

SAN FRANCISCO PORT COMMISSION  
FOREIGN TRADE ZONE NO. 3  
OPERATIONS AGREEMENT

by and between

THE CITY AND COUNTY OF SAN FRANCISCO  
by and through its  
SAN FRANCISCO PORT COMMISSION, ZONE GRANTEE

and

**Aeroground, Inc. DBA Menzies Aviation,  
A Delaware Corporation**

**October 11<sup>th</sup>, 2022**

This Foreign Trade Zone Subzone Operations Agreement (hereinafter referred to as this "Agreement") is entered into on this 11<sup>th</sup> day of October, 2022 and made by and between the City and County of San Francisco, by and through its San Francisco Port Commission (hereinafter referred to as "Zone Grantee"), and **Aeroground, Inc. DBA Menziez Aviation, A Delaware Corporation** (hereinafter referred to as "Subzone Operator or "Operator").

**WHEREAS**, the grant of authority for Foreign Trade Zone No. 3 ("FTZ No. 3" or the "Zone") was issued to the San Francisco Port Authority, the State of California's predecessor port agency prior to its transfer to the City and County of San Francisco, by the FTZ Board (as defined below) on March 10, 1948 under Board Order No. 16; and

**WHEREAS**, as grantee of the FTZ No.3, Zone Grantee has certain responsibilities to establish and maintain the FTZ No.3 as stated in the Foreign-Trade Zones Board regulations; and

**WHEREAS**, the Zone Grantee deems it practicable to limit its participation in the everyday operations of the Subzone; and

**WHEREAS**, the Operator desires to make use of foreign trade zone status and wishes to activate the site located at **606 McDonnell Road, San Francisco, California 94128** and further described in Exhibit A attached hereto and made a part hereof (the "Subzone"); and

**WHEREAS**, said Subzone is a part of the U.S. Foreign Trade Zone No. 3, as designated under FTZ Board Order \_\_\_\_ **[Enter FTZ Board Order]**; and

**WHEREAS**, Article VII of the Transfer Agreement of 1969 between the State of California and the City and County of San Francisco, relating to the transfer of lands to the City, and Section B3.581(o) of the San Francisco Charter authorize the Port of San Francisco "to contract for and operate foreign trade zones within the port area or auxiliary to the port area, or such zones or subzones as have been operated by the San Francisco Port Authority;" and

**WHEREAS**, by Port Commission Resolution No. **[ ]**, the Port Commission has determined that the Subzone is auxiliary to the port area; and

**WHEREAS**, Operator is the owner of the Subzone and wishes to undertake the operational management of foreign trade subzone activities, on its own behalf, pursuant to the authority extended by Zone Grantee; and

**WHEREAS**, The City's Risk Manager has accepted Operator's program of self-insurance based upon the recommendation of Zone Grantee;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree to the following terms and conditions:

1. **Recitals:** The above recitals are incorporated herein for all purposes.
2. **Definitions:** In this Agreement and in any amendment or supplement hereto (except as otherwise expressly provided or unless context otherwise requires), terms used as defined terms in the recitals hereto shall have the same meanings throughout this Agreement and, in addition, the following terms shall have the meanings specified below:
  - (a) "Act" shall mean the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. § 81(a) et. seq.).
  - (b) "Activation" shall mean initiation within the Subzone of any activity authorized by the FTZ Board and by the CBP to be conducted within a foreign trade zone subzone.
  - (c) "Board" or "FTZ Board" shall mean the U.S. Foreign-Trade Zones Board or any successor body or agency of the United States.

(d) “Customs” or “CBP” shall mean United States Customs and Border Protection or any successor body or agency of the United States.

(e) “Operator” shall mean the corporation, Aeroground, Inc. DBA Menzies Aviation, a Delaware Corporation, designated by Zone Grantee to operate a foreign-trade zone subzone at the Subzone.

(f) “Port” or “Zone Grantee” shall mean the San Francisco Port Commission.

(g) “Regulations” shall mean all applicable federal, state and local laws, rules, statutes, ordinances, regulations, orders, decisions, or decrees, including laws, rules, statutes, ordinances, regulations, orders, decisions, or decrees, of any governmental body, including judicial bodies, having jurisdiction over FTZ No. 3, the Zone Grantee, and the Subzone with respect to the duties and obligations of each hereunder, or the operations conducted in such Zone.

(h) “Subzone” shall mean those areas described in *Exhibit A*, which Operator may operate and maintain as a foreign-trade zone subzone.

