

Request for City Council Committee Action from the Department of

Date: March 2, 2010

To: Council Member Lisa Goodman, Chair, Community Development
Committee

Subject: Lease Agreement for GAF Materials Corporation

Recommendation: Authorize River Services Inc (and City officers, if necessary) to enter into a Lease Agreement and other related documents with GAF Materials Corporation consistent with the terms and conditions outlined in this report, and authorize a declaration and/or easement to allow ongoing maintenance of stormwater facilities.

Previous Directives:

On July 23, 2004, the City Council authorized an Operating Agreement with River Services Inc. to manage and operate the City's Upper Harbor River Terminal from 2005 through 2014.

Department Information

Prepared by: Carrie Flack, Sr. Project Coordinator, 673-5010
Approved by: Charles T. Lutz, Deputy Director, CPED _____
Catherine A. Polasky, Director of Economic Policy & Development _____
Presenters in Committee: Carrie Flack, Sr. Project Coordinator

Financial Impact

- Action provides increased revenue for appropriation increase
Dept Name: CPED, Business Development
Fund Name: River Terminal
Project Name & Number (if capital budget): 07ERT – (River Terminal) 8900900
- Action is within the Business Plan
- Request provided to the Finance Department
- Other financial impact

Community Impact

- Neighborhood Notification – not applicable
- City Goals – consistent with maintaining industrial businesses and jobs
- Comprehensive Plan – consistent with goals identified for Economic Development; Environment; and Land Use
- Zoning Code – consistent with the current I2 industrial zoning district
- Other

Supporting Information

The City has owned and operated the 48 acre Upper Harbor River Terminal (UHT), a commercial navigation oriented inter-modal bulk commodity freight facility in North Minneapolis, since the early 1960's. In 1991, the City entered into an operating agreement with River Services Inc. (RSI) for operation of the UHT. The City's 1991 operating

agreement with RSI was renewed in 1992, 1995 and 2000. A new agreement was entered into in 2004. The new agreement makes the Operator responsible for all net losses incurred from operation of the Terminal.

Per the operating agreement, RSI is allowed to enter into sub-lease agreements for additional uses on the site consistent with the operations. This allows RSI to fully utilize the property as well as generate additional revenue to off-set any losses from the terminal operation. There are currently four sub-leases on the site: 1. Organic Technologies Inc.; 2. Hennepin County for Lowry Avenue demolition debris removal; 3. All Wood Chipping Co.; and 4. a container company. All sub-leases are managed by RSI, thus insulating the City from liability and management issues.

The City has been approached by the adjacent business to the south, GAF Materials Corporation to lease the southernmost parcel adjacent to their business location for outdoor storage of their product, asphalt shingles. This would significantly reduce their trucking and storage costs.

GAF Materials Corporation is proposing to pave the entire parcel (approximately 6 acres) and install a stormwater management system to accommodate the runoff as well as a fence to secure and maintain the site. GAF will be responsible for these expenses.

Due to the capital improvement to the site, City authorization is required. However, the City's operator, RSI, will continue to oversee the overall management and operation of the UHT site including this parcel. This proposed sub-lease will coincide with the term of the City's agreement with RSI which terminates in 2014 with the right to terminate with 180 days notice. As mentioned above, rent generated from this parcel as well as other sub-leases on the UHT will be included in the overall budget of the UHT to be submitted by RSI later this spring.

Staff is recommending approval of the lease agreement consistent with the terms outlined below.

TERM SHEET
FOR LEASE OF LAND OWNED BY CITY OF MINNEAPOLIS
ADJACENT TO GAF PLANT SITE

Premises: Approximately 268,700 square feet, located on and adjacent to Tract A, Registered Land Survey No. 1390, as depicted on that certain preliminary grading plan prepared by McCombs Frank Roos Associates, Inc., dated 11/16/2009, to be verified by survey paid for by Tenant. The Premises shall include all land area being used by GAF for storage, storm water controls or required regulatory screening requirements. The Premises shall not include the road, the riverbank or the railroad right-of-way, provided that GAF shall have the right to use the road for ingress and egress to the Premises.

Landlord: River Services, Inc.

Property Owner: The City of Minneapolis

Tenant: Building Materials Corporation of America

Term: _____ (“Commencement Date”) to December 31, 2014 (“Expiration Date”), subject to early termination rights discussed below.

Rent: Rent shall be based on the following per square foot rental rate:

Months 1 – 12:	\$0.58 per s.f. per year.
Months 13 – 24:	\$0.58 per s.f. per year.
Months 25 – 36:	\$0.60 per s.f. per year.
Months 37 – 48:	\$0.65 per s.f. per year.
Months 49 – Expiration Date:	\$0.68 per s.f. per year.

