

St. Louis City Ordinance 63477

FLOOR SUBSTITUTE

BOARD BILL NO. [95] 59

INTRODUCED BY ALDERMAN FRED WESSELS

AN ORDINANCE recommended by the Board of Public Service authorizing and directing the Mayor and the Comptroller of the City of St. Louis, Missouri, to enter into a contract with the City of Maryland Heights, Missouri, a municipal corporation of the State of Missouri, which contract authorizes the Mayor and Comptroller of the City of St. Louis to grant to the City of Maryland Heights, upon the satisfaction of certain conditions precedent set forth therein and other good and valuable consideration, a permanent, non-assignable, conditional easement for street right-of-way purposes pertaining to the responsibility for the improvement and maintenance of an all-weather road, along with bridges, drainage facilities and other related grounds keeping functions, for surface rights on property located in St. Louis County and commonly known as "CITY WATER WORKS ROAD", and containing an emergency clause.

WHEREAS, the City of St. Louis is the owner of a strip of real property located in St. Louis County, which property contains water mains bringing water from the Howard Bend Plant on the Missouri River to residents of the City of St. Louis; and

WHEREAS, it is deemed to be in the public interest to permit the continued use of the surface of said property as a right-of-way to provide ingress and egress to the local area, so long as the integrity of the water mains are maintained and so long as the City of St. Louis retains rights of access, control and development related to the ongoing operation and potential expansion, modification, maintenance, repair and/or potential creation of existing and/or new water mains on or under said property; and

WHEREAS, the City of Maryland Heights has expressed an interest in obtaining an easement for right-of-way purposes on said property, which easement would apply only to surface use of said property, which easement would require the City of Maryland Heights to improve and maintain such property and to indemnify the City of St. Louis for any and all liabilities arising from such right-of-way use, and which easement would expressly provide that the City of St. Louis would retain all rights and privileges pertaining and/or

relating to the ongoing operation and potential expansion, modification, maintenance, repair and/or potential creation of existing and/or new water mains on or under said property.

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

SECTION ONE. The Mayor and Comptroller are hereby authorized and directed to enter into a contract with the City of Maryland Heights, Missouri, pertaining to the granting by the City of St. Louis to the City of Maryland Heights of a surface right-of-way easement for property generally known as "CITY WATER WORKS ROAD", which contract shall be substantially in words and figures as follows:

CONTRACT

THIS AGREEMENT is made and entered into this _____ day of _____, 1995, by and between the City of St. Louis, Missouri, a municipal corporation of the state of Missouri, (hereinafter "St. Louis"), and the City of Maryland Heights, Missouri, a municipal corporation of the state of Missouri, (hereinafter "Maryland Heights").

WITNESSETH:

WHEREAS, the City of St. Louis is the owner of a strip of real property located in St. Louis County, which property contains water mains bringing water from the Howard Bend Plant on the Missouri River to residents of the City of St. Louis, and which property is more fully described as a tract of land in U. S. Surveys 387 and 433, Township 46 North, Range 5 East of the 5th Principal Meridian, and U. S. Survey 2030 and fractional Section 36, Township 46 North, Range 4 East of the 5th Principal Meridian, in the City of Maryland Heights, St. Louis County, Missouri; and

WHEREAS, it is deemed to be in the public interest to permit the continued use of the surface of said property as a right-of-way to provide ingress and egress to the local area, so long as the integrity of the water mains are maintained and so long as the City of St. Louis retains rights of access, control, and development related to the ongoing operation and potential expansion, modification, maintenance, repair and/or potential creation of existing and/or new water mains on or under said property; and

