



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JUNE 25, 2024

FROM: CARGO & INDUSTRIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - APPROVE THE FIRST AMENDMENT
TO PERMIT NO. 750 WITH SA RECYCLING, LLC**

SUMMARY:

Staff requests approval of the First Amendment to Permit No. 750 with SA Recycling LLC (SA Recycling) to effect the following changes: 1) extend the term by 10 years, changing the expiration date from August 30, 2024, to August 30, 2034, subject to termination with 36 months' notice with a minimum of a five year term; 2) increase compensation and revise the methodology by which compensation is calculated; 3) update the restoration provision for consistency with current laws, rules and regulations, and require a restoration security deposit; and 4) add environmental obligations, including those arising from the Environmental Impact Report certified by the Board of Harbor Commissioners on April 11, 2024.

Under the proposed First Amendment, guaranteed compensation would increase from \$3,969,079 to \$6,404,002, effective August 31, 2024.

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines;
2. Approve the First Amendment to Permit No. 750 with SA Recycling LLC;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment upon approval by the Los Angeles City Council; and
4. Adopt Resolution No. _____.

DISCUSSION:

Permit No. 750 (Permit) grants SA Recycling (a successor to original tenant, Hugo Neu-Proler) approximately 26 acres of waterfront land at Berths 210-211 for receiving, storing, processing and exporting steel scrap and other metals (Transmittal 1). The Permit took effect on August 31, 1994, for a term of 30 years, expiring August 30, 2024. Compensation was last reset by the Board on August 22, 2019, for the period of August

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31, 2019, through August 30, 2024. The proposed First Amendment (Transmittal 2) extends the term of the Permit, resets compensation, and updates the restoration, and environmental provisions as follows:

| <u>Provision</u> | <u>Current</u> | <u>Proposed</u> |
|---------------------------------------|---|--|
| <u>Term</u> | Term: 30 years Expiration: August 30, 2024 Early Termination: None Holdover: 110% | Term: +10 years Expiration: August 30, 2034 Early Termination: 5-year notice Holdover: 150% |
| <u>Rent</u> (see below discussion) | Fixed Rent, plus, Tariff Charges <ul style="list-style-type: none"> - Fixed Rent: \$3,969,079 - Tariff charges: Variable (est. \$1.7 to \$2.3 million) | Greater of Minimum Annual Guarantee (MAG) or Tariff charges <ul style="list-style-type: none"> - MAG: \$6,404,002 |
| <u>MAG Adjustment</u> | <u>Five-Year Reset</u> <ul style="list-style-type: none"> - Holdover rate: 110% - Monies paid at the 110% rate could count against the new Fixed Rent <u>Annual CPI: None</u> ¹ | <u>Five-Year Reset</u> <ul style="list-style-type: none"> - Holdover rate: 150% - Monies paid at the 150% rate could count against the new MAG on a sliding scale basis if reset concludes within 1-year of reset due date. <u>Annual CPI: Included, minimum 2%</u> |
| <u>Security Deposit</u> | None | \$500,000 |
| <u>Restoration</u> | Return the premises in compliance with now-outdated regulatory cleanup standards | Return the premises: <ul style="list-style-type: none"> - Free of Hazardous materials stored on the premises. - In compliance with any order with the Department of Toxic Substances Control, Los Angeles Regional Water Quality Control Board, and any other regulatory |

¹ There is no CPI provision in the current Permit. However, the Order for the last 5-year compensation reset included scheduled increases to fixed rental amounts for the first 3 years, and CPI adjustments for the last 2 years.

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| | | <p>agency requiring characterization and remediation of the premises.</p> <ul style="list-style-type: none"> - Free of any encumbrances (e.g. land use restriction) except for institutional controls required by the regulatory agencies. |
| <u>Restoration Security Deposit</u> | None | \$3.5 million, to be funded in installments |
| <u>Environmental obligations</u> | Not applicable | <p>The following is added to Permit No. 750:</p> <p>Tenant shall comply (and shall immediately halt and remedy any incident of non-compliance) with:</p> <ul style="list-style-type: none"> - Applicable Laws. Tenant shall immediately upon receipt provide City with copies of any notices or orders or similar notifications received from any governmental agency regarding compliance with applicable laws relative to obligations under the premises - Environmental Policies, Rules and Directives. All applicable environmental policies, rules and directives of the Harbor Department - Mitigation Measures and MMRP arising from the subsequent Environmental Impact Report certified by the Board of Harbor Commissioners on April 11, 2024. |

Rent Reset – Due to the extension of the Permit, rent is due to be reset for the period of August 31, 2024 through August 30, 2029. The reset is folded into the proposed First Amendment. Staff determined that an increase is required to bring the compensation in line with market rates. In addition, the proposed Amendment will change the structure used to determine minimum annual amounts of rent, wharfage and dockage due.

