

RECOMMENDATION APPROVED;
RESOLUTION NO. 14-7695 ADOPTED; AND
AGREEMENT NO'S. 14-3148-A AND
14-3149-A APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS

SEPTEMBER 4, 2014

Amadeses
BOARD SECRETARY



Executive Director's

Report to the
Board of Harbor Commissioners

9-4-14
3

DATE: AUGUST 26, 2014

FROM: BUSINESS AND TRADE DEVELOPMENT

**SUBJECT: RESOLUTION NO. 147695 APPROVAL OF FIRST
AMENDMENTS TO FOREIGN-TRADE ZONE GENERAL PURPOSE
OPERATING AGREEMENT NOS. 13-3148 AND 13-3149 BETWEEN
THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND PUMA
NORTH AMERICA, INC., FTZ 202, SITE 9 AND SITE 28**

SUMMARY:

The City of Los Angeles Harbor Department (Harbor Department), as the Foreign-Trade Zone (FTZ) 202 grantee, establishes General Purpose Operating Agreements with FTZ operators to oversee their FTZ operations. On September 1, 2013, the Harbor Department entered into two FTZ Operating Agreements with Puma North America Inc., (Puma) for Site 9 located in Torrance, California and Site 28 located in Carson, California as Multi-User Zone Sites to provide FTZ services to the public. However, Puma has elected not to handle FTZ services to the public and as such, requires their operating agreement to be amended to a Single-User Zone. Under FTZ Board rules, both Puma sites will now be classified as Single-User Zone sites.

A classification change from a Multi-User Zone Site operator to a Single-User Zone Site operator requires the Harbor Department to amend FTZ Operating Agreement No. 13-3148 (Agreement No. 13-3148) and FTZ Operating Agreement 13-3149 (Agreement No. 13-3149). This change will increase the annual administration fee to the Harbor Department from \$7,750 for Multi-User Zone Site operator to \$10,000 for Single-User Zone Site operator (Per FTZ Tariff No.2). Also, as part of the changes, all updated City of Los Angeles contractual provisions will be incorporated into Agreement No. 13-3148 and Agreement No. 13-3149. All remaining terms and conditions of the Agreements shall remain in full force and effect.

RECOMMENDATION:

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

1. Approve the proposed First Amendments to Foreign-Trade Zone Operating Agreement No. 13-3148 and Foreign-Trade Zone Operating Agreement No. 13-3149 between the City of Los Angeles Harbor Department and Puma North America Inc.;

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2. Direct the Board Secretary to transmit the proposed First Amendments to Foreign-Trade Zone Operating Agreement No. 13-3148 and Foreign-Trade Zone Operating Agreement No. 13-3149 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;
3. Upon approval by the City Council, authorize the Executive Director to execute and the Board Secretary to attest to the proposed First Amendments to Foreign-Trade Zone Operating Agreement No. 13-3148 and Foreign-Trade Zone Operating Agreement No. 13-3149; and
4. Adopt Resolution No. 14-7695.

DISCUSSION:

Background Context – The Foreign-Trade Zone Act of 1934, as amended (19 U.S.C. 81a-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 a FTZ is a restricted access site located in the United State Customs and Border Protection Agency territories. The importer may defer payment of duties and other fees until the merchandise is brought into U.S. Commerce for consumption.

Need for Agreement – The Harbor Department, as the grantee, is required by the FTZ Board to have an operating agreement with FTZ site operators (Transmittals 1 and 2). The proposed First Amendments are to designate Puma as a Single-User Zone Site operator for Site 9 and Site 28. Puma is a U.S. company and its head office is located in Westford, Massachusetts. Puma employs approximately 200 full-time employees at Site 9. The facility at Site 9 consists of approximately 425,000 square feet of warehouse and an office space on 30.27 acres owned by Prologis Inc. (Transmittal 3). Puma employs approximately 150 full-time employees at Site 28. The facility at Site 28 consists of approximately 220,000 square feet of warehouse and an office space on 8 acres owned by California Cartage Inc. (Transmittal 4).

