

St. Louis City Ordinance 62605

FLOOR SUBSTITUTE

BOARD BILL NO. [91] 393

INTRODUCED BY ALDERMAN JoAnn Wayne

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment authorizing the Mayor and the Comptroller of the City of St. Louis to execute on behalf of the City of St. Louis, a Space Permit Document (Airport Number AL 92) between the City of St. Louis and Trans States Airlines, including certain terms and conditions for space occupancy and use in the areas as shown on the attached Exhibit "A" for a term of five years commencing from the date of the removal of the space per attached Exhibit "A" from the AL 154 Lease Agreement with McDonnell Douglas by Ordinance, providing for monthly rental payments, providing for construction by Permittee, in accordance with provision of this Permit, requiring Performance and Payment Bond necessary for any construction in the Space Permit Area as designated per attached Exhibit "A", providing for regulation regarding signs or advertizing displays, provision for establishing responsibilities for repairs and maintenance, requiring for providing Liability and Property Insurance Indemnification and Assignment provisions all as contained in detail in Section One of this Ordinance; and containing an emergency clause.

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

Section One. There is hereby established an Ordinance recommended by the Airport Commission and the Comptroller of the City of St. Louis to execute on behalf of the City of St. Louis a certain Space Permit Document (Airport Number AL 92) between the City of St. Louis and Trans States Airlines and which said document shall read in words and figures as follows:

AIRPORT NUMBER.....

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

SPACE PERMIT

(TRANS STATES AIRLINES)

The City of St. Louis (the City) hereby grants to Trans States Airlines, (the Permittee) permission to occupy and use the Space described below at Lambert

St. Louis International Airport (the Airport) under the terms and conditions of this Permit.

Section 1. SPACE. The Space for which occupancy and use is granted (the Space) is shown on the attached Exhibit "A" and is more fully described as approximately 48,915 square feet off Genaire Drive, northeast of airfield. The rights granted in Section 2 may be exercised only within the Space.

Section 2. USE. The building in the Space is to be used only for offices. This Permit does grant the use of parking area in the Space by Permittee.

Section 3. ACCESS. Subject to Section 15 hereof, the Permittee has the right of free access, ingress to and egress from the Space, for the Permittee's employees, agents, guests, patrons and invitees.

Section 4. TERM. The term of this Permit shall begin on the date City Ordinance is approved removing the Space from Lease Agreement AL 154 with McDonnell Douglas and shall end five years from that date unless sooner terminated in accordance with other provisions of this Permit. City will notify Permittee of the start date.

City or Permittee may terminate this Permit by giving 90 days notice to the other party.

Section 5. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the term of this Permit shall be necessary. Permittee covenants and agrees that at the expiration date of the term of this Permit, or at the earlier termination hereof, it will peaceably surrender possession of the Leased Premises in good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Leased Premises with or without due process of law.

Section 6. SPACE RENTAL PAYMENT. For the first three years of the term of this Permit, permittee will pay in advance to City on or before the first day of each month of the term of this Permit a monthly rental of \$3,144.00. For the last two years of the terms of this Permit, Permittee will pay \$3,144.00 monthly rent as well as Consumer Price Index rent escalator (see attachment "A"). All unpaid rent and fee payments due the City hereunder shall bear a service charge of 1 1/2% per month if same is not paid and received by the City on or before the 30th of the month in which said payments are due, and the Permittee agrees that it shall pay and discharge all costs and expenses including attorneys' fees

incurred or expended by the City in collection of said delinquent amounts due including services charges.

Payments shall be made at the Office of the Director of Airports at the airport, or at such other place in the City of St. Louis, Missouri as the City may hereafter notify Permittee and shall be made in legal tender of the United States.

Section 7. NON BUYOUT. In no event shall the City of St. Louis be held liable for or be required to make any buyout payment for this Permit or the improvements on the space.

Section 8. ADDITIONAL FEES CHARGES AND RENTALS. Permittee shall pay additional fees, charges and rentals under the following conditions:

A. If the City has paid any sum or sums or has incurred any obligation or expense for which Permittee has agreed to pay or reimburse the City for, and

B. If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Permittee to perform or fulfill any of the conditions of this Permit.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rental, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against Permittee that the amount of such payment was necessary and reasonable.

Section 9. PROMPT PAYMENTS OF TAXES AND FEES. Permittee covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, assessments, fees and charges to become delinquent.

