

## **PAYMENT IN LIEU OF TAXES AGREEMENT FOREIGN-TRADE ZONE SITE**

THIS AGREEMENT ("Agreement") is entered into by and between Mouser Electronics, Inc., A Delaware Corporation ( "Mouser"), and Mansfield, a Texas home rule city located in Tarrant, Johnson and Ellis, Counties ("the City").

### **A. RECITALS**

**WHEREAS**, Dallas Fort Worth Airport (DFW) is the Grantee of Foreign-Trade Zone ("FTZ") No. 39 created pursuant to the Foreign-Trade Zone Act of 1934 codified in 19 U.S.C. §81 (the "Act").

**WHEREAS**, Mouser desires participation in the FTZ program through the expansion of Foreign-Trade Zone No. 39 to include a usage-driven FTZ site located on tract(s) comprising a total of 28.994 acres at 1000 North Main Street, in the City, as described in Exhibit B (the "FTZ Site").

**WHEREAS**, Mouser seeks an executed Letter of Non-Objection ("Letter") from the City which is required to expedite designation as a FTZ Site, which the City shall provide only if Mouser contractually commits that no financial harm or lost revenue shall be incurred by the City as a result of the designation of the FTZ Site.

**WHEREAS**, inventory qualifying under the Act and held in activated FTZ is exempt from state and local ad valorem taxes.

**WHEREAS**, Mouser and the City desire that designation and activation of the FTZ Site cause no financial harm or lost revenue to the City.

In consideration of the mutual commitments expressed in this Agreement, the parties agree to the following:

### **B. DEFINITIONS**

When used herein, the listed words have the following meanings:

"Act", "City", "Mouser", and "FTZ Site" have the meaning set forth in the Recitals.

"Activated" means the approval by Customs for FTZ operations at the FTZ site as specified in Customs Regulations, 19 CFR Part 146.

"Board" means Foreign-Trade Zones Board within U.S. Department of Commerce.

"Customs" means US Customs and Border Protection within U.S. Department of Homeland Security.

"FTZ Exemption" means the federal exemption provided by the Act pursuant to 19 USC § 81(o)(e) for certain inventory in a FTZ.

"FTZ Inventory" means any inventory held in the FTZ Site that qualifies for the FTZ Exemption.

"FTZ Site" means the tract(s) described in Exhibit B, owned and operated by Mouser.

"Interest" means an amount equal to penalty and interest and attorney's fees ("Collection Cost") for delinquent ad valorem tax payments assessed by the City pursuant to Texas Property Code, Sections 33.01, 33.07, and 33.048 or their successors.

"Letter" means executed Letter of Non-Objection from the City in the form attached as Exhibit "A."

"PILOT Payment" means the payment made pursuant to this Agreement in an amount equal to the aggregate ad valorem taxes loss to the City solely because of the FTZ designation of the FTZ site.

### **C. OBLIGATIONS of MOUSER**

**1. PILOT Payment.** Mouser understands that if any FTZ Inventory receives the FTZ Exemption, the City may suffer lost revenue. Therefore, Mouser agrees to the following PILOT Payment:

- a) Mouser agrees that with respect to each year of this Agreement that all or any portion of the FTZ Site is Activated on the valuation date for taxation purposes otherwise applicable to personal property inventory held by Mouser, or any affiliated or unaffiliated third party holding inventory within the FTZ site, Mouser will pay to the City an amount equal to:
  - (i) the Value of Net Exempted Inventory, divided by 100, times
  - (ii) the then current year tax rate adopted by the City.
- b) The following definitions shall be used to determine the Mouser payment:
  - (i) Value of FTZ Inventory means the value of inventory exempt from local taxation by the Act pursuant to 19 U.S. C. §81o(e), as incorporated into the annual certified tax roll of the Tarrant Appraisal District.

