

ORDINANCE 71384

BOARD BILL NUMBER 11 INTRODUCED BY: ALDERMAN JOHN COATAR

1 An Ordinance amending **Ordinance Number 66935**, which ordinance relates to an original Lease
2 Agreement dated January 1, 2006, as extended in 2010 and in 2015 between The City of St. Louis,
3 Missouri (the “City”) and Material Sales Company, Inc., a Missouri corporation (“Lessee”),
4 authorizing the execution of a First Amendment to Lease Agreement between the City and Lessee
5 for a period of five (5) years with one more five (5) year mutual option for certain land and mooring
6 rights at or near the north side of MacArthur Bridge and a point Three Hundred feet (300’) south
7 of the Poplar Street Bridge for \$21.70 per linear foot for 2021 and increasing each year thereafter
8 as set forth in the said First Amendment, as attached hereto as **Exhibit A**; and containing a
9 severability clause.

10 **WHEREAS**, the City, by **Ordinance Number 66935**, did lease to Lessee beginning on
11 January 1, 2006 certain land and mooring between the MacArthur and Poplar Street Bridges; and

12 **WHEREAS**, the City and Lessee desire to enter into a First Amendment to Lease
13 Agreement under certain terms and conditions with a base rent of \$21.70 per linear foot annually
14 for 2021 subject to adjustment as set forth in **Exhibit A** hereto.

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

16 **SECTION ONE.** **Ordinance Number 66935** is hereby amended to provide for a First
17 Amendment to Lease Agreement with Material Sales Company, Inc. for certain land and mooring
18 between the MacArthur and Poplar Street Bridges for a period of five (5) years with one more five
19 (5) year mutual option of \$21.70 per linear foot annually for 2021 subject to adjustment as set
20 substantially set forth in **Exhibit A** hereto.

1 **SECTION TWO.** The Board of Aldermen hereby approves, and the Mayor and
2 Comptroller are hereby authorized to execute, on behalf of the City, said First Amendment to
3 Lease Agreement. Any Permit entered into through the Board of Public Service for this same land
4 and mooring shall expire on the date this Lease Agreement is executed.

5 **SECTION THREE.** The Mayor and Comptroller or their designated representatives are
6 hereby authorized to take any and all actions, and to execute and deliver for and on behalf of the
7 City any and all additional certificates, documents, agreements or other instruments, as may be
8 necessary and appropriate in order to carry out the matters herein authorized, with no such further
9 action of the Board of Aldermen necessary to authorize such action by the Mayor and Comptroller
10 or their designated representatives.

11 **SECTION FOUR.** The Mayor and Comptroller or their designated representatives, with
12 the advice and concurrence of the City Counselor and the Port Commission, are hereby further
13 authorized to make any changes to the documents, agreements and instruments approved and
14 authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary
15 and appropriate in order to carry out the matters herein authorized, with no such further action of
16 the Board of Aldermen necessary to authorize such changes.

17 **SECTION FIVE.** It is hereby declared to be the intention of the Board of Aldermen that
18 each and every part, section and subsection of this Ordinance shall be separate and severable from
19 each and every other part, section and subsection hereof and that the Board of Aldermen intends
20 to adopt each said part, section and subsection separately and independently of any other part,
21 section and subsection. In the event that any part, section or subsection of this Ordinance shall be
22 determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and

1 subsections shall be and remain in full force and effect, unless the court making such finding shall
2 determine that the valid portions standing alone are incomplete and are incapable of being executed
3 in accord with the legislative intent.

4 **SECTION SIX.** After adoption of this Ordinance by the Board of Aldermen, this
5 Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over
6 her veto.

EXHIBIT A

FIRST AMENDMENT TO LEASE AGREEMENT

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EXHIBIT A

FIRST AMENDMENT TO LEASE AGREEMENT

Board Bill Number 11
Exhibit A

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this “Amendment”) is entered into as of January 1, 2021 (“Effective Date”) by and among the **CITY OF ST. LOUIS, MISSOURI**, a constitutionally chartered city organized and existing under the laws of the State of Missouri (“Lessor”) and **MATERIAL SALES COMPANY, INC.**, a Missouri corporation (“Lessee”).

