ORDINANCE #65200
Board Bill No. 11
Committee Substitute

An ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City an Operating Agreement (Parking Facilities) (the "Agreement") at Lambert-St. Louis International Airport (the "Airport") between the City and APCOA-SRP Parking V (the "Operator"), to operate and manage certain Airport parking facilities and related services at the Airport subject to terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and the Board of Estimate and Apportionment and is attached hereto as **ATTACHMENT 1** and is incorporated herein; directing that the Agreement be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions, and executive orders relating to equal employment opportunity; and containing an emergency clause.

WHEREAS, The City of St. Louis (the "City") now owns, operates, and maintains Lambert-St. Louis International Airport (the "Airport");

WHEREAS, APCOA-SRP Parking V (the "Operator") desires to enter into with the City an Operating Agreement (Parking Facilities) at the Airport (the "Agreement"), which is attached hereto as **ATTACHMENT 1** and incorporated herein;

WHEREAS, the parking facilities at the Airport are essential for proper accommodation of the traveling public;

WHEREAS, it is in the best interest of the City, the Airport, the traveling public, and others that the Operator be a qualified operator and manager of parking facilities and related services;

WHEREAS, the City has determined that the Operator is a qualified operator and manager of parking facilities and related services; and

WHEREAS, the Agreement has been approved by the Airport Commission and the Board of Estimate and Apportionment.

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

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City an Operating Agreement (Parking Facilities) (the "Agreement") at Lambert-St. Louis International Airport (the "Airport") between the City and APCOA-SRP Parking V (the "Operator"), to operate and manage certain Airport parking facilities and related services at the Airport subject to terms, covenants, and conditions of the Agreement that was approved by the Airport Commission and the Board of Estimate and Apportionment and is to read in words and figures as set out in **ATTACHMENT 1,** which is attached hereto and made a part hereof.

SECTION TWO. The Agreement shall be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws ordinances, regulations, court decisions, and executive orders relating to equal employment opportunity.

SECTION THREE. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter and shall become effective immediately upon its approval by the Mayor of the City.

AIRPORT NUMBER .....AL-68.....

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
OPERATING AGREEMENT
(PARKING FACILITIES)

THIS AGREEMENT, made and entered into as of the _____day of _____, 2001 by and between the CITY OF ST. LOUIS, a municipal corporation of the state of Missouri (the "City") and APCOA-SRP Parking V, (the "Operator")

WITNESSETH, That:

WHEREAS, the City now owns, operates and maintains an international airport known as "Lambert-St. Louis International Airport" ("Airport"), located in the County of St. Louis, Missouri; and

WHEREAS, parking facilities at the Airport are essential for proper accommodation of the public; and

WHEREAS, City has determined that it is in the public interest for the following objectives to be met:

- To provide first-class parking services that meet the Airport user needs and add value to other Airport services;

- To have the Facilities and shuttle busses operated and serviced with well-trained, efficient, courteous and pleasant staff;

- To be responsive to City of St. Louis Airport Authority goals for Disadvantaged Business Enterprise participation.

WHEREAS, City has advertised and received competitive Bids for the right to manage and operate the parking operation at the Airport, and by this process City has determined that the Operator is qualified to provide this service and has submitted a Bid deemed advantageous to the public and City.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants and agreements herein contained, and other valuable considerations, the City and the Operator agree as follows:

ARTICLE I
DEFINITIONS

Section 101. Definitions. The following words, terms and phrases wherever used in this Agreement shall for the purpose of this Agreement have the following meaning

"Agreement" shall mean this document and any amendments thereto, duly approved by the City.

"Airport" shall mean as stated in the preamble hereof.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, operator, concessionaire and other premises at the Airport, and shall be the Operator's point of contact with the Airport on all issues related to this Agreement.

"Annual Operating Budget" shall mean as established in Section 407, below.

"City" shall mean as stated in the preamble hereof.

"Contract Year" shall mean a consecutive twelve (12) month period commencing on the first day of the Term of this Agreement.

"Disadvantaged Business Enterprise" or "DBE" shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are presumed (rebuttable) to be women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

"Director" shall mean the Director of Airports of the City of St. Louis or his/her authorized designee.

"Facilities" means as established in Section 201, below.

"Gross Receipts" shall mean all fees and charges collected by the Operator or due hereunder from the Operator for the parking or storing of vehicles in the Facilities.

"Management Fee" means as established in Section 401, below.

"Net Receipts" shall mean the Gross Receipts minus the total of the authorized Reimbursable Operating Expenses.

"Reimbursable Operating Expenses" shall mean as established in Section 402, below.

"Operator" shall mean as stated in the preamble hereof.

"Revenue Control System" means the mechanical, electronic, and/or computerized equipment provided and owned by the City to control and record entrances and exits from the Facilities, including, but not limited to, loop detectors, gate arms, ticket dispensers, automatic vehicle identification detectors, fee computers, fee indicators, lane control lights, computerized data management systems, and any other management system existing or to be established related thereto.

"Term" means as established in Article III, below.

ARTICLE II
PARKING FACILITIES

Section 201. Parking Facilities. Subject to all the terms, covenants and conditions of this Agreement, the City makes available to the Operator public and employee parking areas as shown on the attached Exhibit "A" (which is incorporated herein) and further designated as Main Terminal Garage, East Terminal Garage, Intermediate Lot, Long Term Lot(s), and Employee Parking Lot(s), together with all improvements, including but not limited to an office building and maintenance building. These areas shall hereafter be referred to collectively as the "Facilities".

The Operator accepts the Facilities "AS IS" with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives. The City without limitation expressly disclaims and negates, as to the Facilities: a) any implied or expressed warranty of merchantability, b) any implied or expressed warranty for a particular purpose, and c) any implied or expressed warranty with respect to the Facilities or any portion thereof.

The Facilities shall, at all times during the term of this Operating Agreement, be subject to the right of the City to go upon the same and revise parking spaces, change from public to employee use or vice versa, change or rearrange entrances and/or exits, use temporarily or permanently such portions as necessary for making improvements and repairs to parking or other Airport facilities, and for maintenance of facilities on lots and in structures, for installation of improvements, service roads, or other facilities necessary for operation and maintenance of the Airport.

