



**GRAND JUNCTION CITY COUNCIL
MONDAY, AUGUST 29, 2016**

**PRE-MEETING (DINNER) 5:00 P.M. ADMINISTRATION CONFERENCE ROOM
WORKSHOP, 5:30 P.M.
CITY HALL AUDITORIUM
250 N. 5TH STREET**

To become the most livable community west of the Rockies by 2025

1. **Foreign Trade Zone Update:** [Discussion of potentially establishing a Foreign Trade Zone](#)
[Supplemental Documents](#)
2. **Next Workshop Topics**
3. **Other Business**



**Grand Junction City Council
Workshop Session**

Item #1

Meeting Date: August 29, 2016

Requested by: Greg Caton,
City Manager
John Shaver,
City Attorney

Submitted By: John Shaver, City Attorney

Department: Administration

Information

SUBJECT: Discussion of potentially establishing a Foreign Trade Zone.

EXECUTIVE SUMMARY: On August 9th City Staff received the final report from Mr. David Spooner Esq. of Barnes & Thornburg. Mr. Spooner/the firm was retained last year to provide an initial feasibility assessment and briefing regarding the possible application for/establishment of a Foreign Trade Zone (FTZ) in Grand Junction/the Grand Junction area. The August 9th report has been distributed to Council, the Grand Junction Area Chamber of Commerce and Grand Junction Economic Partners (GJEP).

The FTZ program has been in existence since the 1930's and operates through the Treasury Department. The program enables international trade and global competitiveness through tax and other incentives.

A FTZ requires a U.S. Customs port of entry so that specified merchandise can be imported into a zone without formal Customs entry procedures or paying import duties. Customs duties and excise taxes are due only at the time of transfer from the FTZ for U.S. consumption. If the merchandise never enters the U.S. commerce, then no duties or taxes are paid on those items.

A Zone may be used for assembly, testing, sampling, storage, repackaging and with specific approval of the FTZ Board, manufacturing.

BACKGROUND OR DETAILED INFORMATION: The August 9th report and the appendices thereto provide extensive information about FTZ's; however, for purposes of the August 29th work session, Staff has prepared an outline of the "next steps" and "questions to be asked and answered". That outline is attached and incorporated by this reference as if fully set forth. The first three "next steps/questions" on the outline (Who will serve as the Zone grantee, which site or sites and who will oversee and finance the operation of the Zone project) are very important and need to be addressed.

FISCAL IMPACT: The cost of application and/or other fiscal impacts have not been determined; if the FTZ application proceeds, City would fully calculate the initial and on-going impacts of the zone.

SUGGESTED ACTION:

Staff recommends moving forward with the application to establish a new FTZ in Grand Junction region. Staff also recommends identifying a local agency to serve as the applicant and long term manager of the program. Discussions regarding the establishment of an FTZ should include the airport.

Attachments

ATTACHMENT 1 – Outline

ATTACHMENT 2 – Barnes and Thornburg Briefing Paper

Outline of Foreign Trade Zone Process

FTZ Application Process

1. Who will serve as the Zone Grantee?
2. Which site or sites?
3. Who will oversee and finance the operation of the Zone project?

The application consists of a letter of transmittal, an executive summary and five exhibits.

1. Letter of Transmittal by/from the Grantee organization
2. Executive Summary
 - a. The type of organization and legal authority to apply
 - b. Type of zone
 - c. Proposed zone site(s)
 - d. Project background
 - e. Relationship of the Zone project to the community's economic development plans
 - f. Plan for operating and financing the Zone project
3. Exhibits 1 - 5
 - a. Authority to apply – statute(s), charter, organization papers
 - b. Site(s) (both general and specific description(s), proposed activity, zoning and other site characteristics)
 - c. Operation and financing plan – capital and operating costs, security, construction and activation schedule
 - d. Economic justification – economic goals, economic profile of community, justification and description of site/site activities, environmental impact and description of and/r request for manufacturing use/users
 - e. Maps of the site and State with the State map showing the site's location relative to the transportation network
4. Review and Processing by the FTZ Board
5. Submission and Pre-Filing Review
6. Formal Filing
7. Public Comment
8. Rebuttal
9. Public Hearing
10. Case Review

11. Examiner's Report and Recommendation (within 120 days +/- of the close of public comment period)
 - a. If the report is unfavorable, the applicant will be given 30 days to respond with additional evidence
 - b. If the report is favorable, then the application is sent to the Treasury Department and to the Secretary of Commerce for Import Administration for final review

12. Final Action – Upon review and approval by Treasury and Commerce, the FTZ Board issues a Board Order and publishes the decision in the Federal Register. Applications that do not involve manufacturing take 12 months +/- for review. Applications involving manufacturing take 12 + months.

Briefing Paper

TO: Tim Moore, Deputy City Manager
John P. Shaver, City Attorney

FROM: David M. Spooner
Christine J. Sohar Henter

DATE: August 29, 2016

CLIENT: City of Grand Junction, Colorado

MATTER: **Foreign Trade Zone Initial Feasibility Briefing Paper for the City of Grand Junction, Colorado**

The purpose of this briefing paper is to provide guidance on the application process and an initial assessment regarding the feasibility of a Foreign Trade Zone being established for the City of Grand Junction, based on preliminary market research, feasibility meetings with local businesses conducting international trade, and due diligence research.

I. EXECUTIVE SUMMARY

Market research, feasibility meetings, and due diligence conducted by Grand Junction city officials and Foreign Trade Zone experts, including legal counsel, demonstrated that several companies are very interested in the city pursuing a Foreign Trade Zone (“FTZ”) for Grand Junction. The field research revealed that the majority of companies would support the project and were likely to participate in any potential FTZ project.¹

The more urgent demand by the international business community in Grand Junction, however, is for a U.S. Customs Agent or CBP official to be located in the local airport. Repeatedly, companies indicated that they could significantly improve international business opportunities and facilitate more efficient trade transactions, if a U.S. Customs agent was local, as opposed to using U.S. ports of entry in Denver, Houston or Salt Lake City. Such a request does not undermine the City’s goal to ultimately obtain an FTZ. Rather, it is a primary threshold issue for an FTZ application, determining whether the geographical service area of the zone for Grand Junction is within a certain distance (*i.e.*, the adjacency requirement which is either within 60 statutory miles or 90 driving miles) of a U.S. port of entry, or whether the Grand Junction Regional Airport can host a CBP officer.

Therefore, any plan for the City of Grand Junction to move forward with an FTZ should address, as a priority, the adjacency requirement for the geographical area considered for the zone, as well as seriously considering the more prevalent business needs of local companies, which nearly all reported as being to gain access to a local U.S. Customs agent.

¹ See *infra* Section VIII.E – Attorney Findings: Feasibility of Application Approval, at 22-23.

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In summary, as requested, this initial feasibility briefing paper provides insights into the following eight topics, and the accompanying appendices referenced herein regarding a FTZ for the City of Grand Junction:

II. Brief Description of FTZs.....3

III. History of Outreach and Research Efforts.....5

IV. Potential Geographic Area.....6

V. Custom Agent.....8

VI. Roles and Responsibilities of the Grantee.....12

VII. Case Studies.....14

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IX. Conclusion.....26

X. List of Accompanying Appendices.....29

Please let us know if you have any questions about the information provided herein or any other related topics. We would be happy and honored to assist further.

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II. BRIEF DESCRIPTION OF FOREIGN TRADE ZONES

A foreign trade zone (“FTZ”) is a designated geographic site licensed by the FTZ Board (chaired by the US Secretary of Commerce) within which (a) special U.S. Customs and Border Protection (“Customs” or “CBP”) procedures may be used, and (b) firms can manipulate and inventory imported items prior to formal entry into the U.S. market. A FTZ is physically within the United States, but is legally treated as if it is outside the U.S. market for Customs law purposes.² Companies in the FTZ can reduce, defer, and eliminate duties on foreign products brought into the zones for storage, processing, manufacturing, assembling, or exhibition, as well as mitigate other administrative Customs costs.

