

SECOND AMENDMENT TO
FOREIGN-TRADE ZONE OPERATING AGREEMENT NO. 2340
BETWEEN THE CITY OF LOS ANGELES AND
CUSTOMS AIR WAREHOUSE, INC.

THIS SECOND AMENDMENT to Foreign-Trade Zone ("FTZ") Operating Agreement No. 2340 ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and CUSTOMS AIR WAREHOUSE, INC. ("Operator") as follows:

WHEREAS, City and Operator wish to extend the term of Agreement an additional five (5) years; and

WHEREAS, Operator wishes to change its location; and

WHEREAS, City and Operator also agree to further modify language to Agreement;

NOW, THEREFORE, BE IT RESOLVED, that Agreement between the City of Los Angeles and Customs Air Warehouse, Inc. be hereby amended as follows:

1. ARTICLE II. AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT, Section 2:03 Term of Agreement, subsection A. Term of Renewal, the initial term of this Agreement shall be extended an additional five (5) years beginning on June 23, 2014 and ending on June 22, 2019.

2. ARTICLE XIV. INDEMNIFICATION, INSURANCE, BONDING AND PAYMENT OF OBLIGATIONS, is deleted in its entirety and shall be replaced with the following:

"ARTICLE XIV. - INDEMNIFICATION AND INSURANCE

14.01 Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Operator undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person,

including Operator's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Operator or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

14.02 Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Operator's insurance documents. Operator's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Operator's behalf.

14.03 General Liability Insurance

Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Operator's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10 days notice of cancellation for nonpayment of premium, and a 30 days notice of cancellation for any other reasons.

14.04 Automobile Liability Insurance

Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated

VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

14.05 Workers' Compensation and Employer's Liability

Operator shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Operator shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Operator shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Operator, and for all employees of any subcontractor or other vendor retained by Operator.

14.06 Professional Liability Insurance [Intentionally omitted]

14.07 Carrier Requirements

All insurance which Operator is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

14.08 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given

thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

14.09 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Operator.

14.10 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Operator shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Operator neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be charged to the Operator.

14.11 Right to Self-Insure

Upon written approval by the Executive Director, Operator may self-insure if the following conditions are met:

1. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.
2. Operator agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.

5. Operator provides the name and address of its claims administrator.
6. Operator submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Operator agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Operator has complied with all laws pertaining to self-insurance.

14.12 Accident Reports

Operator shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Operator's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Operator, its officers or managing agents."

3. ARTICLE XVI. MISCELLANEOUS PROVISIONS

1. Section 16.11 Notices to the Parties, Operator's address is amended to read:

"For the Operator To: Customs Air Warehouse, Inc.
5540 W. 104th Street
Los Angeles, California 90045
ATTN: Mr. Billy Carthcart"

2. New Sections are added to read as follows:

"16.17 Equal Benefits Policy

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended,

relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Operator shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Operator and pursue any and all other legal remedies that may be available.

16.18 Governing Law/Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules."

Except as amended herein, all remaining terms and conditions of Agreement No. 2340 shall remain in full force and effect.

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IN WITNESS THEREOF, the parties hereto have executed this Second Amendment to Agreement No. 2340 on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners


Dated: _____, 2014

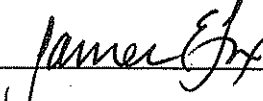
By _____
Interim Executive Director

Attest _____
Board Secretary

Dated: March 20, 2014

CUSTOMS AIR WAREHOUSE, INC.

By 
Bill Conant
(Print/type name and title)

