

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and executed this day of August 2008 in Manila, Philippines, by and between:

SUBIC-CLARK ALLIANCE FOR DEVELOPMENT COUNCIL, a government agency organized and established pursuant to Executive Order No. 504 s. 2006, with office address at Building 2127 E. Quirino St., Clark Special Freeport Zone, Pampanga, duly represented herein by its **Chairman and Chief Executive Officer (CEO), Secretary EDGARDO D. PAMINTUAN**, hereinafter referred to as “**SCADC**”;

BUREAU OF CUSTOMS, a government agency under the Department of Finance (existing under the laws of the Republic of the Philippines) with office address at South Harbor, Port Area (Port of Manila,) Manila and herein represented by its Commissioner, **NAPOLEON L. MORALES**, hereinafter referred to as “**BOC**”;

CLARK DEVELOPMENT CORPORATION, a government-owned and controlled corporation duly registered and existing under the laws of the Republic of the Philippines with office address at Building 2121, Clark Freeport Zone, Philippines and herein represented by its President and CEO, **BENIGNO N. RICAFORT** hereinafter referred to as “**CDC**”;

and

SUBIC BAY METROPOLITAN AUTHORITY, a government-owned and controlled corporation duly registered and existing under the laws of the Republic of the Philippines with office address at Subic Bay Freeport, Zambales and herein represented by its Administrator and CEO, **ARMAND C. ARREZA**, hereinafter referred to as “**SBMA**”.

WITNESSETH:

WHEREAS, under EO 504, the SCADC has the mandate to rationalize resources and harmonize strategies that will ensure an integrated and coordinated approach to the development of the Subic-Clark Economic Corridor as a competitive world-class logistics center in the Asia Pacific Region;

WHEREAS, R.A. 7227, otherwise known as the Bases Conversion and Development Act of 1992 and as amended by RA 9400, mandates the Bases Conversion and Development Authority (BCDA) to adopt, prepare and implement a comprehensive and detailed plan for the conversion of the former Clark and Subic Military Reservations and their extensions consistent with the plans and programs of the national and local governments;

WHEREAS, Executive Order No. 80 (Series of 1993) authorizes the establishment of CDC as the operating and implementing arm of BCDA to manage the Clark Freeport Zone (CFZ) and the Clark Special Economic Zone (CSEZ);

WHEREAS, RA 7227, as amended by RA 9400 created the SBMA as the operating and implementing arm of the BCDA to operate, administer, manage and develop the Subic Bay Freeport Zone (SBFZ) and the Subic Special Economic Zone (SSEZ);

WHEREAS, the Tariff and Customs Code of the Philippines (TCCP) as amended, provides that the BOC has the power and jurisdiction within the customs territory over the entrance and clearance of vessels and aircraft engaged in foreign commerce; the supervision and control of all import and export cargoes, landed or stored in piers, airports, terminal facilities, including container yards and freight stations, and the enforcement of the tariff and custom laws and all other laws, rules and regulations relating to the tariff and customs administration;

WHEREAS, RA 9400 provides that the CSEZ and SSEZ shall be operated as separate customs territories ensuring the free flow or movement of goods and capital within, into and exported out of the zones and providing incentives such as tax and duty-free importations of raw materials, capital and equipment;

WHEREAS, Executive Order no. 482 (Series of 2005) provides that government departments and agencies involved in cargo clearance and release must cooperate with each other in order to provide the BOC with an automated electronic system required for the establishment, implementation and operation of the National Single Window (NSW) program;

WHEREAS, the NSW program is a system that enables a single submission of data and information that is synchronously processed, resulting in a single point of decision for the release of cargoes by BOC, based on decisions made by other government departments and agencies and communicated in a timely manner to BOC;

WHEREAS, the establishment of the NSW for the admission and transit of cargo facility in the Freeport Zones such as Clark Freeport Zone (CFZ) and Subic Bay Freeport Zone (SBFZ) will, among others, facilitate trade and business; increase the transparency in cargo processing; provide accurate, timely and cost-efficient exchange of information; reduce BOC operational costs and enhance revenue collection.