The purpose of a FTZ is to facilitate, encourage, and expedite international trade in the US market, as well as increase the retention of domestic jobs that help improve the U.S. economy. In 2014, the last year for which official data is available, U.S. exports from FTZs reached a record high of \$99.2 billion, tripling since 2009, and zones accounted for 420,000 US jobs.³

The three U.S. government agencies that administer the FTZ program are the Department of Commerce and the Department of Treasury, which regulate the creation of new zones and the activity that can occur within zones,⁴ and Customs & Border Protection, which “polices” new zones after they have been approved. Other federal agencies must cooperate with CBP and participant companies in the FTZ, which may include the Environmental Protection Agency (“EPA”), the Food and Drug Administration (“FDA”), the Department of Transportation (“DOT”), and the U.S. Department of Agriculture (“USDA”).

- The FTZ Board oversees the FTZ program by reviewing and determining approval or denial for applicants of new FTZs or subzones, modifications, and new companies wishing to use the zones for particular business activities. The Board is comprised of a chair or chief operating official from Commerce who’s authority has been delegated from the Secretary, and another member from the U.S. Department of Treasury.
- CBP regulates daily operations, security, and compliance of participant companies with Customs procedures and rules within the FTZ and subzones. CBP is responsible for controlling the imported merchandise, merchandise moving in-bond between FTZs, and overseeing activities within the zones.

² 19 U.S.C. 81a-81u (FTZ Act of 1934), 15 CFR Part 400 (FTZ Board regulations), and 19 CFR Part 146 (Customs regulations regarding FTZs).

³ See FTZ Board’s Annual 2014 Report to Congress, available at <http://enforcement.trade.gov/ftz/page/annualreport/ar-2014.pdf> (August 2015) and attached as **Appendix 1**.

⁴ While both Commerce and Treasury must approve a FTZ application in order for the FTZ to go into effect, Commerce plays a far more active role than Treasury. As a rule, the Commerce Department assesses FTZ applications, working closely with stakeholders to resolve any contentious issues while the application is pending. Commerce, then, at the end of the application review process, makes a recommendation to Treasury, which can accept or reject.

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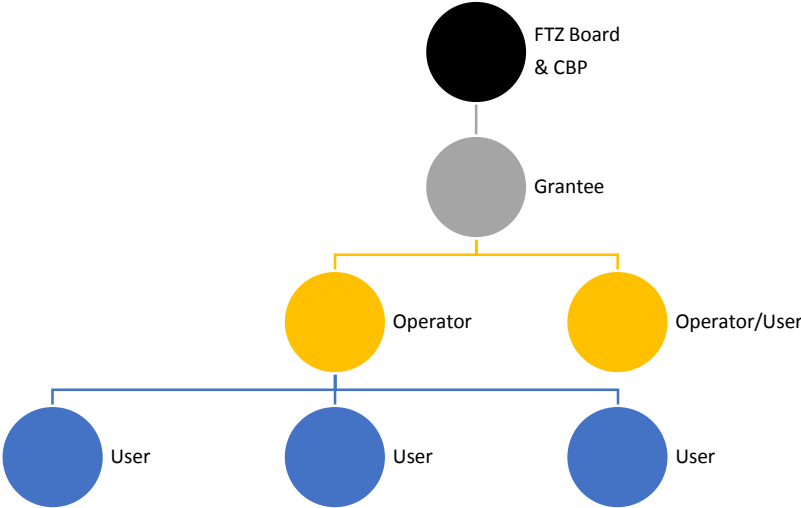


Figure 1: Basic Participants in FTZs.

The three primary participants in a FTZ include the following: (i) Grantees, (ii) Operators; and (iii) Users.

1. As described in further detail below, the **Grantee** is a local entity that obtains authority from the FTZ Board to establish, operate, manage, and maintain a zone. A Grantee is usually a public or government entity, but it can also be a private, not-for-profit entity organized for the FTZ project and authorized under local enabling legislation. A Grantee is required to provide uniform treatment in like situations to all companies aspiring to use the zone. The Grantee is the sponsor for the FTZ project, which may operate the zone directly or may contractually delegate operations to an Operator.
2. An **Operator** operates the zone under an agreement with Customs and holds the bond with Customs. The Operator provides daily oversight of the zone activities by users, such as recordkeeping, reporting, marketing administrative services, warehousing, storage, manufacturing, distribution, and technical expertise. An Operator may be the Grantee, a User, or a third party entity providing warehousing or consulting services.
3. **Users** are the companies, businesses, or firms using the zone for approved storage, handling, manufacturing, or production activities and receiving the trade, cost, and administrative benefits.

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III. HISTORY OF OUTREACH AND RESEARCH EFFORTS

The City of Grand Junction conducted numerous outreach meetings with local businesses, delivered community presentations, and executed due diligence research to examine the feasibility of an FTZ in the City of Grand Junction.

Research included reviewing recent zone applications, meeting with the FTZ trade association (*e.g.*, National Association of Foreign Trade Zones (“NAFTZ”)) experts and legal counsel, which previously administered the FTZ program at Commerce. City officials drafted a preliminary questionnaire for potentially participating companies to assess whether the FTZ would be helpful for their business,⁵ as well as general informational presentation on the FTZ program.⁶ City officials and staff met with FTZ experts in Washington, DC to discuss the process, procedures and experiences of FTZs and clarify questions raised while research and outreach was conducted. Staff also attended NAFTZ training and reviewed NAFTZ’s resource materials about FTZs.

During the City’s Manufacturing Summit in April 2015, the NAFTZ Chairman delivered the keynote presentation to educate local companies, while counsel interviewed and spoke to various company representatives, who imported items and were interested in knowing more about the potential FTZ.⁷ Counsel also met with representatives of various local economic development organizations, including Grand Junction Area Chamber of Commerce, Grand Junction Economic Partnership (“GJEP”), and the Business Incubator. Additionally, the FTZ experts met with city and county government officials of Grand Junction and Northwest Colorado, as well as with the Airport Authority in Grand Junction to discuss FTZs.

Import data was researched for importers at nearby U.S. ports of entry (*e.g.*, Denver and Salt Lake City) and companies with a history of import business to identify prospective companies who might wish to participate in the FTZ program. Counsel held meetings in person with business officials during their visit to Grand Junction, as well as telephonically, to discuss the FTZ program and potential benefits the companies may receive, as summarized below in section VIII. At each meeting, assessment tools and resources were shared with local company officials to help assess and calculate any potential benefits for the businesses to operate in the FTZ, including the FTZ Board’s calculation sheet to estimate savings,⁸ a preliminary and more detailed company questionnaire, as well as basic details about the FTZ.⁹

⁵ See [Appendix 2](#) (Grand Junction’s Company Initial FTZ Questionnaire).

⁶ See [Appendix 3](#) (Grand Junction’s Presentation on FTZs).

⁷ See [Appendix 4](#) (Press coverage of the event).

⁸ See [Appendix 5](#) (FTZ Board calculation sheet).

⁹ See [Appendix 6](#) (Preliminary and More Detailed Company FTZ Questionnaires).

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IV. POTENTIAL GEOGRAPHIC AREA

The City of Grand Junction is, of course, the primary locality investigating this potential FTZ project, but we also met with county officials and nearby businesses to discuss the option of potentially expanding the geographic area to include surrounding counties either in the zone or as subzones. Such an expansion may bolster the economic justification for a zone. A map of the potential region was printed to demonstrate the locations under consideration for establishing the zone service area, if the statutory 60 mile radius was followed.¹⁰

A. Logistical Organization of the Zones

An FTZ must be organized under one of two different frameworks: (i) the Traditional Site Framework or (ii) the Alternative Site Framework (“ASF”). Although both frameworks are currently in use, the vast majority of new applications for FTZs are under the ASF. Both are reviewed below.

1. Traditional Site Framework

Under the traditional site framework, two types of zones exist – (i) general purpose zones (“zone”) and (ii) special purpose zones or subzones. The general purpose zone is often a warehouse open to multiple uses or an industrial park. It is traditionally located near or within a port of entry, such as an airport, which could work well for Grand Junction.

The zone is restricted to being wholly within 60 statutory miles or 90 driving miles from the nearest U.S. Customs port of entry.¹¹

A special purpose zone is called a subzone. Under the traditional framework, most zone sites are subzones. The subzone is approved for a specific use for a particular company (*i.e.*, oil refining, cell phone distribution, auto assembly). The subzone can be used for a myriad of processing, production, distribution, and warehousing operations, but they must all be approved by the FTZ Board and other restrictions may apply, such as examination upon request. The subzones are also required to satisfy the zone adjacency requirements, but CBP may waive them if it can adequately oversee the activities.¹²

2. Alternative Site Framework

The ASF is organized similar to the traditional site framework in that there are two types of zones – (i) a general purpose zone, which is commonly known as the “magnet” site, such as industrial parks,

¹⁰ See **Appendix 7** (Grand Junction Regional Airport Map with 60 mile radius). Note, though, that the regulations permit a service area of 60 miles or a 90 minute drive from the port of entry.

