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July 25, 2011

SENT BY FEDERAL EXPRESS AND EMAIL
Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Ave., NW, Room 2111
Washington, DC 20230

RE: Proposed Foreign-Trade Zone – Eloy, Arizona, Docket 35-2011

Dear Mr. McGilvray:

These comments are being filed on behalf of the City of Phoenix, in its capacity as Grantee of Foreign-Trade Zone No. 75 (FTZ No. 75), with respect to the above-referenced application filed by the City of Eloy, Arizona seeking General Purpose Foreign-Trade Zone designation in Pinal County. The proposed Zone Project consists of four sites, three of which are owned, at least in part, by the Walton International Group and the fourth which is owned by the City of Eloy. Whether a fourth Foreign-Trade Zone Project should be approved at the Phoenix Customs Port of Entry is a determination to be made by the Foreign-Trade Zones Board (Board), the federal agency that has been tasked with issuing Grants of Authority to establish and maintain foreign-trade zones throughout the United States in an orderly and responsible fashion.

When determining whether an additional Foreign-Trade Zone Project is to be established at a Customs Port of Entry, the Board must follow the statutory dictate found at 19 U.S.C. 81b(b) wherein it is stated:

> Each port of entry shall be entitled to at least one zone,... Zones in addition to those to which a Port of Entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce.

Based on this statutory language, the Board must affirmatively find that the existing Foreign-Trade Zone Projects at the Phoenix Customs Port of Entry do not "adequately serve the convenience of commerce" before the instant application filed by the City of Eloy can be approved. As stated above, the Board is the entity that must decide whether the City of Eloy has overcome this burden. The intended purpose of these comments is to respond to some of the allegations contained within the City of Eloy's application – allegations which we believe do not provide a current depiction or describe the manner in which the City of Phoenix has administered FTZ No. 75 for approximately thirty years. We hope that our clarifications will assist the Board in making an informed decision.

I. NEITHER THE CITY OF PHOENIX NOR THE BOARD HAS EVER RECEIVED A COMPLAINT FROM ANY OF THE SURROUNDING COMMUNITIES OR TAXING ENTITIES WITH RESPECT TO THE MANNER IN WHICH THE CITY OF PHOENIX HAS SPONSORED FTZ ACTIVITY

FTZ No. 75 was established in 1982 with the City of Phoenix functioning as the Grantee. As discussed below, it has been the City's policy, and remains the City's policy, to work with the proponent of a proposed FTZ project in engaging respective local communities and taxing entities when an entity (whether an individual company or property owner) initiates FTZ discussions with the City of Phoenix for a site outside of the City. The goal is ensure that all parties are aware of, and agree with, the tax impact of foreign-trade zone designation, if any, for said entity. The State of Arizona provides a property tax advantage to activated FTZ projects (currently codified at Arizona Revised Statutes § 42-12006) if the property owner seeks reclassification of the property subsequent to the activation of the site. If the property owner does not seek reclassification, there is no property tax advantage. Over the years, the City of Phoenix has sponsored FTZ activity throughout the regional area and has not received any negative feedback from any of the surrounding communities and taxing entities with regard to the manner in which it administered the FTZ program in the region. It was not until the recent application filed by Greater Maricopa County FTZ, Inc. and the present application filed by the City of Eloy that any of the local taxing entities voiced any concern about the City of Phoenix acting as the Grantee for Zone Projects in their communities. The basic theme of the letters of support from local taxing entities was that they "would prefer to support an FTZ project that was controlled by their own elected officials." The City of Phoenix has no issue with the City of Eloy managing its own FTZ. The City of Phoenix has functioned as the Grantee in the region so as to enable surrounding communities to provide FTZ designation to entities that required such designation without the need for the communities to expend the time and money to apply for their own FTZ designation. The City of Phoenix has always approached the FTZ program as an economic development tool, not as a revenue source for the City. If the

Board finds that the City of Eloy has adequately demonstrated that the existing FTZ Grantees do not adequately serve the convenience commerce at the Phoenix Customs Port of Entry we have no objection to the establishment of their own Zone Project.