Rent shall be payable in equal monthly installments each year during the lease term. The Premises consists of 290,000 square feet, subject to survey verification if desired by Tenant at Tenant expense. In addition, Tenant is responsible for any storm water management fees related to the Premises, provided that Tenant shall receive the benefit of any credits granted by the applicable authority as a result of the installation of Tenant’s storm water management system.

Capital

Improvements: Subject to Property Owner approval of plans and specifications, Tenant, at its expense, shall (i) pave the Premises to its specifications, (ii) fence the perimeter of Premises, and (iii) install a storm water management system as required by the City of Minneapolis. Property Owner acknowledges that Tenant’s storm water management system plans have been reviewed and approved by Bonestroo, Inc. (the City’s engineering consultant). In addition, Tenant may (but shall not be obligated) to install permanent lighting at the Premises (collectively, the paving, fencing, storm water system and lighting shall be considered the “Capital Improvements”).

Tenant shall obtain all governmental approvals necessary for the Capital Improvements, provided that Property Owner shall cooperate with Tenant in connection therewith. In no way shall the Property Owner's commitment under this section impact the City's discretion when implementing its regulatory powers in reviewing Tenant's plans. All necessary permits for the Capital Improvements must be obtained by Tenant prior to initiation of the Lease term.

Tenant shall furnish or cause to be furnished to the Property Owner on or before the start of Capital Improvements, payment and performance bonds covering the faithful performance of the Capital Improvements' contractor(s) and the payment of all obligations arising thereunder. The payment and performance bonds shall name the Property Owner as obligee or co-obligee, shall be in the amount of the contract, and shall be in such form and with such surety or sureties as the Property Owner may approve.

Permitted Use: Outdoor storage of asphalt shingles and related products and materials, and all handling related thereto, subject to zoning and permitting restrictions, if any. Tenant may not transport any materials to or from the Premises by way of the Mississippi River except under separate contract with Landlord and may not block the road.

Contingencies: The lease shall be contingent on Tenant receiving all governmental approvals required for the Capital Improvements and operations.

Sublease and

Assignment: No subleases or assignments without explicit Landlord and Property Owner approval, which will be approved or denied in their sole discretion. Notwithstanding the foregoing, Tenant may sublease the Premises or assign the Lease to any entity controlling, controlled by or under common control with Tenant or to any entity into or with which Tenant may be merged or to any person or entity acquiring substantially all of the assets of Tenant to which the Lease relates.

Security Deposit: \$50,000 (related to cost to remove fencing and lighting if Tenant does not fulfill restoration obligations).

Collateral Access: Landlord and Property Owner shall execute a collateral access agreement giving Tenant's lender the right to access Tenant's inventory and other personal property at the Premises and giving such lender the right to cure any default by Tenant under the Lease for a reasonable period of time thereafter.

Insurance: See Exhibit A.

Utility Service: Tenant shall pay the cost of utility services to the Leased Premises, if any, such payment to be made directly to the utility provider.

Environmental

Investigation: Tenant shall be required to perform an environmental investigation of the Premises, after execution of the Lease but before the Commencement Date, to be performed by a Property Owner-approved contractor in accordance with the scope of work attached hereto as Exhibit B (the "Pre-Commencement Investigation"), and results shared with Landlord and Property Owner. At the termination of the Lease, Tenant must also perform (through a Property Owner-approved contractor), and provide results to Property Owner, an environmental investigation of the Premises comparable to the Pre-Commencement Investigation. The following contractors are acceptable to Property Owner for

the investigations described in this section: Braun Intertec Corp., American Engineering and Testing and AECOM. Property Owner will not unreasonably withhold its consent to other contractors proposed by Tenant.

In the event that the Pre-Commencement Investigation identifies any contamination at the Premises, Tenant shall have the right to terminate the Lease by giving written notice to Property Owner and Landlord on or before the later of (i) the Commencement Date or (ii) thirty (30) days after receipt of the results of the Pre-Commencement Investigation.

Indemnity:

A. Property Owner: Property Owner shall indemnify Tenant from and against any and all liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) and damages (collectively, "Losses") suffered or incurred by Tenant and resulting from or related to claims by persons or parties other than Tenant or Tenant's officers, employees, agents or contractors or invitees (such claims, collectively, "Third Party Claims") arising from hazardous substances and environmental conditions existing at the Premises as of the commencement of the Lease term (collectively, "Pre-Existing Environmental Conditions"). Notwithstanding the foregoing, Tenant shall release Property Owner and Landlord from claims by Tenant for Losses suffered or incurred by Tenant arising from Pre-Existing Environmental Conditions to the extent that such claims are not Third Party Claims.

B. Tenant: Tenant shall indemnify Landlord and Property Owner from and against any and all hazardous substances and environmental conditions, liabilities, losses, damages, costs, expenses, including reasonable attorney's fees arising during the term of the Lease from Tenant's operations, or the activities of Tenant's officers, employees, agents, contractors or invitees, at the Premises, except for the negligence or intentional torts of the Property Owner or Landlord.