RECITALS:

WHEREAS, Lessee and Lessor are parties to that certain Lease Agreement dated January 1, 2006, as extended in 2010 and further extended in 2015 (the “Lease”) for certain land and mooring rights on the unimproved wharf located between MacArthur Bridge and Poplar Street Bridge.

WHEREAS, the term of the Lease is scheduled to expire on December 31, 2020;

WHEREAS, Lessor and Lessee desire to extend the term of the Lease; and

WHEREAS, Lessor and Lessee desire to amend certain provisions of the Lease to reflect such extension and other changes to the Lease;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained and each act performed hereunder by the parties, Lessor and Lessee hereby agree that the Lease is amended as follows:

1. Incorporation of Recitals. The above recitals are hereby incorporated into this Amendment as if fully set forth herein.
2. Extension of Term. The term of the Lease is hereby extended for five (5) years, that is from January 1, 2021 through December 31, 2025 (“Extension Term”).
3. Renewal Options. The parties acknowledge and agree that Lessee has only one (1) remaining additional five (5) year mutual option to renew the term of the Lease in accordance with the terms and conditions in the Lease, each option to be exercised with the mutual consent of the Lessee and Lessor’s Port Authority Commission and Board of Public Service.
4. Base Rent. Commencing on January 1, 2021, Lessee shall pay to Lessor the rent pursuant to the below schedule:

| Period | Rate per Linear Foot | Payment Amount |
|----------------------------------|----------------------|--------------------------------|
| January 1, 2021 – June 31, 2021 | \$21.70 / LF | \$5,757.50 due January 1, 2021 |
| July 1, 2021 – December 31, 2021 | \$24.53 / LF | \$6,500.00 due July 1, 2021 |

| | | |
|-------------------------------------|--------------|---------------------------------|
| January 1, 2022 – June 31, 2022 | \$27.36 / LF | \$7,250.40 due January 1, 2022 |
| July 1, 2022 – December 31, 2022 | \$30.75 / LF | \$8,148.75 due July 1, 2022 |
| January 1, 2023 – December 31, 2023 | \$31.37 / LF | \$16,626.10 due January 1, 2023 |
| January 1, 2024 – December 31, 2024 | \$31.99 / LF | \$16,954.70 due January 1, 2024 |
| January 1, 2025 – December 31, 2025 | \$32.63 / LF | \$17,293.90 due January 1, 2025 |

5. Brokerage Commissions. Lessor and Lessee hereby represent and warrant to each other that no brokers were involved in the negotiation and execution of this Amendment.
6. Representations and Warranties. Lessee hereby represents and warrants that (i) Lessee is duly organized, validly existing and in good standing in accordance with the laws of the State under which it was organized; (ii) Lessee is authorized to do business in the State of Missouri; (iii) the individual(s) executing and delivering this Amendment on behalf of Lessee has been properly authorized to do so, and such execution and delivery shall bind Lessee to its terms; and (iv) Lessee hereby ratifies acceptance of the leased premises, in its present “AS IS” condition, and acknowledges that Lessor has no obligation to construct or install any improvements within the leased premises.
7. Examination of Amendment. Submission of this instrument for examination or signature to Lessee does not constitute a reservation or option, and it is not effective until execution by and delivery to both Lessor and Lessee.
8. Capitalized Terms. Except to the extent specifically defined herein, all capitalized terms set forth in this Amendment shall have the same meaning as defined in the Lease.
9. Counterpart Execution. The parties acknowledge that this Amendment may be executed in counterparts and exchanged by electronic mail transmission, and that the electronic mail copies of each party’s respective signature shall be binding as if the same were an original signature.
10. Incorporation. This Amendment shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended hereby shall remain in full force and effect.

[Remainder of Page Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective officers or officials.

