



Request for City Council Committee Action from the Department of Community Planning and Economic Development

Date: September 9, 2014 Revised October 7, 2014

To: Council Member Lisa Goodman, Chair, Community Development
And Regulatory Services Committee

Subject: Lease Agreement with GAF Materials Corporation for Portion of Upper Harbor
Terminal Site

Recommendation: Authorize City officers to enter into a interim Lease Agreement and other related documents with Building Materials Corporation of America (GAF) consistent with the terms and conditions outlined in this report.

Previous Directives:

On March 12, 2010, the City Council authorized a three-party lease (City, River Services Inc. and GAF Materials Corporation) for a portion of the Upper Harbor Terminal site that expires December 31, 2014.

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: Ann Calvert, Principal Project Coordinator, 673-5023 Approved by: Charles T. Lutz, Deputy Director, CPED _____ Catherine A. Polasky, Director of Economic Policy & Development _____ Presenter in Committee: Ann Calvert, Principal Project Coordinator

Financial Impact

- Lease income of over \$600,000 over three years, with reduced City property management expenses
- Action provides increased revenue
 - 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 – McKinley Community was notified of the proposed lease
- City Goals – The lease will help achieve the hub of economic activity and innovation goal through helping an existing Minneapolis business meet its needs.
- 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

PARCEL	ADDRESS
Upper River Parcel 5	3360 First Street North

LESSOR
 Building Materials Corporation of America
 50 Lowry Avenue North
 Minneapolis, MN 55411

Background

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. Since 1991, the City has contracted with River Services Inc. (RSI) to operate the terminal on behalf of the City. In accordance with planned implementation of the *Above the Falls Master Plan* and its *Update* and in anticipation of the pending closure of the Upper St. Anthony Lock, the RSI contract will not be renewed when the current term ends on December 31, 2014, and the terminal operations and barge shipping will cease.

As part of that operating contract and pursuant to City Council approval, RSI and the City entered into a sub-lease with GAF Materials Corporation in 2010 for a six-acre parcel at the southernmost end of the UHT site immediately adjacent to GAF’s roofing manufacturing facility. GAF improved this leased parcel for outside storage of their roofing products, including completion of stormwater improvements and installation of paving, fencing and landscaping. This 2010 lease term ends December 31, 2014.

GAF would like to extend its use of the leased parcel. While the long-term vision for the UHT site does not include this use, staff is open to continuation of this interim use for an additional time period. A technical study is currently being completed by the City, with the cooperation of the Minneapolis Park and Recreation Board, and it appears that it will be at least a few years before the Park Board is ready to complete the initial park improvements that will be important

to securing the desired private redevelopment of the riverfront portion of the UHT site, including the parcel currently leased to GAF. Further, unlike much of the rest of the UHT site, the portion to be leased by GAF will not require significant lead time for demolition and site preparation prior to parkway and other infrastructure development. Also unlike the remainder of the UHT site, the portion leased by GAF is fenced and secured and thus relatively easy to devote to an interim use.

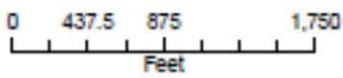
Staff is recommending approval of a new interim lease agreement with GAF consistent with the terms outlined in general below and in more detail on the attached term sheet. These terms are very similar to the terms of the current lease that will end this year. The annual rental amount is a fair market value rate based on an updated external appraisal.

The proposed lease term will be three years, but the lease will allow the City to cancel the lease with one year's notice when redevelopment becomes more imminent. Continuing to lease this parcel to GAF will generate rental revenue to the City of over \$200,000 per year, and GAF also will cover any stormwater fees and property management costs associated with the parcel, thus reducing the City's property management expenses. In addition, continued use of the site will enhance security on this portion of the UHT site in the interim until it is developed.

In consideration for entering into the proposed extended lease, GAF has agreed to:

- Improve the fencing on the western and northern edges of its parcel at 111 33rd Avenue North so that it provides screening that will be 90% opaque throughout the year and at least six feet in height.
- Repair the access road that runs on the western edge of the leased parcel by adding and compacting additional gravel.
- Meet with the City to discuss hiring and training opportunities, particularly for Northside residents.
- Meet with the Minneapolis Park and Recreation Board to explore ways to facilitate construction of a parkway across the rail spur tracks that serve Tenant.

UPPER HARBOR TERMINAL



TERM SHEET

FOR LEASE OF LAND OWNED BY CITY OF MINNEAPOLIS

ADJACENT TO GAF PLANT SITE

Premises: Approximately 275,477 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 4/22/2010. 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 adjacent private access road, the riverbank or the railroad right-of-way, provided that GAF shall have the non-exclusive right to use the access road for ingress and egress to the Premises.

Landlord: City of Minneapolis

Tenant: Building Materials Corporation of America

Term: January 1, 2015, (“Commencement Date”) to December 31, 2017 (“Expiration Date”), subject to early termination rights discussed below.

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

Months 1 – 12: \$0.75 per sq. ft. per year.

Months 13 – 24: \$0.77 per sq. ft. per year.

Months 25 – 36: \$0.79 per sq. ft. per year.

Rent shall be payable in equal monthly installments each year during the lease term and calculated based on a size of 275,477 square feet. In addition, Tenant is responsible for any storm water management fees related to the Premises, and the Tenant shall continue to receive the benefit of any credits granted by the applicable authority as a result of the installation and ongoing operation of Tenant’s storm water management system.