II. THE CITY OF PHOENIX HAS ALWAYS WORKED WITH AND CONSULTED WITH THE LOCAL COMMUNITIES AND TAXING AUTHORITES IN THE ESTABLISHMENT OF FOREIGN TRADE ZONE PROJECTS IN MARICOPA, PINAL AND YAVAPAI COUNTIES

As stated above, it is the current policy of the City of Phoenix to work with the proponent of a proposed FTZ project in contacting local communities and taxing authorities whenever the City is approached by an entity to establish a new FTZ outside of the City of Phoenix. The City of Phoenix will enter into an Inter Governmental Agreement (IGA) with the respective community to address tax issues and any other matters of importance to that community relative to the establishment of the new FTZ. Any issues of local concern, such as implementation of a specific taxing policy, would be addressed in the IGA. The City of Phoenix is willing and able to enter into a PILOT agreement as appropriate and include such provisions in its FTZ Operations Agreements. However, when a prospective FTZ applicant indicates that it will not be seeking a reclassification of the subject property for tax purposes, the City includes a statement to that effect in its Agreement with the entity along with the stated intent of the parties to have the taxing status remain unchanged throughout the terms of the Agreement. Furthermore, the City requires the operator to acknowledge that agreements providing for payment in lieu of taxes may be required as a condition of the City continuing to allow the operator to operate the zone site if the taxing status does change during the term of the Agreement.

It is to be noted that prior to the filing of the Alternative Site Framework (ASF) reorganization application for FTZ No. 75, the City of Phoenix held a public hearing at which no objections were voiced. Since there were no pending FTZ applications in any of the affected counties at the time of the filing of the ASF application, the City did not seek letters of concurrence from all the impacted municipalities or taxing authorities. Based on the Board Guidelines, all that was required were letters of concurrence from Maricopa County, Yavapai County, and Pinal County officials. The concurrence letters from each of these officials noted that there was no intention to provide a position on state or local tax issues for any sites and tax issues would be addressed at the time of any new proposed FTZ site. It was in this manner that the City of Phoenix plans to handle all future Magnet and Usage Driven site requests.

III. THE CITY OF PHOENIX DID NOT EXPAND THE AREA IN WHICH IT FUNCTIONS AS THE GRANTEE BY REORGANIZING UNDER THE ALTERNATIVE SITE FRAMEWORK (ASF) AND DID NOT LIMIT ITS ABILITY TO SPONSOR MAGNET SITES THROUGHOUT THE SERVICE AREA

It is a misnomer to characterize the filing of the ASF application by the City of Phoenix as expanding the Service Area of FTZ No. 75 as implied in the City of Eloy application at page 53 wherein it is stated that "the City of Eloy is not opposed to FTZ No. 75 and their expansive service area." The ASF application did not enlarge the service area embraced by FTZ No. 75 – it has always been defined by the "adjacency requirement" set forth in the FTB Regulations at 19 C.F.R. 400 400.21(b)(2) . The ASF Service Area is confined and limited to the geographical area within 60 miles or 90 minute driving time from the outer limits of the Phoenix Customs Port of Entry.

The City of Eloy application also provides the misimpression that FTZ No. 75 is unwilling to sponsor Magnet Sites. The application states at page 48:

> The City of Phoenix has specifically indicated in their Zone plan, their desire for the future is to "offer Zone services to those companies that want to operate the Zone" and not to provide locations within industrial parks.

The City of Phoenix does not intend to exclude industrial parks or new Magnet Sites – in fact, the FTZ No. 75 Zone Schedule provides for the establishment of Magnet Sites. The City of Phoenix does however agree with the Board's intent of the ASF to maximize the linkage between designation of FTZ space and actual use of that space for FTZ activity. The City of Phoenix did maintain the following at page 3 of our ASF application:

> Reorganizing from the traditional zone management framework to the new ASF will help to promote the benefits of a FTZ as an economic development tool to encourage international commerce and the retention or creation of jobs as a result of the flexibility and streamlined processes of the ASF. To help minimize zone designation for Magnet sites on a speculative basis, Usage-Driven sites will be the focus of new applications for companies ready to pursue conducting FTZ activity.

Undeniably, Usage Driven Sites will be the focus of FTZ No. 75 – however, if a need is demonstrated for the establishment of a Magnet Site and the local communities and taxing authorities concur in such establishment, a Magnet Site can be established at FTZ No. 75.

