

AGREEMENT NO.

SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE OF CLAIMS  
BETWEEN THE CITY OF LOS ANGELES  
AND SA RECYCLING, LLC

PARTIES

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS (the "*Agreement*") is entered into between SA RECYCLING, LLC ("*Tenant*") and the CITY OF LOS ANGELES ("*City*"), acting by and through its Board of Harbor Commissioners ("*Board*"), collectively ("*Parties*").

RECITALS

WHEREAS, City and Tenant are parties to Harbor Department Permit No. 750 ("*Permit*") under which Tenant occupies certain premises on Terminal Island as defined in Section 2 of the Permit ("*Premises*");

WHEREAS, the Tenant disputes City's entitlement to assess wharfage under the terms of the Port of Los Angeles' Tariff No. 4 and the Permit for scrap metal which is removed from the Premises in containers by land-based transportation ("*Containerized Scrap Metal*"); and

WHEREAS, the Parties desire to settle all claims, disputes and controversies between them regarding the City's alleged entitlement to assess wharfage for Containerized Scrap Metal by agreeing upon (1) past wharfage for Containerized Scrap Metal; and, (2) the method for calculating future wharfage charges for Containerized Scrap Metal.

DEFINITIONS

1. The term "Tariff" shall mean the Port of Los Angeles Tariff No. 4 as amended from time to time as well as any successor Tariffs.
2. The term "Permit" shall mean Harbor Department Permit No. 750 as amended.
3. The term "Containerized Scrap Metal" shall mean processed scrap metal which is removed from the Premises in a "Container" by land-based transportation.
4. The term "Container" is defined by Tariff No. 4, Item 100(u)(4).
5. The term "Past Wharfage" shall mean all wharfage, including any accrued late fees allegedly owing to the City for Containerized Scrap Metal from 2007 to 2009.

6. The term "Future Wharfage" shall mean all wharfage which accrues for Containerized Scrap Metal from the date of this Agreement through the expiration or termination of the Permit.
7. The term "KT" and "metric ton" shall mean one thousand (1,000) kilograms.

#### AGREEMENT AND RELEASE

NOW, THEREFORE, in consideration of the mutual covenants contained herein and with the intent to finally and fully settle all disputes related to the City's alleged entitlement to assess wharfage for Containerized Scrap Metal by agreeing upon Past Wharfage and Future Wharfage as follows:

1. The Parties agree that as to Past Wharfage, the amounts previously paid to City by Tenant for Containerized Scrap Metal at \$2.13 per metric ton shall be retained by the City, and no further payment shall be made by Tenant as to Past Wharfage nor shall Tenant be entitled to any refund, repayment, or credit as to that Past Wharfage.
2. The Parties agree to the following method for calculating Future Wharfage. From the date of this Agreement to the expiration or termination of the Permit and within each successive five (5)-year compensation reset period (as defined in Permit Section 4(i)), Tenant agrees to pay Future Wharfage to City at the Tariff rate as characterized in Tariff Item No. 550-719 as "*scrap metal, in bulk, not carried in cargo containers*" for the first One Million Five Hundred Thousand (1,500,000) metric tons of Containerized Scrap Metal and for all Containerized Scrap Metal beyond the first One Million Five Hundred Thousand (1,500,000) metric tons as calculated within each five (5)-year reset period to pay Future Wharfage at the Tariff rate characterized in Tariff Item 550-775 as "*merchandise, not otherwise specified, in bulk, carried in containers*" or at the Tariff rate characterized as in Tariff Item 550-550 as "*scrap metals, other than bulk, in containers*" depending on the manner in which such scrap metal is shipped.
3. The City agrees that upon Tenant's request, it will in good faith consider commercial factors affecting SA's need to containerize scrap during each five (5)-year compensation reset process, and in doing so, consider whether the One Million Five Hundred Thousand (1,500,000) metric ton limit on Containerized Scrap Metal assessed at the Tariff rate as characterized in Tariff Item No. 550-719 as "*scrap metal, in bulk, not carried in cargo containers*" should be adjusted. The process afforded by Permit Section 4(i) for resolving disputes as to fixed rent shall not apply to the resolution of any future dispute as to whether the One Million Five Hundred Thousand (1,500,000) metric ton limit should be adjusted.
4. From the date of this Agreement to the expiration or termination of the Permit, Tenant shall at the time of reporting cargo to the City, provide an electronic Microsoft Excel spreadsheet which provides the following details for Containerized Scrap Metal: (1) the Container number; (2) the vessel name and voyage number upon which the Container