The City reserves the right to relocate, add, substitute or delete the Facilities as the City may, in its discretion, determine is necessary for the efficient operation of the Airport. Such rights may be exercised by the City at any time during the Term of this Agreement by giving the Operator ten (10) days written notice.

The City may, at its expense, install new revenue control equipment at any time during the Term of this Agreement.

Except as expressly set forth, nothing herein contained shall be construed to grant to the Operator the right to use any space or area improved or unimproved which is exclusively leased by the City to a third party, or which the City has not granted herein.

Section 202. Access. Subject to the terms, covenants and conditions of this Agreement hereof, the Operator has the right of free access, ingress to and egress from the Facilities, for the Operator's employees, agents, guests, patrons and invitees.

ARTICLE III
TERM

Section 301. Term. The Term of this Agreement shall begin on July 1, 2001, and shall end on June 30, 2004, unless extended or sooner terminated in accordance with other terms of this Agreement.

Section 302. Surrender of Operation. No notice to quit operation at the expiration date of the Term of this Agreement shall be necessary. The Operator warrants, covenants and agrees that at the expiration date of the Term of this Agreement, or at the earlier termination hereof, it will peaceably surrender operation of the Facilities and vehicles in good condition as that existing at the time of the Operator’s initial entry upon the Facilities or acceptance of the vehicles under this Agreement, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take operation of the Facilities with or without due process of law.

Operator shall at the expiration or early termination of the Term of this Agreement, turn over to the City all revenue control equipment, vehicle and any other equipment keys; the operating and maintenance manuals for the revenue control equipment, vehicles and any other equipment used by the Operator; all keys for the parking office, maintenance facility, cashier booths and any other areas kept locked by the Operator.

ARTICLE IV
FINANCIAL

Section 401. Management Fee. The City shall pay to the Operator a monthly Management Fee of 2.974% of the Net Receipts. The fee will be paid monthly within fifteen (15) days of the date the statements of Gross Receipts and Reimbursable Operating Expenses are submitted. However, the City shall have the right to deduct from the fee any unpaid amounts due the City from the Operator.

Section 402. Reimbursable Operating Expenses. A cost is a Reimbursable Operating Expense under this Agreement if it is: (1) actually incurred by the Operator; (2) necessary for the performance of the Operator's duties under this Agreement; (3) reasonable under the circumstances; (4) not expressly excluded from reimbursement under this Agreement; and (5) no greater than the amounts stated for the applicable category of costs in the approved Annual Operating Budget or, if in excess of that amount, approved in writing by the Director before the cost is incurred.

Section 403. Non-Reimbursable Operating Expenses. Costs related to the following are not reimbursable under this Agreement:

A. Off-site operations or off-site personnel, including but not limited to wages and benefits of those personnel;

B. Travel, lodging, and meal expenses, except those arising from travel directed by the Director;

C. Legal representation;

D. Bonuses;

E. Premiums for any bonds or insurance, including but not limited to workers' compensation and those required by this Agreement;

F. Insurance deductibles;

G. Uninsured losses;

H. Long distance telephone charges, excluding calls necessary as a result of direction given by the Director, and excluding calls to the Operator's Airport employees.

I. Employee relocation costs;

J. Charitable and political contributions;

K. Employee social functions;

L. Penalties and fines paid or owed by the Operator or the Operator's employees, agents, contractors, or invitees, including but not limited to any amounts due because of lost Airport identification badges;

M. Damages owed to the City;

N. Late payment charges owed to a vendor;

O. Late payment charges owed to the City;

P. Repair of damage to City or others property caused by the Operator's employees, agents, contractors, or invitees, or for which the Operator is responsible under this Agreement;

Q. Interest on money borrowed or other financing costs;

R. Depreciation;

S. Taxes;

T. Profit;

U. Overhead;

V. General and administrative costs;

W. Internal audits; and

X. Liabilities, losses, suits, claims, litigation costs, judgements, fines or demands that Operator is responsible for under Section 907 titled Indemnification.

Section 404. Reimbursable Capital Expenditures. In addition to the Reimbursable Operating Expenses as defined in Section 402, the City may authorize the Operator to incur certain costs for capital items such as, but not limited to, purchase of vehicles and modifications to the Facilities unless otherwise excluded from reimbursement pursuant to this Agreement.

Section 405. Deposit of Gross Receipts. The Operator shall collect, hold in trust for the City, account for, and deposit in a bank account designated by the City, and in the name of the City each days' Gross Receipts from the operations hereunder. Deposits shall be made each day the bank is open. The amount shown on the deposit slip must be equal to the amount shown on the detailed daily report forms referred to in Section 413. All Gross Receipts derived from the operation of the Facilities shall belong to the City and shall be held in trust by the Operator while the funds are in its custody and control. Should any of such Gross Receipts be lost, stolen or otherwise removed without the authorization of the City from the custody and control of the Operator prior to their deposit in the bank account designated by the City, the Operator shall be responsible therefor and shall deposit in said account like sum of monies within forty-eight (48) hours of such loss, theft or removal. Should said loss, theft or removal be insured or otherwise secured by the Operator, any payments made to the City on account thereof shall, if appropriate, be reimbursed to the Operator. All credit card receipts will be deposited in a bank account designated by the City.

Section 406. Failure to Deposit Gross Receipts. All Gross Receipts due the City hereunder shall bear a service charge of one and one-half percent (1½%) per month if same is not deposited in the City's account on the day on which said Gross Receipts are required by this Agreement to be deposited and the Operator agrees that it shall pay and discharge all costs and expenses including attorneys' fees and litigation costs incurred or expended by the City in collection of said delinquent amounts due including services charges within five (5) business days of written notice.

Section 407. Annual Operating Budget. The Operator shall submit to the Director forty-five (45) days prior to the start of each Contract Year of this Agreement a budget of Operating Expenses to be charged to the City for the ensuing Contract Year. The Director shall within such forty-five (45) day period examine and issue a written approval for the Annual Operating Budget. The Operator and Director shall meet if necessary to make any adjustments within such forty-five (45) day period. Should any dispute arise the Director's determination is final. Only the Director may change the budget and all changes must be in writing. The budget shall only include Reimbursable Operating Expenses.

The approved Annual Operating Budget will be a line item budget with separate amounts budgeted for each category of expense. Transfers between line items are not allowed without written approval of the Director. If the Operator exceeds the approved amount for any line item without written approval of the Director, such expenditures are to be paid by the Operator.