WHEREAS, the establishment of the NSW is a primary step in harmonizing the policies and regulations of SBFZ, CFZ, and, eventually, the Subic-Clark Economic Corridor which aims to provide a timely and seamless delivery and transportation of goods, people and services that shall match the logistics services of the major players in the Asia Pacific supply chain;

WHEREAS, BOC, SCADC, CDC and SBMA (hereinafter collectively referred to as "the Parties") have agreed to enter into a Memorandum of Agreement (MOA) pursuant to their common desire to implement the NSW program in CFZ and SBFZ to adopt international standards and best practices on cargo clearance rules and procedures, including the Revised Kyoto Convention (RKC); and to institutionalize a partnership and cooperation aimed at enhancing the image and competitiveness of the two Freeport Zones as a preferred international investment and tourist destination.

NOW, THEREFORE, for and in consideration of the foregoing premises the parties, through their representatives herein, hereby agree on the following:



- 1 The Parties shall cooperate to successfully adopt the NSW program in CFZ and SBFZ and shall jointly formulate, coordinate, implement and monitor an automated cargo clearance and releasing facility in the two zones;
2. The Parties shall issue a Joint Memorandum Order (JMO) on "Transit and Admission Declaration of Cargo for BOC, CDC and SBMA" and other necessary joint issuances, which shall outline the administrative and operational provisions for the automated cargo facility; and delineate the definitive roles and responsibilities of the parties;
3. BOC, CDC, and SBMA shall link their respective manpower, financial, IT and communication resources for the effective implementation of the NSW program and particularly, the automated cargo facility; and
- 4 The Parties shall meet quarterly, or upon notice of SCADC, to discuss and pursue efforts in harmonizing and streamlining the NSW program in CFZ, SBFZ, and eventually, the Subic Clark Economic Corridor, and their respective admission and transit cargo facilities.

This Agreement shall take effect immediately upon signing and shall be binding upon the parties, its assigns and successors-in-interest.

IN WITNESS WHEREOF, the parties hereto have set their hands in the date and place first above written.



EDGARDO D. PAMINTUAN
Secretary/Chairman and CEO
Subic Clark Alliance for Development Council
(SCAD Council)

NAPOLEON L. MORALES
Commissioner
Bureau of Customs (BOC)




BENIGNO N. RICAFORT
President and CEO
Clark Development Corporation (CDC)



ARMAND C. ARREZA
Administrator and CEO
Subic Bay Metropolitan Authority
(SBMA)

JOC NO. 447
PAGE NO. 91
BOOK NO. IV
SERIES OF 2008

SHERYL C. SANTOS
NOTARY PUBLIC
UNTIL DECEMBER 31, 2008
PTR NO. 1132272/2-20-08
IBP NO. 731390/1-24-08
CITY OF SAN FERNANDO (P)
ROLL NO. 51277

Republic of the Philippines

Bureau of Customs

Subic Bay Metropolitan Authority
Clark Development Corporation

21 August 2008

JOINT MEMORANDUM ORDER
NO. ___ - 2008

SUBJECT: AUTOMATED TRANSIT AND ADMISSION DECLARATION OF CARGO
FOR BOC, CDC AND SBMA

Pursuant to the Memorandum of Agreement entered into by and between the BUREAU OF CUSTOMS (BOC), SUBIC BAY METROPOLITAN AUTHORITY (SBMA), CLARK DEVELOPMENT CORPORATION (CDC), and the SUBIC-CLARK ALLIANCE FOR DEVELOPMENT COUNCIL (SCADC), dated ___ day of August 2008, the following rules and regulations are hereby prescribed to govern the admission of cargo directly into the Subic and Clark Freeport Zones; admission of cargo discharged at ports outside of the Freeport Zones but subsequently admitted into the Freeport Zones; and transfer of cargo from and between Freeport Zones.

For the purpose of this Order, "Freeport Zones" shall refer exclusively to Clark Freeport Zone (CFZ) and Subic Freeport Zone (SFZ), and "Freeport Zone Authorities" shall refer to Clark Development Corporation and Subic Bay Metropolitan Authority, as defined and provided under Republic Act No. 9400, amending Republic Act No. 7227, and its implementing rules and regulations. The term "transit" shall refer to the customs (clearance) procedure under which goods are transported under customs control from one customs office to another customs office or to a Freeport Zone. On the other hand the term "admission" shall refer to the Freeport procedure where goods, directly or indirectly, enter Freeport Zones.

