

MEMORANDUM

October 20, 2017

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of the Operations Agreement with Agility Logistics Corp. (“Agility”) granting Agility authority to operate its site in South San Francisco, California as a Foreign Trade Zone No. 3 usage-driven site for a term of five years, with one option to extend for four years and outlining conditions for the operation of the usage-driven site

DIRECTOR’S RECOMMENDATION: Approve Attached Resolution

Background

In March 2017, Port staff received a request to apply to the Foreign-Trade Zones Board (“FTZ Board”), on behalf of Agility Logistics Corp. (“Agility”), to establish a Foreign Trade Zone (FTZ) usage-driven site (“Operator Site”) at a portion of Agility’s South San Francisco, California facility. Port staff subsequently submitted an application on May 16, 2017 on behalf of Agility to establish this Operator Site. The FTZ Board notified the Port on August 7, 2017 through Board Administrative Action No. S-114-2017 that usage-driven site status has been approved for Agility’s South San Francisco facility. The expansion of the Port’s FTZ area to include Agility is consistent with the Port’s Strategic Plan for Economic Vitality in the region. Foreign Trade Zones promote cargo and economic opportunities that may be lost to overseas markets. Agility will use their FTZ status to serve their network of freight customers and to market for additional lines of business.

Agility provides supply chain solutions to meet traditional and complex customer needs and offers air, ocean and road freight forwarding, warehousing, distribution, and specialized services in project logistics.

THIS PRINT COVERS CALENDAR ITEM NO. 12A

“Usage-Driven Site” is a relatively new term created with the implementation of the FTZ Board’s Alternative Site Framework (ASF) program in 2009. The Port of San Francisco applied for its Foreign Trade Zone No. 3 (“FTZ No. 3”) to participate in the ASF program in 2010 for San Francisco and San Mateo Counties and then to expand this ASF “Service Area” to five additional North and East Bay Counties in 2012. The ASF program gives FTZ Grantees like the Port of San Francisco the ability to easily bring FTZ designation to single operator/user locations within their local service area. Usage-driven sites are company-specific, and can be designated within thirty days by a simplified process known as Minor Boundary Modification (MBM).

The FTZ usage-driven site designation is generally limited to the space needed by the company for the FTZ activities, and in this case the Agility’ site will be limited to a 7,000-square foot parcel of their South San Francisco facility.

Agility, a global logistics provider operating in just over 100 countries, will operate the usage-driven site pursuant to the proposed Operations Agreement (“Agreement”), a copy of which is on file with the Secretary of the Port Commission. The Agreement confirms that the Port of San Francisco owns the grant of authority for FTZ No. 3, and the Port is providing Agility authority to operate its South San Francisco site, under our grant of authority as an FTZ No. 3 usage-driven site for a term of five years, with one option to extend for four years at Port’s sole discretion. Agility assumes responsibility under the Agreement for operation and management of the usage-driven site 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 foreign trade zone and usage-driven site operations. Agility agrees to indemnify, protect and save harmless the Port of San Francisco and any and all of its commissions, boards, officers, Agents and employees. Failure to operate the Operator Site in accordance with these regulations will constitute a material default, which shall permit Port to immediately terminate this Agreement by written notice to Agility. CBP is the oversight agency ultimately responsible for ensuring conformance to regulations. Representatives of FTZ No. 3, the FTZ Board, CBP, and other authorized U.S. Government officers shall 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 this Agreement.

Any operating costs or capital improvements associated with the Operator Site will be Agility’ responsibility. No public funds will be required to fund the Operator Site project.

The Port’s FTZ No. 3 Zone Schedule (tariff) provides for a \$5,000 Application Processing Fee, already received from Agility, which covers the Port’s expenses for obtaining the necessary approvals for the Operator Site, submission of the site application to the FTZ Board and any necessary support required in the application process. The Zone Schedule also provides for a \$2,000 Activation Fee and \$10,000 Annual Fee, as adjusted periodically, which covers Port staff administrative expenses including preparation of an Annual Report to the FTZ Board summarizing FTZ No. 3 annual activities as required under FTZ Board regulations.

The FTZ Act (Section 14 (19 U.S.C. 81n)) 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 also has granted subzone status to two other Bay Area businesses similar to Agility.

Discussion

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 a 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 usage-driven sites, such as logistics service providers like Agility.

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 use of foreign trade zone procedures at their South San Francisco facility will help Agility’s distribution operations 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 Commission approved a similar usage-driven site agreement with Expeditors International of Washington, Inc. for its site in Brisbane, California under Resolution 13-49 (December 12, 2013). The Agility site would be the second usage-driven site activated under FTZ No. 3’s new Alternative Site Framework designation. FTZ activities Agility proposes to conduct at the usage-driven site include receiving, unpacking, repackaging, quality control inspection, and warehouse distribution related operations. The operations will not effect changes in customs tariff classification, quota category or country of origin of any merchandise admitted to the zone site.

The FTZ Board processed the Port’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 their Board Administrative Action No. S-114-2017 dated August 7, 2017 (Attachment 1).

Recommendation

The expansion of the Port's FTZ area to include Agility is consistent with the Port's Strategic Plan for Economic Vitality in the region. Foreign Trade Zones promote cargo and economic opportunities that may be lost to overseas markets. Agility will use their FTZ status to serve freight customers and attract additional lines of business.

Staff deems it practicable to limit Port participation as Zone Grantee in the everyday operations of the Operator Site. Agility assumes responsibility under the Agreement for operation and management of the usage-driven site 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 foreign trade zone and usage-driven site operations. CBP is the oversight agency ultimately responsible for ensuring conformance to regulations. Agility is the lessee of the Site and will undertake the operational management of FTZ activities, on its own behalf, pursuant to the authority extended by the Zone Grantee and subject to all applicable federal, state and local regulations, statutes and ordinances. The Agreement outlines conditions for the operation of the Operator Site.

Port staff recommends that the Port Commission approve this resolution authorizing execution of the Agreement with Agility Logistics Corp. granting Agility authority to operate its site in South San Francisco as an FTZ No. 3 usage-driven site for a term of five years, with one Port option to extend for four years, and outlining conditions for the operation of the usage-driven site.

Prepared by: Brendan O'Meara, Maritime Marketing Manager

For: Peter Dailey, Deputy Director, Maritime

Attachments:

- 1) Foreign-Trade Zones Board Administrative Action No. S-114-2017 approving usage-driven site status at the leased facilities of Agility Logistics Corp. in South San Francisco, California

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

RESOLUTION NO. 17-58

- 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, Agility Logistics Corp. (the “Usage-Driven Site Operator”) desires to make use of foreign trade zone status and wishes to activate a portion of its South San Francisco, California site 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 South San Francisco, California site (filed May 16, 2017); 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. S-114-2017 dated August 7, 2017; 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. S-114-2017 of August 7, 2017; 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 Operator 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 \$10,000 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 Agility Logistics Corp. granting Agility exclusive authority to operate at its leased site in South San Francisco, California 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 the foregoing resolution was adopted by the Port Commission at its meeting of October 24, 2017.

Secretary