In addition, along with the submission of the Annual Operating Budget the Operator shall submit a separate report listing any anticipated Reimbursable Capital Expenditures for the ensuing Contract Year. Such report shall only be used for planning purposes and each item identified will still require the separate written approval of the Director.

Section 408. Unbudgeted Expense. The approved Annual Operating Budget may be revised by the Director from time to time, to permit the inclusion of unforeseen expenses as approved Reimbursable Operating Expenses, but only if and to the extent the Director, in his/her sole discretion, deems such revisions necessary and appropriate under this Agreement. The Operator shall comply with

the Director's request for the revision to the approved Annual Operating Budget within ten (10) days after written notice thereof, or at such other time specified by the Director.

Section 409. Reimbursement of Approved Expense to the Operator. The Operator shall pay all costs and expenses connected with its operations hereunder when due. The Operator shall submit an itemized statement of all approved expenses incurred and paid in the operation of the Facilities on or before the fifteenth (15th) day of each month for the previous month of operation. Said statement shall be accompanied by such proof of disbursements as the City may from time to time require. The City shall reimburse the Operator for expenditures authorized pursuant to this Agreement within a reasonable period of time from receipt of said statements and proof of disbursements. The Director may adjust the frequency of reimbursement as operating conditions may warrant, but in no case less than monthly. In the event the City questions the eligibility of any expense submitted by the Operator for reimbursement, the Director will request in writing, and the Operator will submit, additional documentation or clarification in support of the eligibility of such disputed item. The Director's determination as to the eligibility of any expense submitted by the Operator for reimbursement is final.

Section 410. Operating Fund. On or before the first business day of the first month of the Term of this Agreement, the City will deliver to the Operator an amount equal to 1/6 of the approved Annual Operating Budget. These funds will be used by the Operator only for payment of costs authorized by the approved Annual Operating Budget. On or before the fifteenth (15th) day of the month following the expiration or early termination of this Agreement, the Operator will deliver to the Airport, a certified or cashier's check in an amount equal to the amount delivered to the Operator under this Section at the beginning of the Term of this Agreement. The Operator may not credit this amount against any amounts due the Operator from the City. The City will not pay the Operator any amounts due the Operator for the final month of the Term of this Agreement until the requirements of this Section are complied with in full.

Section 411. Equipment Provided by City. The City will provide and pay for the following capital equipment:

A. All revenue control equipment; and

B. All other capital equipment, which in the opinion of the Director, is necessary for the operation of the Facilities.

The Director may require the Operator to purchase the above mentioned equipment pursuant to Section 404 above.

Section 412. Title to Equipment. Title to all equipment used by the Operator in conjunction with this Agreement, whether purchased pursuant to the approved Annual Operating Budget, as a capital expenditure, or directly by the City, shall vest in the City upon purchase.

Section 413. Reports. The Operator shall provide the Director, in a form and detail satisfactory to the Director, the following reports including but not necessarily limited to:

A. Cashiers' daily shift reports;

B. Daily shift reconciliation;

C. Daily report of Gross Receipts, overnight vehicle count and ticket reconciliation in accordance with procedures approved in writing by the Director;

D. Monthly activity and Gross Receipts and Reimbursable Operating Expenses summaries and certifications, to be reconciled to daily reports;

E. Monthly DBE/MBE/WBE Goods and Services Activity Reports as required pursuant to Section 1201 E.; and

F. Monthly abandoned vehicle reports showing vehicle tags, registration, days parked, and monies owed.

Any other reports that are daily shall be submitted to the Director no later than the next business day following the report date. Monthly reports shall be submitted to the Director in writing attested by a duly authorized officer of the Operator on or before the fifteenth (15th) day of each month for the previous month.

Within sixty (60) days following the conclusion of each Contract Year during the Term of this Agreement and any extension thereof, the Operator shall file with the Director a report showing dollar amounts paid and received by DBE Participants.

Section 414. Accounting Records. The Operator and its DBE participant shall keep, throughout the entire Term of this Agreement or any extension thereof, all books of account and records customarily used in this type of operation, and as from time to time may be required by the City, in accordance with generally accepted accounting principals. Such books of accounts and records shall be retained and available for such period of time as provided herein unless otherwise approved by the City. The City at all times, throughout the Term of this Agreement or any extension thereof and for up to three (3) years following termination, shall have the right to audit and examine during normal business hours all such records and books of account relating to the Operator's operation hereunder.

If the books of account and records are kept at a location other than at the Airport, the Operator shall arrange (at the operator's sole expense) for them to be brought to a location convenient to the auditors for the City.

Section 415. Audit. The City or its designated agent reserves the right to audit the Operator's, its sub-contractor's or others doing business under this Agreement books and records at any time for the purpose of verifying the Gross Receipts, Reimbursable Operating Expenses and Reimbursable Capital Expenditures hereunder. If as a result of such audit(s) it is established that additional receipts are due the City or the City has overpaid an expense or the City has paid an expense that is not a reimbursable expense pursuant to this Agreement, the Operator shall pay such receipt, overpayment or non-reimbursable expense to the City not later than fifteen (15) days after completion of such audit and written notice by the Director.

Section 416. Secondary Audits. The Operator shall conduct quarterly internal audits of the operation. The scope of such audits shall be reviewed and approved by the Director in writing prior to each audit being conducted. The Director's determination as to the scope of such audits is final. The results of such internal audits shall be sent to the Director within thirty (30) days of the internal audit.

Section 417. Parking Rates. The Operator shall charge users of the Facilities only those rates which are established from time to time in writing by the City and shall permit only such complimentary use of parking space as may be established by the City. The City shall have the sole and unrestricted right from time to time as it considers necessary or advisable, to revise the parking rates. Should additional parking lots be made available at the Airport for parking the City shall set the rates thereof and the Operator shall abide by such rates.

City shall charge and collect fees directly from the users of the Employee Parking Lot and any such fees and charges collected by the City will not be included in the calculation of Gross Receipts.

Section 418. Prompt Payment of Taxes and Fees. The Operator covenants and agrees to pay promptly all lawful general taxes or payments in lieu of 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. Not withstanding the foregoing, the City shall pay directly any license fees imposed by any municipalities on a per parking space basis or any similar method.