(i) “Zone” shall mean those areas within the San Francisco Customs Port of Entry designated by the FTZ Board as Zone No. 3 under Order No. 16 issued to the San Francisco Port Commission on March 10, 1948, and any other areas from time to time included by the FTZ Board in such Orders.

**3. Authority Granted/Accepted:**

(a) Authority Granted: As of the Effective Date (defined in Section 13 below), Zone Grantee grants Operator the exclusive authority to operate and maintain the Subzone as a foreign trade zone subzone, subject to the terms and conditions of this Agreement.

(b) Authority Accepted: As of the Effective Date, Operator assumes responsibility for the operation and management of the Subzone, including without limitation the all pertinent and specific activities within this Subzone (hereinafter referred to as “Subzone Operations” or “Operations”), and agrees to operate and manage the Subzone in accordance with the terms and conditions of this Agreement.

**4. Construction, Repair and Maintenance:** Operator agrees that it will construct at its expense the improvements and facilities at the Subzone reasonably required by the Regulations of the FTZ Board and CBP. Operator shall, subject to Operator’s right to contest under Regulations, be liable and shall make immediate payment of any fine, penalty, liquidated damage or other charge or assessment imposed by the FTZ Board, CBP or Zone Grantee for failure to make repairs or alterations as ordered, pursuant to Regulations or procedures herein provided.

**5. Use of Name and Advertising:** So long and only so long as this Agreement shall remain in force and effect, Operator, in operational management of the Subzone, may advertise its operations as a subzone of the “San Francisco Port Commission Foreign Trade Zone No. 3”; however, no designs, advertising, signs or forms of publicity referring to the City and County of San Francisco, the San Francisco Port, the San Francisco Port Commission or “Foreign Trade Zone No. 3” (including form, color, number, location and size) shall be used upon or with respect to the Subzone or other place of related business unless the same shall have been first approved in writing by the Zone Grantee as meeting its standards. Such approval shall not be unreasonably withheld, conditioned or delayed. Operator shall promptly remove any unapproved signs or advertising media (which violate the provisions of this Section), at its own expense, within ten (10) days after receiving written notice from Zone Grantee or its authorized agents.

**6. Operations:**

(a) Availability of Subzone: Operator shall use the Subzone only for the conduct of Operator’s business, and will not permit it to be used by any other entity or for the

storage, manufacture or exhibition of merchandise owned by other entities unless Zone Grantee is notified in advance and provides concurrence in writing.

(b) Operator: Operator shall establish and implement standards of operation and management of the Subzone which conform to the requirements of the FTZ Board and CBP, including the standards of operation set forth in the Foreign-Trade Zones Manual compiled by CBP, as amended. Operator agrees to submit to Zone Grantee reports containing data required by the Zone Grantee, the FTZ Board, and CBP (pursuant to the terms of Section 8 below).

(c) Zone Grantee: Zone Grantee shall ensure that the annual report required by the FTZ Board in connection with the Subzone is timely filed by Zone Grantee according to FTZ Board Regulations and guidelines and shall ensure that all steps are taken by Zone Grantee to maintain the FTZ Board's grant of zone authority for the Subzone.

(d) Operator and Zone Grantee: Operator shall comply with the terms of this Agreement and with applicable Regulations, including without limitation all applicable provisions of the Foreign-Trade Zones Act (19 U.S.C. §81(a) et seq., as amended from time to time) applicable to foreign trade zone and subzone operations, with respect to the Operator and its obligations under this Agreement. Zone Grantee shall comply with the terms of this Agreement and with applicable Regulations, including without limitation all applicable provisions of the Foreign-Trade Zones Act (19 U.S.C. §81(a) et seq., as amended from time to time), applicable to foreign trade zone and subzone operations, with respect to the FTZ No.3 and its obligations under this Agreement.

(e) Operator's Expenses: Operator further agrees to pay, or cause to be paid, all costs, expenses and taxes (if any) of the Subzone operation, including, but not limited to, all such costs and expenses related to its construction, installation, improvements, security, maintenance and personnel, and as otherwise provided herein.

(f) FTZ Procedures Manual: Operator shall prepare an FTZ Procedures Manual with respect to the Subzone in accordance with FTZ Board and CBP Regulations and shall supply a current version of such manual to Zone Grantee.

