



Request for City Council Committee Action
From the Department of Community Planning & Economic Development

Date: May 3, 2005

To: Council Member Lisa Goodman, Community Development Cmte
Council Member Barbara Johnson, Ways and Means/Budget Cmte

Prepared by: Jim Forsyth, Phone 612-673-5179

Presenter in

Committee: Jim Forsyth

Approved by: Mike Christenson, Director of Economic Development _____

Subject: Dredged Material Disposal Permit

RECOMMENDATION: That the City Council authorize appropriate City Officials to execute a permit allowing the US Army Corps of Engineers to place dredged material at the City's Upper Harbor River Terminal.

Previous Directives: In 1985 the City formally identified the Upper Harbor River Terminal as a dredged material disposal site. In 1999 the City Council approved a permit allowing the Corps to place dredged material at the Terminal for a five year period (2000 through 2004).

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to next box)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Approval of the permit will allow continued sale of the dredged material by the operator of the Terminal. This has been a significant source of income for the Terminal.
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact (Summarize below)

Ward: 3

Neighborhood Notification: Not Applicable

City Goals: Manage City assets wisely

Comprehensive Plan: Not Applicable

Zoning Code: Not Applicable

Living Wage/Job Linkage: Not Applicable

Background/Supporting Information

The commercial navigation channel on the Mississippi River (including Minneapolis) requires that periodic dredging be done to ensure that nine foot draft vessels can navigate the river. When the commercial navigation channel was extended to the Upper Harbor Terminal (Terminal) the City became responsible for providing locations for the Corps of Engineers (Corps) to dispose of sand dredged from the river for channel maintenance. One of the disposal locations has been the City's Upper Harbor Terminal. In 1985 the City formally identified the Terminal as a disposal site and in 2000 further formalized the process by issuing the Corps a permit for use of the site. The permit issued in 2000 expired at the end of 2004 and it is necessary to issue a new permit prior to any dredging the Corps may do this year and for the next five years.

Our agreement with the Corps makes the dredged sand the property of the City once it is placed at the Terminal. The sale of the material for construction fill has proved to be a significant source of income for the Terminal and therefore for the City. Currently material is being sold for \$2.25 per cubic yard. Although dredging is not usually done annually, the average annual amount of sand placed at the Terminal is 50,000 cubic yards which equates at this time to over \$112,500 in average annual revenues.

Attached to this report as an exhibit is a copy of the permit that expired at the end of 2004. It is this report's recommendation that appropriate City officials be authorized to enter into a similar agreement for 2005 through 2009.

PERMIT FOR DREDGED MATERIAL PLACEMENT

THIS AGREEMENT, made this 3rd day of August, 2002, by and between the City of Minneapolis (hereinafter "City") and the United States of America, by and through its Army Corps of Engineers (hereinafter "Grantee").

WHEREAS, the City is the fee owner of certain real property situated in the City of Minneapolis, Hennepin County, Minnesota, and legally described on Exhibit A attached hereto (hereinafter "Premises"); and

WHEREAS, Grantee desires to enter onto the Premises for the purpose of depositing dredging material on the Premises from dredging operations performed for operation and maintenance of the 9-foot channel projects on the Mississippi River.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties hereto agree as follows:

1. **Right of Entry.** The City hereby authorized the grantee and its employees, agents or contractors to enter upon the Premises for the following purposes, and grantee specifically agrees that its conduct shall be limited to those purposes only:
 - (a) Grantee is permitted during the term of this Grant to deposit dredging materials on the Premises.
 - (b) Grantee and its employees, agents or contractors shall conduct their activities in an orderly and lawful manner, securing at their own expense all required permits and approvals.
 - (c) The dredged material may be deposited on the Premises in such manner as suits the convenience of the dredging operations without any obligation on the part of the Grantee to level or otherwise dress the spoil deposits.
 - (d) All tools, equipment, and other property taken upon or placed upon the Premises by the Grantee shall remain the property of the Grantee and may be removed by the Grantee at any time within ninety (90) days after the expiration of this agreement.
2. The granting of this permission, right, privilege and license does not obligate the Grantee to perform any dredging operations for depositing of material upon the Premises.
3. **Term of Right of Entry.** Grantee shall have the right to enter upon the Premises for the purposes described herein for the five (5) year period from January 1, 2000, through December 31, 2004. Grantor may terminate this right of entry upon thirty (30) days prior written notice to Grantee.
4. **Dredged Material Disposal.** After the Grantee has deposited any dredged material upon the Premises, the City may then use or dispose of such dredged material as the City deems appropriate without owing any compensation to Grantee or its agents or contractors for such material.