Section 419. Mechanics' and Materialmen's Liens. The Operator agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Facilities 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 420. Other Facilities. The Airport shall have the right to require the Operator to manage any additional parking Facilities not contemplated at the time of execution of this Agreement, in which event all costs of operation for such service, including transportation services, shall be made part of this Agreement, and all revenues (other than Employee Parking Lot revenues) therefrom shall be included in Gross Receipts.

Section 421. Performance Incentive Bonus Program. The City, acting by and through its Director, may develop a performance based incentive bonus program, to be approved by the Airport Commission. The development and implementation of such will be at the sole discretion of the Director. The Director may, from time to time and at the Director's sole discretion, make changes to the performance based incentive bonus program once developed. The total annual bonus available shall be determined by the Airport Commission and shall not exceed three quarters of one percent (0.75%) of Net Receipts for the most recently completed Contract Year. The actual total annual bonus distributed to the Operator will be at the sole discretion of the Director in accordance with the approved bonus program and may not exceed the total annual bonus amount approved by the Airport Commission.

In the event the City develops such performance based incentive bonus program, the Operator will be encouraged to utilize at least twenty percent (20%) of such bonus to initiate programs it sees fit to boost local management and employee morale.

ARTICLE V
OBLIGATIONS OF OPERATOR

Section 501. General. The general purpose of the City in entering into this Agreement is to insure that a high level of service in the parking operation is made available to the public and others. Accordingly, the Operator shall provide said high level of service to the public and others and shall manage, staff, maintain (except as set forth in Section 702) and operate the Facilities within the approved Annual Operating Budget. The Operator shall pay, from its own operating funds and within the approved Annual Operating Budget, all necessary expenses incurred in the operation of the Facilities. The Operator shall also maintain at all times a reasonable sum for its cashier change fund.

The Operator covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. The Operator shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method.

Section 502. Type of Operation. The Operator shall operate the Facilities in a first-class manner and maintain them in a safe, neat and orderly condition, and shall take all reasonable steps to insure that prompt, courteous and efficient service is provided to all users thereof.

Section 503. Hours of Operation. The Operator shall, pursuant to a staffing plan prepared by the Operator and approved by the Director, have appropriate attendants on duty at the Facilities twenty-four (24) hours per day each day of the year and at all times provide adequate personnel to meet all reasonable demands of the public.

Section 504. Personnel.

A. The Operator shall employ and train all persons necessary to operate the Facilities, including supervisory personnel, cashiers, clerical staff, and all other personnel necessary for compliance with the provisions of this Agreement.

B. The Operator shall employ a full-time, qualified and experienced resident manager, who must be approved by the Director, whose sole duty shall be to supervise and be responsible for all aspects of this Agreement and whose office shall be on the Airport. If the choice of resident manager is in dispute, the Director's decision is final. Said resident manager, or a qualified and experienced assistant responsible for acting in the absence of said resident manager, shall be on duty at all times at the Airport.

C. The Operator shall be responsible for the neat appearance, courtesy, efficiency and conduct of all Operator's personnel at all times. Such personnel shall be non-discriminatory with regard to services rendered and polite under all circumstances, and under no circumstances shall they be loud, boisterous or noisy or use profane or abusive language in or about the Facilities.

D. The Operator shall, within twenty-four (24) hours written notice by the Director, remove and keep removed from the Facilities any employee who participates in illegal acts in the Facilities, who violates Airport Rules and Regulations or the provisions of this Agreement, or who, in the opinion of the Operator or at the sole discretion of the Director is determined to be otherwise detrimental to the public interest at the Airport. The Director's decision shall be final.

E. The Operator's employees shall at all times while on duty wear name tags and uniforms approved by the Director.

Section 505. Supplies & Equipment. The Operator shall procure all supplies and equipment paid for from the approved Annual Operating Budget. Parking tickets will be purchased by the Operator, paid for from the approved Annual Operating Budget, but shall be delivered by the manufacturer to the Office of the Director.

Section 506. Parking Charges & Collection of Monies.

A. The Operator shall collect and hold in trust for and on behalf of the City all monies collected from parking customers in accordance with the rate structure established by the City and it shall deposit all such monies in the bank account to be designated by the City and in the name of the City, as provided in Section 405.

B. The Operator shall charge users of the Facilities only those rates which are established from time to time in writing by the City, as provided in Section 416, and shall permit only such complimentary use of the parking space as may be directed or approved by the City.

C. If the Operator charges any patron a price in excess of the established schedule of rates, the amount by which the actual charge exceeds the established rate shall constitute an overcharge which shall, upon demand of the patron or of the City, be promptly refunded to the patron. The amount of any such refund shall be considered a reimbursable expense, provided that suitable substantiating evidence of such refund is provided to the City by the Operator and provided further that the amount of said overcharge is, or has been, deposited as part of Gross Receipts in the bank account designated by the City. If the Operator charges any patron a price which is less than the established schedule of rates, the amount by which the actual charge is less than the established rate schedule shall constitute an undercharge and an amount equivalent thereto shall be paid by the Operator into the bank account designated for the deposit of Gross Receipts hereunder.

Section 507. Patron Claims and Complaints. The Operator shall handle and report, in a manner satisfactory to the City, all complaints and all claims made for losses or damages to vehicles in the Facilities and shall be responsible for carrying out any and all statutory and City procedures for handling unclaimed and abandoned cars; expenses incurred in carrying out such procedures shall be considered as reimbursable expenses when properly reported to the City.

Section 508. Fire, Flood, Etc. The Operator shall notify the Director immediately of any fire, flood, casualty or damage in or to the Facilities or of any unusual condition or threat thereof.

Section 509. Operational Procedures. The Operator shall operate the Facilities twenty-four (24) hours a day, seven (7) days a week in accordance with the written procedures prepared by the Operator and approved in writing by the Director, and all such procedures shall be subject to change at any time at the sole discretion of the Director. Recommendations by the Operator for improving service and procedures will be considered but will not binding upon the City.

Section 510. License Plate Inventory. The Operator shall conduct a license plate inventory each night of the year in each public parking facility and one night of each week of the year at any employee parking facility. Such inventory shall be done after midnight when vehicular movement is at a minimum.

Section 511. Removal of Vehicles. Except in an emergency involving public convenience and safety or pursuant to the Director's written instruction, the Operator shall not move vehicles in the Facilities or remove any vehicle from the Facilities. Any expenses incurred in the moving of vehicles in an emergency or at the Director's request shall, if not collectible from the operator of the vehicle after reasonably diligent efforts, be considered a reimbursable expense, but costs incurred for damage as a result of being moved shall not be considered a reimbursable expense.

