



MEMORANDUM

December 9, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of the Operating Agreement (Contract # OP-0010) with Aeroground, Inc. DBA Menzies Aviation, granting authority to operate its location at 606 McDonnell Road, San Francisco, CA as a Foreign Trade Zone No. 3 Usage Driven Site for a term of five years, with one operation to extend for four years and outlining conditions for the operation of the usage driven site

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-64

EXECUTIVE SUMMARY

The Port of San Francisco has been the grantee of Foreign Trade Zone (FTZ) No. 3 since receiving authorization from the Foreign Trade Zone Board (“FTZ Board”) in 1948. As grantee the Port acts as a facilitator to private entities that may benefit from this public utility. Foreign Trade Zones were established to stimulate economic development in communities by providing businesses with economic advantages to conduct international trade activities in the United States, versus foreign locations, thus increasing the availability of local jobs and industry.

Aeroground, Inc. DBA Menzies Aviation (“Menzies Aviation”), has requested approval to activate an FTZ “Usage Driven Site” under the “Service Area” of the Port of San Francisco FTZ No. 3.

As grantee of this public utility, the Port of San Francisco, is required on a non-discriminatory basis to afford to all those who apply within the FTZ No. 3 service area and receive approval from the FTZ Board and US Customs and Border Protection, access to

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the benefits of operating an FTZ. The Port assists in the application process of potential FTZ operators and submits an annual report to the FTZ Board but has no liability or oversight responsibility of FTZ operations.

BACKGROUND

Foreign trade zones were established by the U.S. Congress in The Foreign-Trade Zones Act of 1934 to stimulate economic development in communities by providing businesses with economic advantages to conduct international trade activities in the United States, versus foreign locations, thus increasing the availability of local jobs and exports. In 1948, the Port of San Francisco received FTZ Board Grant of Authority to establish, operate and maintain a foreign trade zone. In granting such a designation, the Act allows for the establishment of Subzones outside of Port property.

The Foreign-Trade Zones Act provides for "...the establishment...of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the FTZ Board to grant to qualified corporations the privilege of establishing FTZ sites in or adjacent to U.S. Customs and Border Protection (CBP) ports of entry. Article VII of the Transfer Agreement and Charter Section B3.581(o) authorize the Port of San Francisco "to 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."

The Port of San Francisco Foreign Trade Zone No. 3 ("FTZ No. 3") "Service Area" includes San Francisco and San Mateo Counties. In 2012, five additional North and East Bay Counties were added to the Port's "Service Area" those being Marin, Sonoma, Napa, Solano, and Contra Costa Counties.

The FTZ Act (Section 14 (19 U.S.C. 81(n)) mandates that each zone "be operated as a public utility ...and the grantee shall afford to all who may apply for the use of the zone...uniform treatment under like conditions."

Federal law mandates that FTZ grantees, such as the Port of San Francisco, must provide access to zone benefits to businesses and manufacturers on a nondiscriminatory basis unless it has a compelling case not to. Failure to do so could result in the grantee being fined up to \$1,000 per day. The Port currently has five active FTZ users.

Proposed Agreement with Menzies Aviation

Port staff received a request to apply to the Foreign-Trade Zone Board ("FTZ Board") on behalf of Menzies Aviation to establish a Foreign Trade Zone (FTZ) Usage Driven Site for Menzies San Francisco, California location. In November of 2022, Port staff subsequently applied on behalf of Menzies to establish a FTZ Usage Driven Site. The FTZ Board will notify the Port through a Board Administrative Action that FTZ status has been approved for Menzies San Francisco location.

Menzies Aviation will operate the FTZ site pursuant to the proposed Operations Agreement ("Agreement"), a copy of which is on file with the Secretary of the Port Commission. The Menzies agreement will have a term of five years, with one option to extend for four years in Port's sole discretion.

The Agreement will be on the Port's standard FTZ form agreement and include the following key provisions. The Agreement confirms that the Port of San Francisco owns the grant authority for FTZ No. 3, and the Port is providing Menzies Aviation authority to operate its San Francisco location, under Port's grant of authority as an FTZ No. 3 Usage Driven Site. Under the Agreement, Menzies Aviation assumes responsibility for operation and management of the operation in conformance with all FTZ Board and U.S. Customs and Border Protection ("CBP") regulations and guidelines, and all other local, state and federal laws, rules, and regulations applicable to FTZ usage driven site operations. Menzies Aviation must indemnify, protect and hold the Port harmless and must maintain insurance coverages as approved by the City's Risk Manager. Failure to operate the site in accordance with applicable regulations will constitute a material default, which shall permit Port to immediately terminate the Agreement. CBP is the oversight agency ultimately responsible for ensuring conformance with regulations. Representatives of FTZ No. 3, the FTZ Board, CBP, and other authorized U.S. Government officers have the right to enter the Operator Site to determine whether the business is being conducted in accordance with regulations and the procedures established with the Agreement. The Agreement includes a covenant regarding good corporate citizenship and a recognition of the City's Campaign and Governmental Conduct Code and California Government Code relating to conflicts of interest. Any operating costs or capital improvements associated with the FTZ operations will be Menzies Aviation's sole responsibility. No public funds will be required to fund the project.