5. **Condition of Premises.** Grantee shall use reasonable efforts to keep the Premises in neat, clean and safe condition during the term hereof, and agrees not to make any improvements without the prior written approval of the City.
6. **Scope of Right of Entry.** The grant of the Right of Entry to the Grantee by the City shall be non-assignable and not confer any estate, title, nor exclusive possessory rights in the Premises to Grantee, and may be terminated upon thirty (30) days written notice by the City to Grantee.
7. In the event of any breach of this permit by the Grantee, the City shall have the right to make claim for its losses or damages under the Federal Tort Claims Act (28 U.S.C. 2671, et seq.), the Tucker Act (28 U.S.C. 1491(a). 1346(a)(2)) or any other applicable waiver of the Grantee's sovereign immunity. The City shall also be entitled to any other remedies which may be available to it by law such as writs of mandamus, injunction, or review of agency action under the Administrative Procedure's Act (5 U.S.C. 702, et seq.).
8. To the fullest extent permitted by law, the Grantee shall be liable to the Grantor, its successors and assigns, for any loss and/or damage arising from and caused by the Grantee's placement of dredged material upon the Property, insofar as such loss, damage and/or cause of action is based upon RCRA, CERCLA, or any other environmental statute, regulation and/or cause. This paragraph is further qualified only to the extent that liability of the Grantee hereunder is subject to the availability of appropriations for such payments, and appropriate funds sufficient to meet any deficiencies. The foregoing qualification notwithstanding, it is not intended hereby to in any way restrict, limit and/or diminish such liability of the Grantee as may be provided for under the provisions of RCRA and/or CERCLA. The provisions of this paragraph shall survive the termination of the Permit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

GRANTEE: UNITED STATES OF AMERICA
By U.S. Army Corps of Engineers

CITY OF MINNEAPOLIS
By its Contract Administrator, Minneapolis Community
Development Agency

Approved as to form:

Assistant City Attorney

River Services

Exhibit A

Legal Description

PARCEL No. 1: (Area is 243,824 ± Sq. Ft. or 5.596 ± Acres)

All of Lot 2, Block 1, Osborne-McMillan First Addition, except that part thereof lying Northeasterly of the following described line: Beginning at a point on the Westerly line of said Lot 2, said point being 1006.64 feet Northerly of the Southwest corner of said Lot 2, as measured along said Westerly line; thence South 61 degrees 49 minutes 44 seconds East to the Easterly line of said Lot 2, said Easterly line also being the shoreline of the Mississippi River, and there terminating. For the purpose of this description the South line of said Lot 2 is considered to be a line bearing North 89 degrees 58 minutes 30 seconds West.

PARCEL No. 2: (Area is 21,893 ± Sq. Ft. or 0.503 ± Acres)

That part of Dowling Avenue North which lies Easterly of the Southerly extension of the Westerly line of Lot 2, Block 1, Osborne-McMillan First Addition and Westerly of the Westerly shoreline of the Mississippi River.

PARCEL No. 3: (620,640 ± Sq. Ft. or 14.249 ± Acres)

Blocks 1 and 6, D. L. Peck's Rearrangement of D. L. Peck's Addition to Minneapolis, and that part of 37th Avenue North vacated between said Blocks 1 and 6, and the Easterly half of 1st Street North vacated between the North line of 36th Avenue North and the South line of Dowling Avenue North adjoining said Blocks 1 and 6, except the North 33 feet of said described tract of land acquired for Dowling Avenue North.