- (ii) Value of Otherwise Exempt Inventory means the portion of the Value of FTZ Inventory which, but for the existence of the foreign trade zone, would be exempt for local taxation pursuant to any other provision of law. For example, the value of inventory which would qualify for the Freeport Exemption pursuant to Texas Tax Code Section 11-251 if not already exempted by the Foreign-Trade Zones Act would be included in the Value of Otherwise Exempt Inventory.
  - (iii) Value of Net Exempted Inventory means the Value of FTZ Inventory, less the Value of Otherwise Exempt Inventory.
- c) Mouser agrees to disburse the annual PILOT Payment(s) specified above to the City, at the address set forth in Section J in the form of a check payable to "City of Mansfield."
- d) Any adjustment to the Tarrant Appraisal District tax roll which results in change to the FTZ Exemption after the tax role has been certified will cause a recalculation of the PILOT Payment within 30 days of the adjustment, and additional payments or refunds will be made promptly.
- e) PILOT Payments made after January 31<sup>st</sup> shall be delinquent and incur Interest in the same manner as delinquent ad valorem taxes.
- f) The aggregate of: (1) the amounts payable by Mouser to the City under this Agreement, (2) the amount of ad valorem tax paid by Mouser to the City and (3) the amount of ad valorem taxes paid by any other party owning inventory in the FTZ Site to the City shall in no event exceed the amounts of ad valorem taxes that would have been payable to the City pursuant to the Texas Property Tax Code if the FTZ had not been created.

**2. Report.** By October 1, 2018 and by October 1 of each year thereafter, that the FTZ Site is Activated by Customs, Mouser will provide to the City:

- a) A completed Mouser FTZ PILOT worksheet in the format contained in Exhibit "C,"
- b) A copy of the Mouser rendition to the Tarrant Appraisal District for that year, including the Application for Freeport Exemption, and
- c) Copies of any relevant correspondence between Mouser and the Tarrant Appraisal District which resulted in a change between the Mouser rendered inventory value and the final inventory value appearing on the Tarrant Appraisal District certified tax roll.

**3. Termination of Activation.** Mouser agrees that this Agreement is necessary for the designation of the FTZ Site. Therefore, in the event of any violation by Mouser or a determination of the invalidity of this Agreement, Mouser agrees to request that Customs terminate Activation of the FTZ Site, within thirty (30) days after notification from the City that Mouser has violated the Agreement or the Agreement is invalid.

**4. Boundaries.** As long as this Agreement is in effect, Mouser shall not modify its FTZ Site boundaries as described in Exhibit B, or otherwise take any action allowing any party whether affiliated or unaffiliated to own inventory in the FTZ Site, unless the City, by express action of its City Council, enters into a new or modified PILOT Agreement with Mouser allowing the boundary modification and/or with such third party.

**5. Information to be Provided.** Any additional information that may be reasonably requested by the City to effectuate or facilitate Mouser's obligations under this Agreement must be furnished by Mouser within 15 business days thereafter.

**6. Security.** The parties recognize that but for the Activation of the FTZ Site, the FTZ Inventory would be subject to ad valorem taxes. The City would otherwise enjoy a priority lien on the FTZ Property imposed pursuant to Section 32.01 of the Texas Tax Code to secure payment of the ad valorem taxes. Therefore, so the City is not disadvantaged by entering into this Agreement, Mouser agrees to obtain and maintain for the term of this Agreement a bond or letter of credit payable to the City in an amount equal to no less than the annual PILOT Payment, in a form satisfactory to the City attorney and City finance director. The bond or letter of credit shall be payable to the City in the event Mouser fails to make the annual PILOT Payment and shall be provided to the City prior to the City's execution of the Letter of Non-Objection.

**7. Tax Obligations Unaffected.** Mouser acknowledges that this Agreement does not affect any other tax obligations of Mouser to the City.

#### **D. OBLIGATIONS OF CITY**

**1. Letter of Non-Objection.** Upon execution of this Agreement, the City shall furnish its Letter of Non-Objection, in the form shown in Exhibit A, based on the commitments of Mouser herein that the City will not suffer lost revenue given that Mouser agrees to make the PILOT Payments.

**2. Invoice.** On or before December 1 of each year, the City will invoice Mouser for the PILOT Payment due with respect to that year as determined pursuant to paragraph 1(a) of Section C. The PILOT Payment is due from Mouser to the City on or before January 31<sup>st</sup> of the year following the year for which payment is being made. Penalties, interest and statutory attorney's fees (collection costs) for late payments shall be the same as that assessed by the City against delinquent taxpayers, pursuant to Texas Property Tax Code sections 33.01, 33.07, and 33.48, or their successor provisions.

#### **E. CHANGE IN LAW**

In the event that state legislation, judicial decisions, administrative interpretations by the Office of Texas State Comptroller including the Property Tax Division, in the sole judgment of the City, reasonably exercised, materially and detrimentally impacts the financial consequences to the City of the FTZ Site, the parties agree to renegotiate this Agreement in accordance with its original intent of protecting the City from financial loss.

