




## MEMORANDUM

October 9, 2020

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Doreen Woo Ho  
Hon. Gail Gilman

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of the Operations Agreement with DHL Global Forwarding (“DHL”) granting DHL authority to operate its Brisbane, California location 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 No. 20-47

---

### **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.

DHL Global Forwarding (“DHL”) 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 the benefits of operating an FTZ.

**THIS PRINT COVERS CALENDAR ITEM NO. 12A**

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 DHL**

Port staff received a request to apply to the Foreign-Trade Zone Board ("FTZ Board") on behalf of DHL to establish a Foreign Trade Zone (FTZ) Usage Driven Site for DHL's Brisbane, California location. In April of 2020, Port staff subsequently applied on behalf of DHL to establish a FTZ Usage Driven Site. The FTZ Board notified the Port on September 29, 2020 through Board Administrative Action No. S-170-2020 that FTZ status has been approved for DHL's Brisbane location.

DHL is one of the world's largest logistics companies with 380,000 employees in 220 countries. DHL is very experienced with FTZ operations and compliance currently having nineteen FTZ locations across the US. DHL 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 DHL 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 DHL authority to operate its Brisbane location, under Port's grant of authority as an FTZ No. 3 Usage Driven Site. Under the Agreement, DHL 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. DHL 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 DHL's sole responsibility. No public funds will be required to fund the project.

### **Strategic Objective and Benefit to the Port**

The inclusion of DHL in the Port's FTZ program is consistent with the Port's Strategic Plan for Economic Vitality in the region. Foreign Trade Zones promote maritime cargo and related economic opportunities that may be lost to overseas markets which increases local jobs and economic activity. Operating an FTZ Usage Driven Site at their Brisbane location will allow DHL to be more competitive in the region.

As grantee, the Port functions as administrative support for all those qualified to operate as an FTZ within the "service area" of FTZ No.3 which includes seven Bay Area Counties.

The Port benefits from the utilization of FTZ operations that maintain economic vitality in the region, specifically in cargo shipping and the local maritime industry. As grantee of FTZ No. 3, the Port has no oversight responsibility or liability for facilitating this public utility. The fee structure ensures Port time and administrative resources are fully recovered.

## **Discussion**

The use of foreign trade zone procedures at its Brisbane location will allow DHL's distribution operations 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 below fees to be paid by the Operator to cover the necessary Port staff administrative expenses related to FTZ operations.

<b>Applicaton Fee</b> (one time fee):	\$ 5,000.00
<b>Activation Concurrence Fee</b> (one time fee):	\$ 2,000.00
<b>Annual Operating Fee</b> (paid to Port annually):	\$ 14,000.00

The Port Commission has approved six other FTZ subzone and usage-driven operator agreements.

The FTZ Board processed the DHL'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 No. S-170-2020 dated September 29, 2020 (Attachment 1).

US Customs and Boarder Protection who acts as the oversight agency for all FTZ operations has provided its concurrence with activation of DHL's Brisbane location as an FTZ Usage Driven Site.

## **Future FTZ Agreements**

Under current practice, the Port Commission approves each FTZ Operator Agreement. Because the FTZ is a public utility and, as the grantee, Port is required to allow all qualified companies to utilize the FTZ and because the operation of the FTZ is heavily regulated by the Operations Agreement is standardized, staff believes that the program could be implemented more efficiently if the Port Commission delegated to staff the authority to determine eligibility and enter into future FTZ agreements. Staff plans on coming back to the Commission for approval of this delegation.

## **Recommendation**

Port staff recommends that the Port Commission approve the resolution authorizing execution of the Agreement with DHL Global Forwarding granting authority to operate its Brisbane, CA location 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

Prepared for:          Andre Coleman  
Deputy Director, Maritime

Attachments:

- 1) Foreign-Trade Zones Board Administrative Action No. S-170-2020 approving usage-driven site status at DHL's Brisbane location

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION NO. 20-47**

- 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, DHL Global Forwarding (the "Operator") desires to make use of foreign trade zone status and wishes to activate its Brisbane, California location as 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 ("Usage Driven Site") at the Brisbane, California location; 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 FTZ status for DHL through its Board Administrative Action No. S-170-2020 dated September 29, 2020; and
- WHEREAS, The Port, as Zone Grantee, deems it practicable to limit its participation in the everyday operations of the FTZ Usage Driven Site; and
- WHEREAS, the Usage Driven Site is an approved site of FTZ No. 3, as designated under FTZ Board Administrative Action No. S-170-2020 of September 29, 2020; and

WHEREAS, The Port and Usage Driven Site Operator have negotiated an agreement granting exclusive authority to operate the Operator Site for a term of five years, with one option to extend for four years at 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, DHL agrees to pay the Port as Zone Grantee a \$5,000 application fee, 2,000 activation fee and \$14,000 Annual Fee that will cover Zone Grantee expenses for oversight of the Usage Driven 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 DHL Global Forwarding granting DHL exclusive authority to operate at its location in Brisbane, 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 13, 2020.***

---

Secretary