¹¹ 15 C.F.R. § 400.11(b)(2)(i).

¹² 15 C.F.R. § 400.11(b)(2)(ii).

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airports, and warehouses; and (ii) subzones that are usage-driven sites. Usage-driven sites function identically to traditional subzones, except the approval time is expedited and the application is streamlined to assist small and medium-sized businesses. A magnet site application under the ASF system takes about 10-18 months from the filing and acceptance of the petition to the final approval. If manufacturing authority is sought, it might take longer. There is also a mandatory pre-docketing review to assist the FTZ Board with vetting the application and major issues before the application is actually filed with the Board. A usage-driven site or subzone are company-specific, and can be designated either (a) within 30 days via a simplified application process known as a Minor Boundary Modification (“MBM”); or (b) within four months for an application of a usage-driven site containing production activity.

The ASF starts with a designated “Service Area”, which typically includes entire counties that are under the Grantee’s jurisdiction, though the service area need not follow county boundaries. The entire Service Area must meet the FTZ port adjacency requirements (*e.g.*, either within 60 statutory miles from the port or 90 minutes driving from the port). Most FTZs organized today under the new alternative site framework define their geographical area by counties to proffer a flexible, regional area that is uniformly governed.

B. Potential FTZ Strategy and Service Area for the City of Grand Junction

Applying under the ASF appears to be the best option for Grand Junction considering the more expedited and flexible options to amend and change the FTZ. The FTZ Board’s recent approval of Limon, Colorado’s new FTZ supports that recommendation.

Additionally, the service area for the FTZ could be defined broadly, covering multiple counties to preserve future flexibility of businesses in nearby areas to join the FTZ as a usage-driven zone. For instance, using the map of 60 miles radius from the Grand Junction Regional Airport, the radius identifies multiple additional Colorado counties that could be included in the broad service area, including all of Mesa and Delta counties, a portion of Garfield and Montrose counties, and a smaller part of Ouray, Gunnison, Pitkin counties. If the service area is broadly defined, then the businesses within this territory can participate in and benefit from the FTZ program. On the other hand, a service area that involves more counties in the FTZ program may complicate an effort to secure the appropriate approvals in various jurisdictions.

At bottom, the primary restriction for the geographic area of the FTZ is ensuring it satisfies the adjacency requirements of being at least within 60 miles or a 90-minute drive of a US port of entry. Satisfying this requirement will depend upon where the US Customs agent is located, as explained below in Section VIII.E.

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V. CUSTOMS AGENT & CUSTOMS SERVICES

To obtain a U.S. Customs agent or Customs Services, the City of Grand Junction can submit a written request to the Commissioner of Customs and Border Protection (CBP), Commissioner R. Gil Kerlikowske, located at CBP Headquarters, 1300 Pennsylvania Ave. NW, Washington, DC 20229.¹³ The request for becoming a port of entry can be made slightly before or contemporaneously with the FTZ application. Though the FTZ Board will process an application filed contemporaneously with a request for the posting of a Customs officer, the Board will not approve an application until the City and Customs & Border Protection have resolved the City's request for a Customs officer.

The City of Grand Junction must also notify the other federal inspection agencies (*e.g.*, USDA, FDA, APHIS, US FWLTTB, ATFB, NRC, DOC, DOE, and CPSC) of its request to establish a port of entry and obtain the concurrence of these agencies on this issue. The City can coordinate with CBP to notify the additional agencies, whose services are anticipated by importing local businesses.

Procedurally, there are two options available to establish a U.S. Customs agent and Customs services in the City of Grand Junction: either gaining (i) status as a U.S. port of entry; or (ii) status as a user fee airport.¹⁴ Both of these options are explained further below.

If either of these options is pursued by the City of Grand Junction, it would be advisable to meet with CBP officials early to discuss the prospect of obtaining a U.S. port of entry, along with Commerce's FTZ Board's Executive Secretary, Andrew McGilvray, to discuss this port of entry option and its feasibility.

A. Port of Entry

A CBP port of entry is a designated location where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce other CBP and related laws. This location can be, and often is, an airport.¹⁵

CBP considers the following criteria, as a minimum threshold, for establishing a port of entry:

¹³ This is as of September 29, 2015. Officials' names should be confirmed when application is submitted at <http://www.cbp.gov/contact/cbp-hq>. Furthermore, Assistant Commissioner Todd C. Owen, of the Office of Field Operations would be another key official to meet with and dialogue about the project.

¹⁴ See CBP websites at:

https://help.cbp.gov/app/answers/detail/a_id/173/kw/Request%20a%20Customs%20Agent%20at%20Airport/sno/1 and <http://www.cbp.gov/trade/trade-community/programs-outreach/ports>.

¹⁵ See CBP website at <http://www.cbp.gov/trade/trade-community/programs-outreach/ports>.

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- The requesting community must prepare a report that shows how the benefits expected to be derived justify the federal government expense.
- The location is serviced by at least one major mode of transportation.
- Have a minimum population of 300,000 within the immediate service area (approximately a 70 mile radius). (Note: We understand the City of Grand Junction is approximately 60,000 people, but perhaps the 70 mile radius increases the population to meet this standard. Despite the formal CBP requirement, the town of Gypsum, Colorado (population 7,000) received approval to be a port of entry. Why CBP waived this requirement for Gypsum is unclear.)
- The actual workload in the area must be one or a combination of the following:
 - 15,000 international air passengers (airport), 2,000 scheduled international arrivals (airport);
 - 2,500 consumption entries (each valued over \$2,000), with no more than half being attributed to any one party (airport, seaport, land border port);
 - 350 vessels (seaport);
 - 150,000 vehicles (land border port); or
 - Any combination of the above.

Our survey of local importers leads us to believe that the Grand Junction area may meet prong two above (a minimum 2,500 consumption entries), though, in many cases, local importers may use middlemen and may not serve as the importer of record. (*See e.g.*, company-by-company analysis below)

To obtain approval as a port of entry, the City of Grand Junction would have to provide without cost to the federal government, the following facilities for CBP's use:

- Warehousing space for the secure storage of imported cargo pending final CBP inspection and release;
- The commitment of optimal use of electronic data input equipment and software to permit integration with any CBP system for electronic processing of commercial entries;
- Administrative office space;
- Passenger facilities and cargo inspection areas;
- Primary and secondary inspection rooms; storage areas and any other space necessary for regular CBP operations; and
- The location and distance of the nearest CBP ports.

CBP will ensure that the facility requirements of all federal agencies are met.

Though we are not privy to the City's plans, if any, for the repurposing of such space, it is our understanding that the airport has a semi-finished building that could be utilized for the above-cited purposes.

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B. User Fee Airport Program

Considering that the City of Grand Junction explored the option of establishing a user fee airport (“UFA”) program three years ago, we incorporate its findings by reference, herein.¹⁶ Thus, only the basic criteria for this option follow below.¹⁷

A UFA is a small airport which has been approved by the Commissioner of CBP to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

Any applicant jurisdiction must meet the following criteria for UFA consideration:

- The volume or value of business at the airport is insufficient to justify the availability of inspectional services at such airport on a non-reimbursable basis.
- The current Governor of the State in which such airport is located supports such designation in writing to the Commissioner of CBP.
- The requestor (*e.g.* airport authority or City of Grand Junction) agrees to reimburse CBP for all costs associated with the services, including all expenses, of staffing a minimum of one full-time inspector.
- The requestor completes an Agriculture Compliance Agreement (ACA) with fixed base operators and garbage haulers for handling any international garbage.

The basic steps required in considering an application for designation as an UFA include:

- Receipt of a letter from the current Governor of the State supporting the user fee airport designation addressed to the Commissioner.
- An initial site visit in which CBP officials discuss workload and services.
- A final site visit in which CBP officials verify that facilities are 85% complete and adequate for inspectional services to be provided.