(g) Right of Entry: Representatives of the Zone Grantee, the FTZ Board, CBP, and other authorized U.S. Government officers shall have the right to enter the Subzone during normal business hours or as provided for by applicable law or regulation for the authorized and lawful purpose of examining the same; conferring with Operator, its agents and employees on such premises; inspecting and checking operations, supplies, equipment and merchandise; and determining whether the business is being conducted in accordance with the procedures established with this Agreement. All entries shall be in accordance with the established security procedures. For rights of entry requested by the Zone Grantee only, Zone Grantee shall provide advance notice of at least 24 hours of its intent to enter the Subzone, and Operator shall have the right to have a representative present upon any such entry.

## **7. Fees and Expenses:**

(a) Activation: Operator agrees to pay Zone Grantee the activation fee set forth in the current Zone Schedule 1 Foreign Trade Zone No. 3 adopted by the Port Commission within thirty (30) days after the Activation of the Subzone by the CBP.

(b) Zone Grantee Annual Fee: Operator shall pay Zone Grantee an annual fee in the amount set forth in the current Zone Schedule 1 Foreign Trade Zone No. 3 adopted by the Port Commission, to be paid within thirty (30) days after the Effective Date of this Agreement, and thereafter to be paid yearly on each anniversary of the Effective Date of this Agreement. Operator agrees that Port may adjust the annual fee periodically (but not more frequently than once every 12 months) and, upon notice by Port, Operator agrees to pay the adjusted annual fee for any year in which this Agreement is in effect, including in any extension period.

(c) Past Due Obligations: Any and all amounts required hereunder to be paid by Operator to Zone Grantee or reimbursed to Zone Grantee and not paid within ten (10) days after the due date shall bear interest from the due date until paid at the rate of ten percent (10%) per year. Payment of interest shall not excuse or cure any default by Operator.

(d) CBP and FTZ Board Administrative Expenses: Operator agrees to pay or cause to be paid all CBP and FTZ Board administrative fees and expenses attributable to the Subzone Operations of Operator at the Subzone, including but not limited to duties, taxes, charges, fines, penalties, interest, attorney, user, and other fees, costs, liquidated damages, or expenses assessed due to the operation of the Subzone. Zone Grantee shall ask CBP and the FTZ Board to bill Operator directly for all fees and expenses attributable to the Subzone, if practicable. If billed directly, Operator shall promptly pay such fees and expenses, but in no event later than the time required by CBP or the FTZ Board. If such direct billing is not practicable, Operator will reimburse Zone Grantee for such fees and expenses attributable to Operator's Subzone Operations which are paid by Zone Grantee, within thirty (30) days after the date that Operator receives an invoice and supporting documentation therefor from Zone Grantee.

(e) CBP Bond: Operator will pay the full cost of any bond required under Regulations for operation of the Subzone and will ensure that the bond is maintained and kept current on file with CBP, or other applicable agency, throughout the term of this Agreement. The bond shall be issued by a surety company authorized to conduct business in the State of California and approved by Customs.

(f) Other: Except as expressly provided in this Agreement, Operator shall have no other obligation or responsibility to pay, reimburse, or otherwise incur expenses related to the operation or maintenance of the Foreign Trade Zone No. 3 or of the Zone Grantee. Without limiting the foregoing, except as provided in Section 11 (Indemnification) and Section 12 (Insurance), Operator shall have no obligation to pay, reimburse, or otherwise incur expenses related to the operation or maintenance of any other area of the Foreign Trade Zone No. 3 or of the Zone Grantee, other than the Subzone pursuant to the express provisions of this Agreement.

**8. Recordkeeping and Reporting:** Operator shall submit to Zone Grantee, at Operator's sole cost and expense, data sufficient to allow the Zone Grantee to compile its annual report to the FTZ Board. Such information shall be provided to Zone Grantee not later than March 1 of each year (for the preceding period of January 1-December 31). The submittal of all such data shall be signed by an appropriate official of Operator, certifying to the accuracy of the records for the specified accounting period. Current due dates for reporting are:

(a) Foreign Trade Zone Board Annual Report: Operator agrees to submit, after the end of each year (January 1-December 31), reports covering Operator's activities at the Subzone for such fiscal year, including the data required by the Foreign-Trade Zones Board and CBP no later than March 1.

(b) Annual Reconciliation: Operator shall take at least an annual physical inventory of all merchandise in the Subzone with prior notice of the date(s) given to the Zone Grantee and to CBP for any supervision necessary by either of them. Operator shall notify the CBP Port Director and Zone Grantee of any discrepancies. An annual reconciliation will be prepared and provided to Zone Grantee. Within ninety (90) days of the end of the zone year, Operator will prepare the Annual Reconciliation. Operator shall submit to CBP, within ten (10) working days after completion, a certification letter declaring that the report has been completed, is accurate and is available for CBP review. The letter shall also contain any reporting of shortages and overages and a list of any system deficiencies with corrective action taken. A copy of the certification letter to CBP is required to be sent to the Zone Grantee ten (10) days after it has been sent to CBP.

