

ORDINANCE #67685
Board Bill No. 239

An ordinance recommended by the Port Authority Commission of the City of St. Louis authorizing and directing the Mayor and the Comptroller to enter into a lease agreement between the City of St. Louis and the United States of America by and through its agency the U.S. Army Corps of Engineers for nine hundred and seventy-five feet (975') of mooring rights on the Unimproved Public Wharf for a period of five (5) years commencing on the date of execution in substantially the form attached hereto and incorporated by reference herein as Exhibit 1 and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Mayor and Comptroller of the City of St. Louis are hereby authorized and directed to enter into a lease agreement with the United States of America by and through its agency the U.S. Army Corps of Engineers for nine hundred and seventy-five feet (975') of mooring rights on the Unimproved Public Wharf for a period of five (5) years commencing on the date of execution in substantially the form attached hereto and incorporated by reference herein as Exhibit 1.

SECTION TWO. EMERGENCY CLAUSE.

This being an ordinance for the preservation of public peace, health and safety it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the mayor.

EXHIBIT 1

CONTRACT NO. _____

LEASE AGREEMENT

This agreement made and entered into as of the ____ day of _____ 2007, by and between the City of St. Louis, a Municipal Corporation of the State of Missouri, hereinafter called Lessor, through Francis G. Slay, Mayor, and Darlene Green, Comptroller, and the United States of America by and through its agency the U.S. Army Corps of Engineers, hereinafter called Lessee.

WITNESSETH:

1. That, for and in consideration of the rents hereinafter reserved to be paid by Lessee to Lessor, and the mutual covenants and agreements herein contained, the Lessor hereby leases and lets to said Lessee an exclusive license to the following described mooring privileges to wit:

Start at the Eastern prolongation of the south line of the previously vacated Seven and Five Tenths Feet (7.5') East and West Alley in City Block Two Thousand and Sixteen (2016) and extending Northward a distance of approximately Nine Hundred Seventy-Five (975') Feet.

2. To have and to hold for a term beginning on the 1st day of October 2007 through September 30, 2012; provided that, unless and until the Government shall give notice of termination in accordance with paragraph thirteen (13) hereof, this lease shall remain in force thereafter from year to year without further notice provided that adequate appropriations are available from year to year for the payment of rentals; and provided further that this lease shall in no event extend beyond September 30, 2012.

3. For the rights and privileges herein granted, the Lessee agrees to pay the Lessor the following rental:

An annual rental of Twenty Four Thousand Four Hundred Dollars (\$24,400.00), payable monthly in arrears at the rate of Two Thousand Thirty Three Dollars and Thirty-Three Cents (\$2,033.33).

The parties hereto acknowledge Ordinance 57933, which requires adjustments to base rentals. Under this lease agreement, the rental specified above, until rental established by Ordinance 57933 requires an increase, shall be paid by Lessee.

4. The above-described area shall be used only for the purposes of mooring barges and boats and provide a supply operation and a maintenance facility for the Lessee's equipment, which operation must be entered into by the Lessee within one hundred eighty (180) days of the effective date of this lease.

The above mooring area shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures

of major alteration shall be made in accordance with plans and specifications approved by lessor through the Board of Public Service and the Port Commission. Upon the expiration, termination or cancellation of the lease agreement, the Lessee shall remove all and any vessels, boats, watercraft or other practical movable structures from the mooring, without expense to the Lessor, unless authorized by Section Fourteen (14). In event said vessels, boats, watercraft or other practical movable structures are not removed within ninety (90) days after receipt of notice by the Lessee, the Lessor may take possession of said vessels, boats, watercraft or other practical movable structures or may cause same to be removed at the expense of Lessee.

During the term of this lease, the Lessee shall remain open for business. In the event the business ceases to operate for a period longer than six (6) months due to causes other than strikes, floods, and acts of God, the lease shall be canceled.

Written notice, when required, shall be deemed to be sufficient and delivered when deposited in the Certified U.S. Mail and addressed to the District Engineer, United States Army Corps of Engineers, 1222 Spruce Street, St. Louis, Missouri 63103-2833.

5. During the term of this lease or its extension, the Lessee agrees to abide by and enforce, where necessary, all City Ordinances, State Laws, Federal Laws, U.S. Coast Guard regulations, and any other governmental regulatory requirements. Failure to do so on the part of the Lessee shall be considered as a breach of this contract.

6. The Lessor shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Government's use of the premises under the terms of this agreement and are not due to the negligence of the Lessor.