Section 512. Shuttle Bus Service. The Operator will operate and maintain a fleet of vans and/or shuttles, provided by City, to transport parking patrons to and from the parking Facilities and between the Main Terminal Building and the East Terminal Building where the Director determines such service is desirable. The service will be provided in accordance with operating procedures, schedules, and staffing requirements prepared by the Operator and approved by the Director in writing, but meeting the following standards at a minimum:

A. Shuttle Bus service shall be available twenty-four (24) hours a day, seven (7) days a week. The Operator shall schedule service in a flexible manner so that all required service is provided. A goal that no passenger will be required to wait more than six (6) minutes for the Operator's shuttle bus operation during day time and evening hours (7:30 a.m. to 11:30 p.m.) nor more than ten (10) minutes during night hours (11:30 p.m. to 7:30 a.m.) is established by this Section.

B. The routing and scheduling for the shuttle bus service may require changes from time to time for the purpose of a more efficient operation. These changes must first be approved by the Director in writing. The Operator is required to operate the shuttle bus according to any schedule change directed by the Airport.

C. The Operator shall be responsible for fully maintaining shuttle vehicles in clean, safe, and good running order in accordance with a maintenance schedule prepared by the Operator and approved by the Director in writing.

D. The Operator shall be solely responsible for all damage to the shuttle vehicles resulting from acts of god (normally covered under a standard automobile insurance policy), the acts of third parties or the negligent acts, intentional or unintentional, of the Operator, its employees, agents, contractors and independent contractors, and any expenses incurred herein shall not be

reimbursable under this Agreement. Any expenses resulting from routine or normal maintenance or routine or normal repairs shall be considered an Operating Expense under this Agreement, unless otherwise excluded pursuant to this Agreement or otherwise insured pursuant to Article IX of this Agreement.

E. The Operator shall have a dispatcher (or an employee with supervisory capability) at the Airport at all times. Said dispatcher shall have two-way communication with all the vehicles and shall be responsible for compliance with scheduling (or any changes needed to meet demands for service).

F. The Operator shall employ sufficient drivers and relief drivers to meet the requirements of this Section. All drivers shall be uniformed, clean and neat in appearance, and courteous at all times.

G. All drivers and dispatchers shall be properly licensed under the laws of the State of Missouri.

H. Drivers will be trained to courteously give announcements to passengers and prospective passengers on the locations of airport and airline facilities and on safety precautions; drivers will also be required to advise dispatchers on needs for additional service.

I. Employees of the Operator shall make no charge to the members of the public for use of the shuttle bus operation and shall refuse all gratuities.

Section 513. Support Vehicles. The City, at its sole and absolute discretion, may provide support vehicles to the Operator for the safe and efficient operation of the Facilities and shuttle service. The Operator will operate and maintain such support vehicles in accordance with the operating procedures prepared by the Operator and approved by the Director in writing, but meeting the following standards at a minimum:

A. The Operator shall be responsible for fully maintaining the support vehicles in clean, safe, and good running order in accordance with a maintenance schedule prepared by the Operator and approved by the Director in writing.

B. The Operator shall be solely responsible for all damage to the support vehicles resulting from acts of god (normally covered under a standard automobile insurance policy), the acts of third parties or the negligent acts, intentional or unintentional, of the Operator, its employees, agents, contractors and independent contractors, and any expenses incurred herein shall not be reimbursable under this Agreement. Any expenses resulting from routine or normal maintenance or routine or normal repairs shall be considered an Operating Expense under this Agreement, unless otherwise excluded pursuant to this Agreement or otherwise insured pursuant to Article IX of this Agreement.

C. The Operator and its employees will not use the vehicles for personal reasons.

Section 514. Procedures Manual. As of the commencement date of this Agreement, the Operator shall submit to the Director for review and written approval a procedures manual including all procedures to be followed by the Operator's personnel relating to control of revenue and expenses; employee standards of conduct, courtesy, appearance, and disciplinary guidelines; maintenance of Facilities and equipment; removal of vehicles; and other matters as the Operator considers prudent or the City may require. The procedures manual shall be updated and/or amended at such time as changes in the operation occur. All changes will also require review and written approval of the Director.

Section 515. Communication.

A. Operator's resident manager shall schedule monthly meetings with the appropriate representative of the Airport Properties Department to discuss any relevant issues which may affect Operator's operation at the Airport. Operator shall also be available for meetings at other times as necessary.

B. Operator shall be responsible for notifying the Airport Properties Department of any problem which reduces service levels or Gross Receipts or in any way impairs Operator's operation. The City will make every reasonable effort to assist in eliminating such problems.

Section 516. Taxicab Management. The Operator will provide, if required by the City, taxicab management and starter services at both the Main and East Terminals and at the taxicab staging area. Should the City require the Operator to provide such taxicab management and starter services, the approved Annual Operating Budget will be amended accordingly, to account for all operating expenses in conjunction with taxicab management and starter services.

Section 517. Marketing. The Operator will develop and implement upon written approval by the Director, a strategic marketing program with advertising campaigns designed to develop customer loyalty and increase public parking patronage and revenue. Upon approval of a strategic marketing program, the approved Annual Operating Budget will be amended accordingly, to account for all operating expenses in conjunction with the strategic marketing program.

Section 518. Non-Compete. The Operator warrants, represents and agrees that no officer, director, owner, partner, affiliate or DBE partner of the Operator or business organization owned wholly or partially by the Operator or its directors, officers, owners, affiliates, partners or DBE partners shall own, operate or have a financial interest in any parking operation which would be in competition with the Facilities during the Term of this Agreement or any extension thereof.

ARTICLE VI
CONSTRUCTION ON PREMISES

Section 601. Construction by the Operator. The Operator is not authorized to perform or contract for the performance of any improvements to the Facilities without prior written approval of the Director.

Section 602. Signs. The Operator agrees that no signs or advertising displays shall be placed on, painted on or erected in any manner upon the Facilities without prior written approval of the Director and that any such signs shall conform to reasonable standards established by the Director with respect to wording, type, size, design, color and location.

