



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

Date: November 18, 2014

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

Subject: **Interim Management Agreement for Upper Harbor Terminal**

Recommendation: Waive the requirement for a request for proposals process and authorize the appropriate City officials to finalize and execute an interim management agreement with River Services, Inc. for the Upper Harbor Terminal in accordance with the term sheet herein, for a period of up to three years beginning January 1, 2015, and with a 2015 maximum amount of \$870,000, contingent upon sufficient appropriation being authorized by the 2015 budget.

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. Article VI of the agreement required annual approval of the Terminal's Operating Budget for the ensuing year. The City Council approved the budget annually with the most recent approval on February 7, 2014, for the 2014 budget. On December 6, 2013, the City Council authorized the execution of a contract for an Upper Harbor Terminal redevelopment technical study.

| | |
|-------------------------|--|
| Prepared by: | Ann Calvert, Principal Project Coordinator, 612-673-5023 |
| Approved by: | D. Craig Taylor, CPED Director _____ Catherine A. Polasky, Director Economic Policy & Development _____ |
| Presenter in Committee: | Ann Calvert |

Financial Impact

Action will be accommodated within the 2015 budget.

Action is within the Business Plan

Request provided to the Finance Department

Other financial impacts:

The agreement will reduce City costs and liabilities by enhancing site security and will increase the potential for interim use revenues.

Community Impact

Neighborhood Notification: Notice of this report was sent to Webber-Camden Neighborhood Organization, McKinley Community and the Above the Falls Citizens Advisory Committee.

City Goals: Efficient and effective interim property management will address the Living Well goal by enhancing site security and the A City That Works goal by assuring that this City-owned facility is well managed and maintained.

Sustainability Targets: Not applicable

Comprehensive Plan: The interim use of the terminal is consistent with goals identified for Economic Development. Future land uses will be consistent with adopted City policies, including the *Above the Falls Master Plan Update* adopted June 14, 2013.

Zoning Code: The terminal use and future land uses will be consistent with the zoning code.

Living Wage/Business Subsidy: The management agreement will require RSI to comply with the Living Wage ordinance.

Supporting Information – Interim Management Agreement for 2015 -- 2017

The City has owned and operated the 48-acre Upper Harbor River Terminal (UHT), an 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 that was renewed in 1992, 1995 and 2000. A ten-year agreement with RSI was entered into in 2005 and expires in December 2014. Absent further action, the terminal operations will cease at the end of 2014 and the property management responsibilities will revert to the City.

A technical study will define the infrastructure needed to support the redevelopment of the site, identify potential development scenarios for the planned business park uses and estimate the costs for both the City infrastructure and park improvements. Additional work is needed after completion of the study, including completion of soil and environmental testing, designing the necessary infrastructure and securing the funding needed for the park and public improvements.

While considerable progress is being made towards the redevelopment of the UHT site to the park and jobs-intensive business uses anticipated in the *Above the Falls Master Plan Update*, the site will not be ready for redevelopment in the immediate future. In the interim, there are significant ongoing costs associated with the site, the largest of which is the annual storm water fee. Significant staff time is necessary to manage the site. If the site is not in active use, it also could become a security and maintenance liability for the City.

An interim property management agreement with RSI is proposed to maximize the revenue the site can generate to offset City costs, enhance site security and reduce the property management burden. The proposed management role is much less extensive than under the current operating agreement. The terms of this agreement will not allow for any barge-related activities. Moreover, the Upper St. Anthony Falls Lock will be closing no later than June of 2015. The agreement would be for a three-year term, with the ability to terminate upon one-year's notice (or reduce the scope of management duties) when and if staff feels that some or all of the site is ready for redevelopment. The proposed term sheet is attached and outlines additional details.

Staff is proposing that RSI be selected to provide the property management services without seeking other interim management proposals through a request for proposals process. The Permanent Review Committee concurred that this approach is appropriate due to the specialized nature of the terminal operation, the extensive knowledge RSI has about the terminal property/equipment and existing and potential tenants, and the time that would be required to complete an RFP process for other proposals with the terminal closure imminent.

Exhibit B reflects the anticipated cost of services proposed by RSI for 2015, compared to the anticipated costs of in-house management by City staff. If the site is managed by City staff, it is anticipated that revenue will be limited to rental of outdoor storage and possibly dome storage. The reduced activity levels will result in lower revenue potential. Furthermore, without on site management, additional investments for fencing and other security measures are expected to be needed.

