

HARBOR DIVISION

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DATE: DECEMBER 11, 2012

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. _____ - FIRST AMENDMENT TO AGREEMENT NO. 11-2997, A SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS WITH SA RECYCLING, LLC

SUMMARY:

The City of Los Angeles Office of the City Attorney is transmitting to the Board of Harbor Commissioners (Board) a First Amendment to Agreement No. 11-2997, a Settlement Agreement and Mutual Release of Claims (Settlement Agreement) with SA Recycling, LLC (SA), the tenant of the City of Los Angeles Harbor Department (Harbor Department) under Permit No. 750. If approved, the First Amendment extends the previous settlement to cover the time period just prior to the execution of the original Settlement Agreement under the same terms.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Consider the First Amendment to Agreement No. 11-2997, 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 \$84,000 in disputed wharfage invoiced from June 1, 2011 through July 20, 2011 (including late charges) to be written off in accordance with the Harbor Department's financial policies; and
4. Adopt the foregoing as Resolution No. _____.

DISCUSSION:

Background and Context— 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. In July 2011, the Board of Harbor Commissioners approved a settlement agreement with SA resolving a dispute regarding interpretation of the Permit and the Tariff as to wharfage owed by SA for cargo

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processed at its facility, put into a shipping container, and leaving SA by land transportation for export through a container terminal. The Settlement Agreement, Agreement No. 11-2997 (Transmittal 1), covered the time periods 2007 to 2009, and from execution of the Settlement Agreement through the termination or expiration of the Permit. A total of approximately \$4.6 million in invoiced wharfage and late fees were written off by Harbor Department under this settlement.

Unknown to the Harbor Department at the time, SA containerized and exported cargo from its facility during the several weeks prior to execution of the Settlement Agreement. This time frame was not covered by the Settlement Agreement and the parties' original dispute still applied to this time period from June 1, 2011 to July 20, 2011. The proposed First Amendment to Agreement No. 11-2997 (Transmittal 2), extends the coverage of the Settlement Agreement to include this time period and avoids litigation over this time period. Under the First Amendment, the Harbor Department would write off approximately \$61,000 in invoiced wharfage plus late charges (for a total write off of approximately \$84,000).

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a settlement agreement with SA Recycling, LLC 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 Harbor Department will write-off approximately \$61,000 in past wharfage invoiced (plus late charges) that were disputed by SA (for a total write off of approximately \$84,000). 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 off, the allowance for bad debt remains at a sufficient level to meet the needs of potential problem accounts.

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The Harbor Department had previously provisioned for bad debts at a level that is sufficient to meet this write off. 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 Harbor Department:

- agreement by SA to pay \$31,545.90 for wharfage it currently disputes
- avoidance of litigation costs by the Harbor Department

CITY ATTORNEY:

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

TRANSMITTALS:

1. Agreement No. 11-2997
2. Proposed First Amendment to Agreement No. 11-2997

FIS Approval: WR (initials)
CA Approval: JAC (initials)



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APPROVED:



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