IV. THERE IS GENERAL PURPOSE FTZ ELIGIBLE SPACE AVAILABLE WITHIN FTZ NO. 75

At page 46 of its application, the City of Eloy alleges the following:

> Currently, (year end 2010) there are no buildings or land available for GP Site utilization within FTZ No. 75. All available land and buildings are occupied. This does not allow for small and medium sized businesses to readily avail themselves of FTZ opportunities, in tax policy approved Sites" within FTZ No. 75.

As the attached Zone Schedule for FTZ No. 75 indicates, our Zone Project is comprised of five Magnet Sites. Since early 2010, Site 1 has had two spaces available in two separate buildings – one space includes 31,400 SF and the other includes 22,400 SF. In addition, Site 4 has approximately 18 acres of vacant land available. Furthermore, Site 3 (the Riverside Industrial Center), contains a 1,200,000 SF building that sat vacant until August 2010 when Amazon.com leased the property.

V. CONCLUSION

As stated above, the purpose of these comments is to clarify for the record, the goals, objectives and manner in which the City of Phoenix has administered FTZ No. 75 and the manner in which it plans to continue to do so under the ASF. Based upon the application filed by the City of Eloy it appears that the prime rationale for the establishment of the Eloy FTZ is the need for pre-approved FTZ Sites from a local tax perspective. This is the theme that permeates throughout the application. Although the City of Phoenix feels that it has satisfactorily addressed the local taxing issues in all FTZ applications it has sponsored, it has no objection to the approval of the application by the City of Eloy to establish the fourth FTZ project at the Phoenix Customs Port of Entry should the Board conclude that the City of Eloy has met its statutory burden with regard to the establishment of the additional Zone Project at the Phoenix Customs Port of Entry.

Respectfully submitted,

David R. Ostheimer
Counsel to the City of Phoenix

CITY OF PHOENIX, ARIZONA
GRANTEE

FOREIGN-TRADE ZONE NO. 75

ZONE SCHEDULE

Effective July 12, 2011

On October 7, 2010, FTZ No. 75 received authorization from the Foreign-Trade Zones Board to reorganize under the Alternative Site Management Framework (Board Order No. 1716).

SITE DESCRIPTION

Magnet Sites

Site 1, owned by the Grantee, the City of Phoenix, Arizona, consists of approximately 278 acres located at Phoenix Sky Harbor Center, a business park adjacent to Phoenix Sky Harbor International Airport and approximately 60 acres within the air cargo area of Phoenix Sky Harbor International Airport.

Site 2, approximately 18 acres, is located within the CC&F South Valley Industrial Center, a multi-owner business park at Seventh Street and Elwood Street, in an industrial area immediately south of downtown in central Phoenix.

Site 3 is the Riverside Industrial Center, approximately 74 acres, located at 4747 W. Buckeye Road.

Site 4 is the Santa Fe Business Park, approximately 18 acres, located between 45th Avenue and 47th Avenue, at Campbell Avenue.

Site 5 is the Jet-fuel storage and distribution system, approximately 32.5 acres, at and adjacent to the Phoenix Sky Harbor International Airport.

Usage-Driven Sites

Site 6 is the Western Digital, LLC, campus located at 1000 and 1100 E. Bell Road, 31.1 acres.

Site 7 is the Michael Lewis Company, located at 2021 E. Jones Avenue, 5.7 acres.

Site 8 is the Gap, Inc., located at 2225 S. 75th Avenue, 9.47 acres.

Subzone Sites

Foreign-Trade Zone No. 75 also includes nine subzones operated by the following companies:

75A - Conair Corporation, Glendale, Arizona
75B - Wal-Mart Stores, Inc., Buckeye, Arizona (currently deactivated)
75C - Intel Corporation, Chandler, Arizona
75D - STMicroelectronics, Inc., Phoenix, Arizona
75E - Abbott Laboratories, Casa Grande, Arizona
75F - PetSmart, Phoenix, Arizona
75G - SUMCO Southwest, Phoenix, Arizona
75H - Microchip Technology, Inc., Chandler, Arizona
75I - American Italian Pasta Co., Tolleson, Arizona

FEE SCHEDULE

Annual Fees
Includes magnet, usage-driven, and subzone sites. The Annual Fee is due on January 1 of each year.

Activated Magnet Site Operator, Usage Driven Site Operator or Subzone Operator.. $ 8,000

Non-refundable fee payable within 10 days after Operator is approved for activation by CBP, prorated from date of activation through December 31 of that year. Thereafter, payable annually on January 1 every year that the site remains activated.

