

Notice of Meeting

BOARD OF TRUSTEES OF THE GALVESTON WHARVES

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding, contact this office, 123 Rosenberg Avenue, 8th Floor Shearn Moody Plaza, Galveston, TX 77550 (766-6105) to make arrangements for this special accommodation.

IT IS POSSIBLE THAT ONE OR MORE MEMBERS OF THE BOARD OF TRUSTEES WHO ARE NOT MEMBERS OF THE FINANCE COMMITTEE AND/OR ONE OR MORE MEMBERS OF THE BOARD OF DIRECTORS OF THE GALVESTON PORT FACILITIES CORPORATION MAY ATTEND THIS MEETING. IF THE ATTENDANCE BY SUCH TRUSTEES OR DIRECTORS RESULTS IN A QUORUM OF THE FULL BOARD OF TRUSTEES OR THE CORPORATION BEING PRESENT AT THE MEETING, THIS MEETING WILL ALSO BE CONSIDERED A MEETING OF THE FULL BOARD OF TRUSTEES AND THE CORPORATION.

FINANCE COMMITTEE

Monday, November 27, 2017

8:30 a.m.

Port of Galveston

8th Floor Shearn Moody Plaza

123 Rosenberg Avenue, Galveston, Texas 77550

-THIS FINANCE COMMITTEE MEETING IS OPEN TO THE PUBLIC-

Finance Committee Members

Albert P. Shannon, Chairman

Richard DeVries

Todd Sullivan

I. CALL TO ORDER

- A. Roll Call
- B. Declaration of Quorum
- C. Declaration of Conflicts of Interest

II. PRESENTATIONS AND ANNOUNCEMENT

-Presentation by Jonathan Hale of Gulf Copper & Manufacturing

III. CONSENT AGENDA

- Consider Board and Staff Expense Reports (D-1)
- Consider Financial Statements (D-2)
- Accept Port Investments Report (D-3)
- Accept Bank Reconciliation Report and Schedule of Restricted Fund Balances Report (D-4)
- Accept Cash Flow Projections (D-5)
- Accept Monthly Delinquent Accounts Receivable Analysis (D-6)
- Accept Vendor Check Register Report (D-7)
- Consider Trade Development (D-8)

IV. COMMENTS FROM THE FINANCE COMMITTEE ON AGENDA ITEMS

V. ADJOURNMENT

3:30 p.m., Wednesday, November 22, 2017



By: Peter Simons, Interim Port Director

Please Note

Members of the public attending the Board's Committee Meetings may park at no cost in the Shearn Moody Plaza Parking Garage. The garage is located across the street from the Port offices.

Members of the City Council may be attending and participating in discussion.

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, WITHIN THREE (3) DAYS PRIOR TO ANY PROCEEDING, CONTACT THE CITY SECRETARY'S OFFICE, SUITE 201, 823 ROSENBERG, GALVESTON, TEXAS 77550 (409-797-3510).

**PORT OF GALVESTON
LEASE SUMMARY**

I. IDENTIFICATION OF PARTIES AND PREMISES

Effective Date of Lease: May 1, 2006

Current Term of Lease: May 1, 2016 to April 30, 2021 (Third renewal Term)

Lessee: **GULF COPPER & MANUFACTURING CORPORATION**, a Texas corporation

Lessee's Notice Address: 320 Houston Avenue, Port Arthur, Texas 77640

Leased Premises: The property known as the Pelican Island Shipyard (including any submerged lands), as described by metes and bounds on Exhibit A (the "Land"), and all permanent improvements in existence on the Land as of May 1, 2005, including without limitation any sheds, buildings, docks, wharves, bulkheads, piers, pilings, dolphins, cranes, ramps, warehouses, structures, paving, and fences (the "Existing Improvements"). The Land and the Existing Improvements, together with any Lessee Improvements (defined in the Agreement) that may be constructed by Lessee, are collectively defined as the "Leased Premises".

