

Summary
Board Bill Number 11
Sponsored by Alderman John Coatar
April 30, 2021

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.

BOARD BILL NUMBER 11 INTRODUCED BY: ALDERMAN JOHN COATAR

1 An Ordinance amending **Ordinance Number 66935**, which ordinance relates to an original
2 Lease Agreement dated January 1, 2006, as extended in 2010 and in 2015 between The City of
3 St. Louis, Missouri (the “City”) and Material Sales Company, Inc., a Missouri corporation
4 (“Lessee”), authorizing the execution of a First Amendment to Lease Agreement between the
5 City and Lessee for a period of five (5) years with one more five (5) year mutual option for
6 certain land and mooring rights at or near the north side of MacArthur Bridge and a point Three
7 Hundred feet (300’) south of the Poplar Street Bridge for \$21.70 per linear foot for 2021 and
8 increasing each year thereafter as set forth in the said First Amendment, as attached hereto as
9 **Exhibit A**; and containing a 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
18 mooring between the MacArthur and Poplar Street Bridges for a period of five (5) years with one
19 more five (5) year mutual option of \$21.70 per linear foot annually for 2021 subject to
20 adjustment as set 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
4 land 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
9 further action of the Board of Aldermen necessary to authorize such action by the Mayor and
10 Comptroller 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
15 necessary and appropriate in order to carry out the matters herein authorized, with no such
16 further action of 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
19 from each and every other part, section and subsection hereof and that the Board of Aldermen
20 intends to adopt each said part, section and subsection separately and independently of any other
21 part, section and subsection. In the event that any part, section or subsection of this Ordinance
22 shall be determined to be or to have been unlawful or unconstitutional, the remaining parts,

1 sections and subsections shall be and remain in full force and effect, unless the court making
2 such finding shall determine that the valid portions standing alone are incomplete and are
3 incapable of being executed 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
6 over her veto.

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: _____

ORDINANCE #66935
Board Bill No. 264

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 Material Sales Company for certain land and mooring rights on the Improved Public Wharf at or near the MacArthur and Poplar Street bridges for a period of Five (5) years commencing on the date of execution with four (4) five (5) year options, in substantially the form attached hereto and incorporated by reference herein as Exhibit 1, and containing an emergency clause.

SECTION ONE. The Mayor and Comptroller of the City of St. Louis are hereby authorized and directed to enter into a lease agreement with Material Sales Company for a period of Five (5) years commencing on the date of execution with four (4) five (5) year options, in substantially the form attached hereto and incorporated by reference herein as Exhibit 1.

SECTION TWO. Passage of this ordinance being necessary for the immediate preservation of public peace, health, safety, and general welfare of the residents of the City of St. Louis, shall be and 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, as such, this ordinance shall take effect immediately upon its passage and approval by the Mayor.

EXHIBIT 1

LEASE AGREEMENT

This Agreement made and entered into as of the ____ day of _____, 20 __, by and between the City of St. Louis, a Municipal Corporation of the State of Missouri (hereinafter called "Lessor"), through its Mayor and Comptroller and Material Sales Company (hereinafter called "Lessee").

WITNESSETH:

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

Five Hundred and Thirty (530') Feet of the Improved Wharf between a point Three Hundred (300') Feet north of the north side of the MacArthur Bridge and a point Three Hundred (300') Feet south of the Poplar Street Bridge.

2. This Lease Agreement shall be for a period of Five (5) years, beginning on the ____ day of _____, 20 __, and terminating on the ____ day of _____, 20 __, with Four (4) additional five year options, each option to be exercised with the mutual consent of the Lessee and the Lessor's Port Authority Commission and Board of Public Service. With respect to the latter, said consent shall not be unreasonably withheld as long as Lessee is performing within the terms of the Lease Agreement.

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

An annual rental of Seven Thousand Seven Hundred Fifty One Dollars and Twenty Five Cents (\$7,751.25) payable at a rate of Three Thousand, Eight Hundred Seventy Five Dollars and Sixty Three Cents (\$3,875.63) semi-annually in advance.

The rents to be paid to Lessor for the rights and privileges leased hereunder shall be subject to adjustments as provided by, and under the terms and conditions set forth in APPENDIX "A" STANDARD PROVISIONS, LEASES OF WHARF LAND AND MOORING RIGHTS", which is attached hereto and made a part hereof.