ARTICLE VII
USE OF FACILITIES

Section 701. Compliance with Laws and Regulations. The Operator 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 Facilities or to any adjoining public ways, as to the manner of use or the condition of the Facilities or of adjoining public ways.

Section 702. Maintenance by Airport. The City shall provide maintenance services (excluding janitorial services) for the Facilities as specified below:

A. Main Terminal Garage and East Terminal Garage:

1. Structural components including surface parking area;
2. Lighting and relamping;
3. Escalators; and
4. Sidewalk surface and curbing.

B. Surface Lots:

1. Pavement;
2. Fencing;
3. Lighting and relamping; and
4. Sidewalk surface and curbing.

C. Buildings (including but not limited to the office building and maintenance building):

1. Structural components.

If the Airport so elects, it may assume responsibility for maintenance of a portion or all of the revenue control equipment.

Section 703. Maintenance by the Operator. The Operator shall provide maintenance services for the designated Facilities including but not limited to:

A. Main Terminal Garage and East Terminal Garage:

1. Signage;

2. Cashier booths;
3. Sweeping, oil and fuel spills;
4. Janitorial service;
5. Snow and ice removal;
6. Electrical System;*
7. HVAC;*
8. Plumbing;*
9. Striping;*
10. Janitorial service for escalators and in escalator wells; and
11. Revenue control equipment.

* The Operator shall first notify the City of necessary maintenance or repair. The City has the first right to perform required maintenance, or the City will inform the Operator to maintain or repair such item.

B. Surface Lots:

1. Cashier booths;
2. Sweeping, oil and fuel spills;
3. Signage;
4. Janitorial service;
5. Snow removal;
6. Striping;
7. Revenue control equipment;
8. Weed control; and
9. Landscaping.

C. Vehicles:

1. Any and all maintenance required (including preventative).

D. Buildings (including but not limited to the office building and maintenance building):

1. Perform custodial services daily;
2. Keep all equipment and fixtures in good repair and appearance;
3. Keep the buildings free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment;
4. Repair all damage to the buildings;
5. Repair all damage to the Airport when such damage results from the careless or negligent acts of the Operator or the Operator's employees or agents;
6. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director 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 Operator agrees to promptly provide and install same and to abide by such standards;
7. Keep all papers and debris picked up daily from and around the buildings;
8. Keep the buildings free of all pests, providing such pest control services as required; and
9. No unscreened storage will be permitted on the exterior areas of the buildings.

The Operator shall not spend an amount greater than $1,000 on the maintenance of any one item unless the expenditure is approved in writing by the Director.

Section 704. 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 the Operator's operations as is reasonably practicable) to enter upon and in the Facilities for the following purposes:

A. To inspect such Facilities to determine whether Operator has complied and is complying with the terms, covenants and conditions of this Agreement.

B. To perform maintenance and make repairs in any case where the Operator is obligated, but has failed to do so, after the City has given the Operator notice so to do, in which event the Operator shall reimburse the City for the cost thereof plus a charge of 15% for overhead promptly upon demand. (Such maintenance or repair will not be reimbursable under this Agreement.)

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 705. Utilities. The City will pay directly for all utilities required other than telephone utilities.

Section 706. Shutdown of Services. The City through the Director shall have the absolute right to take over the operation of the Facilities, either by the City or through others, in the event that any portion the Facilities should remain closed, or the service substantially interrupted, for a period of twenty-four (24) hours by reason of the Operator being unable, for any reason whatsoever, to employ, maintain in its employ, or adequately provide for the personnel necessary to keep the entire Facilities open for public patronage.

During any such period that the City takes over, the Management Fee shall be reduced on a pro rata basis for each day the City operates the Facilities.

Section 707. Prevailing Wage and Fringe Benefits. The Operator shall pay to all employees and subcontractor's employees not less than the prevailing hourly rate of wages and fringe benefits as determined by the United States Secretary of Labor, or his authorized representative, in accordance with prevailing rates in the locality of the metropolitan St. Louis area pursuant to 41 U.S.C. 351 et §eg., as amended except for any person engaged in an executive, administrative or professional capacity.

Section 708. Living Wage Initiative Ordinance. This Agreement is subject to the City's Living Wage Initiative Ordinance approved by voters on August 8, 2000, (the "Living Wage Ordinance"). The Operator warrants, represents and agrees to comply with the applicable provisions of the City's Living Wage Ordinance. The Operator hereby acknowledges and agrees that the living wage established by the City using the formula described in the Living Wage Ordinance will be adjusted annually, no later than April 1. The Operator hereby warrants, represents and agrees to provide the City with prompt access to and copies of any payroll records, documents or schedules as the City, in its sole discretion, may deem necessary or request from time to time in order to monitor and audit the Operator's compliance (including its sub-contractors, if any) with the Living Wage Ordinance. Prior to the performance of any work under this Agreement, the Operator (including its sub-contractors, if any) shall promptly execute and deliver to the City the City's "Living Wage Certification" form, which is incorporated herein by reference. The Operator shall post information (i.e., posters) about the Living Wage Ordinance provided by the City in an area where covered employees including the sub-contractors' employees, if any, may easily review the information. This Agreement shall be considered in default when the Operator fails to fulfill any of the terms, covenants, conditions or warranties of this Section and such default shall be considered a material breach of this Agreement for which the City, at its option, may seek any remedy available at law or in equity, including, without limitation, the right of specific performance, the right to terminate this Agreement, and/or those remedies more fully set out in the Living Wage Ordinance. The Operator stipulates and agrees that its liability and responsibility for the proper payment of the living wage to its employees and sub-contractors' employees, if any, rests solely with the Operator an/or its sub-contractors, if any.

Operator hereby acknowledges receipt of the Temporary Restraining Order recently issued by Judge Decker in Missouri Hotel and Motel Association, et al. vs. City of St. Louis, St. Louis City Circuit Court Cause No. 004-2638 (the "TRO"), which temporarily prevents the City from enforcing the City's Living Wage Ordinance No. 65045. Contractor and the City acknowledge that the TRO temporarily prevents the City from enforcing this Section 708 of the Agreement while the TRO is in effect.

ARTICLE VIII
PERFORMANCE BOND

Section 801. Performance Bond. Operator agrees to furnish a bond in a form acceptable to City in the principal amount of $2,000,000.00. Such bond will guarantee the performance of all of the obligations of the terms, covenants and conditions of this Agreement by the Operator. The bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No.570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the term hereof. City may agree to another form of deposit which will provide equal protection of City's interest. If City cashes the bond, Lessee

agrees to furnish a replacement bond in the same principal amount within fifteen (15) days.

