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Board of Harbor Commissioners

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Edward R. Renwick

Gary Lee Moore, P.E.

Interim Executive Director

March 7, 2014

Honorable Members of the  
City Council of the  
City of Los Angeles

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

SUBJECT: RESOLUTION NO. 14-7612 – FIRST AMENDMENT TO FOREIGN-TRADE ZONE DEVELOPER AGREEMENT NO. 08-2723 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND COGNAC PACIFIC GATEWAY, LLC – SITE 7

Pursuant to Section 373 of the City Charter and Section 10.5 of the Los Angeles Administrative Code, enclosed for your approval is Agreement No. 14-2723-A with Cognac Pacific Gateway, LLC, regarding the above subject. The Board of Harbor Commissioners approved Agreement No. 14-2723-A at its meeting of January 23, 2014. There is no impact to the General Fund.

RECOMMENDATION:

1. The City Council approve the proposed First Amendment to Agreement No. 08-2723 between the City of Los Angeles Harbor Department and Cognac Pacific Gateway, LLC;
2. Adopt the determination by the Los Angeles Harbor Department that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III, Class 1(14) of the Los Angeles City CEQA Guidelines; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully Submitted,

AMBER M. KLESGES  
Commission Secretary

cc: Trade, Commerce, & Tourism Committee

Councilman Bonin, encls.

Councilman LaBonge, encls.

Councilman Buscaino, encls.

Mandy Morales, Mayor's Office, encls.

Erick Martell, POLA Legislative Analyst, encls.

Alvin Newman, CAO, encls.

Lisa Schechter, CD4, encls.

Aaron Gross, Government Affairs, encls.

Christine Yee Hollis, CLA, encls.





THE PORT  
OF LOS ANGELES  
Executive Director's  
Report to the

Board of Harbor Commissioners

January 23, 2014

*[Signature]*  
ACTING SECRETARY

DATE: JANUARY 14, 2014

FROM: BUSINESS & TRADE DEVELOPMENT

SUBJECT: RESOLUTION NO. 14-7612 APPROVAL OF FIRST  
AMENDMENT TO FOREIGN-TRADE ZONE DEVELOPER AGREEMENT  
NO. 08-2723 BETWEEN THE CITY OF LOS ANGELES HARBOR  
DEPARTMENT AND COGNAC PACIFIC GATEWAY, LLC - SITE 7

**SUMMARY:**

The City of Los Angeles Harbor Department (Harbor Department), as the Foreign-Trade Zone (FTZ) grantee, establishes developer agreements with FTZ site owners to oversee their FTZ developments. The Harbor Department received a request from Cognac Pacific Gateway, LLC (Cognac) to execute its first renewal option to extend the term of FTZ Developer Agreement No. 08-2723 (Agreement) at FTZ 202, Site 7, located in Torrance, California. Cognac is a real estate investment firm whose principal address is located in San Francisco, California. The original term of the Agreement is five years with three, five-year renewal options. The original Agreement commenced on February 1, 2009 and is set to expire on January 31, 2014.

Any change made to an original developer agreement, including existing renewal options, requires an amendment to the agreement. Upon approval, the proposed First Amendment (Amendment) will extend the Agreement for five years through January 31, 2019. Also, Cognac recently notified the Harbor Department that some of the buildings shown in the original attachment map are no longer owned by Cognac. A newly revised site map clearly outlines new property lines. All remaining terms and conditions of the Agreement shall remain in full force and effect.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the proposed First Amendment to Foreign-Trade Zone Developer Agreement No. 08-2723 between the City of Los Angeles Harbor Department and Cognac Pacific Gateway, LLC;
2. Direct the Board Secretary to transmit the proposed First Amendment to Foreign-Trade Zone Developer Agreement No. 08-2723 to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;

DATE: JANUARY 14, 2014

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SUBJECT: FIRST AMENDMENT TO DEVELOPER AGREEMENT BETWEEN THE HARBOR DEPARTMENT AND COGNAC PACIFIC GATEWAY, LLC - SITE 7

3. Upon approval by the City Council, authorize the Executive Director to execute and the Board Secretary to attest to the proposed First Amendment to Foreign-Trade Zone Developer Agreement No. 08-2723; and
4. Adopt Resolution No. 14-7612.