(c) **Annual Internal Review:** Operator shall perform an annual internal review of the inventory control and record keeping systems under its supervision and shall report to the Port Director of Customs any deficiency discovered and corrective action taken to ensure that the system meets the requirements of the CBP Regulations. Any such deficiencies with corrective action should be reported to the Port Director, the name and street of the facility where the required records are available for CBP review, and the name, title and telephone number of the person having custody of the records.

(d) Operator shall provide Zone Grantee with all correspondence from CBP to Operator and all correspondence from Operator to CBP concerning Foreign Trade Zone operations, liabilities, and issues.

(e) **Additional Reports:** In the event that any audit, inspection, or examination by CBP, the FTZ Board, or Zone Grantee discloses that books, records, or operational procedures of Operator are not in conformance with the requirements of this Agreement, Zone Grantee may order the immediate correction of the documents or procedures. In the event that it is anticipated that such correction will take in excess of five (5) working days, Operator shall submit a plan (report) of performance to Zone Grantee for the correction of such discrepancy.

**9. Record Retention:** Operator shall maintain financial and accounting records concerning its Subzone Operations, and shall retain such records for a period of at least five (5) years after the date of the act or occurrence recorded or the date that the merchandise covered by such records has been forwarded from the Subzone, whichever is longer. All such records shall be available for inspection and audit by the governmental agencies with authority over operations in the Subzone and by Zone Grantee (to satisfy itself of Operator's compliance with the terms hereof) during Operator's normal business hours upon reasonable prior written notice to Operator. Audits by Zone Grantee may not be conducted more frequently than annually. Any and all entries by Zone Grantee upon the Subzone shall be in accordance with Operator's security procedures, and Operator shall have the right to have its representatives escort the Zone Grantee's representatives (limited to the minimum number necessary to accomplish the purposes of the visit) at all times while Zone Grantee's representatives are at the Subzone.

**10. Confidentiality:** All financial and operating information of Operator or any of its affiliates, received by, reviewed by, or made known to Zone Grantee, and all information of any kind contained in the books and records of Operator and disclosed or made known to Zone Grantee pursuant to this Agreement, shall be kept strictly confidential, except as such information has previously been disclosed to the public by no fault of Zone Grantee, may be required to be disclosed to the FTZ Board, CBP, or other governmental agency under applicable Regulations or is required to be disclosed by the California Public Records Act, California Government Code § 6250 et seq., Chapter 67 of the San Francisco Administrative Code (the San Francisco Sunshine Ordinance), or other applicable federal, state or local Regulations requiring disclosure. Any and all operations manuals, computer programs, financial and operations information, computer reports and systems designs developed by Operator for the Subzone Operations shall be the sole property of Operator and shall not be disclosed to any other entity without the prior written approval of Operator, except as such information has previously been disclosed to the public by no fault of Zone Grantee, may be required to be disclosed to the FTZ Board, CBP, or other governmental agency under applicable Regulations, or is required to be disclosed by the California Public Records Act, California Government Code § 6250 et seq., Chapter 67 of the San Francisco Administrative Code (the San Francisco Sunshine Ordinance), or other applicable federal, state or local Regulations requiring disclosure. Notwithstanding any provision to the contrary contained herein, upon any request under the California Public Records Act, California Government Code § 6250 et seq., Chapter 67 of the San Francisco Administrative Code (the San Francisco Sunshine Ordinance) or other applicable federal, state or local Regulations requiring disclosure, Zone Grantee shall make a good faith effort to provide prior written, telephone or email notice to Operator so that Operator has an opportunity to protect its information from public disclosure.

**11. Indemnification:** Operator shall at all times indemnify, protect and save harmless the City and County of San Francisco and any and all of its commissions, boards, officers, commissioners, agents and employees, including, without limitation, Zone Grantee, and if requested, shall defend them against any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including, without limitation, civil fines and penalties and reasonable attorney's fees and court costs, consultant's fees, and expert fees, for death of or injury to persons or damage to property, arising directly or indirectly from (i) Operator's performance of this Agreement or (ii) any cause whatsoever on, at, or by operation of the Subzone, including, but not limited to, the following (except to the extent caused by the willful misconduct of Zone Grantee):

(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the Subzone, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Subzone by Operator, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the Subzone by Operator, its officers, agents, employees, sublessees, licensees or invitees, under or pursuant to the provisions of this Agreement or otherwise;

(c) Any act, omission or negligence of Operator, its officers, agents, employees, sublessees, licensees or invitees; or

(d) Any failure of Operator, its officers, agents or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation.