Section 10. MECHANICS' AND MATERIALMEN'S LIENS. The Permittee agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Space or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 11. OCCUPANCY OF PREMISES. Permittee accepts the Space "as is". The Permittee agrees that it will not permit any act of omission or commission or condition to exist on the Space which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 12. CONSTRUCTION BY PERMITTEE. Permittee may improve the Space subject to written approval of the Director of Airports. Permittee will submit to the Director of Airports detailed plans and specifications for all improvements to and equipping of the Space. Permittee will not begin any work until it receives the approval of its plans and specifications from the Director of Airports. Any changes in the plans or specifications after approval will require resubmission. Upon the completion of the improvements hereunder, the Permittee shall submit to the Director of Airports a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Permittee.

Permittee will provide the Director of Airports with a copy of all applicable permits as required by local municipalities prior to beginning any construction or alterations.

Permittee will provide the Director of Airports within 30 days of completion or occupancy of any construction or modification to the Space, reproducible as built drawings on either Mylar or Sepia Mylar base.

All improvements installed by the Permittee shall become the property of the City upon termination of this Permit, except that the City reserves the right and the Permittee agrees that the Director of Airports may require the Permittee to remove any or all improvements and structures and restore the Space to their original condition. The Permittee agrees to bear all costs of such removals and restorations.

Section 13. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving and equipping the Space, Permittee shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and

their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than \$250,000 as to any one person and \$1,000,000 as to any one occurrence, and with property damage limits of not less than \$1,000,000 as to any one occurrence. Said insurance shall be in a form agreeable to the City.

Section 14. **PERFORMANCE AND PAYMENT BONDS.** City shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1986. Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 15. **SIGNS.** Permittee agrees that no signs or advertising displays shall be placed on, painted on or erected in any manner upon the areas of the Space exposed to the public without prior written approval of the Director of Airports and that such signs shall conform to reasonable standards established by said Director of Airports with respect to wording, type, size, design, color and location.

Section 16. **COMPLIANCE WITH LAWS AND REGULATIONS.** Permittee shall comply with all Rules and Regulations which the Director of Airports may establish from time to time. In addition, Permittee shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Space or to any adjoining public ways, as to the manner of use or the condition of the Space or of adjoining public ways.

Section 17. **REPAIRS AND MAINTENANCE.** Permittee will provide and pay for all repairs and maintenance of the Space.

The Permittee will perform the following functions as part of its responsibilities in the repair and maintenance of the Space. The following list includes certain functions but the Permittee's responsibilities are not limited to those functions:

A. Perform custodial services daily.

- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Space and the Airport when such damage results from the careless or negligent acts of Permittee or Permittee's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director of Airports applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Permittee agrees to promptly provide and install same and to abide by such standards.
- F. Confine all handling and holding of Permittee's property to the Space.
- G. Keep all papers and debris picked up daily from the Space.
- H. Keep the Space free of all pests, providing such Pest Control Services as required.
- I. No storage will be permitted on the exterior areas of the Space.

Section 18. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Permittee's operations as is reasonably practicable) to enter upon and in the Space for the following purposes:

- A. To inspect such premises to determine whether Permittee has complied and is complying with the terms and conditions of this Permit.
- B. To perform maintenance and make repairs in any case where Permittee is obligated, but has failed to do so, after the City has given Permittee notice so to do, in which event Permittee shall reimburse the City for the cost thereof plus a charge of 15% for overhead promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 19. UTILITIES. Permittee will provide and pay all utilities it requires.

Section 20. INTERFERENCE WITH AIR NAVIGATION. The Permittee agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Space. Any obstructions will be removed by the Permittee at its expense. The Permittee agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. The Permittee further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

Section 21. LIABILITY INSURANCE. Permittee, at his expense, at all times during the term hereof, shall cause the City and its Board of Aldermen, Airport Commission, officers, agents and employees and Permittee to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Permittee its officers, agents, employees, and independent contractors pursuant to this Permit both on the Premises and the Airport under the following types of coverage:

A. General Comprehensive

B. Automobile (all vehicles)

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$1,000,000 comprised of such primary and excess policies of insurance as Permittee finds it feasible to purchase during the term of this Permit.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be named as additional insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Permittee, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as additional insured is not intended to,

and shall not, make the City a partner or joint venturer with Permittee in its operations hereunder.

