

HARBOR DIVISION

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June 29, 2011

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HONORABLE MEMBERS OF THE  
BOARD OF HARBOR COMMISSIONERS

SUBJECT: RESOLUTION NO. \_\_\_\_\_ - SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE OF CLAIMS WITH SA RECYCLING, LLC

HONORABLE MEMBERS:

**SUMMARY:**

The City of Los Angeles Office of the City Attorney is transmitting to the Board of Harbor Commissioners (Board) a Settlement Agreement and Mutual Release of Claims (Settlement Agreement) with SA Recycling, LLC (SA), the Harbor Department's tenant under Permit No. 750. If approved, the Settlement Agreement resolves a dispute regarding the Harbor Department's right to assess wharfage on scrap metal leaving SA's premises in a shipping container by land transportation for export through another terminal under Permit No. 750 and Tariff No. 4 as to both past and future cargo, eliminates the possibility of the Harbor Department initiating litigation, and also avoids the threatened litigation by SA.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Consider the Settlement Agreement and Mutual Release of Claims (Settlement Agreement) to be entered into with SA Recycling, LLC, and, if approved:
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Settlement Agreement and Mutual Release of Claims;
3. Further approve and authorize up to \$4.7 million in disputed wharfage invoiced from October 2007 through February 2009 to be written off in accordance with the Harbor Department's financial policies; and
4. Adopt the foregoing as Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background— SA Recycling, LLC ("SA") is the tenant under Harbor Department Permit No. 750 and operates a scrap metal processing and export facility at Berths 210

to 211 on Terminal Island. SA primarily exports scrap metal as bulk cargo over its wharf onto ships. However, due to certain market conditions, in 2007 to 2009, SA exported scrap metal processed at its facility in shipping containers through other terminals. This sparked a dispute regarding interpretation of the Permit and the Tariff as to wharfage owed by SA for cargo processed at its facility, put into a shipping container, and leaving SA by land transportation for export through a container terminal. The Harbor Department invoiced wharfage on such cargo at the container rate of \$6.25/metric ton, however, SA only paid at the bulk non-container rate of \$2.13/metric ton and further claimed it should not have had to pay any wharfage on such cargo.

Discussions between SA and Harbor Department Staff were unsuccessful in resolving the dispute as were negotiations involving the Office of the City Attorney and SA's attorneys. In late 2010, SA's counsel indicated the parties were at an impasse and suggested mediation prior to either party initiating litigation. In February 2011, the parties took part in an all-day mediation before a retired judge. The proposed Settlement Agreement is the result of that mediation and continued negotiations following that mediation.

Under the terms of the Settlement Agreement, the Harbor Department retains the wharfage previously paid by SA for containerized scrap metal (at bulk non-container rate) but writes off the additional unpaid amounts that have been invoiced (at the higher container rate), SA agrees to pay wharfage for future containerized scrap metal at the lower bulk non-container rate for up to 1.5 million metric tons in each 5-year compensation reset period and at the higher container rate thereafter, the Harbor Department agrees to consider adjustment to the 1.5 million metric tons limit during each 5-year compensation reset period, and both parties waive and release claims against each other relating to the wharfage dispute.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a settlement agreement with SA Recycling, LLC (SA) which would eliminate the possibility of the Harbor Department initiating litigation and avoid the threat of litigation by SA. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) under Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines

**ECONOMIC BENEFITS:**

This Board action will have no direct employment effect.

**FINANCIAL IMPACT:**

It is estimated that under the Settlement Agreement the City will write-off approximately \$4.7 million in past wharfage invoiced (including late charges) that were disputed by SA. The current estimate of the amount of write-off is \$4,568,143.96. The final calculated amount should not exceed \$4.7 million subject to verification with SA.

The write-off amount will reduce overall accounts receivable and the associated allowance for bad debt in this same amount thereby helping to improve receivable turnover. After the write down, the allowance for bad debt remains at a sufficient level to meet the needs of potential problem accounts.

The Harbor Department had previously provisioned for bad debts at a level that is sufficient to meet this \$4.7 million write down. Therefore there will not be a need to set aside a provision for bad debt expense as a result of this action and there will not be a negative impact to the current fiscal year's income statement.

The agreement provides for the following financial benefits to the City:

- certainty in retaining approximately \$2 million in past wharfage already invoiced and paid to the City, which SA disputed and sought refunds;
- agreement that SA will pay future wharfage on containerized cargo; and
- avoidance of litigation costs by the City

**CITY ATTORNEY:**

The Settlement Agreement has been reviewed by the Office of the City Attorney and approved as to form and legality.

**TRANSMITTAL:**

1. Settlement Agreement and Mutual Release of Claims with SA Recycling, LLC

FIS Approval: lvf (initials)  
CA Approval: rn (initials)

  
SIMON M.KANN  
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APPROVED:



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