II. DESCRIPTION OF TERM

Primary Term: Two years, commencing May 1, 2006 and ending April 30, 2008

Renewal Terms: Six additional periods (each a "Renewal Term"), to commence at the expiration of the Primary Term or the previous Renewal Term, whichever is applicable. The first Renewal Term is for a 3-year period and each remaining Renewal Term is for a 5-year period. Each Renewal Term will automatically begin at the end of the Primary Term or the previous Renewal Term, whichever is applicable, without action of any type by Lessor or Lessee, unless Lessee delivers written notice of its intention not to renew to Lessor at least 180 days prior to the expiration of the Primary Term or the previous Renewal Term, whichever is applicable.

Termination Options: The parties may terminate following total destruction of the Leased Premises. The Agreement terminates following a total condemnation of the Leased Premises.

License for Additional Space: Lessee may from time to time request in writing to temporarily use space other than the Leased Premises to conduct its permitted activities under the Agreement if Lessee determines that use of such additional space is necessary or beneficial. If Lessor, in its sole discretion, determines that additional space is available during the period of time requested by Lessee and it is suitable for Lessee's purposes, Lessor will grant Lessee a temporary license to use such space for the period of time requested. During any period of time Lessee is occupying such additional space, all the terms, covenants and conditions of the Tariff will apply to the additional space except that dockage with respect to any vessel berthed at the space will be assessed at 50% of the normal dockage charge that would otherwise be applicable to such vessel

but for the application of this limitation, and all revenue generated by Lessee's use of the additional space will be included in Gross Revenue.

III. MONETARY OBLIGATIONS

Rent

Base Rent: \$41,667 for each month during the Term, payable monthly, in advance, on the first day of each month during the Term of this Agreement subject to escalation

Current Base Rent Payment: \$51,830.25

Percentage Rent: In addition to the Base Rent, Lessee must pay Lessor a percent of all Gross Revenues of Lessee in the following amounts ("Percentage Rent"): (i) for Gross Revenues between \$25 million and \$35 million, Percentage Rent is equal to 3% of the amount of Gross Revenues in excess of \$25 million but not exceeding \$35 million; (ii) for Gross Revenues between \$35 million and \$45 million, Percentage Rent is equal to the Percentage Rent calculated under (i) above, plus 4% of the amount of Gross Revenues in excess of \$35 million but not exceeding \$45 million; and (iii) for Gross Revenues of \$45 million or more, Percentage Rent is equal to the Percentage Rent calculated under (i) and (ii) above, plus 5% of the amount of Gross Revenues in excess of \$45 million. Percentage Rent, if due, is payable no later than the 45th day following the end of each Lease Year. Each payment of Percentage Rent must be accompanied by a statement certified as being true and correct and signed by an officer of Lessee stating (i) the amount of Gross Revenues generated with respect to the Leased Premise for the Lease Year to which the Percentage Rent relates, and (ii) the amount of Percentage Rent generated by those Gross Revenues.

The last Percentage Rent Payment was made in 2014 in the amount of \$441,861. From 2006 through 2014, total supplemental rent paid was \$15,104,605.

Rent Escalation Provisions: Beginning May 1, 2007, the Base Rent will be adjusted on that date and on each anniversary of such date (each an "Adjustment Date") to reflect increases in the Consumer Price Index for All Urban Consumers (CPI-U) for Houston-Galveston-Brazoria, Texas, All Items (1982-84 = 100). Notwithstanding any provision in the Agreement to the contrary, Base Rent must never be more than \$62,500 per month or less than \$41,667 per month. Lessor will provide Lessee with notice of each adjustment to Base Rent and the calculation of the adjustment no later than June 30 following each Adjustment Date.

CPI-U is calculated on the CPI-U numbers published mid-April of every year.

Dockage: Lessor may not assess or collect dockage with respect to any vessel to which Lessor's dockage tariffs apply unless such vessel is berthed at the Leased Premises without any work constituting a Permitted Activity being actively performed on it for 72 consecutive hours, or such longer period if such vessel is in good faith berthed at the premises for a Permitted Activity and Lessee demonstrates with specific facts and certifies to Lessor on demand that such work

constituting a Permitted Activity has not yet begun or has been temporarily discontinued because Lessee has not been able in good faith to commence or continue such work for some reasonable basis beyond its control.