Capital Improvements: Subject to Landlord approval of plans and specifications, Tenant, at its expense, shall: a) add black fabric mesh screening (e.g. knitted polyethylene) to the existing fencing along the western and northern edges of its parcel at 111 33rd Avenue North (the “Fence Screening”) so that it is at least 90% opaque, six feet high, throughout the year, and b) repair the access road on the western edge of the Premises by adding and compacting additional gravel where the road surface is no longer

even (collectively the “Capital Improvements”). The Capital Improvements shall be completed no later than December 31, 2014, subject to force majeure delays (e.g. weather conditions or an inability to timely secure materials needed). Within 90 days following the Lease commencement date, Tenant shall install at its manufacturing facility adjacent to the Premises the following: (i) additional equipment to increase the volume of air and mixing capability to improve combustion within the fume incinerator, and (ii) additional controls to address normal variation of raw material streams to maintain combustion efficiency.

Tenant shall obtain any governmental approvals necessary for the Capital Improvements (none are expected to be required), provided that Landlord shall cooperate with Tenant in connection therewith. In no way shall the Landlord’s commitment under this section impact the City’s discretion when implementing its regulatory powers in reviewing Tenant’s plans.

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 and may not block the existing gravel access road to the Premises.

Compliance with Law: Tenant’s operations at the Premises and at Tenant’s adjacent facility (located at 50 and 74 Lowry Avenue North and 111 33rd Avenue North) shall comply with all applicable law. Receipt by Tenant of written notice of a violation of the City’s odor ordinances related to Tenant’s operations at the Premises or Tenant’s adjacent facility property based at 50 Lowry Avenue will be considered a default and Tenant’s time to correct the default shall be either 30 days or the amount of time listed in the written violation notice, whichever is sooner.

Sublease and Assignment: No subleases or assignments by Tenant without explicit Landlord approval, which will be approved or denied in its 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.

Landlord may assign its rights under the Lease to the Minneapolis Park and Recreation Board (the “Park Board”) with notification to Tenant (accompanied by a fully executed copy of an assignment and assumption of the Lease between the City and Park Board), but without requiring Tenant’s approval, provided that any such assignment shall be contingent

on the Park Board assuming the City's obligations as Landlord under the Lease.

Security Deposit: \$50,000 deposit (related to cost to remove fencing and lighting if Tenant does not fulfill restoration obligations) made for 2010 lease will be transferred to City by River Services, Inc.

Collateral Access: Landlord 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: Tenant to provide property, liability and other insurance in accordance with standard City requirements.

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 performed an environmental investigation of the Premises in 2010 (the "Pre-Commencement Investigation"), and the results were shared with Landlord. At the termination of the Lease, Tenant must also perform (through a Landlord-approved contractor), and provide results to Landlord, an environmental investigation of the Premises comparable to the Pre-Commencement Investigation. The following contractors are acceptable to the Landlord for the investigations described in this section: Braun Intertec Corp., American Engineering and Testing and AECOM. Landlord will not unreasonably withhold its consent to other contractors proposed by Tenant. Tenant will not be required to complete an environmental investigation at the end of the 2010-2014 lease for the Premises between the Landlord, Tenant and River Services, Inc.

Indemnity:

A. Landlord: Landlord 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 May 17, 2010, (collectively, "Pre-Existing Environmental Conditions"). Notwithstanding the foregoing, Tenant shall release 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 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 Landlord.

**Repairs and
Maintenance:**

Tenant shall have the right, but not the 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 maintaining the Fence Screening on its property.

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

Access Road:

Only the Tenant, Landlord, and any contractors/vendors and other tenants of the Landlord shall have the right to use the adjacent private access road, not the general public. Tenant shall have the right, but not the obligation, to maintain that access road, including snow and ice removal. In the event Tenant elects to remove ice and snow from the access road, Tenant will be allowed to deposit such snow at a location on the Landlord's property outside of the Premises mutually acceptable to both Landlord and Tenant. In the event the Landlord grants another party the right to use the access road, then the Landlord, Tenant and such other party(ies) will meet to negotiate in good faith the most efficient delivery of road maintenance, including snow and ice removal, and an allocation of snow/ice removal costs that is reasonably proportionate to the portion of the access road being used and the amount/duration of such use.

**Early Termination
Rights:**

A. Landlord: In the event (i) Landlord is prepared to initiate any actions leading to redevelopment of the Premises, Landlord shall have the right to terminate the Lease upon 1 year written notice to Tenant, provided that no such termination shall be effective prior to January 1, 2016. Such actions include, but are not limited to: conveyance of some or all of the Premises to the Minneapolis Park and Recreation Board, issuance of a request for development proposals for some or all of the premises, site clearance activities that include some or all of the Premises

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 day written notice to Landlord.

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 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.

Workforce

Development Plan: Tenant and Landlord will meet to discuss hiring and training opportunities, particularly for Northside residents. If such meeting occurs prior to execution of the Lease, such requirement shall be deemed satisfied in which event it shall not be incorporated in the Lease.

Spur Tracks: Tenant will meet with the Park Board to explore ways to facilitate construction of a parkway across the rail spur tracks that serve Tenant. If such meeting occurs prior to execution of the Lease, such requirement shall be deemed satisfied in which event it shall not be incorporated in the Lease.