WHEREAS, the City of Maryland Heights has expressed an interest in obtaining an easement for right-of-way purposes on said property, which easement would apply only to surface use of said property, which easement would require the City of Maryland Heights to improve and maintain such property and to indemnify the City of St. Louis for any and all liabilities arising from such right-of-way use, and which easement would expressly provide that the City of St. Louis would retain all rights and privileges pertaining and/or relating to the ongoing operation and potential expansion, modification, maintenance, repair and/or potential creation of existing and/or new water mains on or under said property.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, St. Louis and Maryland Heights do hereby covenant, promise, and agree as follows: 1. Upon full and complete execution of this document, and upon full and complete satisfaction by Maryland Heights of the conditions precedent designated herein, the City of St. Louis, Missouri, acting by and through its Mayor and Comptroller and pursuant to St. Louis Ordinance No. _____, approved on the ____ day of _____, 1995, agrees to grant to Maryland Heights a permanent, non-assignable, conditional easement for street right-of-way purposes pertaining to the responsibility for the improvement and maintenance by Maryland Heights of an all-weather road, along with bridges, drainage facilities and other related grounds keeping functions, for surface rights on property located in St. Louis County and commonly known as "CITY WATER WORKS ROAD", which easement shall be granted through the execution and delivery by St. Louis of the Easement Agreement attached hereto as Exhibit "A," which Easement Agreement is incorporated herein by this reference as if set out in full, and which Easement Agreement specifies and describes the subject property in greater detail.

2. Prior to execution and delivery of the Easement Agreement attached hereto as Exhibit "A" by St. Louis, Maryland Heights shall provide St. Louis with an opinion of counsel, in form and content satisfactory to the St. Louis City Counselor, stating that Maryland Heights is duly authorized and empowered to agree to the terms and conditions contained in St. Louis Ordinance No. _____ and said Easement Agreement, and that any and all approvals, authorizations, and/or actions necessary to enable Maryland Heights to agree to the terms set forth therein have been successfully and fully obtained.

IN WITNESS WHEREOF, St. Louis and Maryland Heights have caused these presents to be executed and delivered as of the date first above written.

THE CITY OF ST. LOUIS THE CITY OF MARYLAND HEIGHTS

BY: _____ BY: _____
MAYOR

COMPTROLLER

Approved as to Form: Attest:

CITY COUNSELOR REGISTER

EXHIBIT A

EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 1995, by and between the City of St. Louis, Missouri, a municipal corporation of the state of Missouri, (hereinafter "St. Louis"), and the City of Maryland Heights, Missouri, a municipal corporation of the State of Missouri, (hereinafter "Maryland Heights").

For and in consideration of the premises and the mutual covenants contained herein, and in consideration of the faithful performance by the parties of the mutual covenants and agreements hereinafter set forth, and in consideration of other good and valuable consideration, the sufficiency of which is hereby acknowledged, St. Louis and Maryland Heights do hereby covenant, promise, and agree as follows:

1. The term "Subject Property," as referred to herein, shall be defined as an irregular strip of land identified as Right-of-Way for the City of St. Louis Water Division, said strip of land being part of U. S. Surveys 387 and 433, Township 46 North, Range 5 East of the 5th Principal Meridian, St. Louis County, Missouri, as described in Deed Book 665, Pages 469 and 470 and Pages 476 and 477, and Deed Book 713, Pages 111 and 112 of the St. Louis County Records. The Subject Property, having been acquired in three (3) separate parcels, will herein be defined as two (2) tracts of land. These two (2) tracts are bounded on the east by Creve Coeur Mill Road (formerly Little Lake Road) and on the west by River Valley Drive (formerly Lower Bottom Road).

These tracts are separated by the Right-of Way for the Southern Pacific Railroad (formerly the Chicago, Rock Island and Pacific Railroad). This Right-of-Way is identified as being a public crossing, State of Missouri I. D. Number 596349U, at Mile Post 22.09, within the Midwest Division, St. Louis Subdivision of the aforesaid railroad. Maryland Heights, by the acceptance of this Easement Agreement, hereby acknowledges this Right-of-Way as not being part of "City Water Works Road". Any work within this Right-of-Way will require negotiations between Maryland Heights and said railroad. Said tracts will be further identified as "Parcel A" and "Parcel B" and described as follows:

PARCEL A

A tract of land being part of U. S. Surveys 387 and 433, Township 46 North, Range 5 East of the 5th Principal Meridian, St. Louis County, Missouri, said easement being more particularly described as follows:

COMMENCING at a concrete monument at the intersection of the southern Right-of-Way line of the Southern Pacific Railroad (formerly the Chicago, Rock Island and Pacific Railroad) and the northern Right-of-Way line of the City of St. Louis Water Division; THENCE North 67 degrees 14 minutes 15 seconds East a distance of 709.06 feet to a chiselled cross in the concrete bridge structure in Creve Coeur Mill Road (formerly Little Lake Road); THENCE South 3 degrees 23 minutes 42 seconds West a distance of 159.02 feet to a chiselled cross in the concrete drainage channel; THENCE South 67 degrees 14 minutes 15 seconds West a distance of 971.30 feet to a point, said point being the intersection of the southern Right-of-Way line of the Southern Pacific Railroad (formerly the Chicago, Rock Island and Pacific Railroad) and the southern Right-of-Way line of the City of St. Louis Water Division; THENCE along the southern line of aforesaid railroad Right-of-Way North 45 degrees 21 minutes East 166.35 feet and North 38 degrees 31 minutes East 183.15 feet to a concrete monument, which is the POINT OF BEGINNING and containing 3.383 acres, more or less, as depicted on Parcel A attached hereto.

PARCEL B

A tract of land being part of U. S. Survey 387, Township 46 North, Range 5 East of the 5th Principal Meridian, St. Louis County, Missouri, said easement being more particularly described as follows:

COMMENCING at an old stone in the centerline of River Valley Drive (formerly Lower Bottom Road); THENCE North 69 degrees 29 minutes 15

seconds East, a distance of 344.92 feet to a point, said point being on the east line of Lot 1 and the west line of Lot 2 of John Hempstead's Estate; THENCE North 69 degrees 29 minutes 15 seconds East a distance of 475.18 feet to a point, said point being an old axle; THENCE North 69 degrees 29 minutes 15 seconds East a distance of 446.22 feet to a point, said point being a rebar on the east line of Lot 2 of John Hempstead's Estate and the west line of Lot 1 of Stephen Hempstead's estate; THENCE North 69 degrees 29 minutes 15 seconds East a distance of 734.20 feet to a point, said point being an old iron pipe in the northern Right-of-Way line of the Southern Pacific Railroad (formerly the Chicago, Rock Island and Pacific Railroad); THENCE southwesterly along the northern Right-of-Way line of aforesaid railroad the following bearings and distances; South 46 degrees 12 minutes West 172.08 feet, South 53 degrees 54 minutes West 192.92 feet, South 61 degrees 53 minutes West 193.75 feet, South 68 degrees 12 minutes West 192.46 feet to a point, said point being a stone; THENCE North 20 degrees 31 minutes East 20.0 feet to a stone; THENCE South 69 degrees 29 minutes 15 seconds West 73.48 feet to a point, said point being on the west line of Lot 1 of Stephen Hempstead's Estate and the east line of Lot 2 of John Hempstead's Estate; THENCE South 69 degrees 29 minutes West 921.20 feet to a concrete monument, said monument being on the west line of Lot 2 and the east line of Lot 1 of John Hempstead's Estate; THENCE South 7 degrees 2 minutes West 22.56 feet along aforesaid line to concrete monument, said monument being on the north Right-of-Way line of the Southern Pacific Railroad (formerly the Chicago, Rock Island and Pacific Railroad); THENCE South 69 degrees 29 minutes 15 seconds West 172.32 feet along said line to a point, said point being the center line of River Valley Drive (formerly Lower Bottom Road); THENCE North 52 degrees 41 minutes 15 seconds West 177.26 feet to an old stone in the centerline of River Valley Drive (formerly Lower Bottom Road), which is the POINT OF BEGINNING and containing 4.314 acres, more or less, as depicted on Parcel B attached hereto.