¹⁶ See User fee Airport Customs Service Review: Grand Junction Regional Airport (July 8, 2013), attached as Appendix 8. The report evaluated implementing the Customs agent at the Grand Junction Regional Airport primarily based on West Star Aviation’s anticipated use of the airport only. The report, therefore, did not consider the degree to which a FTZ may contribute to the needs for a Customs agent. Next, the report found that the most crucial aspect of the project is cost, estimating that the CBP facility and annual cost of services were expected to be over \$150,000. After considering alternative ways to share the cost with local companies and nearby areas, the ultimate conclusion was that the cost precluded the project. We should note that other UFA feasibility reports seem to forecast or consider anticipated additional demand (U.S. and international) for aviation services by the airport upon designation as a UAF. Such an analysis is lacking in Grand Junction’s UAF report.

¹⁷ See CBP website at <http://www.cbp.gov/trade/trade-community/programs-outreach/ports>.

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- A successful site visit in which CBP officials discuss workload and services and verify that facilities are adequate for inspectional services to be provided.
- Completing a Memorandum of Agreement (MOA) with CBP, which states the responsibilities, fees, and hours of service.
- Completing an ACA with CBP for handling international garbage.

An approved UFA receiving CBP services is responsible for payment of the following fees:

- Per Inspector - \$140,874 for the first year and \$123,438 for succeeding years.
- Automated Data Processing costs per inspector - \$17,042 to \$21,062 (1st year) and \$13,620 to \$17,640 for succeeding years depending on the location.
- Other associated costs such as overtime.

In all cases regarding requests for new service, it must be understood that before CBP approves requests to establish new Ports of Entry or User Fee Airports, CBP must have the available staffing or the authorization and appropriations to hire additional staffing. This is and will continue to be one of the most important considerations.

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VI. ROLES AND RESPONSIBILITIES OF GRANTEE

As indicated above, the FTZ Grantee is the organization responsible for the establishment and development of a comprehensive plan to organize, finance, develop, and maintain the zone to support its zone sites, including subzones in a particular geographic area. The Grantee undertakes basic management of the zone and ensures the reasonable needs of the business community are addressed in the zone.

The Grantee may be a public entity (*e.g.*, state, city, county, or air/sea port authority) or a private, not-for-profit corporation responsible for regional economic development, such as the local Chamber. If it is a company, it cannot apply directly to the FTZ Board without sponsorship of a local Grantee organization. Commonly, the Grantee has at least one knowledgeable staffer, often a part-time staffer for smaller FTZs, to manage the FTZ's operations.

A zone is established by the Grantee under the principles of a “public utility,” which provides interested firms the financial and administrative savings afforded by zone status. All companies in the zone must be treated uniformly under like situations.¹⁸ For instance, fees and rates for services must be fair and reasonable and set to simply cover costs.¹⁹ The Grantee sets a zone schedule of fees, which includes “[a]ll rates or charges assessed by or on behalf of the grantee,”²⁰ that are kept current and approved by the FTZ Board. Any company that participates in the FTZ must have a contractual commitment to do so with either the Grantee or the Operator, as appropriate, and a Grantee must establish an internal process for creating and approving such contracts with Users.

The Grantee is required to maintain the following documents related to FTZ projects: (i) the zone schedule; (ii) FTZ Agreements with Operators and Users; (iii) annual reports filed with the FTZ Board; and (iv) zone marketing materials to promote the FTZ.

Grantees' record-keeping and reporting responsibilities generally include the following:

1. Maintaining a file of zone documents, which include: (a) copies of all applications to the FTZ Board and any related correspondence; (b) documents related to the “sunset” limits or lapse provision for the zone and all subzones; (c) FTZ Board orders and notices of application; and (d) list of approved zone sites and maps of all zone sites with their boundaries; and (e) agreements between grantee and operators and private land owners;
2. Ensuring each subzone, if applicable, retains the same records as above;

¹⁸ 15 C.F.R. § 400.42-43. See also, <http://enforcement.trade.gov/ftzpage/publicutility/UniformTreatment.html>.

¹⁹ See FTZ Board's Presentation: “Public Utility, Zone Schedules, and Uniform Treatment”, attached as **Appendix 9**.

²⁰ 15 C.F.R. § 400.44(b)(4). See also *e.g.*, Zone Schedule of Zone 118 (Ogdensburg, New York) attached as **Appendix 10**.

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3. Updating site information (*i.e.*, activation, status, space, date) and contact information in the U.S. Department of Commerce's Online FTZ Information System ("OFIS"); and
4. Having a basic understanding of reporting requirements and methodologies for annual reports to FTZ Board.²¹

Commerce requires Grantees to submit annual reports of zone activity. These reports are not complicated or time consuming, but do necessitate that the Grantee be organized. Basically, by the last business day of each March, Grantees must collect from user companies and submit to Commerce information on the value and volume of trade within their zone.

Finally a Grantee, of course, should routinely promote the FTZ to the community and potential business users and review the current zone structure and evaluate potential developments that would support the economic development goals of the community and existing and potential businesses.

²¹ A more comprehensive presentation of the Grantee's responsibility and best practices is attached as [Appendix 11](#).

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VII. CASE STUDIES

The top two states utilizing the FTZ program are: Texas and Louisiana, both in terms of merchandise received and exported, and for production activity and distribution/warehousing activities.²² The industries with the most use of the FTZs are oil and petroleum refining companies (production operations) and auto companies (warehouse/distribution operations), along with machinery/equipment, consumer electronics, textiles/footwear, consumer products, and pharmaceuticals.²³

To help the City of Grand Junction evaluate the viability of a local zone, we have provided the below summary of activity in (i) other regional zones (*e.g.*, other zones in Colorado and Utah), and (ii) other similarly-situated zones (*e.g.*, selected zones outside of major metropolitan areas). It is extremely important to note: The success or failure of a zone often hinges on the degree to which the Grantee and local economic development officials market the zone. Geographic factors, transportation links, and the strength of the local economy do not, in and of themselves, dictate the success or failure of a zone. Indeed, there are inactive FTZs in major metropolitan areas and successful FTZs serving smaller regional hubs. It is helpful, of course to examine the health of other regional zones and other, similarly-situated zones, but the below examples do not necessarily demonstrate how a zone in Grand Junction would fare.

A. Butte, Montana

The County of Silver Bow, Montana and the city of Butte have been served by a zone since 1993. Though Butte and Silver Bow County are substantially smaller than Grand Junction and Mesa County (Butte's population of 33,922 represents most of the county's population of 34,622), the Butte-Silver Bow FTZ has become an important economic anchor of this rural western county.

In the hopes of invigorating the zone, local authorities reorganized the Butte-Silver Bow FTZ in 2009 under the alternative site framework. In its application, the city conveyed to the Commerce Department that the region had been traditionally reliant upon "commodity production – agricultural, mineral, and timber." The city claimed that continued dependence upon the sale of "non-manufactured", "non-value-added" resources had led to a decline in industry in the region. The city hoped that the zone would attract investors and bolster existing employers. The city's application cited four potential users (REC Silicon, a "small" figurine importer, the Port of Montana (which had warehouse sites), and a manufacturer of castings for aerospace companies), adding that other potential users had inquired about the zone.

Soon after approval of the reorganization, in 2011, an important local company, REC Silicon, a manufacturer of polysilicon and silane gas, entered the zone. The benefits of REC's participation

²² Except South Carolina is the 2nd state for exporting warehouse/distribution activity.

²³ See FTZ Board's Annual Report 2014, at Appendices B-D, attached as **Appendix 1**.

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for the local economy seem to be sizable, with REC claiming that zone status has been key to its continued existence, with exports of \$10 - \$25 million, and with more than 200 employees. [Note: REC's manufacturing application, in 2010 – 2011, for permission to undertake manufacturing operations within the zone was a source of controversy, with REC claiming it needed zone status to remain in business and REC's competitors opposing its application. Commerce nevertheless approved REC's application, with certain restrictions.] Butte-Silver Bow's experience illustrates that a zone in a regional hub need not attract multiple manufacturing sites to be successful, so long as the zone helps an important local employer grow.²⁴

B. Dona Ana County, New Mexico

Like Grand Junction, Las Cruces, New Mexico serves as a dynamic regional hub for a western county of similar size to Mesa County (Dona Ana County, New Mexico is 3,814 square miles, 12% larger than Mesa County). The County Commission of Dona Ana County, New Mexico obtained approval for a zone under the Traditional Site Framework in 1993 and, in mid-2014, obtained approval for a reorganization of the zone into the more flexible Alternative Site Framework. The FTZ has two primary sites at the Dona Ana County Airport and the Las Cruces Airport. The public justification for the zone was a desire to draw new companies to Dona Ana County. At the end of 2014, after 21 years of activity, the zone reported exports in excess of \$75 million with 25 – 50 employees.