#### **F. DEFAULT**

Unless stated elsewhere in this Agreement, a party shall be in default under this Agreement if such party breaches any term or condition of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the non-defaulting party (or, if the defaulting party has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, as determined by both parties mutually and in good faith), the non-defaulting party shall have the right to exercise any and all legal remedies available to it, including, but not limited to, the immediate termination of this Agreement upon provision of written notice to the non-defaulting party.

#### **G. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Mouser shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Mouser shall have the exclusive right to control all details and day-to-day operations relative to the FTZ Site and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Mouser acknowledges that the doctrine of respondeat superior will not apply as between the City and Mouser, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Mouser further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Mouser.

#### **H. INDEMNIFICATION**

**Mouser, at no cost to the City agrees to defend, indemnify and hold the City, its officers, agents, servants, and employees, harmless against any and all claims, lawsuits, actions, costs, and expenses of any kind, including, but not limited to, those for property damage or loss (including alleged damage or loss to Mouser's business and any resulting lost profits) and/or personal injury, including death, that may relate to, arise out of or be occasioned by Mouser's breach or any of the terms or provisions of this Agreement.**

#### **I. RIGHT OF OFFSET**

The parties recognize that the City has in the past entered into development incentive agreements with Mouser, and may do so in the future. The City may, at its option, offset any amounts due and payable to Mouser under any incentive agreement, economic development agreement or other obligation of the City to pay Mouser against any unpaid or delinquent PILOT Payment lawfully due to City from Mouser.

#### **J. NOTICES**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

**CITY:**

City of Mansfield  
1200 E. Broad Street  
Mansfield, Texas 76063  
ATTN: City Manager

**MOUSER:**

Mouser Electronics, Inc.  
1000 North Main Street  
Mansfield, Texas 76063  
ATTN: Scott Brown

#### **K. APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

#### **L. WAIVER AND SEVERABILITY**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

#### **M. NO THIRD PARTY RIGHTS**

The provisions and conditions of this Agreement are solely for the benefit of the City and Mouser, and any lawful assign or successor of Mouser, and are not intended to create any rights, contractual or otherwise, to any other person or entity.



## N. ENTIRETY OF AGREEMENT

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Mouser, and any lawful assign and successor of Mouser, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

## O. MISCELLANEOUS PROVISIONS

1. **Binding Effect.** This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives and future occupants of the FTZ Site. It is agreed that the City is a beneficiary of this Agreement and shall be entitled to enforce its terms and seek damages for its breach.
2. **This Agreement Does Not Affect Other Rights, Obligations or Agreements.** This Agreement does not supersede, modify, or affect any other agreement that has been or may be entered into between Mouser and any other taxing jurisdiction or any other entity, except as otherwise expressly stated in this Agreement.
3. **Further Assurances.** The parties covenant and agree that they will execute such other and further documents as are or may become necessary or convenient to effectuate and carry out the purpose of this Agreement.
4. **Termination of Agreement.** This Agreement shall terminate upon the revocation of FTZ Site status by the Board, but such termination shall not relieve Mouser from paying any PILOT payments remaining due at termination.

EXECUTED on the dates set forth below, but effective as of the last date executed by all the Parties.

**City of Mansfield:**

\_\_\_\_\_

Printed Name \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_

Betsy Elam, City Attorney

Mouser Electronics, Inc.

\_\_\_\_\_

Printed Name \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Signature of Officer to Attest to Officer's Execution of Agreement  
(must be legally authorized to sign on behalf of Mouser Electronics, Inc.)



**Exhibit A**  
**To be reprinted on City of Mansfield letterhead**

**AND**

**Returned to**  
*Karina Rodriguez*  
*Administrator*  
*FTZ/Lease and Property Management*  
*DFW International Airport*  
*P.O. Drawer 619428*  
*DFW Airport, Texas, 75261*  
*Email: krodriquez@dfwairport.com*  
*Phone: 972-973-4649*

[Date]

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

Re: Foreign Trade Zone Application—Mouser Electronics, Inc.