Under RSI management, RSI staff will be on site to provide services that generate revenues and provide for enhanced security. The anticipated revenue sources will include the recently approved interim GAF lease, rent/services from other outdoor- and dome-storage customers and rent/services related to the UHT warehouse. (Additional revenues also are expected from the sale of UHT equipment that is no longer needed for the operation.) Expenses include storm water fees and other utilities, salary and benefits for a small RSI on-site staff group who will both manage the property and provide revenue-generating services, insurance, a management fee to RSI and a wide variety of property and equipment maintenance costs

EXHIBIT A

Term Sheet – Upper Harbor Terminal Interim Management Agreement

Parties

City of Minneapolis (the “City”)

River Services, Inc. (“RSI”)

Contract Administrator: Ann Calvert or CPED Director

Facility

Upper Harbor Terminal (the “Terminal”), which shall include the parcel leased by GAF

Term

3 years, terminable by either party upon one year’s written notice or upon at least ten (10) days’ notice in the event of material damage or destruction at City’s option

Services

Provide all Facility Management Services for the Terminal on behalf of the City for the purposes of managing the Terminal in an efficient, safe and cost-effective manner in accordance with industry standards for similar facilities, maximizing revenue within the constraints of the Facility Management Agreement, minimizing operating costs and securing the Terminal. These services include:

- Marketing the Terminal, seeking tenants and warehouse space users, entering into appropriate agreements and collecting rent/service payments (except GAF rent, which will go directly to the City)
- Assuring that any necessary permits and licenses are secured and maintained (with City assistance where appropriate)
- Promptly paying all expenditures and costs that may be necessary and appropriate for the actual operation, maintenance and repair of the Terminal as a Commodity Storage facility, including the prompt payment of all fees and charges for all utilities and equipment rental
- Maintaining the Terminal, including all structures, grounds and landscaping and timely snow and ice removal
- Overseeing security and responding to any security alarms

- Preparing and submitting weekly reports to the City transferring all revenues received and outlining all expenses for which reimbursement is sought, as well as monthly summaries and annual audits
- Assisting the City in disposition of UHT site equipment and fixtures upon request

Revenues and Expenses

RSI will timely transfer to the City all Terminal revenues received. The City will timely reimburse RSI for all Terminal management and operating expenses (subject to the exclusions outlined in the 2005 Operating Agreement except that no fidelity bond or letter of credit will be required, the City will be responsible for any insurance deductibles and reasonable maintenance costs for RSI-owned equipment being used at the Terminal may be included as an expense) that are within the budget approved by the City. RSI will make no guarantees that revenue will equal or exceed expenses, but the management fee is structured to reward RSI if they maximize revenue and manage expenses.

Annual Budget Process

RSI will provide to the City for City review and approval before the beginning of the last quarter of each calendar year a proposed budget for the coming year and an estimate of the revenues for that year. After City staff review of said budget and revenue projection, the expense budget and revenue budget (as revised pursuant to staff review and discussion with RSI) will be proposed for City Council approval of the necessary appropriations as part of the City's annual budget process. If approved by the Council and Mayor, that will then constitute the Approved Annual Budget for that calendar year. RSI may propose at any time for City consideration a budget increase that includes additional staffing to provide more active services and/or funding for modest capital improvements, if RSI can provide reasonable assurances that those additional services/improvements will allow RSI to secure tenants that will generate enough additional revenues to offset those additional expenses. If approved in writing by the City Contract Administrator and City Finance Officer, the Approved Annual Budget will be increased accordingly. If at any time the projected revenues are not secured, the City will reserve the right with reasonable notice to revise the Approved Annual Budget back to a lower amount to more closely approximate the actual revenues available, provided that any expenses incurred by RSI prior to the date of the budget adjustment shall be reimbursed by the City.

RSI's obligation to pay any management and operating expenses, and the City's obligation to reimburse RSI for those expenses, are limited to the extent that such expenditures and costs are covered by funds contained in Approved Annual Budget. To the extent any such necessary costs and expenditures are not covered by funds in an Initial Budget or an Approved Annual Budget, RSI shall promptly notice the Contractor Administrator of the same.

The proposed budget for 2015 (contingent upon adoption by the City of a corresponding budget appropriation) is reflected below:

| EXPENSE | |
|-------------------------------------|------------------|
| Salary and benefits -- RSI | \$289,000 |
| Stormwater fee | 175,000 |
| Other utilities | 74,000 |
| Security services | 13,000 |
| Accounting, office, supplies, misc. | 49,000 |
| Insurance | 40,000 |
| Licenses and permits | 2,000 |
| Repairs & maint. – bldg. & equip. | 107,000 |
| Management fee | 121,000 |
| | |
| 2015 total budget | \$870,000 |

Management Fee

The City will pay RSI a base monthly management fee equal to the following:

- \$5,000 per month in 2015
- \$5,100 per month in 2016
- \$5,200 per month in 2017

In addition, at the end of each quarter, the City will pay RSI an additional revenue incentive management fee calculated as follows:

- The difference between the cumulative base management fee paid for that year and 12% of the cumulative gross revenues received by RSI and the City for the Terminal during that year (with any adjustments for the final quarter to be included in the first quarter of the next year).

In addition, at the end of each calendar year and submission of the audited financial report, the City will pay RSI a bonus management fee calculated as follows:

- 50% of the amount, if any, by which revenues received by the City (both directly and collected by RSI, but not including revenue from sales of UHT equipment) during that year exceeded the operating expenses paid by the City (both directly and as reimbursement to RSI) during that year.

Monthly Statements and Annual Audits

Each month, RSI shall submit to the Contract Administrator a detailed profit and loss statement showing the results of the operation of the Terminal for the preceding month and for the year to date. RSI shall have an annual audit of its books made by an independent Certified Public Accountant and submitted to the City.

