



## MEMORANDUM

December 8, 2023

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Ed Harrington  
Hon. Steven Lee

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of the Operating Agreement (Contract # OP-0011) with ISOFLEX USA granting authority to operate its location at 1801 Lombard Street, San Francisco, CA 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 the Attached Resolution No. 23-53

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### 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 a 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.

ISOFLEX USA, a California Corporation (“Isoflex”), has requested approval to activate an FTZ “Usage Driven Site” under the “Service Area” of the Port of San Francisco FTZ No. 3.

As a 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 U.S. 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 for 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 the 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 between the State and the Port 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.

### Isoflex USA:

ISOFLEX USA is a California Corporation that manufactures and distributes stable isotopes for science, medicine, and industry. Their products are used in metabolic studies, Mössbauer spectroscopy, isotope geochemistry, high-energy accelerator research, rare isotope beams, and neutrino detectors, as well as other academic and commercial applications worldwide. The company has a warehouse facility located at 1801 Lombard Street in San Francisco, California 95123.

Isoflex intends to obtain FTZ status for this facility to help facilitate their international distribution operations, improve their international competitiveness, and benefit from the customs duties advantages associated with the FTZ program. Isoflex will conduct

receiving, unpacking, repackaging, quality control inspection, and warehouse distribution-related operations at its FTZ facility. The requested operations will not result in a change of customs tariff classification, quota category, or country of origin for any merchandise admitted to the zone.

Proposed Agreement with Isoflex:

Port staff received a request to apply to the Foreign-Trade Zone Board (“FTZ Board”) on behalf of Isoflex to establish a Foreign Trade Zone (FTZ) Usage Driven Site for Isoflex’s San Francisco, California location. In November of 2023, Port staff subsequently applied to the FTZ Board on behalf of Isoflex to establish an FTZ Usage Driven Site. The FTZ Board will notify the Port through a Board Administrative Action that FTZ status has been approved for Isoflex’s San Francisco location.

Isoflex 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 Isoflex agreement will have a term of five years, with one option to extend for four years at the 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 Isoflex authority to operate its San Francisco location, under the Port’s grant of authority as an FTZ No. 3 Usage Driven Site. Under the Agreement, Isoflex assumes responsibility for the operation and management of the 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 FTZ usage driven site operations. Isoflex 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 will permit the 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 at 1801 Lombard Street, San Francisco, California, as further described in the Foreign Trade Zone Operating Agreement as Exhibit A, 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 Isoflex’s sole responsibility. No public funds will be required to fund the Agreement.

Discussion:

The use of foreign trade zone procedures at its San Francisco location will allow Isoflex to improve its 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 the below fees to be paid by Isoflex (“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 is currently reviewing the Isoflex application, and upon finding that the requirements of the FTZ Act and FTZ Board’s regulations would be satisfied and that the proposal would be in the public interest, will grant authority for a Usage Driven Site through a Board Administrative Action. U.S. Customs and Border Protection which acts as the oversight agency for all FTZ operations has provided its concurrence with activation of Isoflex’s San Francisco location as an FTZ Usage Driven Site.

**STRATEGIC OBJECTIVE**

The proposed Operation Agreement supports two 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-0011 with a term from January 1<sup>st</sup>, 2024 to December 31<sup>st</sup>, 2028 between ISOFLEX USA 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. 23-53**

- 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 FTZ Board Order No. 16; and
- WHEREAS, Article VII of the Transfer Agreement between the State and the Port and San Francisco Charter Section B3.581(o) authorizes 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, ISOFLEX USA, A California Corporation (the “Usage-Driven Site Operator”) desires to make use of foreign trade zone status and wishes to activate its site at 1801 Lombard, San Francisco, CA as described in its application to the FTZ Board; and
- WHEREAS, The Port of San Francisco has made an application to the FTZ Board for authority to establish a usage-driven FTZ site (“Operator Site”) at the 1801 Lombard Street, San Francisco, CA site; and
- WHEREAS, The FTZ Board found that the requirements of the FTZ Act and the Board’s regulations would be satisfied, and therefore granted authority for usage-driven site status through its Board Administrative Action No. X-XXXX-2023 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, 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 behalf, pursuant to the authority extended by Zone Grantee; and

WHEREAS, The Port and the Usage-Driven Site Operator have negotiated an agreement granting the 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, now therefore, be it

RESOLVED, That the Port Commission hereby approves the Agreement with ISOFLEX USA, A California Corporation ("Isoflex") granting Isoflex exclusive authority to operate a portion of its site at 1801 Lombard Street, San Francisco, CA 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 12, 2023.***

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Secretary