IV. USE OF PREMISES

Permitted Use: The Leased Premises may be used by Lessee only for the following purpose (each a "Permitted Activity"): the operation of a shipyard, including without limitation, services relating to the repair, cleaning, maintenance, dismantling, and construction of vessels and/or rigs or any other drilling structure, including, but not limited to, jack-up-rigs, semi-submersible rigs, drilling and production vessels, barges, tankers and other vessels, and the repair, cleaning, maintenance, dismantling, and construction of modular units or other items for use on land or marine projects; for other fabrication, construction or manufacturing relating to marine or heavy industrial activities; for the lay berthing of MSC or MARAD vessels; and for other purposes reasonably and necessarily related to the foregoing. Neither Lessee nor its Affiliates or sublessees shall compete with Lessor for the lay berthing of vessels to which Lessor's dockage tariffs apply. Any use of the Leased Premises for other than a Permitted Activity requires the prior written approval of Lessor, which will not be unreasonably withheld, conditioned, or delayed.

V. MAINTENANCE AND REPAIRS

Lessee's Obligations: Except with respect to Deficiencies, to (i) keep, maintain, or replace when needed the Leased Premises and all Improvements on the Leased Premises in a good state of appearance and repair, reasonable wear and tear excepted, and (ii) modify any Improvements on the Leased Premises if necessary to cause the Leased Premises to conform with all laws applicable thereto. Lessee's repair and maintenance obligations with respect to the Deficiencies are only to keep them in the same state of repair as they existed on May 1, 2005, reasonable wear and tear excepted. From time to time during the Term, Lessor and Lessee may identify certain Existing Improvements that would be suitable for improvement or demolition, and will jointly approve a scope of work and maximum guaranteed price for such improvement or demolition. Lessee will be solely responsible for making such improvements or demolition and for paying the cost thereof, but Lessor will consider reimbursing Lessee for any approved costs on a case by case basis.

Lessor's Obligations: None

Dredging: Lessee may, at its cost, perform any dredging of the harbor within and the channel adjacent to the Leased Premises if necessary for its operations on the Leased Premises. If permitted by law, Lessee may from time to time with Lessor's prior approval, which will not be unreasonably withheld, delayed, or conditioned, dispose any dredge material in a designated disposal area under Lessor's management and control near the Leased Premises, provided that the dredge material is not known by Lessee to be contaminated with any hazardous, toxic, or other like material regulated under any state, federal, or local law dealing with hazardous substances, protection of the environment, or similar matters in excess of

lawfully permitted levels. Lessee must pay Lessor the standard dredge material disposal and levee maintenance fee or similar charge charged to other users of the disposal area for similar services with respect to the excess dredge material. If applicable law does not permit Lessee to use any designated disposal area under Lessor's management and control, Lessee must dispose any dredge material in a designated disposal area under the control of the U.S. Army Corps of Engineers (the "COE"), and Lessee must pay Lessor the standard dredge material disposal and levee maintenance fee or similar charge charged to other users of the COE disposal area for similar services and also the "tipping fee". In either event, the volume of dredge material deposited in the designated disposal area will be determined by reference to soundings taken before and after the dredge work by the dredging contractor.

VI. INSURANCE REQUIREMENTS *(variances from standard requirements are shown in bold print)*

Commercial General Liability: \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for personal injury, bodily injury or death

Property Insurance: Lessee must insure all Improvements located or being constructed on the Leased Premises under a commercial property insurance policy written on a "causes of loss – special form" basis. If Lessee cannot obtain such insurance, Lessor will obtain the coverage and Lessee must reimburse Lessor on demand the cost of any premium relating thereto. This insurance must include legal liability coverage, boiler and machinery coverage, and flood coverage. The face value of the insurance insuring the Lessee Improvements and any personal property must be in an amount not less than the full actual replacement cost of all Lessee Improvements and personal property on the Leased Premises, and must have a replacement cost endorsement or similar provision, an ordinance or law coverage endorsement, and an equipment floater, if necessary, to cover any Equipment. The actual replacement cost must be confirmed from time to time by the insurer, at Lessor's request. The face value of the insurance insuring the Existing Improvements must be in an amount not less than the actual cash value thereof as of May 1, 2005.