Contracts for Commodity Storage Services

In no event shall any contract for commodity storage services (or any other contract to use the Terminal property) be for a term longer than December 31, 2017, without the prior written consent of the City. Every contract to allow use of the Terminal shall include a provision that enables the City to assume such contract, assign such contract to another operator or terminate such contract upon one year's written notice.

Modifications to the Terminal Site

Upon 30 days' written notice to RSI, the City may remove any un-contracted portion of the Terminal Site from the definition of the Terminal Site for such purposes as the City deems appropriate. Upon one year's notice, the City may remove from the definition of the Terminal Site any portion of the Terminal site that RSI has leased or contracted to a tenant/user.

Odor and Nuisance Standards

The City has an expectation that the Terminal be operated in such a way that there will be no violations of the City's nuisance ordinances, including in particular the City of Minneapolis Odor Ordinance. Products shall be allowed and use agreements shall be enforced with that goal in mind.

Conflicts of Interest

RSI shall at no time have any ownership in, or title to, any commodities stored at the Terminal nor shall RSI engage in any activity that would conflict with its obligations to manage the Terminal. RSI shall not give any favorable treatment to any parent corporation or affiliates of RSI. RSI shall not accept rebates from any user or customer of the Terminal.

Capital Improvements

RSI shall not make any capital improvements to the Terminal property unless approved in writing by the City as part of the budget process outlined above.

Supplies, Furnishings and Operating Equipment

The City and RSI shall continue to provide those supplies, materials, furnishings, operating equipment and other personal property and movable fixtures that have been provided by the respective parties in the previous Operating Agreement dated January 1, 2005.

Notwithstanding the foregoing, the parties will endeavor to identify equipment and furnishings that are no longer needed for continued operation of the Terminal for commodity storage and the City will attempt to dispose of such consistent with the City's adopted policy on Surplus Equipment. RSI will reasonably assist the City in such disposal efforts.

Maintenance

RSI shall promptly notify the Contract Administrator of any needed repairs to the Terminal, including all buildings and structures thereon, that RSI is not undertaking to repair because funds for the repair are not included in an Approved Annual Budget. RSI shall have no liability to make repairs to the Terminal unless the City has included the costs for such repairs in an Approved Budget or has otherwise approved the costs in writing and committed to reimburse RSI for said repair.

Hours and Wages

RSI will comply with wage and hour standards to the same extent as would be required by the City pursuant to Minneapolis Code of Ordinances, Sections 24.220 through 24.260.

Indemnity

RSI shall defend, indemnify and hold the City harmless from and against any and all liabilities, losses, damages, costs, expenses (including attorneys' fees), causes of action, suits, claims, demands and judgments of any nature, generally as provided in the existing 2005 Operating Agreement except for the obligation to make a No City Loss Payment.

Standard Contracting Requirements

The agreement will include all applicable City contracting requirements, such as living wage, affirmative action, and small and underutilized business program requirements.

Insurance

The agreement will require the following insurance:

- (a) Workers' Compensation Insurance
- (b) Commercial General Liability Insurance (\$2,000,000 limit)
- (c) Warehouseman's Legal Liability Insurance (\$5,000,000 limit).
- (e) Automobile Liability Insurance (\$2,000,000 limit)
- (f) Pollution and Remediation Legal Liability Insurance (\$5,000,000 limit)
- (g) Other Property Insurance (with City input on coverages)
- (h) Excess Liability Insurance (\$10,000,000 limit)

EXHIBIT B
Upper Harbor Terminal
2015 Revenue and Expense Comparison

| EXPENSE | Without RSI management | With RSI management |
|----------------------------------|-------------------------------|----------------------------|
| Salary and benefits – RSI * | \$0 | \$289,000 |
| Stormwater fee | 175,000 | 175,000 |
| Other utilities | 74,000 | 74,000 |
| Security services | 13,000 | 13,000 |
| Accounting, supplies, misc. | 0 | 49,000 |
| Insurance liability | 40,000 | 40,000 |
| Licenses and permits | 2,000 | 2,000 |
| Repairs & maint. – bldg. | 14,000 | 14,000 |
| Repairs & maint. – equip. | 0 | 93,000 |
| Management fee | \$0 | 121,000 |
| | | |
| Add'l fencing (one-time exp.) ** | \$300,000 | \$0 |
| | | |
| Total expenses | \$618,000 | \$870,000 |
| | | |
| REVENUE | | |
| Passive use agreements | \$208,000 | \$208,000 |
| Dredge materials sales | 0 | 25,000 |
| Add. rev. from active mgmt. | 0 | 556,000 |
| Equip. sales | Unknown | Unknown |
| | | |
| Total revenues | \$208,000 | \$789,000 |
| | | |
| NET (from fund balance) | (\$410,000) | (\$91,000) |
| | | |
| Salary and benefits – City*** | (\$100,000) | (\$10,000) |

* Assuming four-person RSI staff group that is providing both management of site and revenue-generating services to customers

** No additional fencing is expected to be needed if site is being actively used by RSI and its customers

*** Estimated value of existing City staff time needed to manage site and maintain security if there were no interim property management agreement, as compared to time needed to manage RSI agreement