4. The above area shall be used only for the purpose of mooring barges and boats as a public supply operation and a maintenance facility for the Lessee's equipment.

5. The above area shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures or major alteration shall be made in accordance with plans and specifications approved by Lessor through the Port Authority Commission and Board of Public Service. Upon expiration, termination or cancellation of the Lease Agreement, the Lessee shall remove all practical movable structures from the area, without expense to the Lessor, unless authorized by Section 12. In the event said practical movable structures are not removed within ninety (90) days after receipt of notice by Lessee, the Lessor may take possession of said practical movable structures or may cause same to be removed at the expense of the Lessee.

6. Notwithstanding any provision to the contrary herein, including APPENDIX "A", the Lessor shall have the absolute right to cancel this Agreement in the sole discretion of the Lessor without further action and without further liability, subject to one (1) year's written notice thereof to Lessee.

7. All other matters governing this lease as well as rents are set forth in said APPENDIX "A."

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Lease Agreement.

LESSEE:

LESSOR:

CITY OF ST. LOUIS, MISSOURI

By: _____

Mayor

ATTEST:

Comptroller

ATTEST:

City Register

APPROVED AS TO FORM, ONLY:

City Counselor

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

On this ____ day of _____, 20 ____, before me appeared _____ to me personally known, who being by me duly sworn did say that they are the Mayor and 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 under the authority of Ordinance No. _____ and acknowledge 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)
)
CITY OF ST. LOUIS) SS.

On this ____ day of _____, 20 ____, before me a Notary Public in and for City of St. Louis, appeared _____ who, being by me duly sworn, did say that he is _____ of Material Sales Company and that the seal affixed to the foregoing instrument is the company seal of said company, and that said instrument was signed and sealed in behalf of said company by authority of its Board of Directors and said _____ acknowledged said instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunder 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:

APPENDIX "A"
STANDARD PROVISIONS
LEASES OF WHARF LAND AND MOORING RIGHTS

1. The base rate of \$0.0750 (current adjusted base rate \$0.14625) per square foot of land and \$7.50 (current adjusted base rate \$14.625) per linear foot of mooring may be adjusted at five year intervals beginning January 1, 2009, upon recommendation of the Port Commission and approval of the Board of Public Service. No such recommendation may be made by the Port Commission unless within 180 days before January 1, 2009, on which the adjusted rates are to become effective, the Port Commission shall conduct a public hearing with due notice to the public and to the users of City owned land and mooring rights. The maximum adjustment which can be recommended and approved shall be 25% of the base rates set out in the first sentence of this section. Each adjustment shall be added to the base rate plus any previous adjustments and the resultant rate shall be called the current adjusted base rate. If the recommended adjustment to the base rate by the Board of Public Service is in excess of 15%, the recommended raise of rate shall be approved by resolution of the Board of Aldermen. If the Board of Aldermen fails to act before the effective date of the rate, the rate then shall be automatically adjusted by 15%.

2. The above mooring area or leased parcel shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures or major alterations shall be made in accordance with plans and specifications approved by Lessor through the Board of Public Service. 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 Eleven (11). In the 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, watercrafts or other practical movable structures or may cause same to be removed at the expense of the Lessee.

Written notice when required shall be deemed to be sufficient and delivered when deposited in the certified U.S. mail and sent to Lessee's last known address.

3. Definitions. As used in this agreement, the following terms shall have the meaning specified herein:

(1) The term "Discharge" shall have the meaning ascribed to such term by '311(a)(2) of the Clean Water Act, 33 USC '1321(a)(2);

(2) The term "Environmental Laws" shall mean any international, foreign, federal, state, regional, county, local, governmental, public or private statute, law, regulation, ordinance, order, consent decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention or other requirement, pertaining to protection of the environment, health or safety of person, natural resources, conservation, wildlife, waste management, any Hazardous Material Activity (as hereinafter defined), and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq. solid waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid Hazardous Waste Amendments of 1984, 42 U.S.C. 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq., Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. (300(f) et \seq., and any similar or implementing state law, and all amendments, rules, regulations, guidance documents and publications promulgated thereunder;

(3) The term "Hazardous Material" as used in this Agreement shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated, byphenyls, petroleum (including crude oil or any fraction thereof), and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which, is prohibited, controlled or regulated by any Environmental Law;

(4) The term "Infectious Waste" shall mean any substance designated or considered to be an infectious waste pursuant to any Environmental Law;