LESSOR:

The City of St. Louis

By: _____
Mayor

By: _____
Comptroller

ATTEST:

By: _____
City Register

APPROVED AS TO FORM ONLY:

By: _____
City Counselor

LESSEE:

MATERIAL SALES COMPANY, INC., a Missouri corporation

By: _____

Name: _____

Title: _____

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

On this _____ day of _____, 2021, before me personally appeared Tishaura Jones, to me personally known or satisfactory proven, who, being by me duly sworn did say that she is the Mayor of the City of St. Louis and that she is authorized to execute this Amendment on behalf of the City of St. Louis under the authority of Ordinance _____ 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:

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

On this _____ day of _____, 2021, before me personally appeared Darlene Green, to me personally known or satisfactory proven, who, being by me duly sworn did say that she is the Comptroller of the City of St. Louis and that she is authorized to execute this Amendment on behalf of the City of St. Louis under the authority of Ordinance _____ 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:

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

On this ____ day of _____, 2021, before me appeared _____, to me personally known or satisfactorily proven, who, being by me duly sworn did say that he is the _____ of MATERIAL SALES COMPANY, INC., a Missouri corporation, and that said instrument was signed in behalf of said corporation, by authority of its _____; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

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: _____

BOARD BILL NUMBER 11

FISCAL NOTE

Preparer's Name: Roland Comfort

Contact Information: SLDC (Port Authority) 657-3744, comfortr@stlouis-mo.gov

Bill Sponsor: Alderman Jack Coatar

| | |
|---------------------------|---|
| Bill Synopsis: | This Board Bill amends Ordinance Number 66935 authorizing a First Amendment to an existing 25 year lease that began on January 1, 2006 with the Material Sales Company, Inc. and with the City of St. Louis for the extension of a mutual five (5) year option with one more five year option remaining for certain land and mooring between the MacArthur and Poplar Street Bridges for \$21.70 per linear foot with an escalator as described in said First Amendment. |
| Type of Impact: | None |
| Agencies Affected: | None |

SECTION A

Does this bill authorize:

- An expansion of services which entails additional costs beyond that approved in the current adopted city budget? ___Yes X_No
- An undertaking of a new service for which no funding is provided in the current adopted city budget? ___Yes X_No
- A commitment of city funding in the future under certain specified conditions? ___Yes X_No
- An issuance of bonds, notes and lease-purchase agreements which may require additional funding beyond that approved in the current adopted city budget? ___Yes X_No
- An execution or initiation of an activity as a result of federal or state mandates or requirements? ___Yes X_No

- A capital improvement project that increases operating costs over the current adopted city budget? ___Yes ___X_No
- A capital improvement project that requires funding not approved in the current adopted city budget or that will require funding in future years? ___Yes ___X_No

If the answer is yes to any of the above questions, then a fiscal note must be attached to the board bill. Complete Section B of the form below.

SECTION B

- Does the bill require the construction of any new physical facilities? ___Yes ___No

- o If yes, describe the facilities and provide the estimated cost:

- Is the bill estimated to have a direct fiscal impact on any city department or office? ___Yes ___No

- Does the bill create a program or administrative subdivision? ___Yes ___No

- o If yes, then is there a similar existing program or administrative subdivision? ___Yes ___No

- o If yes, explain the how the proposed programs or administrative subdivisions may overlap:

- Describe the annual operating, equipment, and maintenance costs that would result from the proposed bill, as well as any funding sources:

Complete the chart below to list the total estimated expenditures required of the City resulting from the proposed board bill and any estimated savings or additional revenue.

| Financial Estimate of Impact on General Fund | | | |
|--|---|----------------------|----------------------|
| Fiscal Impact | <u>Year 1</u> <u>(current)</u> | <u>Year 2</u> | <u>Year 3</u> |
| Additional Expenditures | N/A | N/A | N/A |
| Additional Revenue | N/A | N/A | N/A |
| Net | N/A | N/A | N/A |
| Financial Estimate of Impact on Special Funds | | | |
| Fiscal Impact | <u>Year 1</u> <u>(current)</u> | <u>Year 2</u> | <u>Year 3</u> |
| Additional Expenditures | N/A | N/A | N/A |
| Additional Revenue | N/A | N/A | N/A |
| Net | N/A | N/A | N/A |

- Describe any assumptions used in preparing this fiscal note:

- List any sources of information (including any City officials, agencies, or departments) used in preparing this fiscal note:

- Have the financial estimates of this bill been verified by the City Budget Division?
___Yes ___No
 - o If yes, by whom? _____ .