Discussion

The use of foreign trade zone procedures at its San Francisco location will allow Menzies Aviation's to improve their international competitiveness by allowing the company to realize certain administrative and customs cost savings as well as take advantage of global supply chain efficiencies inherent to the FTZ admission and entry processes.

The Port's FTZ No. 3 Zone Schedule (tariff) provides for below fees to be paid by the Operator to cover the necessary Port staff administrative expenses related to FTZ operations:

Application Fee (One Time Fee)	\$5,000.00
Activation Concurrence Fee (One Time Fee)	\$2,000.00
Annual Operating Fee (Annual Fee)	\$14,000.00

The FTZ Board processed the Menzies Aviation's application, and found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest, and therefore granted authority for Usage Driven Site status through its Board Administrative Action. US Customs and Boarder Protection who acts as the oversight agency for all FTZ operations has provided its concurrence with activation of Menzies Aviation's San Francisco location as an FTZ Usage Driven Site.

STRATEGIC OBJECTIVE

The proposed license agreement supports three key goals of the Port's Strategic Plan:

- *Engagement*: Promote the richness the Port has to offer through education, marketing, and maintaining strong relationships with Port users and stakeholders.
- *Economic Vitality*: Attract and retain maritime and non-maritime commerce to contribute to the long-term viability of the Port and the City.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to enter into proposed Operating Agreement No. OP-0010 with a term from December 1, 2022 to October 31, 2027 between Aeroground, Inc. DBA Menziez Aviation and Port.

Prepared by: Demetri Amaro,
Maritime Business Development Manager

For: Andre Coleman,
Deputy Director of Maritime

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 22-64

- 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 Foreign-Trade Zones Board (“FTZ Board”) on March 10, 1948 under Board Order No. 16; and
- WHEREAS, Article VII of the Transfer Agreement and Charter Section B3.581(o) authorize the Port of San Francisco "to 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, As grantee of the FTZ No. 3, the San Francisco Port Commission (“Zone Grantee”) has certain responsibilities to establish and maintain the FTZ No. 3 as stated in the FTZ Board regulations; and
- WHEREAS, The Foreign-Trade Zones Act provides for “...the establishment...of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the FTZ Board to grant to qualified corporations the privilege of establishing foreign-trade zone sites in or adjacent to U.S. Customs and Border Protection ports of entry; and
- WHEREAS, Aeroground, Inc. dba Menzies Aviation (the “Usage-Driven Site Operator”) desires to make use of foreign trade zone status and wishes to activate its site at San Francisco International Airport described in its application to the FTZ Board; and
- WHEREAS, The Port of San Francisco has made application to the FTZ Board for authority to establish a usage-driven FTZ site (“Operator Site”) at the San Francisco International Airport site; and
- WHEREAS, The FTZ Board found that the requirements of the FTZ Act and Board’s regulations would be satisfied, and therefore granted authority for usage-driven site status through its Board Administrative Action No. X-XXXX-2022 dated (XXXXXXX); and
- WHEREAS, The Port, as Zone Grantee, deems it practicable to limit its participation in the everyday operations of the Operator Site; and
- WHEREAS, The Operator Site is an approved site of FTZ No. 3, as designated under FTZ Board Administrative Action No. X-XXXX-2022 of XXXXXXX; and

WHEREAS, Usage-Driven Site Operator is the lessee of the Operator Site and wishes to undertake the operational management of FTZ Usage-Driven Site activities, on its own behalf, pursuant to the authority extended by Zone Grantee; and

WHEREAS, The Port and Usage-Driven Site Operator have negotiated an agreement granting Usage-Driven Site Operator exclusive authority to operate the Site for a term of five years, with one option to extend for four years in Port's sole discretion, a copy of which is on file with the Secretary of the Port Commission (the "Agreement"); and

WHEREAS, Under the Agreement, Usage-Driven Site Operator agrees to pay the Port as Zone Grantee a \$14,000 Annual Fee that will cover Zone Grantee expenses for oversight of the Operator Site and submission of the Annual Report summarizing FTZ No. 3 annual activities to the FTZ Board, therefore, be it

RESOLVED, That the Port Commission hereby approves the Agreement with Aeroground, Inc. dba Menzies Aviation granting Menzies exclusive authority to operate a portion of its leased site at San Francisco International Airport as a Foreign Trade Zone No. 3 Usage-Driven Site and authorizes the Executive Director to execute the Agreement; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to exercise the extension option in her discretion and to enter into any additions, amendments or other modifications to the Agreement that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 13, 2022.

Secretary