0150-10601-0000

TRANSMITTAL

TO	DATE	COUNCIL FILE NO.
Eugene D. Seroka, Executive Director Harbor Department	MAR 17 2016	
FROM		**COUNCIL DISTRICT**
The Mayor		15

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

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.

MAYOR

MAS:ABN:10160060t

CAO 649-d

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 16, 2016

CAO File No. 0150-10601-0000
Council File No.
Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer

Reference: Correspondence from the Harbor Department dated January 14, 2016; referred by the Mayor for report on January 19, 2016

Subject: **PROPOSED SECOND AMENDMENT TO SETTLEMENT AGREEMENT NO. 11-2997 WITH SA RECYCLING, LLC**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 16-7892 authorizing a proposed Second Amendment (Amendment) to Settlement Agreement and Mutual Release of Claims No. 11-2997 (Settlement Agreement) under Permit No. 750 with SA Recycling (SAR). SAR is a Port tenant which operates a scrap metal recycling and processing facility at Berths 210 and 211 on Terminal Island within the Port of Los Angeles (POLA).

In July 2011, the Board authorized the Port and SAR to adopt a Settlement Agreement to modify and provide a method and structure for calculating wharfage fees for past and future containerized scrap metal processed through the POLA. The wharfage fees involve a charge assessed by the Port, through its Tariff rates (rules and regulations governing POLA operations), for handling incoming and outgoing cargo. In December 2012, the Board approved the First Amendment to extend coverage of the original Settlement Agreement to resolve disputed wharfage fee costs. The proposed Second Amendment will modify the operational method and structure of SAR in order to encourage and promote more business within the POLA. According to the Port, this Amendment will correct inconsistencies involving the tonnage limitations in the Tariff for SAR's containerized scrap metal and will modify how the wharfage fees are calculated currently.

BACKGROUND

SAR is a full-service ferrous (containing iron) and non-ferrous metal recycler and processor. SAR operates recycling facilities in several states in the country. Services at the facilities include general scrap metal processing and the recycling and re-use of various metal products (i.e., automobiles and appliances). Items for recycling are brought in by the public or businesses and can be accepted by truck, rail, vessels and intermodal containers. The Port states that once SAR has recycled and processed the metal products, most of the materials are shipped and exported overseas. SAR states that it is committed to environmental sustainability and updating its on-site equipment fleet to the cleanest possible alternatives in order to lower its air quality emissions.

In 1996, Council approved the execution of the initial Port's Permit No. 750 with Hugo New-Proler Company, the original tenant for the scrap metal processing facility. In 2007, the Board approved a merger and assignment of the lease under Permit 750 to the new entity known as SAR. In July 2011, the Board approved Settlement Agreement No. 11-2997 between the Port and SAR to resolve a dispute regarding the interpretation of the Permit and POLA's Tariff rates. The dispute included the assessment of past (and future) wharfage fees for containerized scrap metal owed by SAR for cargo processed at its facility and prepared by SAR for export through the container terminals. The Settlement Agreement pertains to the Permit 750 and the successor agreement for SAR. In December 2012, the Board approved a First Amendment to the Settlement Agreement to extend coverage to resolve additional wharfage fee costs for a disputed time period just prior to execution of the original Agreement (from June 1 to July 20, 2011).

PROPOSED SECOND AMENDMENT

The original Settlement Agreement between the Port and SAR was intended to negotiate the method and structure for calculating past and future wharfage fees for containerized scrap metal, without otherwise changing the procedures for reporting cargo or assessing and paying wharfage designated in the Tariff and Permit 750. The Port has resolved the past wharfage matter with SAR. The future wharfage deliberations included all wharfage which accrued from the beginning date of the Settlement Agreement to the expiration or termination of Permit 750, in August 2024. For the future wharfage, SAR has agreed to pay the Port at the standardized Tariff rate for the first or initial 1.5 million metric tons of containerized scrap metal under the Tariff designation described as, "scrap metal, in bulk, not carried in cargo containers." For all containerized scrap metal beyond 1.5 million metric tons, SAR is required to pay the Port under a different standardized Tariff rate, calculated and described for "merchandise, not otherwise specified, in bulk carried in containers."