(5) The term "Oil" shall mean any substance designated or considered to be an oil pursuant to any Environmental Law;

(6) The term "Port Commission" shall mean the Commission of the Port Authority of the City of St. Louis;

(7) The term Solid Waste shall mean any substance designated or considered as a solid waste pursuant to any Environmental Law;

4. During the term of this lease or renewal or extension thereof, the Lessee agrees to abide by all City Ordinances, State Laws, Federal Laws, Coast Guard, Corps of Engineers and any other properly applicable governmental regulatory requirements, including, but not limited to, any and all such provisions regulating and/or relating to the: (1) transportation, storage, use, manufacture, disposal, discharge, release or spilling of hazardous materials; (2) transportation, storage, use, recovery, disposal, discharge, release or spilling of "oil"; (3) "discharges" of effluents, pollutants and/or toxic pollutants to either publicly owned treatment works or directly to waters of the United States or tributaries thereof; (4) emissions, release or discharges of pollutants and/or other substances into the air or land; (5) transportation, storage, treatment, disposal, discharge, release or spilling of "infectious waste" ; (6) transportation, storage, treatment, recycling, reclamation, disposal, discharge, release or spilling of "solid waste"; and

(7) transportation, storage, or disposal of waste tires, used white goods and other appliances, waste oil, and/or used lead-acid batteries. Violation of any provision of federal or state law or City ordinance by Lessee shall be considered a breach of the lease agreement between Lessee and the City for which the City, at its sole option, may terminate the lease. In addition, Lessee shall call to the attention of the proper enforcement authorities, any violation of any federal or state law or local ordinance occurring on the leased premises of which Lessee has actual knowledge. Failure to do so on the part of the Lessee shall be considered a breach of this agreement for which the City, at its sole option, may terminate the lease.

Should Lessee's operation on the leased premises violate any provision of federal and/or state laws or regulations Lessee shall, immediately upon becoming aware of the existence of such violation, notify the Port Authority and undertake whatever action is necessary to remedy the violation and comply with the applicable provision(s), including but not limited to the institution of legal proceedings seeking an injunction in a court of competent jurisdiction. Should Lessee fail to remedy the violation, the City may notify Lessee of its intent to undertake remedial action. If Lessee fails to then institute reasonable remedial action within 96 hours of receiving said notice, the City may take whatever action is necessary to bring the leased premises into compliance. In the event that the City remediates an environmental condition at the leased premises, the Lessee shall reimburse the City for all costs incurred by the City in remedying such violation, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, and costs of testing, remediation, removal and disposal.

5. Lessee agrees to hold Lessor harmless for all limits of liability and to defend the Lessor from any and all claims for injuries or damages resulting from or rising out of Lessee's use of the leased premises or mooring area described herein; and that it will at all times during the term of this lease at its own cost, and for the benefit of the City, protect the City with Public Liability and Property Damage Insurance, issued in the name of Lessee and naming the City of St. Louis and Port Authority as named insured, covering each person up to \$500,000 with an overall limit as to all persons for each accident of \$1,000,000 and \$1,000,000 for property damage, approved by the City Counselor as to form and by the Comptroller as to surety and reserving the right of recovery by the City in the event of damage to City owned property, which shall be filed with the Port Authority and the Comptroller's Office before the lease is issued. Said insurance coverage must be maintained during the life of this lease, and any renewal or extension thereof. Included in the insurance policy shall be coverage requiring immediate removal of the vessel when the vessel is damaged or sunken from any cause whatsoever. This clause shall be expressed as a specific warranty by the insurance company regardless of cause.

Lessee, its successors and assigns, shall forever indemnify, defend and hold harmless, the City of St. Louis, the St. Louis Port Authority, its directors, officers, employees and agents, and successors and assigns, from and against all harms, including without limitation, damages, punitive damages, liabilities, losses, demands, claims, cost recovery actions, lawsuits, administrative proceeding, orders, response costs, compliance costs, investigation expenses, consultant fees, attorneys fees, paralegal fees and litigation expenses, arising from:

- (i) any Hazardous Material Activity by Lessee, its successors or assigns, or at the Property;
- (ii) the operation of any applicable Environmental Law against Seller or Property;
- (iii) the violation at the Property or by Seller of any applicable Environmental Law; or,
- (iv) any third party claims or suits filed or asserted.