Blocks 2 and 5, D. L. Peck's Rearrangement of D. L. Peck's Addition to Minneapolis, and that part of 37th Avenue North vacated between said Blocks 2 and 5, and the Westerly half of 1st Street North vacated between the North line of 36th Avenue North and the South line of Dowling Avenue North adjoining said Blocks 2 and 5, except the North 33 feet of said described tract of land acquired for Dowling Avenue North.

That part of 36th Avenue North, as platted in D. L. Peck's Addition to Minneapolis, which lies Easterly of the Southerly extension of the Westerly line of Block 5, D. L. Peck's Rearrangement of the Southerly extension of the Westerly line of Block 5, D. L. Peck's Rearrangement of D. L. Peck's Addition to Minneapolis and Westerly of the Westerly shoreline of the Mississippi River.

That part of 36th Avenue North, being the North 33 feet of Government Lot 8 in Section 10, Township 29, Range 24, which lies Easterly of the Easterly right-of-way line of the Soo Line Railroad and Westerly of the Westerly shoreline of the Mississippi River.

That part of Government Lot 8 in Section 10, Township 29, Range 24 which lies Easterly of the Easterly right-of-way line of the Soo Line Railroad, South of the North 33 feet of said Government Lot 8 and North of a line described as follows: Commencing at the intersection of the Easterly right-of-way line of the Soo Line Railroad with the South line of the North 33 feet of said Government Lot 8; thence on an assumed bearing of South 7 degrees 57 minutes 10 seconds East, along the Easterly right-of-way line of the Soo Line Railroad, a distance of 147.57 feet to the point of beginning of the line to be described; thence North 82 degrees 03 minutes 20 seconds East to the shoreline of the Mississippi River and there terminating.

Parcel No. 4: (Area is 210,029 Sq. Ft. or 4.822 Acres)

Block 3, D. L. Peck's Rearrangement of D. L. Peck's Addition to Minneapolis, including vacated alley in said block and adjoining half of 37th Avenue North and that part of 1-1/2 Street North adjoining the same, now vacated, except the West 7 feet of said Block 3 taken for widening 2nd Street North (now Washington Avenue North) and except the North 33 feet of said described tract of land acquired for Dowling Avenue North.

That part of Block 4, D. L. Peck's Rearrangement of D. L. Peck's Addition to Minneapolis, including the vacated alley and vacated 1-1/2 Street North, which lies northerly of the following described line: Commencing at the southwest corner of said Block 4; thence on an assumed bearing of North 10 degrees 00 minutes 34 seconds West, along the west line of said Block 4, a distance of 531.00 feet to the point of beginning of the line to be described; thence North 82 degrees 27 minutes 26 seconds East to an intersection with the east line of said vacated 1-1/2 Street North and there terminating; except the westerly 7 feet thereof.

PARCEL No. 6: (Area is 604,634 ± Sq. Ft. or 13.881 ± Acres)

All that part of Government Lot 8 in Section 10, Township 29, Range 24 which lies Easterly of the Easterly right-of-way of the Soo Line Railroad and South of the line described as follows: Commencing at the intersection of the Easterly right-of-way line of the Soo Line Railroad with the South line of the North 33 feet of said Government Lot 8; thence on an assumed bearing of South 7 degrees 57 minutes 10 seconds East, along the Easterly right-of-way line of the Soo Line Railroad, a distance of 147.57 feet to the point of beginning of the line to be described; thence North 82 degrees 03 minutes 20 seconds East to the shoreline of the Mississippi River and there terminating.

All that part of 34th Avenue North vacated, as platted in Baker's Fourth Addition to Minneapolis, which lies East of the Easterly right-of-way line of the Soo Line Railroad.

PARCEL No. 7: (Area is 305,472 ± Sq. Ft. or 7.013 ± Acres to shoreline)

Tract A, Registered Land Survey No. 1390, Files of the Registrar of Titles, Hennepin County, Minnesota