7. Upon the nonpayment of said rent at the time when the same becomes due, or upon the nonperformance by the Lessee of any of the substantive covenants hereinbefore or hereinafter mentioned, or those specifically covered herein, the Lessor at its election may terminate this lease provided that the Lessee shall have thirty (30) days after receipt of notice of nonpayment or default or cure any such nonpayment, or ninety (90) days to cure any other default. The failure and omission of the Lessor to declare this lease forfeited upon the default of said Lessee in the payment of said rent as the same becomes due, or the nonperformance of any of the substantive covenants to be performed by the Lessee, shall not operate to bar, abridge or destroy the right of the Lessor to declare this lease null and void upon any subsequent breach, forfeiture or cause thereof by the Lessee, subject to the same provisions for notice and time within which to cure such default as above required in the first instance.

8. If the Lessee remains in possession of the leased premises after the expiration of the term for which they are leased, and the Lessee pays rent (as indicated under paragraph 3) and the Lessor accepts said rent, such possession shall be construed as creating a month-to-month tenancy and not as renewal or extension of this lease, but such month-to-month tenancy shall not continue for more than one (1) year.

9. The Lessor reserves the right to modify, amend or cancel said lease in the event the premises are needed for right-of-way, sewer or floodwall construction purposes or any other municipal purposes or use. Municipal purposes or use shall include economic development in the Port Development District. In the event that this lease is canceled or amended, the Lessee shall receive written notice by Certified U.S. Mail addressed to the District Engineer, U.S. Army Corps of Engineers, 1222 Spruce Street, St. Louis, Missouri 63103-2833.

10. In the event that any portion of the leased mooring shall be needed for any municipal purpose, the Lessor shall have the right to modify or amend this lease upon one (1) year written notice thereof to Lessee and eliminate such portion of the leased area as shall be needed for such municipal purpose. In such event, it is agreed and understood by lessee that no claim or action for damages or other compensation shall arise or be allowed by reason of such termination or modification. Written notice, when required, shall be deemed to be sufficient and delivered when deposited in the Certified U.S. Mail and addressed to Lessee.

11. If said lease is canceled, amended or modified under paragraphs nine (9) and ten (10), the rent shall be adjusted including escalation in direct proportion to the change in area leased, and if the remaining area is not suitable to the use of Lessee, Lessee at its discretion shall have the right to terminate on thirty (30) days' written notice.

12. In the event this lease is canceled, modified or amended under the provisions of paragraphs nine (9) and ten (10), the Lessor shall cause the Lessee to be reimbursed for the undepreciated cost of the capital improvements (not removable) the Lessee has made and paid for and not prorated to the Lessee's customer or paid for by the Lessee's customer. Such capital improvements being only those which have been pursuant to the written approval of the Board of Public Service and the Port Commission. It is agreed and understood that the term capital improvements shall not include wharf boats, vessels or other floating or transferable stationary improvements. Such reimbursement shall be made by or as a part of the cost of the intended new use. Reimbursement

will not be based on anticipated profits; no funds from general revenue should be used for this purpose.

In the event that the rate for service to the customer has been increased to cover the cost of the capital improvements, this accumulated increased cost shall be deducted before the undepreciated cost of the capital improvements is determined.

13. In the event Lessee shall decide to terminate its business operations at the leased premises, Lessee shall give Lessor notice in writing, Certified U.S. Mail of its intention to do so. Upon receipt of said notice, the Lessee or the Lessor shall have the right to cancel this agreement upon the service of thirty (30) days' written notice to the other party.

14. The above-specified rental shall prevail for the duration of this agreement unless changed by ordinance conforming with a general policy applying to all users of this type of facility within the jurisdiction of the Port Authority.

15. Any sublease, or assignment, transfer of any right whatsoever of this agreement or change of corporate ownership or change in use of leased property or any right thereunder shall be valid only with the approval of the Board of Public Service of the City of St. Louis and the Port Commission. If approved, all parts of this are binding on sub-lessor assignee.

16. The Lessee agrees to keep the wharf in front of its leasehold free from trash and refuse and his permanently moored watercraft painted and in good repair. Further, the Lessee shall prohibit and enforce the ruling that no trash or articles of any sort shall be thrown overboard or into the river. The Lessee shall enforce this clause on any craft servicing the Lessee. If in the opinion of the Port Commission, the wharf in front of the leasehold or the permanently moored watercraft are allowed to deteriorate to the point where they are not maintained in conformity with the standards set for the Port District, this lease may be terminated by the Port Commission and the Board of Public Service.