Worker's Compensation: Such coverage must at least meet applicable statutory requirements

Employer's Liability: \$1,000,000 per occurrence for personal injury, bodily injury or death to any employee

Automobile Liability: \$1,000,000 combined single limit coverage per occurrence

Umbrella Liability: Not less than \$5,000,000 per occurrence

Permitted Deductible: \$35,000

VII. ASSIGNMENT/SUBLETTING

Lessee may sublease portions of the Leased Premises from time to time to any Person other than an Affiliate without Lessor's consent (a "Non-Consent Sublease"), but only if each such sublease is for a term not to exceed 5 years or the remainder of the Term, and the portion of the Leased Premises being sublet for each such sublease does not exceed 10% of the total square footage of the Leased Premises. Each Non-Consent Sublease must require the tenant to be bound by all obligations, covenants, and conditions of Lessee under the Agreement, except for the amount of rent to be paid hereunder. Any other sublease requires the prior written approval of Lessor, which will not be unreasonably withheld, conditioned, or delayed. No sublease will release Lessee of its obligations under the Agreement. Lessee must deliver a copy of each sublease to Lessor as soon as practical following execution of the sublease by all parties or the date the tenant takes possession of the sublet premises, whichever is sooner. Assignment is prohibited without Lessor's consent

There is currently one sub-lease allowed by the Port. The sub-lease is in the name of Rolls Royce

VIII. SECURITY FOR PERFORMANCE

Security Deposit: None

Letter of Credit: Lessee must maintain in full force and effect during the Term and deliver to Lessor an irrevocable, clean letter of credit (the "Letter of Credit") in the amount of \$500,000 or such lesser amount as may be permitted in the Agreement (the "Face Amount") as security for Lessee's full and complete performance of the terms of this Agreement. At the end of each Lease Year, Lessee will be permitted to permanently decrease the Face Value in an amount equal to 50% of each dollar actually expended by Lessee for Lessee Improvements during that Lease Year; provided, however, that with respect to the adjustment made to the Face Amount at the end of the first Lease Year, Lessee will be permitted to permanently decrease the Face Value in an amount equal to 50% of each dollar actually expended by Lessee for Lessee Improvements after May 1, 2005 and before the end of the first Lease Year.

The Letter of Credit is no longer in force and expired April 30, 2007. A letter is in the file from Steve Hale, President of Gulf Copper requesting release. Mr. Hale stated in his letter dated August 2, 2006, that 1.) Subsequent to May 1, 2005, Gulf Copper had spent approximately \$1.4 million dollars on leasehold improvements as per the definition in Section 8.01 of the lease and 2.) By providing this Letter of Credit to the Port, they have effectively reduced the amount of monies available to spend on further leasehold improvements due to the facilities being in dire need of repairs/improvements.

Landlord's Lien: On all personal property (except marine vessels described in Section 17.37 of the Lease. Upon approval of the form and substance of the subordination agreement, Lessor will subordinate its landlord's lien to the lien of a purchase money or construction lender.

IX. LESSEE'S DEVELOPMENT OBLIGATIONS

None

X. MISCELLANEOUS

Dry Dock: Lessee will use its best efforts to obtain an operable, ship-capable, dry dock and deliver it to the Leased Premises.

Local Employment and Training: Lessee recognizes that job creation is of paramount importance and will work with educational and other institutions or organizations in the City to hire and train local residents for employment at the Leased Premises.

Economic Development: Lessor and Lessee agree to work together with State of Texas officials and local economic development entities to secure financial or other assistance for the development and improvement of the Leased Premises.