General Objectives

- 1.1 To facilitate the conduct of business by providing through the National Single Window (NSW) program a more efficient, less costly, and simple automated system for admitting domestic and foreign merchandise that are admitted, transited and transferred into and between the Freeport Zones.
- 1.2 To provide a more secure and reliable system for preventing smuggling and protecting government revenue.
- 1.3 To support audit-based risk management system for ensuring that transit foreign merchandise are safely conducted in a timely manner from the port of discharge to the Freeport Zones.
- 1.4 To simplify the documentary requirements for clearance and admission of transit cargo to the Freeport Zones, including the provision for a single submission of permits recognized by BOC and Freeport Zone authorities and consistent with the NSW program.



- 1.5 To provide an alternative procedure for allowing immediate delivery and use of transit cargo by authorized Freeport Zone Locators without the necessity of detaining the cargo in a designated clearance area.

2. Scope

2. This Order shall be applicable to foreign articles for admission and transit to the Freeport Zones for use by authorized Freeport Zone Locators. Freeport Zone Locators not authorized by the Freeport Zone authorities shall continue to avail of the present manual system.

- 2.2 For the initial implementation of this Order, this revised system will be implemented for cargo discharged directly at the Freeport Zones and those discharged at Ninoy Aquino International Airport (NAIA), Manila International Container Port (MICP) and Port of Manila (POM).

3. Automated Admission and Transit Cargo Declaration System

- 3.1 The new automated cargo admission and transit system shall be applicable to cargos admitted directly into the Freeport Zones and, those discharged at ports located outside the Freeport Zones and subsequently (entered) transited into the Freeport Zones.

- 3.2 Upon full implementation, the new automated system shall have the following control and security features:

Transit and Admission Permit (T/AP). A single submission of the T/AP acceptable to BOC and Freeport Zone authorities shall be provided in lieu of the present system of filing and lodging BOC Transshipment/Warehousing (IEIRD) Entry, Transshipment Permit (BC Form 199), Transit Cargo Manifest (TCM), Carrier's Bond, Boat Note and Import Entry and Internal Revenue Declaration (BC Form 236) and an Import Permit (IP) or Bring In Permit issued by the Freeport Zone Authority.

The T/AP shall be lodged by authorized Freeport Zone Locators or its authorized representatives and submitted to the Freeport Zone Authority concerned, in manual and/or electronic format, using the minimum information and supporting documents provided in this Order. The Freeport Zone Authority shall ensure approved T/AP's are forwarded to the BOC system electronically as soon as the transaction is authorized or at the end of office hours each day.

Surety Bond. Upon written request by an authorized Freeport Zone Locator, the District Collector in Clark or Subic may allow said locator to post a surety bond in lieu of the BOC boat note and under-guarding.

The Commissioner of Customs may require additional security measures using the latest technology (e.g. Global Positioning System (GPS), Radio Frequency Identification (RFID) etc.) to ensure that the transit cargo is secured and admitted (delivered) to the Freeport Zone.

- 3.2.3 Electronic Lodgment of T/AP. All Freeport Zone Locators or their agents, as authorized by CDC and SBMA respectively, shall be empowered to lodge their T/AP applications electronically utilizing systems with high security features that will prevent unscrupulous elements from using the duty and tax free privilege granted to Freeport Zone Locators for their activities.

Value Added Service Providers (VASPs) accredited by BOC shall be allowed to provide the remote lodgment facilities for the preparation and lodgment of the T/AP to the Freeport Zone authorities, which shall be processed and approved with a system-generated Freeport Zone authority T/AP reference number.

The Freeport Zone authority, through the VASPs, shall approve the T/AP and transmit to BOC the approved T/AP with electronic signature and prescribed data under the National Single Window Program.

Likewise, the Freeport Zone locator (consignee) or its authorized agents (e.g., Customs brokers) may also lodge through EOC-accredited VASPs the T/AP as approved by the Freeport Authority in the Single Administrative Document (SAD) containing the Freeport Zone authority T/AP reference number indicated therein.

3.2.4 Verification of T/APs. T/APs lodged and processed may be manually printed and may be verified online through the BOC and Freeport authority T/AP system. The BOC shall electronically receive the T/AP in the Transit SAD format as submitted by the Freeport Zone Authority or the Freeport Zone locator through the BOC-accredited VASPs and shall validate the Transit SAD against the T/AP data as transmitted through the National Single Window.