Lessee, and its successors or assigns, shall pay all costs and expenses incurred by Lessor and its successors and assigns, to enforce the provisions of this indemnification, including without limitation, attorneys' and paralegal's fees and litigation expenses. The obligations of Lessee under this Section and this indemnification shall survive the termination of this Agreement and shall remain in force beyond the expiration of any applicable statute of limitations and the full performance of Lessee's obligations hereunder.

Lessee shall be required to purchase and maintain environmental impairment liability insurance, during the term of this lease, in the amount of One Million Dollars (\$1,000,000.00), or such other amount as shall be determined solely by the Port Commission, and naming the City of St. Louis as an additional primary, non-contributing insured, if:

(1) at any time more than the reportable quantity of a hazardous material, oil or infectious waste will be stored or otherwise present on the leased premises in any type of container(s) (including, but not limited to, drums, barrels, boxes, bags, tank trucks or trailers, rail cars or storage tanks, whether above or below ground);

(2) Lessee is required by federal or state law and/or regulation, as a result of or in connection with Lessee's operations on the leased premises, to obtain a permit for (a) discharges of effluents, pollutants, toxic pollutants or other substances into waters of the United States, tributaries thereof, sewer systems and/or publicly owned treatment works; (b) discharges of effluents, pollutants or toxic pollutants to a sewer system and/or publicly owned treatment works subsequent to pretreatment thereof; (c) emissions, releases or discharges of pollutants or other substances into the air or land; (d) treatment, storage or disposal of hazardous waste(s); (e) treatment, storage or disposal of infectious waste(s); (f) treatment, storage, processing, management, recycling or disposal of solid waste(s); (g) operation of a waste tire site or waste tire processing facility; or (h) placement of fill or dredged material into the waters of the United States or adjacent property;

(3) Lessee reports required by Environmental Laws or is otherwise required to obtain a hazardous waste generator identification number from either the federal or a state government;

(4) Lessee engages in the recycling, recovery or reclamation of solid wastes, hazardous materials on the leased premises;

(5) Lessee engages in the manufacture of hazardous, extremely hazardous, and/or toxic substances on the leased premises.

The environmental impairment liability insurance required pursuant to the terms of the preceding paragraph shall provide coverage for unexpected and unintended liability, damages and injuries arising or resulting from sudden and accidental, continuous or repeated discharges, spills and releases, into or onto the air, water, soil, sewer system or similar media, of any hazardous substance, hazardous waste, pollutant, toxic pollutant, extremely hazardous substance, toxic substance, infectious waste, solid waste, or similar material or substance, which disposal, discharge, release or spill occurs on or from the leased premises. The amount of environmental impairment liability insurance required hereunder may be adjusted at five year intervals beginning March 1, 1997, upon recommendation of the Port Commission and approval of the Board of Public Service. Such recommendation shall be made at least 30, but no more than 60, days prior to expiration of each five year period. The amount of environmental impairment liability insurance required shall not increase more than 25% in any five year period. If no recommendation is made by the Port Commission to adjust the amount of insurance required for a five year period prior to expiration of the previous five year period, or if the Port Commission recommendation is not approved by the Board of Public Service, the amount of insurance required shall automatically increase by 15%.

Any insurance policy which Lessee is required to obtain pursuant to the provisions of this section shall provide that said policy may not be canceled except upon the giving of thirty days notice of such cancellation to the Office of the Comptroller of the City of St. Louis. In the event that any policy which Lessee is required to obtain pursuant to the provisions hereof is canceled by the insurer, Lessee shall be required to obtain replacement insurance, and provide proof thereof to the Comptroller's Office, prior to the date that the cancellation becomes effective. Failure to do so shall be considered a breach of this lease. The Lessee shall notify or cause the insurance company to notify the Comptroller's Office of the renewal of all insurance required pursuant to the provisions of this section or of the cancellation of same. Failure to do so shall be considered a breach of this lease.

6. Upon the nonpayment of the rent specified herein 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, after notice of nonpayment or default, have thirty (30) days to cure any such nonpayment and ninety (90) days to cure any other default, unless the provisions hereof provide either that a specified breach is grounds for termination of the lease or that failure to cure within a specified time frame of less than ninety (90) days is grounds for termination. The failure and omission of the Lessor to declare this lease forfeited upon the default of said Lessee in the payment of said rents as the same become 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 therefore by the Lessee.