2. The term "Additional Property", as referred to herein, shall be defined as a strip of land one hundred fifty feet (150') wide identified as Right-of-Way for the City of St. Louis Water Division, said strip of land being part of U. S. Surveys 387 and 2030 and fractional Section 36, Township 46 North, Ranges 4 and 5 East of the 5th Principal Meridian, St. Louis County, Missouri as described in Deed Book 665, Pages 469 through 472 of the St. Louis County Records. The Additional Property having been acquired in three (3) separate parcels will herein be defined as one (1) tract of land; said tract will be further identified as "Parcel C" and described as follows:

PARCEL C

A tract of land being part of U. S. Surveys 387 and 2030 and fractional Section 36, Township 46 North, Ranges 4 and 5 East of the 5th Principal Meridian, St. Louis County Missouri, said easement being more particularly described as follows:

COMMENCING at an old stone in the centerline of River Valley Drive (formerly Lower Bottom Road); THENCE South 69 degrees 29 minutes 15 seconds West, a distance of 170.05 feet to a point, said point being an old concrete monument on the east line of Range 4 East and the west line of Range 5 East; THENCE South 69 degrees 29 minutes 15 seconds West, a distance of 891.53 feet to a point, said point being a concrete monument; THENCE South 59 degrees 21 minutes 15 seconds West, a distance of 2,413.76 feet to a point, said point being an iron pipe on the west line of Lot 9 of Talbot's Subdivision; THENCE South 5 degrees 56 minutes 45 seconds West, a distance of 186.82 feet to a point, said point being a rebar on the south line of the City of St. Louis Water Division Conduit Right-of Way and the north Right-of-Way line of the Southern Pacific Railroad (formerly the Chicago, Rock Island and Pacific Railroad); THENCE North 59 degrees 21 minutes 15 seconds East, a distance of 2,511.82 feet to a point, said point being a concrete monument; THENCE North 69 degrees 29 minutes 15 seconds East, a distance of 878.23 feet to a point, said point being a concrete monument; THENCE North 69 degrees 29 minutes 15 seconds East, a distance of 264.39 feet to a point, said point being a P.K. nail in the centerline of River Valley Drive (formerly Lower Bottom Road); THENCE North 52 degrees 41 minutes 15 seconds West 177.26 feet to an old stone in the centerline of River Valley Drive (formerly Lower Bottom Road), which is the POINT OF BEGINNING and containing 12.913 acres, more or less, as depicted on Parcel C attached hereto.

3. St. Louis hereby grants, bargains, conveys, and confirms unto Maryland Heights, to the extent of St. Louis' interest therein, a non-assignable, conditional surface easement for street right-of-way purposes over the Subject Property, which easement shall remain in full and complete force and effect so long as the conditions and covenants delineated herein are kept and remain satisfied by Maryland Heights, to have and to hold the same for the exclusive purposes set forth herein and subject to all the terms and conditions set forth in St. Louis Ordinance No. _____ and set forth herein, together with all and singular rights, privileges, appurtenances, and immunities thereto belonging, or in any way appertaining unto Maryland Heights. Maryland Heights hereby agrees to take said easement in "AS IS" condition.

4. Notwithstanding the foregoing, the parties hereto hereby agree that the aforementioned easement shall apply only and exclusively to surface portions

of the Subject Property and the Additional Property, in a manner whereby Maryland Heights shall improve and maintain an all-weather road having a surface width of twenty-two feet (22'), along with bridges and drainage facilities, on or near the existing location of the private road owned by the City of St. Louis. St. Louis hereby expressly reserves unto itself all subsurface and/or underground rights relating to the Subject Property and the Additional Property, and Maryland Heights hereby acknowledges said reservation.