4. Administrative Provisions

4.1 In lieu of the preparation and processing of the Import Permit issued by the Freeport Zone Authority (and BOC Transshipment/Warehousing Entry (IEIRD),) Transshipment Permit (BC Form 199), Import Entry and Internal Revenue Declaration (BC Form 236), Carrier's Bond, Transit Cargo Manifest and Boat Note, the Freeport Zone locators shall prepare and lodge the T/AP to the Freeport authorities and the BOC.

4.2 The T/AP shall be used in the delivery of the cargo from ports at the Customs territory to the Freeport Zone locator. Cargo handlers and brokers are advised to maintain a printed copy of the approved T/AP while transporting the cargo to the authorized destinations for presentation and inspection by authorized government officials.

When there is derogatory information or based on customs risk and control management systems, the transit cargo may be subject to physical examination at the Port of discharge (in case of transit into the Freeport Zone) or at the Freeport Zone (in case of transfer to another Freeport Zone). The examination to be conducted shall be undertaken pursuant to CMO 104-92 (Hold Alert System). Physical examination at the port of discharge may only be conducted upon the written authority from the Commissioner.

4.4 For valid reasons and upon prior approval by the District Collector in the Freeport concerned (Subic or Clark), the Freeport Zone locator shall, in lieu of customs boat note and under-guarding, post a surety bond with the BOC, to cover the amount of applicable Customs duties and taxes to the cargo being transferred and delivered to the Freeport zone.

Upon approval of the District Collector, the surety bond shall be a yearly chargeable bond, the amount of which shall be sufficient to cover outstanding transfers at any time based on the level of activity of the locator. For this

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purpose, the amount of the bond shall be equivalent to three (3) days average duties and taxes payable on direct materials using data of the last 3 months of the current year. Upon delivery of cargo to the Freeport Zone and upon receipt by the Freeport Port Zone locator, the locator shall submit a cancellation of the amount charged to the surety bond within 10 days after delivery. The amount charged to the bond shall be cancelled upon presentation to the BOC of manual or electronic evidence confirming that the transited cargo has been admitted to the Zone

- 4.6 The Freeport Zone locator shall likewise submit, in manual or electronic format, a duly-receipted copy of the T/AP to the CFZO at the Port of discharge (in case of transit into the Freeport Zone) or at the Freeport Zone (in case of direct shipment to the Freeport Zone). Thereafter, the CFZO shall complete the transit transaction upon submission of the duly-receipted copy of the T/AP.
- 4.7 The present BOC-VASPs shall provide the front-end system to the locators and their authorized agents for preparation and electronic lodgment of the T/AP to the Freeport Authorities and BOC.
- 4.8 BOC and the concerned Freeport Zone authorities shall maintain the back-end systems, which shall include the maintenance of the information database within a prescribed period.

5. Customs- Freeport Zone Office (CFZO)

A Customs-Freeport Zone Office (CFZO) is hereby created at the various Collection Districts (NAIA, POM, MICP, Clark and Subic) and composed of a customs officer and representatives of CDC and SBMA (as may be necessary in case of Ports located outside of the Freeport zones). The VASPs may provide the work stations for purpose of encoding, verification and processing of the T/APs.

The main functions of the CFZO are as follows:

- 5.2 The T/AP authorization is released only to accredited officials of the Freeport Zone Locators or its authorized representatives following duly established accreditation procedures by the Freeport Zone Authority and BOC. Freeport Zone Authorities shall be provided electronic copies of the T/AP authorizations issued by BOC.
 - 5.2.2 Cargos are received at the Freeport Zone within a reasonable time not exceeding 6 hours from release and exit from the Port of Discharge. For this purpose, the office shall be equipped with the needed communication facility to enable it to communicate with the destination Freeport Zone and with CDC, SMBA, BOC and law enforcement authorizes in case of any untoward incident. A pre-alert system shall be developed wherein CFZO at NAIA, MICP and POM shall notify the Ports of Clark and Subic with a summary listing of of approved T/AP for the day. The Freeport Zone Authority shall likewise be furnished copy of the pre-alert.
 - 5.2.3 On a daily basis during regular office hours, reconciliation shall be undertaken to identify transits that may have been diverted into the customs territory instead of being delivered to the Freeport Zone so that appropriate measures can be undertaken to protect government interest.