The term "persons" as used in this section shall include but not be limited to officers and employees of Operator. This indemnification of Zone Grantee by Operator includes, without limitation, costs incurred in connection with any investigation of site conditions of any clean up, remedial, removal or restoration work required by any federal, state or local governmental agency because of hazardous material present in the soil or groundwater on or under the Subzone to the extent released or spilled by or under Operator.

The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

**12. Insurance:** Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement the following insurance which shall be written by an insurance company authorized to do business in the State of California rated VIII, A- or better in Best's Insurance Guide (or an alternate guide reasonably acceptable to Zone Grantee if a Best's Rating is not available):

(a) Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence Combined Single Limit and Two Million Dollars (\$2,000,000) annual aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, with no explosion, collapse or underground exclusion. Unless approved by City's Risk Manager at his/her sole and absolute discretion, this policy shall be project specific to this Agreement. The provision below in Section 12(g)(i), namely adding the City and County of San Francisco, the Port of San Francisco, their officers, commissioners, agents and employees, as additional insureds hereunder shall be evidenced by an endorsement to this policy.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage.

(c) A Twenty Million Dollars (\$20,000,000.00) umbrella or excess policy shall be excess over the auto liability and commercial general coverages.

**(d)** Workers' Compensation. By signing this Agreement, Operator certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it will comply with such provisions before Activation of the Subzone. Workers' Compensation should include U.S. Longshore and Harbor Workers Compensation (USL&H) and Jones Act benefits, to the extent applicable, and shall be endorsed with a waiver of subrogation in favor of the City with respect to any activities taking place on City property.

**(e)** Pollution Liability Coverage. Operator shall carry Two and One-half Million Dollars (\$2,500,000.00) in pollution liability coverage as well as Oil

Pollution Act (OPA) coverage. This coverage shall be endorsed to include Non-Owned Disposal Site coverage.

**(f)** Builder's Risk and Property Insurance. Operator shall insure the City's building and business personal property, if any, with Property insurance including Builder's Risk coverage when construction is involved. The coverage must be in an amount equal to the full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," such as but not limited to design and engineering fees, code updates, permits, bonds, insurance and inspection costs caused by an insured; the policy may limit the amount for soft costs but such limit shall not be less than 5% of the coverage amount. The Builder's Risk Insurance shall also include the full replacement cost of all City-furnished equipment, if any.

**(g)** The insurance provided shall contain a severability of interest clause. In all cases, said insurance shall contain a defense of suits provision. Where Operator operates watercraft, liability coverage for such craft must be provided as above. The submitted policies shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

**(i)** Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City and County of San Francisco, the Port of San Francisco, their officers, commissioners, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Agreement with Zone Grantee and under any amendments, modifications, extensions or renewals of said Agreement regardless of whether such operations, uses, occupations, acts and activities occur on the Subzone or elsewhere and regardless of whether liability is attributable to the insured or a combination of the insured and the additional insured;

**(ii)** The policy to which this endorsement is attached shall not be canceled or reduced in coverage until after the Zone Grantee has been given thirty (30) days' prior written notice by registered mail addressed to Pier 1, San Francisco, California 94111;

**(iii)** The coverage provided by the policy to which this endorsement is attached is primary coverage and insurance carried by Zone Grantee is excess coverage;

**(iv)** In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom a claim is or may be made, including claims by other named insureds in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the Operator's limit of liability;

**(v)** Notice of occurrences or claims under the policy shall be made to the name and address of the person to be notified.



(h) Notice of Cancellation. Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after Zone Grantee has been given thirty (30) days' prior written notice by registered mail addressed to Port of San Francisco, Pier 1, San Francisco, California 94111.

(i) Copies of Policies. Before Activation of the Subzone, Zone Operator shall submit to the Zone Grantee certificates of insurance and additional insured endorsements that are satisfactory to Zone Grantee in form evidencing all coverages set forth above.

(j) Renewal of Policies. At least sixty (60) days prior to the expiration of each policy, Operator shall furnish to Zone Grantee certificate(s) or endorsement(s) showing that the policy has been renewed or extended.

(k) Modification of Coverage. The City's Risk Manager, at his/her discretion, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Operator.