7. Lessee agrees to pay ad valorem taxes on boats, vessels, aircraft or watercraft and on operation of same that may be moored on said leased area or any operations within said leased area, including all other owned property and equipment, and it is agreed that the Lessee will not deny the authority of the proper assessing agency to assess ad valorem taxes on said improvements. The Lessee reserves the right to question the amount of such assessment in any court of competent jurisdiction or other tribunal established by law to correct the valuation of the property on which the assessment of such tax is based. Failure to do so shall be considered a breach of the terms of this lease. All barges in the transit shall be exempt.

8. If the Lessee remains in possession of the leased premises after the expiration of the terms for which it is leased and the Lessee pays rent and the Lessor accepts said rent, such possession shall be construed as creating a month-to-month tenancy and not a 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 as set forth in section 10 hereof in the event the premises are needed for right-of-way, sewer or Floodwall construction purposes or any other necessary or reasonable municipal purposes or uses. Municipal purposes or uses shall include economic development in the Port District.

10. In the event that any portion of the leased parcel or mooring area shall be needed for any municipal purpose, subject to the same exclusion set forth in section 9 above, sewer, right-of-way, Floodwall or Floodwall construction, as set forth in section 9 hereof, the Lessor shall have the right to modify, amend, or cancel this lease upon one (1) year's written notice thereof to Lessee and eliminate such portion of the leased or mooring area as shall be needed for such 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 sent to Lessee's last known address.

11. If this lease is amended or modified under the provisions of Sections Nine (9) or Ten (10), the current rent shall be adjusted in direct proportion to the change made in the leased area. If the remaining area is not suitable to the Lessee, Lessee shall have the right to terminate this lease without penalty by written notice within 90 days after receipt of the notice to amend provided by Section Ten (10).

12. In the event this lease is canceled, modified or amended under the provisions of Sections Nine (9) or 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 Lessee's customer. Such capital improvement being only those which have been made pursuant to the written approval of the Board of Public Service and those improvements in place on the date hereof whether or not approved by said Board. 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, and no funds from general revenue shall 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. The Lessee shall have the right to terminate this lease upon service of one (1) year's written notice and the payment of an additional one (1) year's rental which shall accompany such notice. The payment of the additional year's rental shall not relieve Lessee of the obligation to pay the current year's rental as provided herein.

14. Any sublease or assignment of this lease, change in corporate structure, or any rights thereunder, shall be valid only with the approval of the Board of Public Service of the City of St. Louis, the Port Commission and the Board of Aldermen of the City of St. Louis. If approved, all parts of this lease are binding on sublessor or assigns.

15. This lease may be canceled at the option of the City if, at any time during the term of this lease, the person or persons who on the date of execution of this lease own or owns a majority of the Lessee's voting shares of stock, ceases or cease to own majority of such shares, except as the result of transfer(s) by gift or inheritance, or public work offering pursuant to the Securities and Exchange Act of 1934, as amended, or merger into or consolidation with another corporation.

Sale of a portion or all of the assets of the Lessee, or sale or transfer of the lease by the Lessee, without Board of Public

Service and Port Commission approval, which approval shall not be unreasonably withheld, makes this lease subject to cancellation at the option of the City.

If sale, transfer or assignment of Lessee's stock is approved, all parts of this lease are binding on the purchaser, transferee or assignee.

16. The Lessee agrees not to erect any barrier, fence or supporting structures or store any materials on the Floodwall itself or twenty-five (25) feet on either side of the Floodwall.

17. Any delinquent payment shall bear interest from the date due at prime rate plus two (2%) percent. Prime rate shall be that average rate as established by Mercantile Bank of St. Louis N.A. and NationsBank NA.

18. The Lessee shall not store any garbage or trash on the Wharf or mooring area, but must keep the area neat and free of all trash and rubble. 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 or vehicle servicing, or being serviced by, the Lessee. Failure to do shall be considered a breach of this contract.

The Lessee shall have responsibility for the housekeeping on the Improved Wharf immediately in front of the mooring area. Failure to maintain this area as required by this lease and all other City ordinances when directed by the Board of Public Service with the approval of the Port Commission shall result in the cancellation of this lease.

19. Upon execution of this lease, the Lessee shall, at his own expense, have this lease recorded by the City's Recorder of Deeds and have the Register make a microfilm of the lease.