Section 22. PROPERTY INSURANCE. Permittee will provide fire and related insurance coverages for all of its improvements and equipment existing or subsequently installed on the Space.

Section 23. EVIDENCE OF INSURANCE. Certificates, or other evidence of insurance coverage required of Permittee in this Article, shall be delivered to the Director of Airports in form and content satisfactory to the City.

At least 15 days prior to the expiration of any such policy, Permittee shall submit to the Director of Airports a certificate showing that such insurance coverage has been renewed. If such coverage is cancelled or reduced, Permittee shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director of Airports, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or cancelled by the insurer during its term without first giving 30 days notice to the Director of Airports.

Section 24. CONDITIONS OF DEFAULT. This Permit shall be considered in default when Permittee fails to fulfill any of the conditions of this Agreement.

Section 25. INDEMNIFICATION. Permittee shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the leased premises or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of Lambert St. Louis International Airport. The Airport Director or his designee shall give to Permittee reasonable notice of any such claims or actions. The Permittee shall also use counsel reasonably acceptable to the

Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this agreement.

Section 26. ASSIGNMENT AND SUBLETTING. Permittee shall not assign this Permit without first obtaining written approval of the Director of Airports and Airport Commission. At least 90 days prior to any contemplated assignment of this Permit, Permittee shall submit a written request to the Director of Airports. No assignment shall be made or shall be effective unless Permittee shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Permit. In the event of any assignment consistent with the foregoing provisions of this paragraph, Permittee upon consummation thereof shall be released and discharged from any and all obligations contained in this Permit. Permittee shall not sublet the Space.

Section 27. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to Permittee shall be sent by certified mail, return receipt requested addressed to Trans States Airlines, d/b/a Trans World Express, 3990 Fee Fee Road, Bridgeton, Missouri, 63044. The parties or either of them may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Permittee or said Director.

Section 28. NON DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

A. The Permittee hereto understands and agrees that the City in operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Permittee hereby agrees that his premises shall be posted to such effect as required by such regulation.

B. Permittee agrees that in performing under this Permit, neither he nor anyone under his control will permit discrimination against any employee, worker or

applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Permittee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

C. Permittee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Permittee state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Permittee shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.

D. Permittee agrees that should it be determined by the Permittee or City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Permittee to achieve the provisions of his program.

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

F. Permittee further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Permittee in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Permit.

G. Whenever the Permittee is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of

these provisions relating to fair employment practices, Permittee shall notify the City Counselor in writing of such suit or threatened suit within 10 days.

H. In event of the Permittee's noncompliance with nondiscrimination clauses of this Permit, or to furnish information or permit his books, records and account to be inspected within 20 days from date requested, this Permit may be cancelled, terminated or suspended, in whole or in part, and Permittee may be declared ineligible for further City contracts for a period of one year by option of the City, provided, further, if this Permit is cancelled, terminated or suspended for failure to comply with fair employment practices, Permittee shall have no claims for any damages against the City.

I. Permittee will establish and maintain for the term of this Permit an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and the City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

J. The Permittee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Permittee assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 29. NO PERSONAL LIABILITY. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Permit.

Section 30. FORCE MAJEURE. Neither the City nor Permittee shall be deemed in violation of this Permit, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 31. QUIET ENJOYMENT. Subject to the provisions of the Permit, the City covenants that Permittee on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 32. GOVERNING LAW. This Permit shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri.

Section 33. WAIVERS. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

Section 34. INVALID PROVISIONS. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Permittee in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Permit.

Section 35. ENTIRE AGREEMENT. This Permit, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Permit may be amended only in writing and executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Permit the day and year first above written.

THE CITY OF ST. LOUIS

Director of Airports Date

APPROVED AS TO FORM ONLY

City Counselor Date
City of St. Louis

Register, Date

City of St. Louis

COUNTERSIGNED

Comptroller, Date
City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on the day of , 1991.

Secretary, Date
Board of Estimate & Apportionment

TRANS STATES AIRLINES, D/B/A
TRANS WORLD EXPRESS

Title:
Date:

Section Two. This being an Ordinance providing for public peace, health and safety, it 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 shall become effective immediately upon its passage and approval by the Mayor of the City of St. Louis.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
03/13/92	03/13/92	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
03/20/92			03/27/92	03/31/92
ORDINANCE	VETOED		VETO OVR	
62605				