Attest 
James E. Fox CFO
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

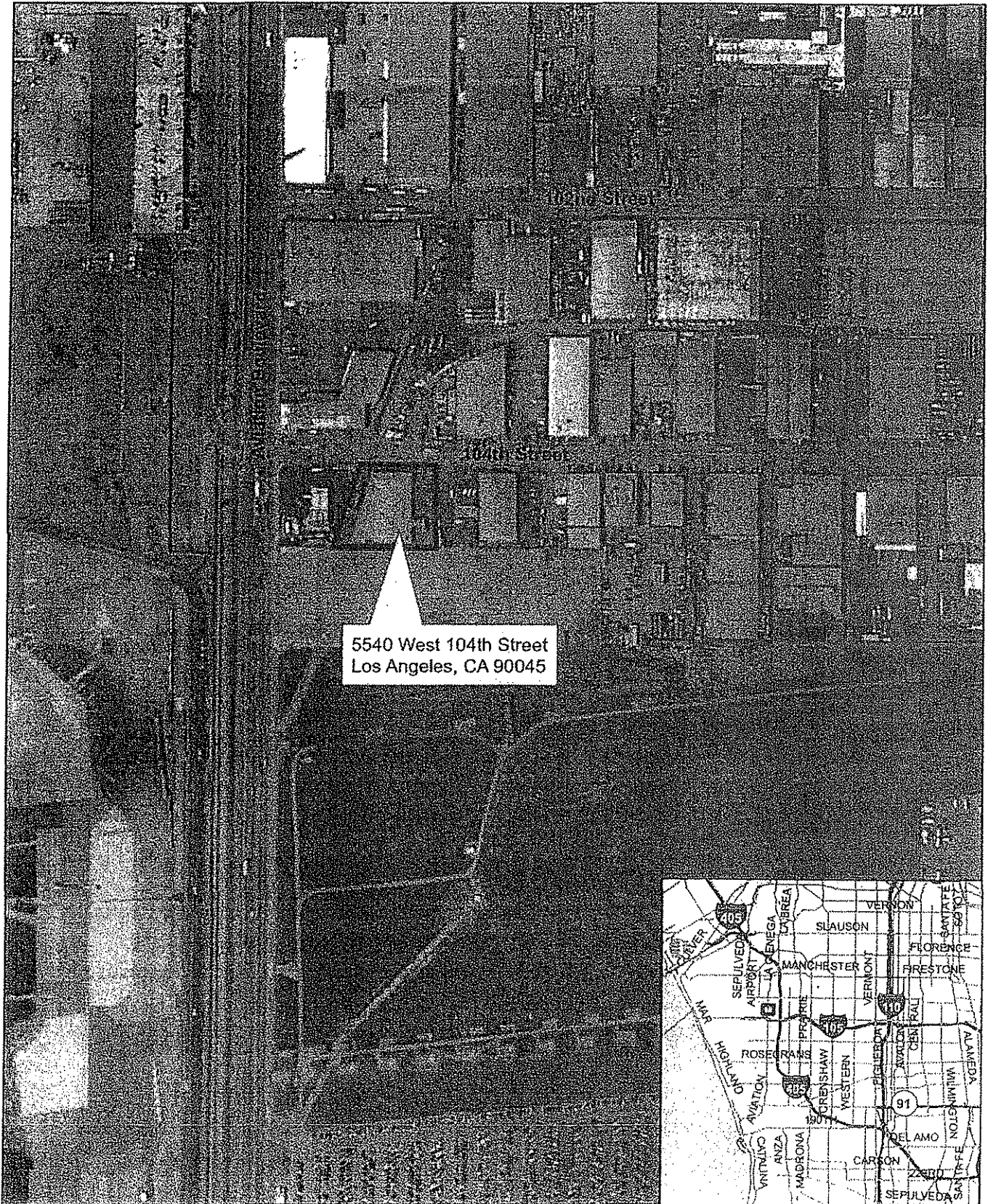
April 9, 2014
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By 
HELEN J. SOK, Deputy City Attorney

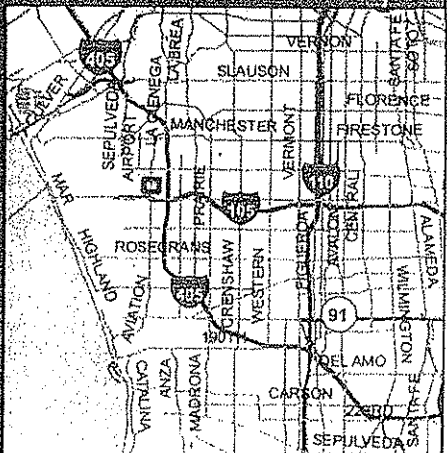
HJS:jpr
031714

FTZ 202 Site 2A Customs Air Warehouse

Transmittal 2



5540 West 104th Street
Los Angeles, CA 90045



Transmittal 2



Harbor Department
Planning & Economic Development
Map Produced 1/2014



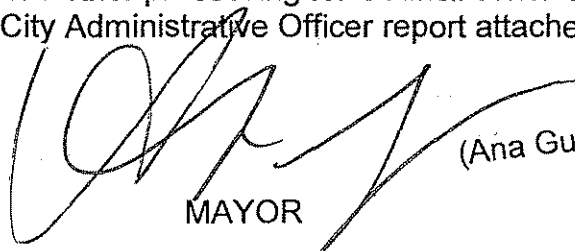
0150-08678-0003

TRANSMITTAL

TO: Gary Lee Moore, Interim Executive Director Harbor Department	DATE MAY 29 2014	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED SECOND AMENDMENT TO FOREIGN TRADE ZONE OPERATOR
AGREEMENT NO. 14-2340-B WITH CUSTOMS AIR WAREHOUSE, INC., FTZ 202, SITE 2A**

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


(Ana Guerrero)
MAYOR

MAS:ABN:10140163t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: May 21, 2014

CAO File No. 0150-08678-0003

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated May 2, 2014; referred by the Mayor for report on May 6, 2014