was exported from the Port of Los Angeles, (3) the date the Container left the Premises and the (4) the weight of the Containerized Scrap Metal in the Container. Any delivered Container for which information is not provided by Tenant in accordance with this section shall be charged Future Wharfage at the Tariff rate characterized in Tariff Item 550-775 as “*merchandise, not otherwise specified, in bulk, carried in containers*” or at the Tariff rate characterized as in Tariff Item 550-550 as “*scrap metals, other than bulk, in containers*” depending on the manner in which such scrap metal is shipped. However, if Tenant subsequently provides such information within thirty (30) calendar days of when originally due, Tenant will be entitled to any credit for the difference in the higher wharfage paid, such credit will be applied by Tenant on its future cargo reporting statements to City. Nothing in this section limits City’s remedies relating to failure to pay wharfage, breach of Tenant’s obligations regarding exporting through the Port of Los Angeles, or any other breach of the Permit.

5. This Agreement is intended only to resolve Past Wharfage and Future Wharfage for Containerized Scrap Metal and shall not otherwise change the procedures for reporting cargo or assessing and paying wharfage as specified in the Tariff and the Permit. Tenant acknowledges that Section 4(g) of the Permit requires Tenant to exclusively export all steel scrap metal which is located on or brought on to the Premises for transoceanic export through the Port of Los Angeles. The Parties acknowledge that the Agreement neither creates nor waives rights or obligations under Tariff Items 520 and 530.
6. RELEASE: In consideration of all terms and conditions of this Agreement, Parties, on behalf of themselves and on behalf of each of their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assignees, members, former shareholders, shareholders, former partners, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, attorneys, servants, employees, representatives, and all persons, firms, entities, associations and/or corporations connected with them, hereby release and forever discharge and each other and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assignees, members, former shareholders, shareholders, former partners, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, and representatives, of and from all claims, demands, causes of actions, obligations, liens, taxes, damages, losses, costs, attorneys fees and expenses of every kind and nature whatsoever, known or unknown, fixed or contingent related to Past Wharfage and waives any right to challenge the method for calculating Future Wharfage except where the Parties agree to revise the calculation by increasing the One Million Five Hundred Thousand (1,500,000) limit on the number of metric tons of Containerized Scrap Metal which can be removed from the Premises by land-based transportation at the rate as characterized in Tariff Item No. 550-719 as “*scrap metal, in bulk, not carried in cargo containers*”.
7. WAIVER: In entering this Agreement, the Parties have enjoyed the benefit of advice of counsel and have been independently advised of the existence of and understand and knowingly and specifically waive all of their rights under California Civil Code section 1542, which provides as follows:

A general release does not extend claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

8. WARRANTY OF AUTHORIZED SIGNATORIES: Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this agreement on behalf of the party for whom he or she purports to sign.
9. COMPROMISE: This Agreement is the result of a compromise among the Parties hereto and shall never at any time, or for any purpose, be considered an admission of liability and/or responsibility on the part of any of the Parties herein released, nor shall the payments of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by any of the Parties herein released, each of which continue to deny such liability and disclaim such responsibility.
10. ATTORNEYS' FEES: The Parties acknowledge and agree that each of them shall bear their own costs, expenses and attorneys fees arising out of or connected with the dispute, the negotiation, drafting and execution of this Agreement, and all matters arising out of or connected therewith.
11. GOVERNING LAW: This Agreement shall be interpreted in accordance with, and governed in all respects by, the laws of the State of California.
12. SEVERABILITY: If any provision or any part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable contrary to public policy, law, statute, and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall be valid and fully enforceable.
13. ENTIRE AGREEMENT: This Agreement contains the entire agreement of the Parties relating to the above-referenced dispute. Any oral representations or modifications of this Agreement, except a subsequent written modification signed by all the Parties, shall be of no force and effect.
14. CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if the Parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the Parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

*[signatures on following page]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date to the left of their signatures.

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


Dated: \_\_\_\_\_

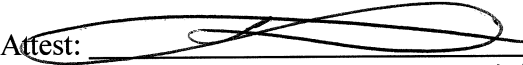
By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Secretary

SA RECYCLING LLC

Dated: 6/29/11

By:   
Print/Type Name: Gray Adams  
Print/Type Title: Pres

Attest:   
Print/Type Name: Terry Adams  
Print/Type Title: Director

APPROVED AS TO FORM AND LEGALITY

6/30, 2011  
CARMEN A. TRUTANICH City Attorney

By   
Simon M. Kann, Deputy