

SECOND AMENDMENT TO
FOREIGN-TRADE ZONE DEVELOPER AGREEMENT NO. 08-2723
BETWEEN THE CITY OF LOS ANGELES AND
COGNAC PACIFIC GATEWAY, LLC

THIS SECOND AMENDMENT to Agreement No. 08-2723 ("Agreement") is made between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and COGNAC PACIFIC GATEWAY, LLC ("Developer").

WHEREAS, City and Developer wish to extend the term of Agreement No. 08-2723 an additional five (5) years; and

WHEREAS, City and Developer also agree to further modify language to Agreement No. 08-2723;

NOW, THEREFORE, BE IT RESOLVED, that Agreement No. 08-2723 between the City of Los Angeles and Cognac Pacific Gateway, LLC be hereby amended a second time as follows:

1. Section III. TERM AND RENEWAL, is amended by extending the term of an additional five (5) years beginning on February 1, 2019 and ending January 31, 2024.

2. Section IV. INDEMNIFICATION, is deleted in its entirety and replaced with the following:

"IV. INDEMNIFICATION AND INSURANCE

A. 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, Developer 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 Developer'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 Developer 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.

- B. Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Developer's insurance documents. Developer's insurance broker or agent shall register with the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> and submit the appropriate proof of insurance on Developer's behalf.
- C. General Liability Insurance. Developer 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 Developer's normal limits of liability but not less than One Million Dollars (\$1,000,000) 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 Developer. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Developer'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.
- D. Automobile Liability Insurance. Developer 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 Developer's normal limits of liability but not less than One Million

Dollars (\$1,000,000) 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.

- E. Workers' Compensation and Employer's Liability. Developer 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 Developer 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. Developer 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 Developer, and for all employees of any subcontractor or other vendor retained by Developer.
- F. Carrier Requirements. All insurance which Developer 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.
- G. 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.

- H. 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 Developer.
- I. Renewal of Policies. At least thirty (30) days prior to the expiration of each policy, Developer shall direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/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 Developer 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 deducted from the next payment due Developer.
- J. Right to Self-Insure. Upon written approval by the Executive Director, Developer may self-insure if the following conditions are met:
1. Developer has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Developer must have a formal resolution of its board of directors authorizing self-insurance.
 2. Developer 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. Developer agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
 4. Developer agrees that any insurance carried by Department is excess of Developer's self-insurance and will not contribute to it.
 5. Developer provides the name and address of its claims administrator.

6. Developer 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. Developer 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. Developer has complied with all laws pertaining to self-insurance.

K. Accident Reports. Developer 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 Developer'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 Developer, its officers or managing agents.

3. Section XIV. WILMINGTON TRUCK ROUTE, shall be added to include the following language:

"XIV. WILMINGTON TRUCK ROUTE

It is recognized by both parties that the Developer does not directly control the trucks serving the Port. However, the Developer shall use its best efforts to notify truck drivers, truck brokers and trucking companies that trucks serving FTZ warehouses and originating in the Port of Los Angeles that they must confine their route to the designated Wilmington Truck Route of Alameda Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached as Exhibit __, which may be modified from time to time at the sole discretion of the Executive Director with written notice to Developer."

Except as amended herein, all remaining terms and conditions of Agreement No. 08-2723 shall remain in full force and effect.

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(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement No. 08-2723 on the date to the left of their respective signatures.

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

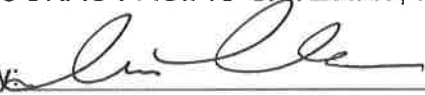
Dated: _____, 2018

By: _____
Executive Director

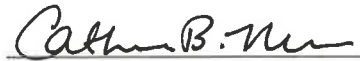
Attest: _____
Board Secretary

COGNAC PACIFIC GATEWAY, INC.

Dated: November 30, 2018

By:  _____

MARKIA TRINH, VP
(Print/Type Name and Title)

Attest:  _____

Catherine B. Minor, VP
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY

December 7, 2018
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By:  _____
HELEN J. SOK, Deputy City Attorney

HJS:jpr
11/06/18
Attachment

TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.
CAMIONES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.

Ruta designado de camión de carga Designated Truck Route

at the Port of Los Angeles

