

BOARD OF PORT COMMISSIONERS
PORT OF REDWOOD CITY

AGENDA SHEET

**SUBJECT: ORDINANCE OF THE BOARD OF PORT
COMMISSIONERS OF THE CITY OF REDWOOD CITY
APPROVING AND AUTHORIZING EXECUTION OF
FOURTH AMENDMENT TO LEASE AGREEMENT WITH
PABCO BUILDING PRODUCTS, LLC - INTRODUCTION**

**DATE: April 8, 2009
ITEM NO.: IV-A
Submitted by: Michael J. Giari**

<u>AGENDA CLASSIFICATION</u>				<u>PROGRAM AREA</u>	
<input type="checkbox"/>	Policies	X	Leases	<input type="checkbox"/>	General Operations
<input type="checkbox"/>	Finance	<input type="checkbox"/>	Construction	X	Marine Terminal Operations
X	Legal	<input type="checkbox"/>	Maintenance	<input type="checkbox"/>	Yacht Harbor Operations
<input type="checkbox"/>	Personnel	<input type="checkbox"/>	Other	<input type="checkbox"/>	Property Management
				<input type="checkbox"/>	Administration

BACKGROUND

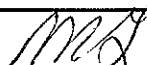
Pabco Gypsum has been a maritime tenant at the Port of Redwood City since 1993. They occupy 1.92 acres near Wharf 4 handling bulk gypsum rock inbound. It is discharged from ships into a hopper located on a dolphin between Wharves 3 and 4 and is conveyed to the stockpile area. Most of the gypsum is trucked to Pabco's wallboard manufacturing plant in Newark. A smaller volume of gypsum rock is used in cement plants in the South Bay.

In July 2005, the Port Commission approved an amendment to the Pabco lease agreement which started a new three-year lease term with an option for Pabco to renew for an additional term of 5 years. Pabco exercised its option before the end of the 3-year term in July 2008. The rent and minimum annual guaranteed tonnage for the 3-year term were specified in the lease amendment. The terms for the 5-year term are to be agreed to by both parties and are specified in the proposed Fourth Amendment to the Lease Agreement.

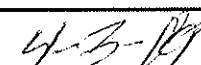
At the end of the 3-year term, the rent was \$5,570 per month and the minimum Annual guarantee for gypsum was 250,000 MT at a rate of \$0.67 per MT. Pabco has met or exceeded the minimum annual guarantee every year of the lease except for the last lease year ending July 2008 when, due to the decline in demand for construction material, the actual tonnage shipped was 210,000 MT.

In October 2008, Pabco temporarily shut down the Newark wallboard plant to make substantial renovations and improvements. They plan to start up with test runs of wallboard in May. The last ship to unload gypsum at the Port was in October, 2008. Gypsum tonnage year to date is 64,700 MT. Pabco continued under the hold over provisions the lease agreement, which expired July 2008, to pay rent and the minimum annual guarantee (in monthly installments of \$13,750), despite the low volume of gypsum shipped and the temporary closure of the plant.

Executive Director's Approval



Date



April 8, 2009

ITEM IV-A (cont.) SUBJECT: ORDINANCE OF THE BOARD OF PORT COMMISSIONERS OF THE CITY OF REDWOOD CITY APPROVING AND AUTHORIZING EXECUTION OF FOURTH AMENDMENT TO LEASE AGREEMENT WITH PABCO BUILDING PRODUCTS, LLC - INTRODUCTION

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Under the terms of the Fourth Amendment, the rent for Lease Year 1, retroactive to July 2008, would increase to \$5,800 per month. The minimum annual guarantee, paid through January 2009 would remain in effect, but for the remainder of Lease Year 1, there will be no minimum annual guarantee. Gypsum shipped through the Pabco facility for the remainder of Lease Year 1 will be charged wharfage per the current tariff rate of \$1.34 per MT. Pabco does not expect to ship any gypsum through its facility to its wallboard plant for the remainder of the lease year. There may be some small shipments, 6,000 MT each, of gypsum to the cement plants.

During Lease Year 2, Pabco plans to have its wallboard plant operating but demand is expected to remain low and the level of production is uncertain. The rent in Lease Year 2 will increase to \$8,000 per month. There will continue to be no minimum annual guaranteed tonnage for gypsum and the wharfage rate in the Tariff for gypsum, currently \$1.34, will apply. (See attached Summary of Revenue per year.)

Due to the current difficulty in forecasting demand for construction materials, the terms for rent and minimum annual guarantee in Lease Years 3, 4, and 5 will be negotiated and agreed to by both parties at the end of Lease Year 2. If no agreement is reached, the Port and Pabco would go to Arbitration. The terms for Lease Years 3, 4, and 5 would be subject to review and approval by the Port Commission.

Port staff recommends approval of the Fourth Amendment to the Pabco Lease Agreement.

Executive Director's Approval _____ Date _____

PABCO GYPSUM REVENUE SUMMARY

**Lease Year ending
July 2008**

Rent	\$	66,840.00
MAG	\$	165,000.00
	\$	<u>231,840.00</u>

Year 1 - 2009

Rent	\$	69,600.00
MAG	\$	96,250.00
	\$	<u>165,850.00</u>

Year 2 - 2010

100,000 mt @ \$1.34	Rent	\$	96,000.00
		\$	134,000.00
		\$	<u>230,000.00</u>

ORDINANCE NO. P-_____

ORDINANCE OF THE BOARD OF PORT COMMISSIONERS OF
THE CITY OF REDWOOD CITY APPROVING AND
AUTHORIZING EXECUTION OF FOURTH AMENDMENT TO
LEASE AGREEMENT WITH PABCO BUILDING PRODUCTS,
LLC

BE IT ORDAINED BY THE BOARD OF PORT COMMISSIONERS OF
THE CITY OF REDWOOD CITY, AS FOLLOWS:

Section 1. Public hearing having been duly noticed for, and held on _____, 2009, on the question of approval of the Fourth Amendment to a lease agreement made and entered into on February 10, 1993, as amended from time to time, and pursuant to the provisions of Section 48 the Charter of the City of Redwood City, the Board of Port Commissioners of the City of Redwood City does hereby approve that certain lease amendment to lease agreement entitled "Fourth Amendment to Lease Agreement (Pabco Building Products, LLC)", hereinafter, the "Fourth Amendment." by and between the City of Redwood City, acting by and through its Board of Port Commissioners ("Landlord") and Pabco Building Products, LLC. ("Tenant"), which Fourth Amendment sets forth the monthly rent payment and the Wharfage rate for the first two (2) years of the Extended Term of the Lease and provides that the rent and wharfage rate and minimum tonnage guarantee for Gypsum for the last three (3) years of the Extended Term of the Lease shall be set by agreement by the parties or by arbitration with the American Arbitration Association.

Section 2. The President and Secretary of the Board of Port Commissioners of the City of Redwood City are hereby authorized and directed to execute the aforesaid Fourth Amendment to Lease Agreement for and on behalf of the City of Redwood City, acting by and through its Board of Port Commissioners.

Section 3. This ordinance shall be effective 30 days from the date of its adoption.

* * * * *

Introduced on the _____ day of _____, 2009.

Passed and adopted as an ordinance of the Board of Port Commissioners of the City of Redwood City this _____ day of _____, 2009.

AYES, COMMISSIONERS:

NOES, COMMISSIONERS:

ABSENT, COMMISSIONERS:

President, Board of Port Commissioners

Secretary, Board of Port Commissioners