ARTICLE IX
LOSS OF AND LIABILITIES PERTAINING TO FACILITIES

Section 901. Liability Insurance. Operator, will obtain, at its sole expense and maintain at all times during the Term of this Agreement, liability insurance, 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 Operator, its officers, agents, employees, independent contractors, and invitees pursuant to this Agreement both on the Facilities and the Airport under the following types of coverage:

A. Comprehensive General Liability - $5,000,000 Combined Single Limit;

B. Garagekeeper's Legal Liability - $5,000,000 Combined Single Limit;

C. Comprehensive Automobile Liability (any vehicles, including hired and non-owned vehicles) - $10,000,000 Combined Single Limit.

The minimum limits of coverage for the above classes of insurance shall equal a combined single limit as shown above, comprised of such primary and excess policies of insurance as the Operator finds it feasible to purchase during the Term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees 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 Operator, its officers, agents, employees, contractors, subcontractors, licensees, independent contractors, and invitees. In addition, such insurance shall include contractual liability insurance sufficient to cover Operator's indemnity obligation hereunder. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City and its Board of Aldermen, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Operator in its operations hereunder.

Section 902. Vehicle Insurance. The Operator will provide comprehensive and collision vehicle insurance coverage for all City-owned vehicles used by the Operator.

Section 903. Workers' Compensation. The Operator at a minimum will obtain, at its sole expense and maintain at all times during the Term of this Agreement for its employees working on Airport premises Workers' Compensation insurance coverage at the statutory limits applicable to the Operator's operations in the State of Missouri.

Section 904. Crime Insurance. Operator shall maintain a commercial crime insurance policy(ies) protecting against loss due to employee dishonesty; forgery or alteration; theft, disappearance and destruction; premise theft and outside robbery; computer fraud; robbery and safe burglary, money and securities; and securities deposited with others. Such coverage shall be written on a Contract blanket basis, in an amount of not less than $5,000,000 per loss. Such insurance shall name the City as joint payee.

Section 905. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Operator in this Article, shall be delivered to the Director in form and content satisfactory to the City.

At least fifteen (15) days prior to the expiration of any such policy, Operator shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Operator shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, 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 canceled by the insurer during its term without first giving thirty (30) days written notice to the Director.

Section 906. Indemnification. Operator 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 any and 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 Facilities or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, licensees, independent contractors 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 City. The Director or his designee shall give to Operator prompt notice of any such claims or actions. The Operator shall also use counsel reasonably acceptable to the City Counselor of the City or his designee, after consultation with the 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 907. Adjustment of Claims. The Operator shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Operator under this Agreement.

Section 908. Occupancy of Facilities. The Operator agrees that it will not permit any act of omission or commission or condition to exist on the Facilities which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 909. Waiver of Subrogation. The Operator on behalf of itself and its insurers, hereby waives any claim or right of recovery from the City, its Board of Aldermen, Airport Commission, officers, agents and employees for any loss or damage to the Operator's officers, agents, or employees or its property or the property of others under the Operator's control, to the extent that such loss is covered by a valid insurance policy. The Operator shall provide notice of this waiver of subrogation to its insurer(s).

ARTICLE X
ASSIGNMENT, SUBLETTING AND SUBCONTRACTING

Section 1001. Assignment. The Operator shall not assign this Agreement. Any such transfer or assignment shall constitute a default on the part of the Operator under this Agreement. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

Section 1002. Subletting. The Operator shall not sublet the Facilities.

Section 1003. Subcontracting. The Operator shall not subcontract this Agreement or any portion of the Facilities or services included in this Agreement, except as may be required to secure DBE participation as required in this Agreement, provided said subcontract conforms to all other provisions of this Section 1003. At least 30 days prior to any contemplated subcontracting of this Agreement, or any portion thereof, the Operator must submit in writing a request to the Director. This request must include a copy of the proposed subcontract. Any subcontract must have the prior written approval of the Director. Any such subcontract must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the Facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all services are available during the hours of operation required in Section 503 of this Agreement.

The parties understand and agree that the Operator is responsible for the performance of its subcontractors under this Agreement. The Operator agrees to initiate and take whatever corrective action is necessary should a contractor fail to comply with its contract with the Operator or any provision of this Agreement.

ARTICLE XI
TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. City's Right to Terminate. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a default.

A. Failure to deposit Gross Receipts as required in Section 405, as provided herein

B. If, during the Term of this Agreement and any extension thereof, the Operator shall:

1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;

2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;

3. Make a general assignment for the benefit of creditors;

4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;

5. File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the Term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating the Operator a bankrupt or insolvent, or approving a petition seeking a reorganization of the Operator, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days; and/or

6. Fail to meet the DBE goal as described in Article XII.

C. If the Operator shall have failed in the performance of any term, covenant or condition herein required to be performed by the Operator.

On the date set forth in the notice of termination, the Term of this Agreement and all right, title and interest of the Operator shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default by the Operator of any of the terms, covenants or conditions required to be performed, kept and observed by the Operator shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions therein contained to be performed, kept and observed by the Operator. The acceptance of monies by the City from the Operator for any period or periods after a default by the Operator of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Operator shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Operator to so perform, keep or observe any of said terms, covenants or conditions.

Section 1102. The Operator's Right to Terminate. The Operator, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for airport purposes in its entirety or substantial entirety.

B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport, continuing for a period in excess of sixty (60) days.

D. If the City shall have failed in the performance of any term, covenant or condition within the control of the City and herein required to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated; and no such termination shall be effective if such cause of default by its nature cannot be cured within such forty-five (45) day period, and if the party at default commences to correct such default within said forty-five (45) days and corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by the City upon the failure to deposit Gross Receipts as provided herein, then the Operator agrees also to pay all reasonable attorney's fees and litigation costs to recover Gross Receipts.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and the Operator specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XII
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Section 1201. Compliance.