The Deputy Collector for Operations of the port shall regularly audit the transfers and the system to insure that there are no security breaches and to investigate, in conjunction with the law enforcement offices, any such breach. In case of security breaches, the applicable customs and Freeport rules shall apply.

The BOC counterparts at the Freeport Zones shall submit, in manual and/or electronic format, a duly-receipted copy of the T/AP to the CFZO at the Port of Discharge (in case of transit into the Freeport Zone) or at the Freeport Zone (in case of direct shipment to the Freeport Zone). The CFZO at the Port of Discharge concerned shall complete the transit transaction upon submission of the duly-receipted copy of the T/AP.

6. CFZO Operating Procedures

- 6.1 The Freeport Zone Locator or his agent shall present the T/AP before the CFZO concerned or refer him to the system-generated Freeport Zone approved reference number of the T/AP. CFZO shall validate the T/AP to check for completeness of document and for presence of any Alert or Hold Order issued by the Commissioner as an exception to CMO 104-92.
- 6.2 If there is no Alert or Hold Order or if the verification yielded satisfactory results, the CFZO shall implement the transit operation. A copy of the approved T/AP shall be forwarded to the Deputy Collector for Operations for his reference.
- 6.2 The Office of the Deputy Collector shall undertake to post release review and tracking of the transit to insure that all transits are fully accounted for.
- 6.3 Based on derogatory information or based on customs risk and control management systems, the CFZO may conduct examination using intrusive and non-intrusive systems upon written authority from the Commissioner.

7. Responsibilities of Arrastre/CBW Operator

Prior to release of the transit cargo at the Port of Discharge (in case of transit into the Freeport Zone through the customs territory), the arrastre/CBW operator shall check the delivery copy of the T/AP presented by the Freeport Zone Locator or his authorized representatives, and verify the identity of the Freeport Zone Locator or his authorized representatives. The delivery copy shall serve as the delivery permit and boat note of the shipment. The arrastre/CBW operator shall also require the authorized representative of the Freeport Zone Locator to acknowledge delivery and receipt of a copy of the T/AP.

8. Responsibilities of the Representatives of Freeport Zone Locator

8. Representatives of the Freeport Zone Locator (of the CFZO) shall:
 - 8.1.1 Conduct the shipment to the Freeport Zone using the most direct and safest route within the prescribed period.
 - 8.1.2 Present to the BOC and Freeport Zone authorities upon arrival at Clark or Subic Freeport zones, the delivery copy of the T/AP in his possession and other documentation accompanying the shipment immediately upon arrival at destination for signature acknowledging the arrival of the goods at the Freeport zone. In case of loss of the delivery copy of the T/AP, the same shall be reconstructed by the CFZO after payment of proper fees to be established by BOC.

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9. Qualifications of Freeport Zone Locator

9.1 To avail of the automated facility as provided in this Order, the Freeport Zone Locator shall:

9.1.1 Submit to the Freeport Zone Authority concerned the following:

- a) List of articles to be admitted into the Freeport Zone as approved of the Freeport Zone Authority;
- b) List of authorized representatives (e.g. customs broker who should be accredited with the Bureau of Customs); and
- c) List of authorized transport vehicles or carriers.

9.1.2 Submit to the Freeport Zone Authority the authorization for their representatives, including their customs brokers (and transport operators and vehicles) duly accredited with the Freeport Zone authority.

9.1.3 Act like good father of the family in the choice of its authorized representatives or custom broker who shall handle the customs clearance of its shipments and their transport to the Freeport Zone and provide them with the appropriate ID card or written authorization to act and sign official documents as such.

9.1.4 Pay required fees as determined by the BOC and Freeport Authority concerned.

10. Repealing Clause

All rules and regulations inconsistent with this Order are hereby deemed repealed, suspended or modified accordingly.

11. Effectivity

This order shall take immediately


NAPOLEON L. MORALES
Commissioner
Bureau of Customs (BOC)


BENIGNO N. RICAFORT
President and CEO
Clark Development Corporation (CDC)


ARMAND C. ARREZA
President and CEO
Subic Bay Metropolitan Authority (SBMA)