Subject: **PROPOSED SECOND AMENDMENT TO FOREIGN TRADE ZONE OPERATOR AGREEMENT NO. 14-2340-B WITH CUSTOMS AIR WAREHOUSE, INC., FTZ 202, SITE 2A**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 14-7648 authorizing the proposed Second Amendment to Foreign Trade Zone (FTZ) Operating Agreement No. 14-2340-B with Customs Air Warehouse, Inc. (Customs Air) in FTZ No. 202, Site No. 2A, located in Los Angeles. In June 23, 2004, the original FTZ Agreement with Customs Air was approved for a five-year term, with three subsequent five-year renewal options, for a total contract term up to 20 years. The Board approved a first contract renewal in June 2009 that is scheduled to expire in June 2014. Board approval is required to exercise any renewal options and changes to the Agreement. Upon approval, the proposed Second Amendment will extend the Agreement by an additional five years, through June 2019. All remaining terms and condition of the Agreement will remain in effect.

Customs Air will continue to operate FTZ Site under federal FTZ Operating rules and regulations. The United States (U.S.) 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 U.S. Customs and Border Protection Agency (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 U.S. See the Attachment for an overview of FTZ policies and guidelines for this Agreement.

The Port states that Customs Air plans to continue to operate and manage FTZ operations, including general warehousing, distribution and office facilities at FTZ Site No. 2A to receive, store, and manage inventory and distribute consumer products, apparel, accessories, and other merchandise for sale in the domestic and, occasionally, the international market. The area used by Customs Air

consists of approximately 37,000 square feet of warehouse and office space on approximately 1.5 acres of land. Customs Air employs approximately eight full-time employees.

Customs Air has already paid a one-time application or activation fee of \$5,000 and an administrative fee of \$25,000, respectively, for the original and first additional five-year terms, for a total of \$50,000 in FTZ Operator fees. The Port subsequently increased the annual administrative fees, and the proposed Amendment with Customs Air would be required to pay an annual fee of \$7,750 per year or \$38,750 for one five-year contract term, with renewal options, subject to ratification by the Board, for up to a total 20-year contract term and fee of \$132,500. The FTZ Operator agreements will require no direct use of Port funds. Although there will be no additional direct cost, the Port states that it spends funds on indirect or outside expenses for FTZ-related administrative services. During the 2013 calendar year, the Port states that it spent approximately \$60,000 for FTZ-related expenses and collected approximately \$264,000 in revenue and fees from all the FTZ operators.

The Port states that Customs Air has committed to use the Pier Pass program, which reduces daytime truck traffic operations and allows open operations in the evenings. Customs Air will notify truck drivers, brokers and companies that trucks serving the FTZ site and Port's container terminals must confine their routes to the designated Wilmington truck route. If the proposed Agreement is not approved, Customs Air has the option to move its facilities to another FTZ region in California, such as Long Beach or San Diego, Palmdale or another state. The Port states that approval of the Agreement is in the best interest of Customs Air and the City and Port economically.

The proposed Agreement is in compliance with City requirements and has been approved as to form by the City Attorney. Pursuant to 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 Port Director of Environmental Management has determined that this is an administrative action and is therefore 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. 14-7648 authorizing the proposed Second Amendment to Foreign Trade Zone (FTZ) Operating Agreement No. 14-234-B with Customs Air Warehouse, Inc. in FTZ No. 202, Site No. 2A, located in Los Angeles, and extend the Agreement by an additional five years, through June 22, 2019, and return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

The proposed Second Amendment to the FTZ Operator Agreement with Customs Air Warehouse Inc. will have no impact on the City General Fund. Customs Air has already paid a one-time application or activation fee of \$5,000 and an administrative fee of \$25,000, respectively, for the original and first additional five-year terms, for a total of \$50,000. The Port subsequently increased the annual administrative fee, and Customs Air will be required to pay an annual fee of \$7,750 per year or \$38,750 for one five-year contract term, with renewal options, subject to ratification by the Board, for up to a total 20-year contract term and fee of \$132,500, if the contract is renewed. All 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:10140163

Attachment

ATTACHMENT

OVERVIEW OF FOREIGN TRADE ZONES, OPERATING AGREEMENT

The Federal 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. The following is an overview of FTZ policies and guidelines.

The FTZ Operating Agreements are entered into with various companies who 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 1934, 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 U.S. instead of offshore. The goal of the Port and FTZ program 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 are 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. In this case, the published rates applicable are the Port Tariff (No. 1) rates, terms and conditions. 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 under the supervision of the Federal FTZ Board and Customs and required to operate within U.S. law.

The FTZ Operator is normally required to pay a one-time application fee of \$5,000 and an annual administrative operating fee of \$7,750 per year for an initial term of five years, with three subsequent five-year renewal options, in the same amount, for a contract term up to a total of 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 one-year term. The proposed Agreement with the FTZ Operator 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 Operator can terminate the proposed Agreement at the end of the each term or by submitting a 180-day prior written notice.