Dear Mr. McGilvray:

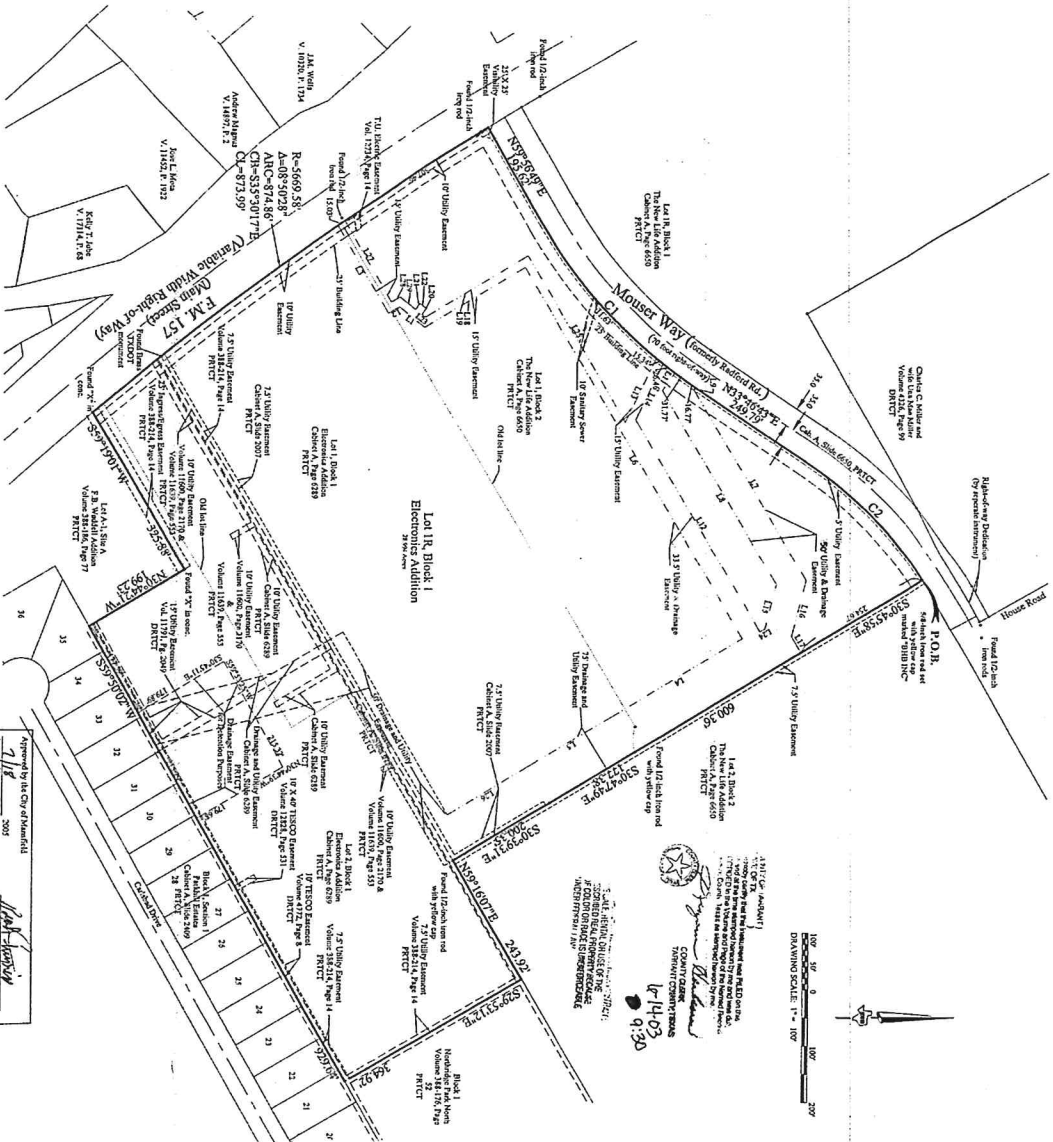
We understand that Mouser Electronics, Inc. will be seeking foreign trade zone designation for its facility located within the City of Mansfield. The City of Mansfield does not object to this application. We understand that imported inventory and inventory held for export at the facility will be exempt from ad valorem tax.