5. Maryland Heights shall improve and maintain the above-described all-weather road at all times subsequent to the date this Easement Agreement is executed, in accordance with the conditions of this Easement Agreement. Additionally, Maryland Heights hereby agrees to be responsible, at its sole and exclusive cost and expense, for maintaining and/or controlling grass and/or weed growth upon the Subject Property and for storm water drainage from Creve Coeur Mill Road to River Valley Drive and for surface water drainage only on the Additional Property, which drainage shall be controlled to the satisfaction of St. Louis. In the event Maryland Heights fails to comply with the provisions of this Easement Agreement, St. Louis may declare this agreement null and void, may enter upon and take possession of the Subject Property and Additional Property and any and all improvements placed thereon, and may pursue any and all other remedies available in law and/or equity.

6. This easement is hereby granted by St. Louis and accepted by Maryland Heights upon the distinct and expressed understanding and condition that St. Louis, its successors and assigns, shall not in any manner whatsoever, either by law or in equity, be liable for any loss of life or injury that may be suffered or sustained by any person or persons, or for any loss or damage to any property, during the duration of this agreement, and resulting from the use and occupancy of said easement by Maryland Heights, its employees, officials, agents, licensees, invitees, or members of the general public. Maryland Heights hereby specifically agrees to indemnify St. Louis from any and all liability arising from such loss, injury, or damage. Maryland Heights agrees to require any and all contractor(s) engaged in the performance of any work within the easement, to indemnify St. Louis against all claims and/or demands arising from the injury to, or death of, any person or persons, or damage to, or destruction of, any property of any person or persons whomsoever, arising from any and all work performed by Maryland Heights or their contractor(s).

7. This easement shall not be assigned without the prior approval of the St. Louis Board of Estimate and Apportionment.

8. Any person or legal entity intending to construct any facility or improvement upon the Subject Property and Additional Property shall first submit detailed plans and specifications to the St. Louis Board of Public Service for its approval, which approval shall not unreasonably be withheld.

9. In the event St. Louis intends to construct or reconstruct any facilities or improvements within or upon the Subject Property, said right is hereby specifically retained by St. Louis and St. Louis shall give Maryland Heights notice and an opportunity to review and comment on the details and specifications therefore. The parties hereto specifically acknowledge that St. Louis intends to continue to operate and manage water mains and/or water transportation and/or treatment facilities or improvements upon or under the Subject Property and Additional Property. The parties hereto specifically agree that St. Louis has retained all rights and privileges incidental to the accomplishment of this intent, including but not limited to the temporary interruption of Maryland Height's operations upon the Subject Property and Additional Property pursuant to this easement, (including but not limited to the detour of traffic and/or closing of all or portions of the thoroughfare), and that St. Louis may, upon its sole and exclusive determination, pursued undergo operations including and/or relating to St. Louis' ongoing operation and potential expansion, modification, maintenance, repair and/or potential creation of new water mains or other incidental improvements on or under the Subject Property and Additional Property. During any such construction and/or repair program, St. Louis shall determine what precautions are to be taken to avoid damage to the facilities of Maryland Heights. Notwithstanding the foregoing, St. Louis shall not be held liable for any damages that may occur at such times.

10. Subject to the aforementioned conditions, Maryland Heights shall have the right and duty, upon receipt of prior approval from the St. Louis Board of Public Service, to improve and maintain the road known as "City Water Works Road," twenty-two feet (22') wide, within the aforementioned Subject Property. Maryland Heights will take all necessary precautions to prevent damage to St. Louis' water transmission conduits and their appurtenances and other improvements, or to any survey markers which are in the vicinity of the Subject Property. In the event Maryland Heights disturbs the protective coating on any of the water conduits, or damage the conduits, appurtenances, or other improvements in any manner whatsoever, Maryland Heights hereby covenants and agrees to repair and/or replace the same, at the sole and exclusive cost of Maryland Heights, in a timely manner and in accordance with St. Louis Water Division specifications.

11. No use, other than improvement and maintenance of the aforementioned roadway and surface water drainage shall be made of this Easement.

12. The lightest possible static (non-vibrating) grading and compaction equipment shall be used over and/or upon the water conduits, appurtenances, and/or other improvements.