The Port states that the 1.5 million metric ton ceiling limits the options that SAR has in shipping its products out of the POLA. Under the present Tariff regulatory rates, SAR is charged wharfage fees twice: 1) when leaving its berth or premises and 2) when shipping its metal products through the POLA terminals (where cargo is handled and shipped) via that wharfage and dockage payments for that terminal. According to the Port, the charge is typically paid as a dollar per container by the respective POLA shipping terminals. As a result, the current fee amount obliges SAR to pay for two wharfage charges on the containers that leave its berth or premises and increased the costs of its operations at the POLA. The Port states that it has received a total revenue amount of approximately $4 million from the combination of the SAR's Permit, Settlement Agreement and First Amendment. This amount includes $2,400,000 for fixed land rent, $1,400,000 for wharfage fees and $200,000 for dockage fees. The Tariff rate in the First Amendment was calculated at $2.13 per metric ton for the first 1.5 million metric revenue tons of containerized scrap metal. According to the Port, the current Tariff rate in effect is $6.25 per metric revenue tons for all containerized scrap metal beyond the first 1.5 million metric revenue tons.

The Port states that the proposed Second Amendment will correct inconsistencies involving the tonnage limitations in the Tariff for SAR's containerized scrap metal and will modify how the wharfage fees are calculated currently. The POLA and SAR have agreed to replace the payment schedule in the Settlement Agreement, including but not limited to removing the 1.5 million metric ton limitation and references to payment by the Tariff Sections, in favor of a fixed containerized rate. According to the Port, the proposed structure for the modified containerized scrap fees will create a better billing efficiency than the current one. In addition, the Port states that removal of the limitation may increase revenue in the future, but is not expected to change existing revenue significantly, in spite of a current slowdown in the scrap metal market.

The proposed Amendment will achieve the following:

- remove the 1.5 million metric ton limitation referenced in the Tariff;
- use the modified method to calculate future wharfage until the expiration of the Permit and for each successive five-year compensation reset period;
- assess a fixed containerized rate of $40 per waterborne container that is transferred to or from the premises of SAR, per the provisions of the Permit, which based upon an estimated volume of 7,000 Twenty-Foot Equivalent Units' (TEU's) would generate approximately $280,000 in annual revenue to the Port when market conditions improve. TEU is a unit of measurement equal to the space occupied by a standard twenty-foot cargo container; and,
- adjust the container rate annually, beginning July 1, 2016, to reflect costs to include the annual percentage change in the Consumer Price Index.

The Port states that modifying the methodology and calculation on the wharfage fees used by SAR will rectify current inconsistent limitations on the metric ton and wharfage charges on their containerized scrap metal products. There is no change in the compensation structure for non-containerized or break bulk cargo (non-containerized general cargo stored in various other units), dockage or fixed rent.

The above referenced Resolution No 16-7892 authorizing the proposed Second Amendment and this report incorporate revised information received from the Port subsequent to the initial request submittal.

CITY CONTRACT COMPLIANCE

The City Attorney has reviewed and approved the proposed Second Amendment with the SAR Permit and Settlement Agreement as to form. Since the proposed Amendment is a property lease, the request is not subject to the provisions of Charter Section 1022. The Port Director of Environmental Management has determined that the proposed action is an administrative action, which proposes to modify the methodology for calculating wharfage fees for containerized scrap metal and therefore is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f), of the Los Angeles City CEQA Guidelines. In accordance with Charter Section 606, Council approval is required to approve and amend a contract that is longer than five years.

RECOMMENDATION

That the Mayor approve Harbor Department (Port) Board of Harbor Commissioners Resolution No. 16-7892 authorizing a proposed Second Amendment to Settlement Agreement and Mutual Release of Claims No. 11-2997 under Permit No. 750 with SA Recycling, and return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the proposed Second Amendment to the Settlement Agreement between the Harbor Department (Port) and SA Recycling (SAR) will correct inconsistencies involving the tonnage limitations in the Tariff for SAR's containerized scrap metal and how the wharfage fees are incurred currently. Under the proposed Amendment the Port and SAR will do the following: remove the 1.5 million metric ton limitation and references to payment in Tariff Sections; use the modified method to calculate future wharfage until the expiration of the Permit, and for each successive five-year compensation reset period; assess a fixed containerized rate of $40 per waterborne container that is transferred to or from the premises of SAR, per the provisions of the Permit, which based upon an estimated volume of 7,000 Twenty-Foot Equivalent Units' (TEU's) would generate approximately $280,000 in annual revenue to the Port when market conditions improve; and, adjust the container rate annually, beginning July 1, 2016; to reflect the annual percentage change in the Consumer Price Index. In the 2014-15 fiscal year, total revenue to the Port was approximately $4 million from the SAR's Permit, Settlement Agreement and First Amendment, which comprised $2,400,000 for fixed land rent, $1,400,000 for wharfage fees and $200,000 for dockage fees. The proposed Amendment proposes no change in the compensation structure for non-containerized or break bulk cargo, dockage or fixed rent. There is no impact on the City General Fund and any revenue collected will be deposited into the Harbor Revenue Fund.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering into Leases," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes actions disapproving a contract that is longer than five years within 30 days after submission to Council, the contract will be deemed approved.

MAS:ABN:10160060t