Despite the substantial exports, Dona Ana's zone activity was from only one company, a company that has used the zone for warehousing and distribution activity. Indeed, there has been no manufacturing activity in Dona Ana County's zone. This should stand in contrast to Grand Junction's experience, should Grand Junction pursue a zone. Most of the potential zone users interviewed by counsel in Grand Junction foresaw manufacturing benefits from a zone, by importing inputs duty free while exporting manufactured finished goods.

Indeed, Mesa County's economic profile generally indicates that Mesa County has more potential zone users than Dona Ana County. 11.6% of Dona Ana County's GDP is derived from manufacturing, transportation and warehousing, agriculture, mining, and oil services and extraction (industries that generally may benefit from a FTZ), while approximately 16.9% of Mesa County's GDP is derived from such industries. Indeed, while Dona Ana County markets its zone aggressively,²⁵ the economic profile of Dona Ana County would generally not seem to mesh as well with a zone, as the profile of Mesa County. The predominant employer in the county is the federal

²⁴ Oddly, the official Census Bureau data show the Butte-Silver Bow region had \$0 in manufacturing shipments in 2012, a figure that does not square with Foreign Trade Zone Board documentation, which outlines substantial shipments from zone user REC Silicon and another potential user, a manufacturer of aerospace castings

²⁵ The County promotes the zone an "ideal location" for logistics serving Mexican maquiladoras, and hopes to attract aerospace investment (due to construction of nearby Spaceport America), renewable energy investment (because of the county's 340 days per year of sunshine), and value-added agriculture (because the county has traditionally relied upon agriculture). The County, in submissions to Commerce, estimated that its zone would create "hundreds" of jobs.

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government (the White Sands Weapons Testing Facility and NASA), followed by the state government (New Mexico State University), local government (the city's public schools and the city and county government), medical centers, and Walmart. None of these employers should be potential zone users. Indeed, the Census Bureau does not disclose the value of Dona Ana County manufacturer shipments, because there are so few private sector manufacturers in the county that publication would disclose confidential information, while the Census Bureau reports total manufacturing shipments from Mesa County of \$521 million (2012).

C. Quad-Cities, Iowa/Illinois FTZ

The Quad-Cities FTZ was approved in 1986 and recently transitioned to the alternative site framework. Though the zone is in the east (or at least straddles the Mississippi) and is in a substantially larger metropolitan area (the Quad-Cities region has a population of 475,000), it serves as another, good example of the prospects for a zone outside of major metropolitan area and away from a major port of entry. While the largest local employer is the federal government (the Rock Island Arsenal), the area hosts significant private-sector manufacturers (primarily Deere & Co., The Hon Company (a furniture manufacturer), Alcoa, Oscar Mayer, and Tyson Fresh Meats). Indeed, the area had \$4.9 billion in annual (2012) manufacturing shipments, according to the most recent Census Bureau data, significantly more than the zone hosts of Butte and Las Cruces.

For years, the zone solely served a Deere & Co. manufacturing facility, which had in excess of 1,200 employees, had \$10 - \$25 million in exports, and had \$50 - \$75 million in total shipments. The Deere & Co. facility was the only user of the zone. Indeed, for most of its history, the Quad-Cities zone apparently served a similar purpose as the Butte, Montana zone, anchoring a significant local employer.

In July 2015, though, the Foreign Trade Zones Board approved the addition of a second, significant manufacturer-participant in the zone: CNH Industrial, a London-based, publicly-trade manufacturer of construction and agricultural equipment with a production facility just to the south of the Quad-Cities. The inclusion of CNH very well may be the result of the resourceful marketing of the Quad-Cities' zone staff; the zone's marketing material is impressive.

D. Town of Limon, Colorado FTZ

In June 2015, the Foreign Trade Zone Board approved another Colorado zone outside of the Denver area – a zone for Limon, Colorado. The service area approved was for Adams and Arapahoe counties and portions of Elbert, Lincoln and Morgan counties, which includes the East Airport. The application for this zone was delayed until the service area could be simplified, resulting in nearly a year-long application time period. The Town of Limon's successful FTZ application notably lacks specifics about potential zone users. Instead, Limon's application contained a lengthy exposition about the increasing importance of foreign trade to Colorado's

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economy and noted, with respect to Limon: “The major reason for a need for FTZ services within the Town of Limon is that several of the companies with whom the Town has spoken, and to whom it has exerted direct efforts to locate their operations within the Town and Lincoln County, have made an FTZ status a key issue in their site selection process. Naturally, we will continue to search for potential users. We have every expectation that we will attract new companies with our FTZ potential.” We are frankly skeptical about the medium-term prospects of the Limon, Colorado zone. The applicants, after all, had not identified “real” short-term potential zone users when they filed their application, which was nevertheless approved by Commerce. We thought it was worth noting, though, that a rural Colorado zone had been recently approved, despite an apparent lack of immediate demand.

E. Other Colorado FTZs

1. The City & County of Denver obtained approval for FTZ #123 in 1985. The FTZ has four sites, but only two are active, and six subzones. The businesses are focused on the airport port of entry. The zone has only one manufacturer-participant, but it is a substantial one: Vestas Nacelles, a Denmark-based wind energy company, broke ground for a facility near the Denver zone in 2009 and, according to the Commerce Department’s latest zone report, yielded \$500 - \$750 million in annual shipments. Other zone participants, which engaged in warehousing and distribution activity, accounted for \$750 million - \$1 billion in annual shipments.
2. Colorado Springs has FTZ #112, approved in 1984. Although this FTZ has four sites, which include the airport and three business and industrial parks, there are no active subzones or businesses. The Commerce Department reported that zone participants shipped \$0 in goods in the last reporting year.

F. Salt Lake City, Utah FTZ

Salt Lake City Corporation obtained approval for FTZ #30 in 1977. Although the FTZ is an active site, it has limited participation with only one site for the Rockefeller Group Development Corp. and one subzone for Red Wing Shoe Company. The Department of Commerce, in its last annual report on the FTZ program, indicated that the Salt Lake City zone had no activity in the last reporting year, shipping \$0 in goods.

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VIII. ATTORNEY FINDINGS

A. Analysis of Potential Benefits to Existing Companies

Barnes & Thornburg interviewed a dozen Grand Junction area companies via phone, company site visits, and meetings at the City's manufacturers' symposium and during County Chamber meetings. Barnes & Thornburg also examined U.S. import data reports that revealed the level of import volumes for local companies.

The City has a diverse range of companies in various industries that import and that are actively involved in international trade as an essential component of their business model. All the companies interviewed would welcome the opportunity to have a local U.S. Customs agent to help facilitate their international trade. The vast majority of companies were interested in supporting the project and learning more about how it might benefit them. The largest benefit to the majority of local companies is securing a local U.S. Customs Agent in Grand Junction. Overall, the interest in the City's pursuit of the FTZ project is very favorable, but many companies have not yet completed an estimate or calculation of their overall specific benefit expected from participating in the zone.

The following provides a summary of the interviews and meetings legal counsel conducted with local businesses to discuss the potential benefits of the FTZ project. We have not identified each company in the below summaries by name so as to help protect each company's sourcing profile. Each company summary demonstrates the various economic benefits anticipated from the FTZ in unique ways, depending on the structure of the business.

1. A Sample of Likely Companies to Participate in Any Potential FTZ

Company A

Company A indicated that it was interested in learning more and potentially supporting the FTZ project. Specifically, Company A indicated that they source materials primarily within the United States, but do on occasion source internationally. Some raw materials are imported on occasion from an affiliated producer in a foreign country and other international suppliers. They were exploring the cost savings of alternative suppliers, given the expiration of the U.S. Trade Preference Programs that had expired in July 2013. The company understood that, in addition to tariff savings, companies may also benefit from FTZs by taking advantage of reduced "merchandise processing fees" to Customs. The inventory, warehousing, and consignment aspect of the FTZ, along with housing a U.S. Customs agent locally were the most appealing aspect of the project to Company A's executives. The company recently hired an employee with significant prior experience in operating business within an FTZ.