**DISCUSSION:**

Background and Context – The Foreign-Trade Zone Act of 1934, as amended, (19 U.S.C. 831a-81u), was established to support U.S. commerce and create jobs by reducing import duties or excise taxes by deferring payment of duties, thereby making it attractive for companies to perform some work on their products in the U.S. rather than offshore. The definition of an FTZ is a restricted access site located in the U.S. Customs and Border Protection territories. The importer may defer payment of duties and other fees until the merchandise is brought into U.S. commerce for consumption.

Need for Amendment – The Harbor Department, as the grantee, is required by the FTZ Board to have a developer agreement with FTZ site owners. The Harbor Department received a request from Cognac to exercise its first renewal option to extend the term of its Developer Agreement at FTZ 202, Site 7 (Transmittal 1). In addition, Cognac recently notified the Harbor Department that some of the buildings shown in the original map are no longer owned by Cognac. The new site boundary necessitates an updated site map of Site 7 clearly outlining new property lines. (Transmittal 2).

Need for Approval – Cognac is requesting approval from the Harbor Department to execute the proposed Amendment to extend Agreement No. 08-2723 for a term of five years in order to continue maintaining FTZ status for this property. FTZ status would be lost without an approved amendment to the Developer Agreement for the renewal as required by the FTZ Board. This is an administrative requirement for the Harbor Department.

If Cognac does not obtain approval as a developer to maintain FTZ status of this site from the Harbor Department, it will not be able to offer additional incentives to attract new business to the Los Angeles economic area. Its tenants potentially have the choice of going to another FTZ in California such as Long Beach, San Diego, Palmdale, or even going out of state. Since FTZ facilities exist in every state, Cognac's tenants could potentially shift its employees to other FTZ facilities if this Amendment to its Development Agreement is not approved.

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SUBJECT: FIRST AMENDMENT TO DEVELOPER AGREEMENT BETWEEN THE HARBOR DEPARTMENT AND COGNAC PACIFIC GATEWAY, LLC - SITE 7

Harbor Department Fiscal Requirements – This proposed Amendment will not require funding by the Harbor Department.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of the Amendment to the Developer Agreement with Cognac, as the landowner of FTZ 202, Site 7, to extend the term of the Agreement. As an activity involving the amendment of an agreement to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article III, Class 1(14) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

Approval of the proposed Amendment will have no employment impact.

**FINANCIAL IMPACT:**

The applicant has paid an initial application fee of \$2,500 to the Harbor Department. When the site is activated, each site operator will pay the Harbor Department a \$5,000 activation fee and a \$7,750 annual fee (per FTZ Tariff No. 2). No Harbor Department funds are required for the actions granted by this Board item.

Although there is no direct cost to the Harbor Department arising from this proposed Board action, the Harbor Department does incur FTZ-related expenses. During calendar year 2013 approximately \$60,000 was spent on outside FTZ-related consulting services whereas \$264,000 in revenues was collected from all FTZ operators.

Approving the proposed Amendment with Cognac creates an entity that confers, among other advantages, tax and operating benefits to the operator, and provides a tool for economic development. As the Harbor Department is a designated grantee of FTZs under the State of California enabling legislation, granting FTZ status to an operator allows more efficient operations and allows Cognac to remain competitive.

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
SUBJECT: FIRST AMENDMENT TO DEVELOPER AGREEMENT BETWEEN THE HARBOR DEPARTMENT AND COGNAC PACIFIC GATEWAY, LLC - SITE 7


**CITY ATTORNEY:**


The City Attorney's Office has prepared and approved the proposed Amendment as to form and legality.

**TRANSMITTALS:**


1. Proposed First Amendment to FTZ Developer Agreement No. 08-2723
2. FTZ 202, Site 7 site map

FIS Approval:  (initials)  
CA Approval:  (initials)

  
MICHAEL DiBERNARDO  
Director of Business Development

  
DAVID L. MATHEWSON  
Interim Deputy Executive Director

APPROVED:

  
GARY LEE MOORE, P.E.  
Interim Executive Director

M. Morimoto

0150-10156-0000

**TRANSMITTAL**

TO  
Gary Lee Moore, Interim Executive Director  
Harbor Department

DATE  
MAR 3 2014

COUNCIL FILE NO.

FROM  
The Mayor

COUNCIL DISTRICT  
15

**PROPOSED FIRST AMENDMENT TO FOREIGN TRADE ZONE DEVELOPER AGREEMENT  
NO. 08-2723 WITH COGNAC PACIFIC GATEWAY, LLC, FTZ 202, SITE NO. 7**

Transmitted for further processing and Council consideration.  
See the City Administrative Officer report attached.