20. EQUAL OPPORTUNITY AND NONDISCRIMINATION GUIDELINES.

In any contract for work in connection with the redevelopment of any property in the Area, the Redeveloper (which term shall include Redeveloper, any designees, successors and assigns thereof, and any entity formed to implement the project of which the Redeveloper is a general partner), its contractors and subcontractors will include a clause requiring compliance with all federal, state and local laws, ordinances, or regulations governing equal opportunity and nondiscrimination, the Executive Orders of the Mayor of the City dated December 6, 1984, January 10, 1990, March 31, 1992, and all guidelines herein.

The Redeveloper and its contractor will not contract or subcontract with any party known to have been found in violation of any such laws, ordinances, regulations or these guidelines.

In the redevelopment of the Area, there shall be maximum utilization of bona fide minority business enterprises ("MBE's") and women business enterprises ("WBE's" and, together with MBE's, "disadvantaged business enterprises" or "DBE's"). The Redeveloper will set a minimum goal of twenty-five percent (25%) MBE participation and five percent (5%) WBE participation under these guidelines. In the event the Redeveloper fails to attain that goal, the Redeveloper may be required to show good cause therefor; provided however, that this requirement will be deemed to have been met when documentation evidences that all available resources (i.e. DBE suppliers, contractors, and subcontractors) willing to perform the work or provide the supplies--at a price which (i) is within the range requested by non-DBE's; or (ii) if higher than that requested by non-DBE's, is attributable to the effects of past discrimination--have been exhausted.

The term MBE shall mean a sole proprietorship, partnership, corporation, profit or non-profit organization owned, operated and controlled by minority group members who have at least fifty-one percent (51%) ownership. The minority group member(s) must have operations and management control and interest in capital and earnings commensurate with their percentage of ownership. The term Minority Group Member(s) shall mean persons legally residing in the United States who are Black, Hispanic, Native American (American Indian, Eskimo, Aleut or Native Hawaiian), Asian Pacific American (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia or Taiwan) or Asian Indian American (persons with origins from India, Pakistan or Bangladesh). The term WBE shall mean a sole proprietorship, partnership, corporation, profit or non-profit organization owned, operated and controlled by a woman or women who have at least fifty-one percent (51%) ownership. The woman or women must have operational and managerial control and interest in capital and earnings commensurate with their percentage of ownership.

The Redeveloper agrees for itself and its successors and assigns, that there shall be covenants to ensure that there shall be no discrimination on the part of the Redeveloper, its successors or assigns upon the basis of race, color, creed, national origin, sex,

marital status, age, sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of any property, or any Improvements erected or to be erected in the Area or any part thereof, and those covenants shall run with the land and shall be enforceable by the LCRA, the City, and the United States of America, as their interests may appear in the project.

The Redeveloper agrees that if the redevelopment of the Area creates permanent jobs, it shall enter into an Employment Plan with the Saint Louis Agency on Training and Employment and the LCRA for referral of Jobs Training Partnership Act eligible individuals. Said plan shall specify the number of jobs to be covered by the Employment Plan, the target date for referrals to begin, and the procedure for referral.

21. After expiration of this lease, and if the Lessee operates on a month-to-month basis, all articles of the lease continue to apply for one year only.

22. Annually, the Lessee must present to the Port Commission a marine survey of the safety of the facilities operated by them.

23. All vessels must be moored in line parallel to the Floodwall and there shall be no mooring in such number as to violate any applicable permits obtained by Lessee from the U.S. Corps of Engineers without approval of the Board of Public Service and the Port Commission.

24. No auxiliary craft shall be moored to any craft covered by this lease except for public safety reasons and maintenance. Maintenance craft may be moored during the period maintenance is taking place.

25. Other than as to installations in existence on the date hereof which shall not be subject to the requirements set forth herein, after notice to the Board of Public Service and the Port Authority, Lessee shall have the right to install, or modify the installation or use of, deadmen and mooring cells on the bank adjacent to Lessee's mooring area in accordance with plans and specifications approved by a licensed marine engineer for such installation, or modification of the installation or use thereof. Lessee must obtain the proper permits from the City, State and Federal regulatory agencies. Lessee shall have the right to ingress and egress to the mooring facilities over the land between the Floodwall and the mooring area leased herein.