Repairs and

Maintenance:

Tenant shall have the right but not obligation to perform any repairs to the Premises (including pavement, fencing and lighting) which Tenant deems necessary or desirable during the term of the Lease.

Tenant shall be responsible for rubbish removal, snow and ice removal, replacement of light bulbs, and for keeping the Premises in safe and reasonably neat condition.

Early Termination

Rights:

A. Property Owner: In connection with the property management agreement between Property Owner and Landlord covering the Lease Premises, if either party thereto terminates such agreement, then Property Owner or Landlord shall have the right to terminate the Lease upon 180 days written notice to Tenant. Upon any such termination, Property Owner shall reimburse Tenant for the unamortized balance of the cost of the Capital Improvements. For purposes of this provision, the cost of the Capital Improvements shall be uniformly amortized over the scheduled term of the Lease, commencing on the Commencement Date and ending on the Expiration Date.

B. Tenant: In the event that the GAF Materials plant at 50 Lowry Ave. N. is closed or that GAF publicly announces the closure of the plant, Tenant shall have the right to terminate the Lease upon 180 days notice to Landlord, but no reimbursement of Capital Improvements costs shall be due upon any GAF initiated termination.

Restoration: Prior to termination, Tenant shall remove any fencing or lighting installed at the Leased Premises by Tenant. Tenant shall not be required to remove or restore any pavement or storm water management facilities or infrastructure.

Terms Not Binding: Submission of this Term Sheet by one party to the other is neither an offer nor an acceptance of an offer to lease, and the terms of this Term Sheet shall not be binding upon Landlord, Property Owner or Tenant unless and solely to the extent that such terms are incorporated in a formal lease agreement which is fully executed and delivered by the parties. Each party may terminate negotiations regarding this Term Sheet and any proposed lease at any time without incurring any liability to the other party.

EXHIBIT A

MINIMUM INSURANCE REQUIREMENTS

REQUIRED INSURANCE COVERAGE

Workers' Compensation	Statutory
Employer's Liability (per accident)	\$1,000,000
Commercial General Liability (per Occurrence)	\$2,000,000 CSL
Contractual, Bodily Injury & Property Damage	(Combined Single Limit)
Automobile Liability	\$1,000,000 CSL
Bodily Injury & Property Damage	(Combined Single Limit)
Pollution Legal Liability	\$2,000,000 CSL
Excess or Umbrella Liability (Inclusive of above limits) including Sudden and Accidental Pollution Liability of \$2,000,000 SIR	\$5,000,000 CSL (Combined Single Limit)

The following apply to all policies:

1. River Services and the City of Minneapolis, and, as applicable, their respective parent, subsidiaries and affiliates and their agents, members, directors, officers and employees, shall be included as additional insured on all policies (except Workers' Compensation coverage).
2. All policies shall contain a Waiver of Subrogation in favor of River Services and the City of Minneapolis, and, as applicable, their respective parent, subsidiaries and affiliates and their agents, members, directors, officers and employees, and its Insurers.
3. River Services shall receive thirty days written notice of cancellation or any material change, except ten days written notice for cancellation due to non-payment..
4. All policies described herein shall have adequate territorial and navigation limits for the location of the Premises and the activities authorized in the Agreement.
5. All insurance shall be with insurers reasonably acceptable to River Services (Insurer shall be a licensed or registered company in the state where contract operations are conducted and must have a Best's rating of at least B+7).

- A. **Workers' Compensation and Employer's Liability** shall include:
 - 1. Statutory Workers' Compensation for state of hire or operation
 - 2. Employer's Liability

- B. **Commercial General Liability** (Occurrence Form) shall include:
 - 1. Premises/Operations
 - 2. Independent Contractors
 - 3. Personal Injury
 - 4. Products/Completed Operations
 - 5. Contractual Liability

- C. **Comprehensive Automobile Liability** shall include:
 - 1. Owned vehicles
 - 2. Non-Owned vehicles
 - 3. Hired vehicles

- D. **Excess Liability** (Occurrence Form) shall comply with the Terms and Conditions of the following underlying coverage:
 - 1. Commercial General Liability
 - 2. Comprehensive Automobile Liability

- E. **Pollution Legal Liability**. This policy must specifically cover the Premises under the Lease.

River Services reserves the right to require certified copies of all policies. The above minimum insurance requirements are subject to change at the discretion of River Services.

All insurance shall be written on an occurrence basis. If such insurance can only be obtained on a claims-made basis, said insurance coverage shall be maintained for at least two (2) years from the termination, cancellation, forfeiture and/or surrender of the Agreement.

EXHIBIT B

SCOPE OF WORK FOR PRE-COMMENCEMENT INVESTIGATION

(See attached sheet.)