13. Maryland Heights agrees to commit no act(s) which would cause an interruption of water transmission by St. Louis without prior permission from the St. Louis Water Commissioner. Maryland Heights shall repair and/or replace any and all damage done to St. Louis Property, including all water transmission conduits, appurtenances and other improvements during any improvement and/or maintenance program.

14. Maryland Heights shall not change the ground elevation or existing drainage patterns without making provisions for adequate catch basins and sewers, which provisions shall be subject to prior approval by St. Louis, and all excess material not used as fill during construction shall be removed.

15. The surface of any ground disturbed along the easement shall be left smooth and neat and shall not require fine grading for mowing. After grading, disturbed areas shall be seeded and fertilized by Maryland Heights as required.

16. Any fill material used on and along the easement shall only be clean earth or granular limestone. No rubble or debris shall be used.

17. St. Louis hereby specifically reserves the right to use the Subject Property and Additional Property, and/or right-of-way for future open cut crossings for water transmission conduits and appurtenances in the earthen area below the easement.

18. St. Louis reserves the right to repair and maintain the present water transmission conduits and appurtenances located in the Subject Property and Additional Property. During any repair or maintenance work on the conduits, appurtenances, or other improvements, St. Louis shall not be held liable for any damage to the facilities of Maryland Heights, including the roadway granted herein.

19. Maryland Heights shall give the St. Louis Water Division at least forty-eight (48) hours notice before any work begins in the easement in order that the Water Division may have a representative present to ensure pipelines, appurtenances, and other improvements are not damaged.

20. St. Louis reserves the right of full and complete access, at all times, to all portions of the Subject Property and Additional Property, for any and all municipal purposes deemed necessary or desirable by St. Louis.

21. The finished grade for any roadway improvements shall provide each conduit with a minimum of two and one-half feet (2 1/2') of earthen cover. If any conduit now, or in the future, shall be left with less than two and one-half feet (2 1/2'), or more than ten feet (10') of cover from finished grade, said conduit shall be reinforced, concrete encased, according to St. Louis Water Division drawings and specifications, at the sole and exclusive cost and expense of Maryland Heights.

22. Any manholes or appurtenances affected by the aforementioned improvement and maintenance shall be set to proper grade by Maryland Heights, at the sole and exclusive cost and expense of Maryland Heights. St. Louis reserves the right of approval of the method selected for raising frames and covers to grade. Future adjustments of manholes or appurtenances caused by a change in elevation of the surface area of the right-of-way shall be borne, and the accompanying costs shall be borne, by Maryland Heights.

23. In the event that the easement provided for herein shall be abandoned by Maryland Heights, or in the event Maryland Heights ceases to operate and/or maintain the Subject Property as an active public thoroughfare, or in the event Maryland Heights shall fail to comply with any term or provision of this Easement Agreement, then the easement granted by this instrument shall cease to exist and all such rights shall revert to St. Louis.

IN WITNESS WHEREOF, St. Louis and Maryland Heights have caused these presents to be executed and delivered as of the date first above written.

THE CITY OF ST. LOUIS THE CITY OF MARYLAND HEIGHTS

BY: _____ BY: _____ MAYOR

COMPTROLLER

Approved as to form:

CITY COUNSELOR

Attest:

REGISTER

SECTION TWO. Upon full and complete execution of the Contract designated in SECTION ONE of this ordinance, and upon full and complete satisfaction of all conditions precedent set forth therein, the Mayor and the Comptroller are hereby authorized and directed to execute and deliver to the City of Maryland Heights any and all documents and/or instruments contemplated and/or required by said Contract, including but not limited to Exhibit A of the Contract designated in SECTION ONE of this ordinance.

SECTION THREE. This ordinance, being deemed necessary for the immediate preservation of the public health, safety and general welfare, shall be and is hereby declared to be an emergency measure within the meaning of Article IV, Section 20, of the Charter of the City of St. Louis, and as such shall take effect immediately upon its approval by the Mayor.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
04/28/95	04/28/95	PU		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
05/26/95			06/02/95	06/02/95
ORDINANCE	VETOED		VETO OVR	
63477				