26. Lessee accepts the property in "as is" condition, and, except as otherwise expressly stated elsewhere in this agreement, without any express or implied warranties of suitability, merchantability, fitness for a particular purpose or environmental fitness. The City of St. Louis has made no representations or warranties, express or implied, and explicitly disclaims the same, concerning the absence of any pollution, contamination, hazardous waste, hazardous or toxic material or substance, underground storage tanks or hazardous building materials in, on or around the leasehold or its improvements, except as may be specifically and expressly stated elsewhere in the lease agreement.

27. Lessee shall not remove any underground or aboveground storage tanks located on the leasehold without first obtaining the written consent of the Port Commission, which consent shall not be unreasonably withheld. In no event shall Lessee abandon in place an underground storage tank. Nor shall Lessee install any underground or aboveground storage tanks on the leased premises without first obtaining the permission of the Port Authority. Unless specifically stated elsewhere in this lease agreement, the Port Commission shall have absolute discretion to approve or deny a request by Lessee to install a new underground or aboveground storage tank. Notwithstanding the foregoing provision, where the Lessee proposes to replace an existing underground or aboveground storage tank with a new tank, the Port Commission shall not unreasonably withhold permission therefor.

28. Unless specifically stated elsewhere in this lease agreement, the Lessee must obtain the explicit written permission of the Port Commission prior to applying to an agency or agencies of the state and/or federal governments for a permit or license to:

- (1) treat, store or dispose of hazardous materials;
- (2) treat, store or dispose of waste oil;
- (3) treat, store, process, manage, recycle or dispose of solid waste(s);
- (4) operate a waste tire site or waste tire processing facility; or
- (5) manufacture hazardous or toxic substances; on all or a portion of the leased premises. Nor, unless explicitly stated elsewhere in this lease agreement, shall Lessee engage in any of the operations enumerated above, for which a federal and/or state

permit or license is required, without first obtaining explicit written permission therefor from the Port Commission. Lessee shall not apply for a permit or license to allow it to place, nor shall Lessee place, any fill or dredged material into the waters of the United States or tributaries thereof which are adjacent to or on the leased premises without first obtaining the explicit written approval of the Port Commission therefor.

29. Lessee agrees and warrants that, upon termination of Lessee's tenancy of the leased premises pursuant to the terms of this or a subsequent lease agreement, it shall return the leased premises to the City free of any and all hazardous or toxic substances, hazardous wastes, infectious wastes, solid waste (unless disposal of solid waste on the leasehold was specifically permitted by the terms of this lease or a subsequent written document executed on behalf of, and authorized by, the Port Commission), pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on or into the leased premises during Lessee's tenancy. Lessee shall, upon termination of its tenancy, remove all product(s) or waste(s) stored in underground and aboveground storage tanks, located on the leased premises, which were installed or used during the term of the Lease. Upon termination of tenancy, Lessee shall also perform tank tightness testing on all underground and aboveground storage tanks and connecting piping, installed or used during the term of the Lease, and shall either remove or repair any tanks or piping which fail such tests. Lessee shall also either remove or decontaminate any soil contaminated by leaks from storage tanks or connecting piping installed or used during the term of the Lease. In the event that Lessee fails to perform its obligations pursuant to this section of the lease agreement, the City shall give Lessee notice of said failure within 30 days of discovering the Lessee's default of its obligations under this section. If Lessee fails to fully comply with its obligations hereunder within 30 days of such notice, the City may undertake such actions as are necessary to bring the leased premises into compliance with the standards set out herein. In the event that the City is required to undertake actions to bring the leased premises into compliance with said standards, Lessee shall reimburse the City for all costs thereof, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal, and/or remediation, and disposal costs.

30. Lessee shall, with respect to its use of the leased premises, periodically furnish the Port Authority with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials. Further, Lessor shall have the right to inspect any and all portions of the leased premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if Lessor has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur. Should Lessee fail to comply with this provision, the City, after reasonable notice, may terminate this agreement.

31. This lease in its entirety covers all the covenants and agreements between the Lessor and Lessee and can only be changed, renewed, or extended in writing signed by the Lessor and Lessee and approved by the Port Commission and Board of Public Service, when authorized by an ordinance enacted for that purpose. The lease of Wharf property may not be extended to cover a period of time exceeding a total of 25 years as provided by Article I, Section 1(16), City Charter.

32. The terms and conditions of this lease shall be binding on Lessee's heirs, successors or assigns.

Approved: December 21, 2005

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? _____ .