17. AFFIRMATIVE ACTION PROGRAM TO ENSURE NONDISCRIMINATION AND FAIR EMPLOYMENT PRACTICES.

(a) Lessee agrees that in performing under this lease neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, national origin or ancestry, sex, age, handicap, and veteran status. Lessee will take affirmative action to ensure that the applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, national origin or ancestry, sex, age, handicap and veteran status. Such action shall include, but not be limited to, its action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable conditions; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Lessee, during his performance under this contract, will in all printed or circulated solicitations, or other advertisement or publication for employees placed by or on behalf of the operator, state that all qualified applicants will receive meaningful consideration for employment without regard to race, creed, color, religion, national origin or ancestry, sex, age, handicap or veteran status. The Lessee will not make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation specification or discrimination because of race, creed, color, religion, national origin or ancestry, sex, age, handicap or veteran status.

(c) Lessee agrees during his performance of this contract that should it be determined by the Lessee or the City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Civil Rights Enforcement Agency, Civil Courts Building, St. Louis, Missouri, of the steps to be taken by the Lessee to achieve the provisions of his program.

(d) Lessee will permit reasonable access by the City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

(e) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this contract, or to furnish information or permit his books, records and accounts to be inspected, within twenty (20) days from date requested, this lease may be canceled, terminated or suspended in whole or part and operator may be declared ineligible for further City contracts for a period of one year, by the option of the City of St. Louis provided further, in the event its contract is canceled, terminated or suspended for failure to comply with fair employment practices, the Lessee shall have no claims for any damages against the City.

(f) Operator further agrees that these clauses (a) through (e) on discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated in all contracts or agreements entered into with suppliers

of materials or services, contractors, and subcontractors and all labor organizations furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or services in connection with this contract.

(g) Whenever the Lessee is sued or threatened with litigation by a subcontractor, vendor, individual, group or association, as a result of compliance with clauses (a) through (f), of these provisions relating to fair employment practices, such operator shall notify the city Counselor in writing of such suit or threatened suit within ten (10) days.

18. Any delinquent payment shall bear interest from the date due at the prime rate plus 2%. Prime rate shall be that average rate as established by US Bank and Bank of America.

19. Upon execution of this lease, the Lessee shall, at its own expense, have this lease recorded by the City’s Recorder of Deeds, and have the Register have a microfilm copy of the lease made.

20. Annually, the Lessee must present, upon request, to the Port Commission a marine survey evaluating the safety of the facilities operated by it.

21. This lease in its entirety covers all the covenants and agreements between the Lessor and the Lessee and can only be changed when done so in writing and signed by the Lessor and the Lessee and approved by the Port Commission. This may only be renewed, extended or modified when done so in writing and signed by Lessee and Lessor.

22. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty, the Lessee shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

23. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

24 (a) The Lessee may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Lessee with a view respect to the awarding or amending, or the making of any determination with respect to the performing of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a), hereof, the Lessee shall be entitled (i)to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined representative) which shall be not less than three or more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Lessee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

25. The Lessor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to payment of the agreed rental, have access to and the right to examine any directly pertinent bonds, documents, papers and records of the Lessor involving transactions to this lease.

LESSEE: U.S. ARMY CORPS OF ENGINEERS

BY _____
ANNE L. KOSEL
Chief, Real Estate Division

Funds Available \$ _____

Certifying Officer/Date

LESSOR: CITY OF ST. LOUIS, MISSOURI

BY _____
FRANCIS G. SLAY
Mayor

BY _____
DARLENE GREEN
Comptroller

ATTEST:

City Register

APPROVED AS TO FORM:

City Counselor

ACKNOWLEDGMENT

STATE OF MISSOURI)
)SS
CITY OF ST. LOUIS)

On this _____ day of _____, 2007, before me appears **Anne L. Kosel** to me personally known, who being by me duly sworn did say that she is the St. Louis District, U.S. Army Corps of Engineers, and that said instrument was signed and sealed in behalf of the U.S Army Corps of Engineers under her delegated authority and said **Anne L. Kosel** acknowledged said instrument to be the free act and deed of the Corps of Engineers.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid the day and year first above written.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF MISSOURI)
)SS
CITY OF ST. LOUIS)

On this _____ day of _____, 2007, before me appears **Francis G. Slay** and **Darlene Green** to me personally known, who being by me duly sworn did say that they are the Mayor and the Comptroller of the City of St. Louis and that they are authorized to execute this lease agreement on behalf of the City of St. Louis and acknowledged said instrument to be the free act and deed of the City of St. Louis.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid the day and year first above written.

Notary Public

My Commission Expires:

Approved: October 11, 2007