other questions, please feel free to contact me at (251) 208-7395. Thank you for your consideration of this request.

Respectfully submitted,

Paul Wesch
Executive Director of Finance

Copy to: Hon. Richard Shelby

Questionnaire – Application for Waiver under 15CFR 400.43(f)

Identity of Applicant and Affected FTZ

1. State your name (individual or organization, as appropriate) as the applicant for a waiver.

This application is made by the City of Mobile, Alabama on behalf of the Mobile Foreign-Trade Zone Corporation, and the Foreign-Trade Zone Corporation.

2. State the specific FTZ (zone number and city/state) to which your application pertains.

This application pertains to activities of Foreign-Trade Zone No. 82. The grantee of the Zone project is the City of Mobile.

Key Functions (15 CFR 400.43(d)(1))

3. If your application for a waiver is approved, do you propose to:

a. Take action on behalf of the grantee of the FTZ identified in your response to Question 2, or make recommendations to that grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP)? If yes, explain fully. Explain the specific actions you propose to take, or the specific types of recommendations you propose to make, regarding the disposition of zone participants' proposals/requests.

No.

b. Approve, or be a party to, a zone participant's agreement with the grantee of the FTZ identified in your response to Question 2 (or person acting on behalf of that grantee) pertaining to FTZ authority or activity (including activation by CBP)? If yes, explain fully. Explain the specific types of agreement that you propose to approve, or to which you propose to be a party.

No. On February 3, 2014, the Mobile City Council approved a measure that effectively provides for Operator Agreements to be made between each Operator and the City.

c. Oversee zone participants' operations on behalf of the grantee of the FTZ identified in your response to Question 2? If yes, explain fully. Explain the specific oversight activities that you propose to conduct.

No/Yes, depending upon whom one asks. The City believes that review the of compliance of prospective or existing Zone Operators by a designee of the City would not constitute "overseeing" zone participants' operations on its behalf; however, the Executive Secretary of the Board has indicated in recent public statements that he believes the act of reviewing zone participants operations on behalf of Zone participants in order to confirm or review Customs compliance would constitute the performance of a "key function" under the Board's regulations. Accordingly, the City is asking for a waiver so that spot checks or compliance reviews can be performed by a professional organization of the City's choosing, even if that organization has provided Zone-related services or products within the previous 12 months to Zone participants of FTZ No. 83.

Key Categories of Persons (15 CFR 400.43(d)(2))[1]

4. For the FTZ identified in your response to Question 2, do you currently engage in, or have you during the preceding twelve months engaged in a) offering/providing a zone-related product/service to or b) representing a zone participant? If yes, explain fully. Describe the type of zone-related product/service you offered or provided, or the type of representation of zone participant(s) you undertook. How often have you done so? Also explain the importance – in terms of income derived and resources committed – of offering/providing zone-related products/services, or representing zone participants, for the FTZ identified in your response to Question 2.

No. However, the Mobile Foreign-Trade Zone Corporation does, from time to time, provide Zone-related services to Zone participants. The Mobile Foreign-Trade Zone Corporation has provided consulting services in instances in which the Zone participant has requested specific Zone-related services (*e.g.* assistance with applications and activations). All such relationships have been entered into with the mutual consent of each party. Other Zone participants utilize other FTZ management services as they wish. With regard to the importance of providing Zone-related services or products, such services and/or products are, in terms of the Foreign-Trade Zone Corporation's services as the Zone Project Administrator, entirely distinct and separate. If the Mobile Foreign-Trade Zone Corporation derives income from providing services to participants within the FTZ No, 82 Zone project, then the income derived from those services and products is to its benefit. Likewise, the resources – including personnel, expenses, and overhead – are entirely the responsibility of the Mobile Foreign-Trade Zone Corporation. With

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[1] Although the questions in this section are written in the present tense, if you are seeking a waiver because you at some point in the future intend or expect to fall within one of the key categories of persons, then please answer these questions in the context of your intent or expectation.

regard to its services as the Zone Project Administrator, those remain the same whether or not the Mobile Foreign-Trade Zone Corporation has any clients from among the population of FTZ No. 82 Zone participants. Accordingly, the Mobile Foreign-Trade Zone Corporation remains entirely responsible for providing the resources necessary to serve the Zone project. Under the Zone Project Administration Agreement between the Mobile Foreign-Trade Corporation and the Grantee, the Mobile Foreign-Trade Zone Corporation's income is dependent on its success in seeing that members of the trade community successfully utilize Zone procedures. At the same time, individual Zone participants are free to use Zone-related services and products from whomever they may choose.