Need for Approval – Puma is requesting approval from the Harbor Department to execute the proposed First Amendments to change site classifications in Agreement No. 13-3148 and Agreement No. 13-3149 to Single-User Zone sites. Puma receives, stores, manages inventory, and distributes shoes, consumer products, and other merchandise for sale nationally. Occasionally, the products are re-exported from the warehouse. Also,

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the proposed First Amendments incorporate updated City of Los Angeles contractual provisions standard in Harbor Department contracts.

Harbor Department Fiscal Requirements – The proposed First Amendments will not require funding by the Harbor Department. Puma will pay an annual fee of \$10,000 for each site to the Harbor Department for the five-year term of the proposed First Amendments.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the proposed First Amendments to the FTZ Operating Agreements with Puma to continue to operate its sites within FTZ 202, Site 9, located in Torrance, California and Site 28 located in Carson, California. As an activity involving the amendment of a permit to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined 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.

ECONOMIC BENEFITS:

This Board action will have no employment impact.

FINANCIAL IMPACT:

The Harbor Department to date has received \$5,000 in annual fees from each site (per Tariff No. 1) from Puma for the original first year of the term. If the proposed First Amendments are approved, the Harbor Department will receive from Puma \$10,000 annually from each site (per FTZ Tariff No. 2). The Harbor Department will collect \$4,500 more per year because of the proposed amendments.

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 \$250,000 was spent on administrative operating cost including FTZ related consulting services while \$264,000 in revenues was collected from all of the Harbor Department's FTZ operators.

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CITY ATTORNEY:


The Office of the City Attorney has prepared and approved the proposed First Amendments as to form and legality.

TRANSMITTALS:

1. Proposed First Amendment to FTZ Operating Agreement No. 13-3148 with Puma North America, Inc., FTZ 202, Site 28
2. Proposed First Amendment to FTZ Operating Agreement No. 13-3149 with Puma North America, Inc., FTZ 202, Site 9
3. FTZ 202, Site 9 Map
4. FTZ 202, Site 28 Map



MICHAEL DiBERNARDO
Director of Business Development

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



DAVID L. MATHEWSON
Interim Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

Author: M. Morimoto

FIRST AMENDMENT TO
FOREIGN-TRADE ZONE OPERATING AGREEMENT NO. 13-3148
BETWEEN THE CITY OF LOS ANGELES AND
PUMA NORTH AMERICA, INC.

THIS FIRST AMENDMENT ("First Amendment") to Foreign-Trade Zone ("FTZ") Operating Agreement No. 13-3148 ("Agreement") is made and entered into by the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), and PUMA NORTH AMERICA, INC. ("Operator").

WHEREAS, City and Operator entered into the Agreement on September 1, 2013; and

WHEREAS, City and Operator wish to modify the Agreement; and

NOW, THEREFORE, BE IT RESOLVED, that the Agreement between City and Operator is hereby amended as follows:

1. ARTICLE II. - AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT, Section 2.01 Authority Granted is hereby deleted in its entirety and replaced with the following:

"2.01 Authority Granted

The Grantee gives and grants to Operator for the term hereof and for any extensions as hereinafter provided, the non-exclusive authority to conduct foreign-trade zone activities at the Zone Site as an Operator of a Single-User Zone Site, subject to the terms, conditions, agreements, and restrictions herein set forth."

2. ARTICLE XIV. INDEMNIFICATION AND INSURANCE, 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 Back-to-Back Bond

Operator shall, if requested to do so by the Grantee, furnish and pay the premium for a bond in a sum equal to the amount of the Customs Form 301 Foreign-Trade Zone Operator's bond required by Customs pursuant to the Regulations, conditioned upon the full, faithful and prompt performance of and compliance with, on the part of the Operator, all the covenants, terms and conditions of this Agreement on its part to be fulfilled, kept, performed and observed. The bond so furnished shall be in a form acceptable to the Grantee, and shall be effective throughout the term of this Agreement and shall be made either by a surety company or companies qualified to carry on a surety business in the State of California and satisfactory to the Grantee.

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