Company B

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An official of Company B indicated that, as a foreign-owned company, the company sources the vast majority of its raw materials internationally and very much wants a U.S. Customs agent located in Grand Junction. The company has weekly shipments to and from Poland and Switzerland, and sources from Canada, Australia, and throughout Asia, because its affiliates are located there. The company has certain products that qualify for NAFTA preference programs. Currently, Company B uses U.S. ports of entry in Denver, New York, and Houston. Company B revealed that some import duties can be as low as zero, whereas some may be as high as 5%, and fewer are as much as 10-20%, though the value of the underlying imports can be high. The company was working through the calculations to see the actual cost savings that could be obtained by participating in the FTZ. Certain industry products (*e.g.*, alcoholic beverages, clocks and watch movements, and certain bicycle parts) are exempted from the benefits of the FTZ, and these exemptions may impact Company B's ability to utilize a FTZ, so the the company will have to conduct a careful actual cost savings analysis.

Company C

Officials of Company C indicated that the greatest benefit of the FTZ project for the company would be a U.S. Customs agent being located locally in Grand Junction. The company was still assessing the bottom line cost benefit to the company regarding duty savings for Customs services and international materials, as well as other financial benefits. For example, the company imports some parts from the U.K. and Canada with tariffs as high as 20%. Furthermore, they were asked to accept an international business opportunity, which could have yielded thousands of dollars in revenue, but had to forego the opportunity because the airport was not a port of entry for the United States. Given the common events, conferences, and seminars in the area, they expect to attract additional business from Mexico, as well as other significant international business by having a U.S. port of entry in Grand Junction.

Company D

An official of Company D indicated that his business could best benefit from a U.S. Customs agent being located in Grand Junction. As a U.S. manufacturer, and subsidiary of a foreign-based company, which is owned by another foreign company, it provides internationally-sourced parts and components to some of its customers in the United States, Canada, New Zealand, and Australia, according to public information. Some benefits of the FTZ project could apply to this company. For example, they pay about 2.5% on certain parts and more on others that are used in production of its products in the United States, and they hold significant quantities of parts in inventory to service and warrantee products. Additionally, zone-to-zone transfers might provide further benefits.

Company E

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Company E indicated that they currently house massive inventories of recycled materials to be further refined, recycled and produced into different high-technology intensive products. The inventory benefits of the FTZ would likely greatly benefit this company, especially as its international business strategy continues to further develop with clients sending imported, recyclable products.

Company F

Company F's official indicated that they import about a third of their raw materials used to produce various high-grade, specialized steel and other specialized metal end-products used by U.S. and international customers. For these inputs and certain inventory obligations, the FTZ may provide benefits of Customs transaction savings, duty reductions or eliminations cost savings, as well as inventory efficiencies.

2. Unlikely Participants Currently, but Potential Future Participation

Company G

An official of Company E described the company as a domestic producer, that sourced all raw materials and parts from U.S. companies. Most suppliers are U.S. distributors, who likely supply international-origin parts, but Company E does not deal with U.S. imports directly. Company E also exports its finished products abroad on occasion. Company E runs considerable tests when it creates and repairs their product, which requires substantial imported product, which the international customer currently covers as a cost. Although Company E's current business operations do not make it a good candidate for the FTZ project, some parts of its business, if restructured and taken on by Company E, could improve the company's chances of participating in any FTZ in the future.

Company H

A newly formed Colorado company that is an affiliate of a mineral identification company currently located in Australia was exploring business opportunities in the United States. Locating in or near an FTZ would permit its lab to more efficiently service international clients and samples from international sources. The company's business model may be an excellent fit for a FTZ, but the company is in a nascent phase.

3. Further Assessment of Quantifiable Benefits

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FTZ Board staff often estimates that individual companies must enjoy at least \$100,000 in cost savings per year to justify the expense of FTZ management and compliance.²⁶ Although interviews with local company officials were informative, companies were not forthcoming with detail about their supply chains and current tariff liabilities. Indeed, no company indicated or knew whether they would likely meet or exceed this \$100,000 threshold. Accordingly, as a next step, we would recommend that the City work with select companies to attempt to collect, calculate, quantify, and assess the anticipated benefits and potential savings, which include duty exemption, duty deferral, duty reduction/inverted tariff, and other logistical benefits that include consolidated entries savings, scrap or waste savings, inventory storage benefits, as well as other financial benefits to the company (*i.e.*, numerous companies mentioned the hopes of having a local Customs broker to facilitate international trade). Indeed, though Companies A, B, and C above never returned questionnaires detailing their current tariff payments, our sense was that Companies A, B, and C imported sufficient quantities of dutiable goods to justify FTZ participation.

FTZ jobs tend to be “good” jobs; after all, the U.S. Department of Commerce estimates that the average jobs in companies that export pay 17% more than average. Generally, the City of Grand Junction and the surrounding areas should expect other non-quantifiable benefits including (i) increased global competitiveness of the U.S. based companies; (ii) job creation for trade facilitation and an influx of new businesses attracted to the area; ; (iii) improved exportation of domestic goods with foreign and domestic content; (iv) zone-to-zone transfers for companies operating in more than one U.S. FTZ; and (vi) deferred duty payments until goods enter the commerce of the U.S. market, as well as the potential reduction and even elimination of payment of duties for some imports with inverted tariffs or waste, scrap, and defective goods. Recent U.S. import data reveal that there are numerous other companies that could be targeted as potential participants in the FTZ either located in Grand Junction, or neighboring areas.

B. Cost of Application

The costs of an FTZ application largely depends largely upon how much the City of Grand Junction is able to organize and accomplish itself versus how much outside attorneys and/or consultants would need to do to finalize, submit, and see the application through the process successfully. Naturally, it is more expensive to have legal counsel complete most of the work, whereas if the City officials completed most of the documents, gathered the requisite exhibits and support for the submissions, and drafted significant portions of the submission, the cost would be reduced. The cost is also a function of how cooperative local businesses, political leaders, government officials, etc. are

²⁶ Despite the above-cited estimate of necessary cost-savings per company, there is at least one FTZ, in Hawaii, according to the National Association of Foreign Trade Zones, which seeks to reduce per company costs by pooling the resources of small to medium sized participant companies to enable the companies to employ a common staffer who manages all of their FTZ management and compliance needs.

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to assist and not hinder the process of collecting the requisite materials, as well as support and not oppose the application itself.²⁷

Additionally, before the pre-application is filed with the Commerce Department for Pre-docketing review, something now required under the alternative site framework (discussed further below), we recommend that the City request a preliminary meeting with the both the FTZ Board and Customs to review concerns, issues, and discuss the prospect of Grand Junction's application. Such meetings will allow the City to address major concerns or deficiencies the agencies may have before the formal submission of the application. By establishing a productive working relationship with the relevant U.S. government officials prior to the formal filing of the application, Grand Junction is less likely to experience any "surprises" during the pendency of the application, reducing costs and expediting consideration of the petition.

The application for a new FTZ under the alternative site format includes three basic procedural steps for the applicant:

- (i) submission of a pre-docketing submission;
- (ii) submission of a final application; and
- (iii) payment of a \$3,200 filing fee.

The Pre-docketing review takes 30 days for the FTZ Board staff to review the pre-application and discover any discrepancies in the pre-filing. The new FTZ alternative site format application review typically takes about ten months, but as much as 18 months, after the application is formally accepted and docketed by the FTZ Board. The regulations provide for at least one public comment period and an optional hearing. The FTZ Board generally applies a "public interest" test, taking several economic factors into consideration. This means that the approval is limited to activity that is consistent with trade policy that yields net positive economic effects, accounting for potential impact on other domestic plants. In short, the application must justify the economic needs and potential benefits.

The FTZ examiner's recommendation must be approved by political-level officials at both Commerce and Treasury. This process typically takes the form of several intermediate steps for deliberations, including (a) FTZ Board staff review, (b) interagency deliberations, (c) final action, and (d) publication of the FTZ Board decision. The review stage is when a Commerce examiner will conduct a review of the application and prepare a memorandum with recommendations to the FTZ Board. If the examiner fails to recommend full approval, then the applicant is notified and given an opportunity to cure any deficiencies identified in the preliminary report that may be considered for the final recommendation. Indeed, in our experience, the FTZ Board staff review is not a confrontational process; the staff is eager to work with potential applicants in an attempt to work out potential problems in an application.