(l) Self-Insurance. City's Risk Manager, at his/her sole and absolute discretion, may accept a program of self insurance offered by Operator in lieu of insurance policies, on such terms and conditions as he/she deems appropriate, based upon recommendation of Zone Grantee. Any self-insurance by any entity or person to whom this Agreement is assigned must receive advance approval by the City's Risk Manager at his/her sole and absolute discretion. Operator hereby agrees that:

(i) it will protect the Zone Grantee, including but not limited to the Port, its commissions, boards, officers, commissioners, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement;

(ii) it will defend the Zone Grantee, including but not limited to the Port, its commissions, boards, officers, commissioners, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier;

(iii) any insurance carried by Zone Grantee is excess of Operator's self-insurance and will not contribute to it;

(iv) it will provide the name and address of its claims administrator;

(v) it will inform the Zone Grantee in writing immediately of any change in its status or policy which would materially affect the protection afforded Zone Grantee by this self-insurance; and

(vi) it has complied with all laws pertaining to self-insurance.

**13. Effective Date:** This Agreement shall become effective (the "Effective Date") on the latest of the following dates: (1) the date of the complete execution of this Agreement; (2) the date of the issuance of the FTZ Board Order (defined in Section 21 below), (3) the Activation of the Subzone by the CBP, as evidenced by a formal Activation approval document to be delivered by Zone Grantee to Operator within ten (10) business days after such Activation, or (4) to the extent Operator has not self-insured, the delivery by Operator of the certificates of insurance and additional insured endorsements consistent with Section 12 above. Operator or Zone Grantee may terminate or withdraw from this Agreement by written notice to the other party at any time before the Effective Date.

**14. Term of Agreement:**

(a) Term and Renewal: The term of this Agreement shall commence on the Effective Date as set forth in Section 13 and shall continue for five (5) years, provided that Operator has performed to the reasonable satisfaction of the Zone Grantee as required herein, and shall, after such five (5) year period, be extended for up to one (1) four (4) year period;

provided that for such extension, Operator provides a written request for the extension pursuant to Section 18 (Notices and Reports) at least sixty (60) days before the expiration of the then current term and the Zone Grantee, in its sole and absolute discretion, approves the request in writing before the expiration of the term. On approving any request for extension, the Zone Grantee may increase the annual fee (Section 7) in accordance with the Port rates and regulations for Foreign Trade Zone No.3 (unless Zone Grantee has adjusted the fees less than 12 months from the date of expiration of the current term). If parties cannot agree on the terms and conditions prior to the end of the then current term, this Agreement shall terminate at the end of such term unless terminated earlier pursuant to the express provisions of this Agreement.

(b) Initiation of Operations: Operator shall not initiate operations at the Subzone as a subzone before the Effective Date. Operator shall give the Zone Grantee written notice prior to commencing operation at the Subzone as a foreign trade zone subzone.

**15. Default; Rights and Obligations upon Termination.**

(a) Termination for Cause: The breach of any material provision of this Agreement or the failure to perform any material obligations or duties by a party hereto shall be a default. The non-defaulting party shall give written notice of default by registered or certified mail to the defaulting party stating the specific default or breach committed. The non-defaulting party shall have the option to immediately terminate this Agreement by written notice to the other party after expiration of the time periods as follows unless cured in accordance with the following:

(i) If the default can be cured by payment or posting of money, bond or other security for money due or the payment of a final assessment or other obligation, the defaulting party shall have ten (10) days after receipt of the notice of default to pay over such money or, if the payment is contested, to post such amount with the other party pending final determination of liability, in cash or security in such form as reasonably approved by the non-defaulting party.

(ii) If the default cannot be cured by payment or posting of money or security as provided in subsection (i) above, the defaulting party shall have thirty (30) days after receipt of written notice of default in which to cure the default.

(iii) If the default is one which by its nature cannot be reasonably cured within thirty (30) days, then the defaulting party shall have a reasonable time in which to cure the default. Such time period shall not exceed sixty (60) days but in no event shall be greater than times required by applicable Regulations, or order of the FTZ Board and shall be based upon a written schedule of performance and supporting documentation indicating the shortest period in which such default can be cured by defaulting party.

(b) Performance: In addition to any default arising under the provisions of Section 15(a), Operator hereby acknowledges that Operator's failure to perform any of the following duties and obligations to the reasonable satisfaction of the Zone Grantee shall constitute a material default hereunder which shall permit the Zone Grantee to immediately terminate this Agreement by written notice to Operator:

(i) Maintenance of a uniform system of accurate books, records and accounts prepared in accordance with Regulations and capable of producing the following required results:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from the Subzone;

(2) Producing accurate and timely reports and documents as required by the CBP Regulations;

(3) Identifying shortages and overages of merchandise in the Subzone in sufficient detail to determine the quantity, description, tariff classification, Subzone status, and value of the missing or excess merchandise;

(4) Providing all information necessary to make entry for merchandise being transferred to the Customs territory; and

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from the Subzone by a CBP authorized inventory method.