Sincerely,



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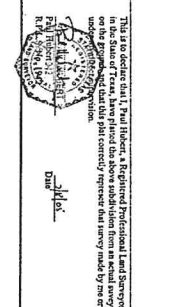
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95	1.00	10	10N	10E	10S
96	1.00	10	10N	10E	10S
97	1.00	10	10N	10E	10S
98	1.00	10	10N	10E	10S
99	1.00	10	10N	10E	10S
100	1.00	10	10N	10E	10S



After recording return to:  
The City of Mansfield  
1200 E. Broad Street  
Mansfield, Texas 76061

Owner:  
Robert Electronics Inc.  
1200 E. Broad Street  
Mansfield, Texas 76061

Surveyor:  
B. B. Bond, Jr.  
1200 E. Broad Street  
Mansfield, Texas 76061



Notes:  
1. The plat is subject to all existing and future recorded easements, rights, and interests.  
2. The plat is subject to all existing and future recorded covenants, conditions, and restrictions.  
3. The plat is subject to all existing and future recorded liens and mortgages.

Approved by the City of Mansfield:  
\_\_\_\_\_  
City Clerk

Approved by the County of Tarrant:  
\_\_\_\_\_  
County Clerk

THIS PLAT FILED IN CANTON A, SUBP 1148, DATE 10/1/2005.

SD#06-032

D206178845

Exhibit C  
**Mouser FTZ PILOT Worksheet**

**Required Information**

Inventory on January 1

(a) Taxable inventory value (from rendition)	\$
(b) Value of FTZ exempt inventory	\$
(c) <u>Freeport exempt inventory value (from rendition)</u>	\$
(d) Total inventory value	\$

Freeport goods information

(e) Freeport goods percentage (from Freeport Exemption Application)	%
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FTZ inventory information

(f) Percentage of inventory imported from outside the US	%
(g) Percentage of US sourced inventory held for export	%
(h) <u>Percentage of US sourced inventory held for US sale</u>	%
	100%

**PILOT Calculation**

Step 1: Calculate Value of Otherwise Exempt Inventory (x)<sup>1</sup>

Value of FTZ exempt inventory (b)	\$
<u>multiplied by Freeport goods percentage (e)</u>	%
(x) Value of Otherwise Exempt Inventory	\$

Step 2: Calculate Value of Net Exempted Inventory (y)

Value of FTZ exempt inventory (b)	\$
<u>minus Value of Otherwise Exempt Inventory (x)</u>	\$
(y) Value of Net Exempted Inventory	\$

Step 3: Calculate PILOT payment

Value of Net Exempted Inventory (y)	\$
divided by 100	
<u>multiplied by current year tax rate</u>	
PILOT Payment	\$

<sup>1</sup> Assumes the only exemption otherwise applicable to Mouser inventory is the Freeport Exemption. If other exemptions become available, the calculation would be altered, if approved by the City Council of the City of Mansfield, Texas.

## Sample Completed Mouser FTZ PILOT Worksheet

### Required Information

\$ 363,609,582

### Inventory on January 1

(a)	Taxable inventory value (from rendition)	\$ 38,077,195
(b)	Value of FTZ exempt inventory	\$ 312,704,241
(c)	Freeport exempt inventory value (from rendition)	\$ 12,828,146
(d)	Total inventory value	\$ 363,609,582

### Freeport goods information

(e)	Freeport goods percentage (from Freeport Exemption Application)	25.20%
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### FTZ inventory information

(f)	Percentage of inventory imported from outside the US	86.00%
(g)	Percentage of US sourced inventory held for export	
(h)	Percentage of US sourced inventory held for US sale	14.00%
		100.00%

### PILOT Calculation

#### Step 1: Calculate Value of Otherwise Exempt Inventory (x) \*\*

Value of FTZ exempt inventory (b)	\$ 312,704,241
multiplied by Freeport goods percentage (e)	25.20%
(x) Value of Otherwise Exempt Inventory	\$ 78,801,469

#### Step 2: Calculate Value of Net Exempted Inventory (y)

Value of FTZ exempt inventory (b)	\$ 312,704,241
minus Value of Otherwise Exempt Inventory (x)	\$ (78,801,469)
(y) Value of Net Exempted Inventory	\$ 233,902,772

#### Step 3: Calculate PILOT payment

Value of Net Exempted Inventory (y)	\$ 233,902,772
divided by 100	\$ 2,339,028
multiplied by current year tax rate	71.00%
<b>PILOT Payment</b>	<b>\$ 1,660,710</b>

\*\*Assumes the only exemption otherwise applicable to Mouser inventory is the Freeport Exemption.  
If other exemptions become available, the calculation would be altered if approved by City Council  
of the City of Mansfield, Texas.