²⁷ A copy of the Alternative Site Framework for a new FTZ is attached as [Appendix 12](#). The application for a traditional site framework FTZ is also attached as [Appendix 13](#).

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The interagency stage is when the examiner's memo is considered by both Board representatives at Commerce and Treasury for a vote. If both the Treasury and Commerce Board members agree upon approval, a Board order is published in the Federal Register, concluding the application process.

Beyond the immediate costs for the application, there are implementation and management costs, representing more intermediate and long-term costs. Implementation costs are a one-time cost to implement procedures, processes, and systems (*e.g.*, security, tracking, reporting, computer applications, etc.) consistent with Commerce's and Customs' FTZ regulations. Implementation also includes "activation" of the zone site, which is largely the companies' responsibility, because the company deals with actually complying with Customs regulatory requirements. It also includes a security review, whereby Customs assesses the security systems employed in the zone facilities. Management costs involve more long-term costs that may implicate systemic changes, such as software applications, warehouse management, human resources (employee(s) for operations, compliance audits and inspections, and marketing efforts), annual reports, and fee collections. The vast majority of these subsequent costs are incurred by the companies in the zones to ensure that the facilities are operating in compliance with Customs' regulations, especially if the FTZ's fee structure for participants is properly established to cover such costs.

C. Cost Estimate of Modifications (*i.e.*, boundary adjustments)

Under Commerce's alternative site framework system, minor boundary modifications ("MBM") usually take only 30 days. Timing will largely depend on receipt of comments from CBP. The specific application form is provided in **Appendix 14**. Under the AFS, the FTZ Board now allows a company to make zone modifications more efficiently, such as pursuing Temporary Interim Manufacturing (TIM), Permanent Manufacturing Authority, and a minor boundary modification with the ASF "Service area" simultaneously.

Under the traditional site framework, the timeline is about the same – 30 days, depending on the timing of comments from CBP – but the application differs. *See* **Appendix 15**.

If the zone wishes to expand more drastically, this application could take about 10 months under the traditional zone process and 7.5 months under the ASF. The grantee is responsible for filing the boundary modification requests. *See* **Appendix 16 (ASF) & 17 (TSF)**.

D. Time and Cost Estimates for Subzone Sites

The subzone application is particular to a specific company for a particular purpose (*i.e.*, storage, handling, manufacturing, and production of merchandise). The subzones, or company-specific sites, are usage-driven, meaning that they are allocated to a particular company's use. Under the

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traditional framework, a subzone is a part of the zone used for a particular purpose and meets the required public interest test. Under Commerce's Alternative Site Framework, the process is simpler and can designate a company's facility a "subzone" or "usage driven site."

Unlike the rules for the establishment of an original general purpose zone or "magnet site", the adjacency requirement (*e.g.*, the requirement that the site be within 60 statutory miles of the port of entry or a 90-minute drive), may be extended if Customs can oversee the activities electronically and is otherwise satisfied that it can inspect the facility when needed. Normally, the time period for reviewing the subzone or usage-driven site application is 3 - 5 months.

The application fee for a subzone not involving production activity or involving production activity with less than 3 products is \$4,000. The fee for subzones involving production activity with three or more products is \$6,500. The application form for such a subzone is attached in **Appendix 14 (same as MBM application for ASF) & 17 (TSF)**.²⁸ Subzones must be sponsored by the Grantee of the general-purpose zone or magnet site.

E. Feasibility of Application Approval

The feasibility of the City of Grand Junction's FTZ being approved largely depends upon some fundamental first steps or threshold matters, which most importantly likely includes securing a U.S. Customs agent in Grand Junction. The most likely avenue for the retention of a Customs agent would be the establishment of a User Fee Airport with an appropriate location to house the Customs official and his or her official operations.

Alternatively, the City may attempt to work with Customs and Commerce FTZ officials to ensure that Gypsum, Colorado's Customs agent can be used for the FTZ and that the zone satisfies the adjacency requirement of being within 60 statutory miles or 90 driving miles of the Gypsum U.S. port of entry (it is our understanding that Gypsum is just outside the 90-minute drive threshold, but, in our experience, Customs and Commerce may be willing to "flexibly interpret" the 90-minute drive standard).²⁹ This will need to be established initially before an FTZ application is submitted. The Colorado town of Limon found this out the hard way. When Limon applied for a FTZ under the alternative site framework, their application was put on hold by Customs until it was revised (by excluding certain partial counties) to satisfy the Customs officer in Denver, who was tasked with servicing and overseeing the newly proposed FTZ.³⁰ After the zone area was revised, though, Limon's application was quickly approved by the FTZ Board.³¹

²⁸ The FTZ has developed a new application for subzones, but it is not yet approved by the Office of Management and Budget. Thus, the TSF Minor Boundary Modification form should be used until the new form is approved.

²⁹ When counsel informally approached the FTZ Board with the question, the Executive Secretary indicated that he thought this might have been considered previously internally and found to not satisfy the adjacency requirements.

³⁰ See <http://www.townoflimon.com/index.php/economic-development/foreign-trade-zone>.

³¹ <http://ita-web.ita.doc.gov/FTZ/OFISLogin.nsf>. *Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework Limon, Colorado*, 80 Fed. Reg. 35,303 (June 19, 2015).

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It may be worth noting that the success or failure of the Limon zone may color Commerce's view of any application from the City of Grand Junction. Overall, Colorado FTZs have not been the most utilized zones, and a lack of activity in the Limon zone may cause Commerce to view an application from Grand Junction more critically, while, conversely, a successful zone in Limon may make Commerce more favorably disposed towards an application from Grand Junction.

The City of Grand Junction's application depends upon Grand Junction being able to satisfy all of the requirements, such as ensuring that local laws permit the establishment of a FTZ, collecting support letters from local business organizations and politicians, and assembling firm examples of beneficiaries of the FTZ that have shared the details of anticipated financial benefits and cost savings. While these pre-filing tasks may sound daunting, they usually require only a moderate amount of effort. State and local laws usually permit FTZs, and local politicians, business organizations, and companies are usually forthcoming with support, when the opportunity of a FTZ become more "real" (*i.e.*, when an application is clearly being assembled).

To assist the City of Grand Junction with this process, we have attached a supplemental memorandum that outlines the requisite background preparations, and provides general questions and the detailed information that is needed for an application to establish a new foreign trade zone, at **Appendix 18**.

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IX. CONCLUSION

As outlined above, our interviews with several, local companies revealed substantial interest in the siting of a Foreign Trade Zone in Grand Junction. Furthermore, recent U.S. import data reveals numerous other companies that could be targeted as potential participants in the FTZ either located in Grand Junction, or in a neighboring area. Targeted companies could be further identified and developed with GJEP and the Business Incubator. Other economic development partners in the area could be partners for this FTZ project, too.³²

In addition to company specific benefits that may be estimated or calculated based on their business experience, the City of Grand Junction and the surrounding areas should expect other less-quantifiable benefits, which include:

- (i) An increase global competitiveness of area companies;
- (ii) Job creation because of Zrade facilitation and new trade-related investment;
- (iii) Increased domestic trade by local companies, as companies can make zone-to-zone transfers of goods duty free; and

Many of these future potential benefits are consistent with the City of Grand Junction's economic development plan, as set forth in 2014.³³

In our view, Grand Junction has the requisite infrastructure, geographic advantages, and demand to support a Foreign Trade Zone. Interstate 70, Grand Junction Regional Airport (which, notably, hosts express delivery flights), and rail connections, provide Grand Junction with the infrastructure needed to support import and export activities. Indeed, even without a Foreign Trade Zone, an examination of import data demonstrates that local companies are active importers. Meanwhile, the closest regional FTZs are at the Denver International Airport (approximately 267 miles away), Colorado Springs (approximately 300 miles away), Limon (approximately 332 miles away), and Salt Lake City (approximately 289 miles away). None of these aforementioned zones are proximate enough to the City of Grand Junction to directly compete with Grand Junction for trade and investment.³⁴ Indeed, there is not a single Foreign Trade Zone on the Western Slope – a fact that should help Grand Junction with the Commerce Department, should the City decide to proceed with a FTZ application. Finally, our meetings with local companies revealed that several local businesses have a supply chain profile that should benefit from a Foreign Trade Zone and, without exception, local companies expressed support for a Customs & Border Protection presence at the airport.

