

AGREEMENT NO. 116-2997-B

SECOND AMENDMENT OF SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF CLAIMS
(HARBOR DEPARTMENT AGREEMENT NO. 11-2997)
BETWEEN THE CITY OF LOS ANGELES AND
SA RECYCLING, LLC
[PERMIT NO. 750]

This Second Amendment of Settlement Agreement and Mutual Release of Claims ("Second Amendment to Settlement Agreement") between the CITY OF LOS ANGELES ("City") acting by and through its Board of Harbor Commissioners ("Board") and SA RECYCLING, LLC ("Tenant") is entered into with respect to the following:

WHEREAS, CITY and Tenant entered into a Settlement Agreement and Mutual Release of Claims (Harbor Department Agreement No. 11-2997) ("Settlement Agreement") which was approved by the Board at its meeting of July 21, 2011; (A copy of the Settlement Agreement is attached hereto as Exhibit 1.)

WHEREAS, the Settlement Agreement was amended a first time in or about December, 2012 by a First Amendment to Agreement No. 11-2997 Between the City of Los Angeles and SA Recycling, LLC, Harbor Department Agreement 12-2997-A ("First Amendment") which extended the settlement to cover the time period just prior to the execution of the Settlement Agreement under the same terms. A copy of the First Amendment is attached hereto as Exhibit 2. (All references to the Settlement Agreement shall include the First Amendment,)

WHEREAS, the Settlement Agreement pertains to Permit No. 750 ("Permit No. 750" or "Permit") entered into by and between City and a predecessor of Tenant, Hugo Neu-Proler Company on or about September 21, 1996;

WHEREAS, the Settlement Agreement provides, in Section 2, among other things, a method for calculating Future Wharfage (as defined in the Settlement Agreement¹) under the Permit;

WHEREAS, Section 2 provides, in pertinent part, "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

¹ Capitalized terms not defined within this Amendment shall have the meaning as defined in the Settlement Agreement.

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."

WHEREAS, City and Tenant have agreed to amend Section 2 by replacing the aforementioned payment schedule in Section 2 of the Settlement Agreement, including but not limited to removing the 1,500,000 metric ton limitation and the references to payment by the Tariff sections within said Section, in favor of a fixed containerized rate of: (i) \$40 per any waterborne container that is transferred from or to Tenant's premises not shipped through a Port of Los Angeles terminal (e.g., through the Port of Long Beach) with the aforementioned \$40 per container rate to be adjusted annually automatically commencing July 1, 2016 and annually thereafter to reflect the percentage change in the Consumer Price Index, as described in Section 1 of the Agreement below.

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, City and Tenant agree as follows:

AGREEMENT

1. City and Tenant agree that the Settlement Agreement is amended by deleting Section 2 in its entirety and replacing with the following:

"The Parties agree to the following method for calculating Future Wharfage. From the Effective Date of this Amendment to the Settlement 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 as follows: Tenant shall pay a fixed containerized rate of (i) Forty Dollars (\$40) per any waterborne container that is transferred from or to Tenant's premises [under Permit 750] not shipped through a Port of Los Angeles terminal (e.g., through the Port of Long Beach). Commencing July 1, 2016 and annually thereafter, the aforementioned container rate shall be adjusted automatically without further notice to reflect the percentage increase (but in no case a decrease) in the Consumer Price Index, all Urban Consumers of the Los Angeles—Riverside--Orange County, California area, 1982-84=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics."

2. Tenant shall provide monthly in writing to the Port of Los Angeles to its wharfingers reporting data on how many containers of scrap are shipped through another port, e.g., the Port of Long Beach."
3. Except as amended herein, all remaining terms and conditions of the Settlement Agreement remain the same. The effective date of this Amendment shall be the date the Amendment is signed by the City after all approvals are obtained.

[SIGNATURES ON NEXT PAGE]

CITY OF LOS ANGELES,
by and through its Board of Harbor
Commissioners

By _____
EUGENE D. SEROKA
Executive Director

By _____
Board Secretary

TENANT

SA RECYCLING, LLC,
a Delaware limited liability company

By: _____
GEORGE ADAMS, PRESIDENT/CEO
PRINT NAME AND TITLE OF OFFICER

Attest: _____
MARK SWEETMAN, CFO
PRINT NAME AND TITLE OF OFFICER

APPROVED AS TO FORM AND LEGALITY

Dec. 14, 2015
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By _____
Estelle M. Braaf, Deputy

AGREEMENT NO.

Harbor Department
Agreement 11-2997
City of Los Angeles

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: 7/20/2011

By: Kathryn McCormott
Executive Director

Attest: Karla Tondreau
Secretary

SA RECYCLING LLC

Dated: 6/29/11

By: [Signature]
Print/Type Name: Gray Adams
Print/Type Title: Pres

Attest: [Signature]
Print/Type Name: Terry Adams
Print/Type Title: Director

APPROVED AS TO FORM AND LEGALITY

6/30, 2011
CARMEN A. TRUTANICH City Attorney

By [Signature]
Simon M. Kann, Deputy

FIRST AMENDMENT TO AGREEMENT NO. 11-2997
BETWEEN THE CITY OF LOS ANGELES AND
SA RECYCLING, LLC

THIS FIRST AMENDMENT to Agreement No. 11-2997 ("First Amendment") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners, and SA RECYCLING, LLC ("Tenant") as follows:

1. Definition No. 6, shall be amended to read as follows: The term "Future Wharfage" shall mean all wharfage which accrues for Containerized Scrap Metal from and including June 1, 2011 through the expiration or termination of the Harbor Department Permit No. 750 as amended. -

2. Future Wharfage which accrued for the period June 1, 2011 through July 20, 2011 that is owed by Tenant shall be due thirty (30) days from the date City executes the First Amendment.

3. Any late charges, penalties, and/or interest pertaining to Future Wharfage which accrued for the period June 1, 2011 through July 20, 2011 prior to thirty (31) days from the date City executes the First Amendment is hereby waived by City.

Except as amended herein, all remaining terms and conditions of Agreement No. 11-2997 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed the First Amendment on the date to the left of their signatures.

Dated: JAN 15 2013

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

By 
EXECUTIVE DIRECTOR

Attest Karl H. Tindall
Board Secretary

Dated: Nov. 5, 2012

SA RECYCLING, LLC

By: [Signature]
George Adams
(Print/type name and title)

Attest: [Signature]
Terry Adams, Director
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

12/12, 2012
CARMEN A. TRUTANICH, City Attorney
Thomas A. Russell, General Counsel

By [Signature]
Simon M. Kann, Deputy