(ii) Proper operation of the Subzone in accordance with Regulations.

(iii) Preparation and timely submission to the Zone Grantee of all reports required under the terms of this Agreement, pursuant to the terms of this Agreement.

(c) Right to Terminate: Operator or Zone Grantee may, for any reason, terminate this Agreement by sending at least one hundred eighty (180) days prior written notice to the other party.

(d) Discontinuance of Trade Name: Upon the termination of this Agreement for any cause, the Operator shall request CBP to deactivate the Subzone as a Subzone and shall discontinue all use of trade names, trademarks, signs and forms of advertising and other indicia of operation within a foreign trade zone at the Subzone, specifically referring to the City and County of San Francisco, the San Francisco Port Commission, or Foreign Trade Zone No.3. Operator shall make, or cause to be made, such changes at its own expense within forty-five (45) days after receiving such written notice from the Zone Grantee.

**16. Independent Contractor Status:** Operator is an independent contractor in the performance of all activities and functions under this Agreement. Zone 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 may be otherwise expressly set forth in this Agreement. Zone Grantee and Operator each agree not to represent to any third party that it is an agent of the other party or that it has any authority to act on behalf of the other party, except as may be otherwise expressly set forth in this Agreement.

**17. Sublease and Assignment:**

(a) Assignments/Subleases. Except as provided below, Operator may not assign, sublease or otherwise transfer any interest in this Agreement or any right or privilege hereunder, without the prior, written consent of Zone Grantee in its sole and absolute discretion. Notwithstanding the foregoing, without the consent of, Zone Grantee, upon no less than thirty (30) days' prior written notice to Zone Grantee, with evidence of the approval (i) of the FTZ Board and CBP as required by Regulations and (ii) compliance with the insurance provisions of this Agreement, including the requirement that City and Port are additional insureds, Operator may assign its interest in and right under this Agreement or sublease any part of the Subzone to a company which it controls. For purposes of this section, the term "controls" means that Operator (a) owns or has the right to acquire 50 percent or more (25 percent or more if publicly traded) of each class of equity interests in the second entity or 50 percent or more (25 percent or more if publicly traded) of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the second entity; or (b) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second entity. Any assignment or sublease shall provide that it is subject to the provisions of this Agreement. Nothing contained in this Section or otherwise shall limit or affect Operator's right to grant easements, rights-of-way, licenses, or similar rights in the ordinary course of its business or otherwise at the Subzone. No assignment or sublease shall be valid or binding unless the assignment or sublease is in compliance with Regulations.

(b) **Miscellaneous Conditions.** Any consent given by Zone Grantee to Operator to transfer this Agreement or any interest therein or right or privilege thereunder shall not be construed as consent to any other such transfer. Moreover, the Zone Grantee's consent to such a transfer shall not alter Operator's obligation to be at all times primarily responsible for compliance with all covenants, conditions and provisions of this Agreement.

**18. Notices and Reports:** All notices, reports, and other communications hereunder shall be made in writing, and shall be deemed given or made: (i) as of the date of personal delivery; (ii) when delivered to the United States Postal Service, on the third business day following the deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid; (iii) when delivered by a nationally or internationally recognized delivery service promising delivery within a period of twenty four (24) hours, receipt obtained, charges prepaid, on the first business day following the deposit with such delivery service; or (iv) upon confirmation of receipt if sent by facsimile or email, addressed as follows, or to such other address as a party from time to time designate in writing to the other party:

*Operator:* Aeroground, Inc. DBA Menzies Aviation  
606 N. McDonnell Road  
South San Francisco, California 94128  
ATTN: Peter Sposito  
Telephone: 650-877-3033  
Email: [Peter.sposito@menziezaviation.com](mailto:Peter.sposito@menziezaviation.com)

*Zone Grantee:* San Francisco Port Commission  
c/o Port of San Francisco  
Foreign Trade Zone No. 3  
Pier 1, The Embarcadero  
San Francisco, CA 94111  
**Attn:** Maritime Marketing Manager  
**Telephone:** 415-274-0400  
**Fax:** 415-732-0470  
**Email:** [Demetri.amaro@sfport.com](mailto:Demetri.amaro@sfport.com)

**19. Good Corporate Citizenship.** During the Term of this Agreement, Operator shall continue to act as a good corporate citizen with respect to its activities within the FTZ by complying with all relevant standards of commercial integrity and business ethics embodied in all applicable federal, state and local laws and Regulations, including but not limited to all such requirements pertaining to equal employment opportunity, the environment, labor, occupational safety and health, securities, antitrust, banking and public integrity, as a condition of Operator's right to receive the FTZ benefits under this Agreement in accordance with the grant of authority issued by the FTZ Board.