*Eric Concelle*

*[Signature]*

MAYOR

(Rich Llewellyn)

MAS:ABN:10140138t

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: February 25, 2014


CAO File No. 0150-10156-0000

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated January 30, 2014; referred by the Mayor for report on February 3, 2014

Subject: **PROPOSED FIRST AMENDMENT TO FOREIGN TRADE ZONE DEVELOPER AGREEMENT NO. 08-2723 WITH COGNAC PACIFIC GATEWAY, LLC, FTZ 202, SITE NO. 7**

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### SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 14-7612 authorizing the proposed First Amendment of Foreign Trade Zone (FTZ) Developer Agreement (Agreement) No. 08-2723 with Cognac Pacific Gateway, LLC (Cognac), in FTZ No. 202, Site No. 7, located in Torrance, California. Cognac is a real estate investment firm whose principal address is in San Francisco, California. The original FTZ Agreement with Cognac was for an initial term of five years, with three subsequent five-year renewal options, for a contract term up to 20 years. The original term began in February 2009 and expired in January 2014. The proposed Amendment will execute the first contract renewal option for an additional five years, from February 1, 2014 to January 31, 2019. In addition, Cognac notified the Port that it does not own some of the original buildings on the FTZ Site No. 7 property, which requires approval by the Board for the revised map outlining the new property lines. According to the Port, all remaining terms and conditions of the Agreement will remain in full force and effect.

The FTZ Developer Agreements are with contractors who have applied for FTZ Developer status with the Federal FTZ Board and been approved by U.S. Customs and Border Protection Agency (Customs) to develop and market this property as a FTZ site. Cognac will operate FTZ Site No. 22 under the Federal FTZ Operating rules and regulations. The United States (USA) Government's Federal FTZ Board designated the Port as the Grantee/Administrator of FTZ 202 region for the City of Los Angeles and the surrounding region. A definition of an FTZ is a secure area located in or near the port of entry for Customs, but legally considered to be outside the Customs territory for the purpose of tariff laws and Customs entry procedures. All activities are performed in accordance with Federal FTZ procedures. The goal of the FTZ program and Port is to stimulate economic growth and development in the United States, facilitate efficient cargo transit and support the local, State and national economy. The FTZ does not generate a direct profit for the Port, but is provided by the Port as a service to its customers to promote international trade and commerce in the region and USA. See the Attachment for an overview of FTZ policies and guidelines for this Agreement.



The Port states that the operating agreements are primarily in two categories of FTZ Operators' and Developer's Agreements. The FTZ Developer's Agreement with Cognac includes leasing and marketing the land for general activities such as warehouse operations, distribution centers and office space to registered FTZ operators. The Port states that any changes made to an original Developer's Agreement, including existing renewal options, requires an amendment to the Agreement. Cognac paid the Port a one-time application fee of \$2,500 to obtain approval from the Federal FTZ Board. As an FTZ Developer, Cognac is not obligated to pay an annual administrative fee to the Port as it would if it was an FTZ operator. Cognac would be unable to keep its FTZ status, if the Port did not approve the proposed Amendment. Although there will be no direct cost of funds for the FTZ site, the Port states that it spends funds on indirect or outside expenses for FTZ-related consulting services. In 2013, the Port spent approximately \$60,000 and collected approximately \$264,000 in revenue and fees from all FTZ operators.

Cognac FTZ Site No. 7 consists of 93 acres of land. These facilities and operations will be under the general supervision of the Federal FTZ Board and U.S. Customs and required to operate within U.S. law. Cognac will continue to market and lease distribution and warehouse spaces to registered FTZ operators who will pay under separate direct agreements with the Port. All FTZ operator agreements approved for land owned or operated by the FTZ Developers will be submitted to the Board, Council and Mayor under separate direct agreements for consideration and approval. The FTZ operators will be required to pay the Port a one-time activation fee of \$5,000 and an administrative fee of \$7,750 per year for a total of \$38,750 for the first five-year term and a maximum of \$160,000 over the proposed 20-year life of the Agreement.

The Port states that Cognac has committed to use the Pier Pass program to reduce daytime truck traffic and is willing to open in the evenings. Cognac states that it will have its FTZ operators notify truck drivers, brokers and companies that trucks serving the Port's container terminals must confine their routes to the designated Wilmington truck route. The Port states that if the proposed Agreement is not approved, Cognac has the option to move its facilities to another FTZ in California, such as Long Beach or San Diego or another state.