Currently, SA Recycling pays fixed monthly rent of \$330,756.61, or \$3,969,079.32 per

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year, as well as wharfage and dockage charges which vary based upon activity. While monthly rent was previously increased annually based upon the year-over-year change in the Consumer Price Index (CPI) in accordance with the terms of the last compensation reset, annual wharfage and dockage has historically varied from approximately \$1.7 million to \$2.3 million over the four-year period from September 2019 through August 2023.

Under the compensation structure proposed within the First Amendment, SA Recycling will continue to pay fixed rent, wharfage and dockage charges, but these charges will be subject to an aggregate minimum of \$6,404,002 in Year 1. Thereafter, the annual MAG will increase by the greater of the annual change in CPI or 2 percent. This approach lessens the Harbor Department's exposure to volume risk relative to the approach currently in place. The proposed Year 1 MAG of \$6,404,002 equates to \$5.50 per square foot per year which is appropriate for this waterfront parcel, based on a comprehensive internal valuation study.

Environmental Regulatory Agency Oversight of Premises – Due to the nature of its operations as a scrap metal recycling facility, SA Recycling has had a history of various regulatory site inspections, violation allegations, and negotiations with the State of California Department of Toxic Substances Control (DTSC). Most recently, on December 12, 2023, SA Recycling and the DTSC entered into a Consent Order, Docket No. HWCA 20187418 (Order). The Order requires SA Recycling to address any and all alleged past violations and implement interim measures, as necessary, to minimize or mitigate future releases of hazardous materials. In addition, SA Recycling is required to perform a full site characterization, perform a human health risk assessment to evaluate potential human health risk and ecological risk, and establish site-specific action levels, and remediate the property, as required by the Order. SA Recycling also has an open case with the Los Angeles Regional Water Quality Control Board (LARWQCB File 90-47) for a former diesel fuel release, where cleanup of groundwater is ongoing. SA Recycling has agreed to assess and remediate the property as required by regulatory agencies having jurisdiction.

While sites regulated under the state are not necessarily ideal, the Order and LAWRQCB case will help facilitate proper assessment and ultimate remediation of the property, to be protective of human health and the environment, thereby alleviating risk to the Harbor Department of making health risk and cleanup determinations during the term of the Agreement.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of First Amendment to Permit No. 750, which is an activity for which the underlying project has been previously assessed in SA Recycling Amendment to Permit No. 750 Project Subsequent Environmental Impact Report (SCH# 93071074), which was certified by the Board on April 11, 2024. Therefore, the Director of Environmental Management has determined that the proposed action has been

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previously evaluated pursuant to the requirements of CEQA under Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed First Amendment will: 1) extend the term of Permit 750 by ten years to August 30, 2034; 2) increase annual compensation and revise the methodology by which compensation is calculated; 3) update the restoration provision for consistency with current laws, rules and regulations and require a restoration security deposit; and 4) add environmental obligations.

If the proposed Amendment is approved, the compensation structure under Permit 750 will be changed such that land rent, wharfage and dockage will be subject to an aggregate minimum annual guarantee of \$6,404,002 in Year 1. Thereafter, MAG will increase by the greater of the annual change in CPI or 2 percent.

The proposed Year 1 MAG of \$6,404,002 represents an increase of \$2,434,923, or 61.3% relative to the guaranteed rent of \$3,969,079 currently paid under Permit 750.

CITY ATTORNEY:

The proposed First Amendment to Permit 750 has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. Proposed First Amendment

FIS Approval: 
CA Approval: 

Marisa L. Katnich
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Director, Cargo & Industrial Real Estate

Michael DiBernardo
MICHAEL DiBERNARDO
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APPROVED:

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