5. Do you stand to gain from a person's offer/provision of a zone-related product/service to, or representation of, a zone participant in the FTZ identified in your response to Question 2? If yes, explain fully (including an explanation of the nature and extent of the gain you may receive).

The Mobile Foreign-Trade Zone does stand to gain when it provides consulting services to Zone participants of FTZ No. 82. Likewise, the Foreign-Trade Zone stands to gain when it provides consulting or software services to Zone participants of FTZ No. 82. In the case of the Foreign-Trade Zone Corporation, it stands to gain in exactly the same manner as it does when it provides similar services to participants of other Zone projects. Likewise, the resources – including personnel, expenses, and overhead – it must devote to providing those services are one and the same as those devoted to clients that are participants of other Zone projects.

6. With respect to the FTZ identified in your response to Question 2, are you related (within the meaning of 15 CFR 400.43(e)) to a) any person that currently engages in, or has during the preceding twelve months engaged in, offering/providing a zone-related product/service to or representing a zone participant or b) any person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a zone participant? If yes, explain fully.

Yes. Gregory Jones, President of the Mobile Foreign-Trade Zone Corporation, is a shareholder of the Foreign-Trade Zone Corporation The Foreign-Trade Zone Corporation is organized as a regular corporation under the laws of the State of Alabama. Its shareholders are Craig. M. Pool and Gregory Jones. Accordingly, this waiver request is submitted on behalf of both the Mobile Foreign-Trade Zone Corporation and the Foreign-Trade Zone Corporation.

7. Please provide any other information that you would like the FTZ Board to consider in evaluating your request.

The City of Mobile understands that the purpose of the provisions of 15 CFR 400.43 is to ensure that the purpose of the provisions of 15 CFR 400.43 is to ensure that no "key functions" are performed by a third party who may have any control over the access of Zone participants to the use of Zone procedures – except as permitted under a waiver issued by the Foreign-Trade Zones Board – if the third party also provides Zone-related products/services to participants of that Zone project. As noted above, the City now requires that each Zone Operator enter into an Operator Agreement directly with the City. The Operator Agreement requires the Operator to operate its Zone or subzone site in accordance with the terms and conditions of the Operator Agreement, the effective Zone Schedule, and any applicable standards of operation, rules or regulations which may exist, or which may in the future be instituted or amended by the Grantee, U.S. Customs and Border Protection, the Foreign-Trade Zones Board, or any other federal, state or local authority with jurisdiction over Foreign-Trade Zone operations. Each Zone Operator also agrees to provide the right of entry to its Zone or subzone site to the Grantee, the U.S. Customs Service, the Foreign-Trade Zones Board, and any other federal, state or local authority of competent jurisdiction, and their authorized agents or representatives. This right may be exercised at all reasonable times and upon reasonable advanced notice, to ensure that all activities conform to the operating standards set forth in the Zone Schedule and the requirements of the Operator Agreement. Any such entry is limited to normal working hours and is made in accordance with the established security procedures of Operator. As the Zone Grantee, the City has sole discretion in determining who its representative or representatives may be in interacting with Zone Operators in assessing the Operator's compliance with the terms of its Operator Agreement with the Grantee and the requirements of all applicable federal, state, and local authorities – including the discretion to designate representatives of the Mobile Foreign-Trade Zone Corporation to enter the Zone site and review Operator conformance. The Mobile Foreign-Trade Zone Corporation is not a party to the Operator Agreement, and accordingly, has no authority to enforce any provision of the Operator Agreement. The Zone Grantee is the sole authority who controls Zone participants' access to the FTZ No. 82 Zone project.

Please note that this request is for a permanent, unconditional waiver that would allow the Mobile Foreign-Trade Zone Corporation to conduct reviews of applications to activate and compliance reviews on behalf of the Grantee, and also allow the Mobile Foreign-Trade Zone Corporation and the Foreign-Trade Zone Corporation to offer other Zone-related services and products, including FTZ software, to Zone participants of the FTZ No. 82 Zone project.