The proposed Agreement is in compliance with City requirements and has been approved as to form by the City Attorney. In accordance with Charter Section 373 and the Los Angeles Administrative Code Section 10.5, Council approval is required because the cumulative contract term exceeds three years. The proposed action is an administrative action to approve an Agreement to an FTZ Developer Agreement with Cognac. According to the Port Director of Environmental Management, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III, Section 1 (14) of the Los Angeles City CEQA guidelines.

## **RECOMMENDATION**

That the Mayor approve Harbor Department (Port) Resolution No. 14-7612 authorizing the proposed First Amendment of Foreign Trade Zone (FTZ) Developer Agreement No. 08-2723 with Cognac Pacific Gateway, LLC, in FTZ No. 202, Site No. 7, located in Torrance, California, and return the document to the Port for further processing, including Council consideration.

## **FISCAL IMPACT STATEMENT**

The proposed First Amendment to the Foreign Trade Zone (FTZ) Developer Agreement No. 08-2723 with Cognac Pacific Gateway, LLC (Cognac), in FTZ No. 202, Site No. 7. Cognac has paid an initial fee of \$2,500 to the Port for the development of FTZ Site No. 7 during the original five-year term of the contract. Approval of the agreement provides tax and operating benefits to Cognac and economic development in the region. The proposed Amendment will have no impact on the City General Funds and any funds will be deposited in the Harbor Revenue Fund.

## **TIME LIMIT FOR COUNCIL ACTION**

Pursuant to Charter Section 373, "Long Term Contract Approved by Council," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes action disapproving a contract that is longer than three years within 60 days after submission to Council, the contract will be deemed approved.

*MAS:ABN:10140138*

Attachment

## ATTACHMENT

### OVERVIEW OF FOREIGN TRADE ZONES, DEVELOPER AGREEMENT

The Federal Foreign Trade Zone (FTZ) Board designated the Harbor Department (Port) as the Grantee/Administrator of FTZ No. 202 for the City of Los Angeles and the surrounding region. Below is an overview of FTZ policies and guidelines.

The FTZ Developer Agreements are entered into with various companies that have applied for FTZ status with the Federal FTZ Board and have been approved by the United States (U.S.) Department of Homeland Security Customs and Border Protection (Customs) to activate a site. Authority is granted by the Federal FTZ Board under the amended FTZ Act of 1943, which is administered through Federal FTZ and Customs Regulations. The FTZ Act was established to support U.S. commerce and create jobs by reducing import duties or excise taxes by deferring payment of duty thereby making it appealing for companies to perform work on their products in the US instead of offshore. The goal of the FTZ program and Port is to stimulate economic growth and development in the U.S., facilitate efficient cargo transit and support the local, State and national economy.

An FTZ is a secure area located in or near the port of entry for Customs, but legally considered to be outside the Customs territory for the purpose of tariff laws and Customs entry procedures. It is the U.S. version of what is known internationally as free-trade zones. An FTZ is sponsored by qualified public or private companies, which may operate the facilities themselves or contract for the operation with public or private firms. The operations are conducted on a public use basis, which opens its services to the public, with published tariff rates. These spaces and operations will be under the supervision of the Federal FTZ Board and Customs and will be required to operate within U.S. law.

The Port FTZ No. 202 is a multi-zone FTZ currently operating 23 sites with 15 contracted FTZ general purpose operators and five Subzone operators. The sites include facilities in the Port area, Los Angeles International Airport, nearby industrial parks and other outlying locations. The FTZ does not generate a profit for the Port, but is provided as a service to its customers to promote international trade in the U.S. These operations will be monitored by the Port, but are under the supervision of the Federal FTZ Board and Customs and required to operate within U.S. law.

The FTZ Developers are not obligated to pay an annual administrative fee to the Port as it would if it was an FTZ Operator. The FTZ Developer leases the land to eligible FTZ Operators for warehousing, distribution and office facilities. The standard FTZ Operating Agreement includes payment to the Port of a one-time application/activation fee of \$5,000 and an annual administrative operating fee of \$7,750 per year for a total of \$43,750 for the first five-year term. Upon approval by the Board of Harbor Commissioners (Board), the Port will be paid up to \$38,750 for each of three five-year renewal options, for an additional \$116,250, and a total contractual amount of approximately \$160,000 over 20 years. The proposed Agreement renewal options will be subject to approval by the Board and based upon terms and conditions negotiated prior to the end of each five-year term. The proposed Agreement will become effective the first of the month following Council approval and will remain in effect for an initial term of five years. Either the Port or FTZ Developer can terminate the proposed Agreement at the end of each term or by submitting a 180-day prior written notice.