

DATE: DECEMBER 17, 2015

FROM: CARGO AND INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - PROPOSED SECOND AMENDMENT TO SETTLEMENT AGREEMENT NO. 11-2997 WITH SA RECYCLING, LLC.

SUMMARY:

The City of Los Angeles Harbor Department (Harbor Department) staff requests approval of the Board of Harbor Commissioners (Board) to approve the proposed Second Amendment to Settlement Agreement No. 11-2997 with SA Recycling (SAR). The proposed Second Amendment to the Settlement Agreement seeks to modify this method and structure to incentivize and promote more business through the Port of Los Angeles (Port). SAR, the successor in interest to original tenant Hugo Neu-Proler Company, is a Harbor Department tenant under Permit No. 750. SAR is a full-service ferrous and non-ferrous scrap metal recycler and processor located at Berths 210–211, Terminal Island. In July 2011, a Settlement Agreement under Permit No. 750 was adopted by the Board of Harbor Commissioners and later amended and approved in December 2012 that provided for a method and structure for calculating wharfage for containerized scrap metal.

RECOMMENDATION:

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

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
2. Approve the Second Amendment to Settlement Agreement No. 11-2997 with SA Recycling;
3. Direct the Board Secretary to transmit the Second Amendment to the City Council for approval pursuant to Charter Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment to Settlement Agreement No. 11-2997 under Permit No. 750; and

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5. Adopt Resolution No. _____.

DISCUSSION:

Background/Context – Settlement Agreement No. 11-2997 was adopted by the Board on July 7, 2011 and later amended on December 20, 2012 to extend the coverage period of the Agreement, addressing wharfage on containerized shipment of scrap pertaining to Permit No. 750 with SAR. The Settlement Agreement states:

“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.”

This 1,500,000 metric ton ceiling limits the options for SAR to ship its products out of the Port of Los Angeles (Port). Under the present permit language, if SAR opted to ship a container through a shipping terminal located in the Port, that container would incur wharfage fees as it leaves the SAR premises and would once again incur wharfage fees as it leaves a Port shipping terminal via that terminal’s wharfage and dockage payments (typically paid as a dollar amount per TEU). The respective Port shipping terminal in turn passes down their wharfage fees to their customer, SAR. This current fee structure places two wharfage charges on the container that leaves the SAR premises effectively making SAR responsible for both charges. As a result of these constraints, SAR has bypassed shipping containers via the Port of Los Angeles.

The proposed Second Amendment (Transmittal 1) will: (i) remove the 1,500,000 metric ton limitation and the references to payment by Tariff No. 4 within the Settlement Agreement, (ii) assesses a fixed containerized rate of \$40 per waterborne container that is transferred to or from the tenant’s premises not shipped through a Port terminal (e.g., shipped through the Port of Long Beach) with the aforementioned \$40 per container rate adjusted annually commencing July 1, 2016 and annually thereafter, (iii) the aforementioned container rate shall be adjusted automatically without further notice to

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reflect the percentage change (but in no case a decrease) in the Consumer Price Index, all Urban Consumers of the Los Angeles--Riverside--Orange County, California area (CPI-U), 1982-84=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics. By modifying the methodology and calculation of wharfage on containerized scrap metal, the Second Amendment to Settlement Agreement No. 11-2997 will address inconsistent tonnage limitations and wharfage charges on containerized scrap metal for SAR.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an approval of a Second Amendment to Settlement Agreement No. 11-2997 with SAR to modify the methodology for calculating wharfage fees for containerized scrap metal, which is an administrative activity. As such, the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Under the present terms of SAR's Permit, Settlement Agreement and associated First Amendment, Fiscal Year 2014/2015 revenue to the Port totaled approximately \$4,000,000 and was comprised of fixed land rent (\$2,400,000), wharfage (\$1,400,000), and dockage (\$200,000). The compensation structure under the First Amendment sets wharfage compensation at \$2.13/metric revenue ton for the first 1.5 million metric revenue tons of containerized scrap metal and \$6.25/metric revenue ton (the current Tariff No. 4 rate in effect) for all containerized scrap metal beyond the first 1.5 million metric revenue tons. Under the proposed Second Amendment, the 1.5 million metric revenue ton ceiling will be eliminated such that a \$40 per waterborne container rate (escalated annually by CPI beginning July 1, 2016) will be assessed for any sized container transferred from SAR's permit premises to any non-Port facility. Furthermore, under the proposed Second Amendment SAR will not be charged wharfage on those containers shipped out of their Port facilities if those containers will be processed through a Port shipping container facility.

There is no change in the compensation structure for non-containerized or break bulk cargo, dockage, or fixed rent. The proposed Second Amendment modifies the present compensation structure for containerized scrap metal only so as to correct inconsistencies involving tonnage limitations and how wharfage fees are incurred when containerized scrap metal leaves the SAR premises and goes through a Port shipping terminal to be exported.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Second Amendment as to form and legality.

TRANSMITTAL:

1. Second Amendment to Settlement Agreement No. 11-2997

FIS Approval:  (Initials)
CA Approval:  (Initials)


JACK C. HEDGE
Director of Cargo Industrial Real Estate


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:


EUGENE D. SEROKA
Executive Director

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