³² *Id.* (listing Mesa County, Grand Junction Area Chamber of Commerce and others).

³³ See http://www.gjcity.org/Business_Info.aspx.

³⁴ The FTZs, in Colorado Springs and Salt Lake City, it should be noted, are poorly managed and had no business activity in the latest reporting year (2014). Neither zone, therefore, would provide much competition, even if it were closer to Grand Junction.

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It is important to note that the success or failure of a zone is not determined by infrastructure or by geographic advantages alone. After establishment of a FTZ, the success or failure of the zone is often determined by the degree to which the Grantee and local economic development officials energetically promote the zone and its benefits. There are many examples of unproductive zones in, or close to, major metropolitan areas (*e.g.*, Salt Lake City; Prince George's County, Maryland (a close-in suburb of Washington, D.C.); Flint, Michigan; and St. Louis – all of which had no business activity in 2014). Meanwhile, there are many examples of zones serving smaller markets that are relatively successful (*e.g.*, the Quad Cities of Iowa/Illinois; Butte, Montana; and Dona Ana County, New Mexico – all of which had at least \$10 million in exports in 2014).

Should the City of Grand Junction proceed to lay the groundwork for the establishment of a Foreign Trade Zone, the City would have to resolve the following issues prior to the drafting of the FTZ application:

1. *Retention of a Customs Official:* As outlined above, general purpose zones and/or magnet sites must be located within 60 miles or a 90 minute drive to the closest U.S. port of entry. The closest port of entry, in Gypsum, Colorado, may be more than a 90 minute drive from Grand Junction. While both the U.S. Department of Commerce and CBP are often willing to interpret the 90 minute drive requirement liberally (*e.g.*, both entities don't necessarily assume that the Customs official drives at or below the speed limit), Grand Junction cannot assume that either Commerce or Customs would determine that the Customs official at Gypsum is close enough to Grand Junction to support a FTZ. Regardless, several local companies expressed an interest in a Customs presence at Grand Junction Regional Airport. Because this requirement is a threshold issue in any FTZ application, we would recommend engagement with both Commerce and Customs to determine whether the Customs employee at Gypsum is "close enough" to Grand Junction to support the establishment of a zone and, if not (or perhaps regardless), whether Grand Junction Regional Airport should utilize user fees to support the presence of a local Customs official.
2. *Better/More Information from Potential Local Users:* Several local companies (particularly Companies A, B, and C profiled above in Section VII.A.1) export and import dutiable inputs, a supply chain profile that should make the companies candidates for FTZ benefits. Each of these companies expressed strong interest in FTZ benefits. No area company, though, completed a questionnaire that would have quantified potential FTZ benefits. Based on our interviews with these companies, we believe that a local user base exists for a zone, but, prior to the pursuit of an application, primary potential users must complete questionnaires.
3. *Determination of Geographic Coverage:* As outlined above, the Department of Commerce's relatively new Alternative Site Framework provides applicants with greater flexibility in defining the geographic boundaries of zones. Before general purpose zone boundaries were limited to what was essentially industrial parks that abutted ports of entry. Now, zone benefits can extend to entire counties or portions thereof. Prior to the filing of a FTZ application, Grand Junction would need to determine whether the local zone would extend to all of Mesa County, to only portions of Mesa

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County, and/or to adjoining counties. Our sense is that this “boundary” issue is still unresolved by local officials. Should Grand Junction seek to obtain the consent of Customs to utilize resources from the port of entry in Gypsum, Colorado to supervise the zone, the boundaries of the proposed zone may be, in part, dictated by the demands of CBP in Gypsum (remember, the town of Limon was forced to reduce the size of its zone because CBP officials in Denver were unwilling to patrol the entire zone as originally defined by Limon).

4. *Identification of the Grantee:* As outlined above, FTZs can be managed by various entities. Zones can be managed by local governments, by private sector economic development organizations, by a company, or by a private-public partnership. Our understanding is that City officials and local economic development organizations have not yet determined the identity of the potential Grantee – an issue that would have to be resolved prior to the filing of a FTZ application.

We have appended to this memorandum a Gantt Chart, outlining the remaining, key, pre-filing tasks and estimating the time it would take to complete each task. We have included on this chart a time estimate for key government decisions, should Grand Junction decide to file a FTZ application. Though the attached Gantt Chart is not an exhaustive list of everything required to draft and pursue a FTZ, the Chart should provide the City with a summary of major activities and deadlines, and should provide the City with a sense of how long it would take to establish a zone.

Should the City of Grand Junction have any questions regarding the FTZ program, the FTZ application process, the likely advantages and challenges Grand Junction would face in a zone application, and/or important unresolved issues, please do not hesitate to contact David Spooner at DSpooner@btlaw.com, 202-637-6377, or Christine Sohar Henter at Christine.Sohar-Henter@btlaw.com, 202-408-6915. We greatly appreciate the opportunity to assist the City in evaluating and enhancing foreign trade opportunities for the Grand Junction area.

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List of Supporting Appendices

App. No.	Brief Description	Section Referenced
1	FTZ Board's Annual 2014 Report to Congress, <i>available at</i> http://enforcement.trade.gov/ftzpage/annualreport/ar-2014.pdf (August 2015) (2015 Report to Congress Not Yet Available)	II
2	Grand Junction's Company Initial FTZ Questionnaire	III
3	Grand Junction's Presentation on FTZs	III
4	Press coverage of City's Manufacturing Summit (April 2015)	III
5	FTZ Board calculation sheet	III
6	Preliminary and More Detailed Company FTZ Questionnaires	III
7	Grand Junction Regional Airport Map with 60 mile radius (April 15, 2015)	IV
8	User fee Airport Customs Service Review: Grand Junction Regional Airport (July 8, 2013)	V
9	FTZ Board's Presentation: " <i>Public Utility, Zone Schedules, and Uniform Treatment</i> "	VI
10	Sample Zone Schedule Template	VI
11	Comprehensive presentation of the Grantee's responsibility and best practices	VI
12	Application for Alternative Site Framework FTZ	VIII
13	Application for a traditional site framework FTZ	VIII
14	ASF Minor Boundary Modification Application	VIII
15	Traditional Minor Boundary Modifications Application	VIII
16	ASF Boundary Modifications Application	VIII
17	TSF Boundary Modification Application	VIII
18	Memorandum of Background Preparations and Questions for ASF FTZ Application	VIII

Summary of U.S. Import Research
April 21, 2015

I. Grand Junction – All Company

Top 20 Consignees:

No.	Consignee	Metric Tons	% of Total Metric Tons (Rounded)
1	Castings (Grand Junction)	2,629	31.7%
2	Top Components (Grand Junction)	2,408	29.0%
3	Westcoast Wheel Accessories (Grand Junction)	800	9.6%
4	Leitner Poma (Grand Junction)	456	5.5%
5	Strata Products USA (Grand Junction)	381	4.6%
6	Reynolds Polymer Technology (Grand Junction)	338	4.1%
7	West Coast Accessories (Grand Junction)	338	4.1%
8	Munro (Grand Junction)	252	3.0%
9	DT Swiss (Grand Junction)	187	2.3%
10	Schauenburg Flexadux (Grand Junction/Fairmont)	139	1.7%
11	6cor (Grand Junction)	53	0.6%
12	Global Plastics (Bedford, NH)	53	0.6%
13	Super Bird Creations (Grand Junction)	40	0.5%
14	Atd Grand Junction Dc (Grand Junction)	29	0.3%
15	Loki (Grand Junction)	27	0.3%
16	Action Bindery (Grand Junction)	21	0.3%
17	Geostabilization International (Grand Junction)	19	0.2%
18	Colorado Custom Elevator Lift (Grand Junction)	18	0.2%
19	Anode Systems (Grand Junction)	17	0.2%
20	Seaminal Corn (Grand Junction)	16	0.2%

Top 24 Shippers:

No.	Shipper	Metric Tons	% of Total Metric Tons (Rounded)
1	R B Agarwalla (India)	2,357	28.4%
2	Shanghai Guoxing Metal Product (China)	1,112	13.4%
3	Tianjin Wanda Tyre Group (China)	1,017	12.3%
4	Chuen Chao Enterprise (Taiwan)	908	10.9%
5	Mine Support Products (Unknown)	313	3.8%
6	Crescent Foundry (India)	272	3.3%
7	Hongkong Wanda Group (Hong Kong)	269	3.2%