**20. Miscellaneous:**

(a) **Amendment:** This Agreement may not be modified, except by written instrument executed by both parties.

(b) **Conflicting Documents:** In the event that there is a conflict between the terms of this Agreement and the terms of any other documents which may have been executed or passed between the parties hereto, it is understood and agreed that the provisions of this Agreement shall control.

(c) **Construction:** This Agreement is the result of negotiation between the parties and is the product of cooperative efforts by the parties. All of the terms, conditions, and provisions of this Agreement shall be construed in a fair and even manner and not more strictly

against any of the parties, and none of the parties will be considered the drafter of this Agreement.

**(d) Exhibits:** All exhibits referred to in this Agreement or any duly executed amendment hereto are by such reference incorporated herein and deemed a part of this Agreement as if fully set forth herein.

**(e) 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.

**(f) Headings:** Headings and captions in this Agreement are solely for convenience of reference and shall not in any way affect the meaning or interpretation hereof.

**(g) Conflict of Interest:** Through its execution of this It is hereby understood and agreed that the parties to this Agreement, Operator acknowledges that it is familiar with the have read and are aware of the provisions of Article III Chapter 2 of the City's Campaign and Governmental Conduct Code, Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Operator becomes aware of any such fact during the Term, Operator shall immediately notify the Port. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, Zone Grantee may immediately terminate this Agreement by giving written notice hereof.

**(h) Compliance with City Business and Tax Regulations Code.** Operator acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Operator under this Agreement is withheld, then Port will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Operator, without interest, late fees, penalties, or other charges, upon Operator coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**(i) Integration:** This instrument contains the entire understanding and agreement of the parties regarding the subject matter hereof and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect.

**(j) Severability:** If any provision of this Agreement is declared void or ineffective as a matter of law, that declaration will not affect the validity of any other provision of this Agreement.

**(k) Terms:** All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words terms and words have been fully and properly written in number and gender.

**(l) Waiver:** No failure of either party hereto to exercise any right or power given hereunder, or to insist upon strict compliance by the other party of any obligations 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.

(m) Complete Signatures: Subject to the terms of Sections 13 and 20 hereof, this Agreement shall not be effective unless and until it has been executed by both parties shown below.

(n) Authority: Subject to the terms of Section 21 below, each party represents and warrants to the other that this Agreement has been duly authorized by all necessary parties and that the same represents the binding obligation of such party, enforceable in accordance with its terms.

(o) Counterparts: This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(p) Agreement Made in California; Venue: The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

(q) Attorney's Fees: If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in such action or proceeding shall be entitled to recovery of its costs and reasonable attorney's fees. For purposes of this Agreement, reasonable attorney's fees of the City's Office of the City Attorney or in-house at Operator shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney or of Operator, as applicable.

**21. FTZ Board Approval.** The effectiveness of this Agreement is conditioned upon the receipt of approval by the FTZ Board, as evidenced by the FTZ Board's issuance of a written FTZ Board order (the "FTZ Board Order") regarding such approval. Promptly upon the issuance of the FTZ Board Order, Zone Grantee shall deliver a copy of the FTZ Board Order to Operator.

[Signatures on Following Pages]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the day first mentioned, effective, however, as of the Effective Date (defined above).

**ZONE GRANTEE: CITY AND COUNTY OF SAN FRANCISCO  
BY AND THROUGH  
ITS SAN FRANCISCO PORT COMMISSION:  
(Zone Grantee)**

\_\_\_\_\_  
**Elaine Forbes**  
**Executive Director**

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

Approved as to Form  
**David Chiu**  
**City Attorney**

BY: \_\_\_\_\_  
Deputy City Attorney

**SUBZONE OPERATOR:  
Aeroground, Inc. DBA Menzies Aviation,  
A Delaware Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

BY: \_\_\_\_\_

Agreement Prepared By: Demetri Amaro,  
Maritime Business Development Manager \_\_\_\_\_ (initial)

Port Commission Resolution No. \_\_\_\_\_

Attachment:

Exhibit A Map and Legal Description of Subzone

**EXHIBIT A**

Map and Legal Description of Subzone