Non-Activated Magnet Site Property Owner.......................... $ 1,000

Non Activated Usage Driven Site Operator or Subzone Operator.. $ 4,000

Non-refundable fee payable within 30 days after site receives FTZ designation unless activated within said time period or within 10 days after deactivation, prorated from date of designation or deactivation through December 31 of that year. Thereafter, payable annually on January 1 every year that the site remains non-activated or becomes deactivated.

Application & Other Fees

New Subzone Application Sponsorship............................ $15,000

Non-refundable fee payable with letter to Grantee requesting sponsorship of subzone application. This fee covers Grantee's expenses incurred in processing the Subzone request, obtaining all required approvals, submitting the Subzone Application to the FTZ Board, any other necessary Grantee activities associated with the Subzone Application and preparing and processing the Operations Agreement. The fee does not include preparation of the actual Subzone Application.

ASF Reorganization/Expansion (New Magnet sites)............ $ 8,000

Non-refundable fee payable with letter to Grantee requesting sponsorship of Reorganization/Expansion Application. This fee covers Grantee's expenses incurred in processing the request, obtaining all required approvals, submitting the Reorganization/Expansion Application to the FTZ Board, any other necessary Grantee activities associated with the Application and preparing and processing the Property Owner's and Operations Agreements. The fee does not include preparation of the actual Reorganization/Expansion Application. The property *owner is responsible for obtaining all required local taxing entity approvals.*

Minor Boundary Modification (New Usage-Driven sites)......... $ 4,000

Non-refundable fee payable with letter to Grantee requesting sponsorship of Usage Driven Site Request. This fee covers Grantee's expenses incurred in preparing and submitting the request to the FTZ Board, any other necessary Grantee activities associated with the request and preparing and processing the Operations Agreement. The Operator of the Usage Driven Site is responsible for obtaining all required local taxing entity approvals.

Temporary/Interim Manufacturing Authority....................... $ 1,000

Non-refundable fee payable prior to the Grantee's submission of the Temporary/Interim Manufacturing (TIM) Authority Request to the FTZ Board. The Operator of the Usage Driven Site or Subzone is responsible for preparing the TIM request and all documentation associated with said request.

Permanent Manufacturing Authority and/or Expansion of Manufacturing Authority (Scope Request) .... $ 2,000

Non-refundable fee payable prior to the Grantee's submission of the Manufacturing Authorization Request to the FTZ Board. The Operator of the Usage Driven Site or Subzone is responsible for preparing the Manufacturing Authorization request and obtaining all documentation associated with said request.

Grantee Activation Concurrence .... $ 2,000

Non-refundable fee due prior to the Grantee's submission of the activation concurrence letter to CBP. The Operator of the Usage Driven Site or Subzone is responsible for preparing the activation request and all documentation associated with said request.

Late Fee .... $ 100 per day

An additional fee of $100 per day will be added to the amount of any late payment from the date due until all fees have been paid in full.

In the event that sufficient data for the Grantee to compile its Annual Report to the FTZ Board, which is required to be provided to the Grantee annually within 60 days after the close of the federal government fiscal year (October 1 through September 30) to allow the Grantee to timely file its Report, is not been received by January 1, a late fee in the amount of $100 per day will be charged beginning on January 1 until the necessary information has been received by the Grantee and all accrued late charges have been paid in full. The late fee charged pursuant to this paragraph is apart from and in addition to the obligation to *reimburse the Grantee for any fine imposed upon Grantee for a late or incomplete Annual Report.*

Notes:

1) In the event Grantee's staff time or out-of-pocket costs exceed what is normal and customary to process similar requests, the Grantee reserves the right to charge the applicant, upon reasonable notice, an additional amount in addition to the applicable fees identified in this Schedule in consideration of such excess administrative or out-of-pocket costs.

2) In addition to Grantee fees identified in this Schedule, other fees or costs associated with submitting an application may be applicable (i.e. FTZ Board fees, fees by other agencies, consultant services).

3) Sunset Period: FTZ designation will be automatically removed if Magnet site is inactive for five years, or if Usage-Driven site is inactive for three years (74 FR 1170-1173).

Please direct any inquiries regarding Phoenix Foreign-Trade Zone No. 75 to:

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(Replaces Schedule dated November 15, 2010)