A. The Operator agrees as a condition hereunder to meet a minimum DBE participation goal of not less than thirty percent (30%) as measured against the total annual Reimbursable Operating Expenses, less payroll expenses. DBE participation may be achieved through a joint venture arrangement with a certified DBE firm, the procurement of goods and services or a combination of each of the aforementioned methods. This goal remains in effect throughout the term of the Agreement. Credit toward the DBE goal will only be given for the use of DBE's certified by processes acceptable to the Director. The Operator submitted at time of bid a DBE participation plan and good faith efforts documentation as required, which detailed the method(s) and percentage of DBE participation it offers in the performance of this Agreement. This DBE participation plan must be approved in writing by the Director before it may be implemented. The Operator is obligated to make a good faith effort to meet the thirty percent (30%) DBE participation or the amount of participation detailed in its DBE participation plan as approved by the Director.

B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 26. The Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any agreement covered by 49 CFR part 26.

The Operator agrees to include the above statements in any subsequent sub-agreements that it enters in to and cause those businesses to similarly include the statements in further sub-agreements.

C. Substitutions of DBE's must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract or agreement. The Operator understands, warrants and agrees that it shall not amend or terminate its agreement with the DBE without cause and shall timely forward supporting documentation substantiating the cause of the default or termination to the Director for review. The Operator shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, the Operator must make good faith efforts to subcontract or contract out for other rights to secure DBE participation. If a replacement DBE subcontract or agreement is secured, the subcontract or agreement must be reviewed and certified by the Contracts Administration/DBE Office prior to implementation. The Director will determine if the Operator has made acceptable good faith efforts. The Operator must immediately assume responsibility and operate in place of a DBE that has failed to perform.

D. The Operator shall operate in compliance with all other requirements imposed by or pursuant to 49 CFR Part 26, as applicable and as said regulations may be amended or new regulations promulgated, and the St. Louis Airport Authority’s Contracts Administration/DBE Program. The Operator shall also comply with any City executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement and to re-enter and repossess the Facilities thereon and hold the same as if this Agreement had never been made or issued.

D. The Airport Authority's Contracts Administration Department/DBE Office must receive DBE/MBE/WBE Goods and Services Activity Reports on or before the fifteenth (15th) day of each month for the previous month with a copy sent to the Airport Properties Department.

Section 1202. Noncompliance. The Operator understands that any substantial deviation from Section 1201, as determined by the City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices, requests, demands and other communications under this Agreement shall be in writing and sent by certified mail, return receipt requested or a nationally recognized overnight delivery service for which a signature is required upon delivery and properly addressed as follows:

If to City: Director of Airports
St. Louis Airport Authority
Lambert Station
P.O. Box 10212
10701 Lambert International Boulevard
St. Louis, MO 63145

Copy to: Airport Properties Manager
St. Louis Airport Authority
Lambert Station
P.O. Box 10212
10701 Lambert International Boulevard
St. Louis, MO 63145

City Counselor
City of St. Louis
Room 314, City Hall
St. Louis, MO 63103

If to Operator: Chief Legal Council
APCOA Standard Parking
900 N. Michigan Ave.
Suite 1600
Chicago, Illinois 60611

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 the Operator or said Director.

Section 1302. Conditions of Default. This Agreement shall be considered in default when Operator fails to fulfill any of the terms, covenants or conditions of this Agreement and such default shall be considered a material breach of this Agreement for which the City at its option may terminate this Agreement as provided for in Article XI of this Agreement.

Section 1303. Non-Discrimination and Affirmative Action Program.

A. The Operator hereto understands and agrees that the City in operation and use of the 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. The Operator hereby agrees that its Facilities shall be posted to such effect as required by such regulation.

B. The Operator agrees that in performing under this Agreement, neither he nor anyone under its control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. The Operator 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. The Operator will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Operator state that all qualified applicants 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". The Operator 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. The Operator agrees that should it be determined by the Operator or the 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 ten (10) days of such determination, as to the steps to be taken by the Operator to achieve the provisions of his program.

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

F. The Operator 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 the Operator in all contracts or agreements it 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 Agreement.

G. Whenever the Operator 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, the Operator shall notify the City Counselor in writing of such suit or threatened suit within ten (10) business days.

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

I. The Operator will establish and maintain for the Term of this Agreement 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 and the United States Government may direct to enforce the above covenants.

J. The Operator 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 Operator 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 Operator assures that it will require that its covered suborganizations provide assurances to the City 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 1304. 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 Agreement.

Section 1305. Force Majeure. Neither the City nor the Operator shall be deemed in violation of this Agreement, 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, acts of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control. A “Year 2000 problem”, as defined in Section 1322 of this Agreement, is not intended by the parties hereto to be covered by this clause.

Section 1306. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, subcontractors, and assigns of the respective parties hereto.

Section 1307. Operation and Maintenance of Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to Site. The Facilities from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the use thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1310. Modifications for Granting Federal Aviation Administration Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document, Operator agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter.

Section 1312. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by all the signatories to this Agreement.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Operator and the City.

Section 1315. Not a Lease. This Agreement is not a lease and the right to use the Facilities is entirely dependent upon the rights and privileges granted hereunder, and the Operator will in no instance be deemed to have acquired any possessory rights against the City or the Facilities or be deemed to be a tenant of the City.

Section 1316. Withholding Required Approvals. Whenever the approval of the City, or Director, or of the Operator is required herein, no such approval shall be unreasonably requested or withheld.

Section 1317. Waivers. No waiver of default by either party of any of the terms, covenants or 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. All such waivers must be in writing and signed by the party waiving.

Section 1318. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either the City or the Operator in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1319. Americans with Disabilities Act ("ADA"). The Operator shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to the Operator's services on the Facilities.

Section 1320. Advertising. The Operator shall have no right to use the trademarks, symbols, trade names or name of the Airport, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Operator and any other tenant, operator, licensee or concessionaire, as to the respective rights of the others, Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and the Operator agrees to be bound by such decision. All determinations by Director are final.

Section 1322. Year 2000 Compliance-Performance Covenant.

A. The Operator represents, covenants, agrees and warrants that it will not permit a Year 2000 problem in its computer systems, software or equipment owned, leased, or licensed by it (for its own use), its affiliates or subsidiaries to interfere with its performance under this Agreement. The Operator agrees to request, from those of its suppliers whose performance may materially affect its performance hereunder, that each such supplier undertake the same obligation with respect to such material performance. The Operator will use reasonable commercial efforts to cooperate and share information to further comply with this section, and to minimize the impact of any Year 2000 problem on performance of this Agreement. The Operator will inform the other party of any circumstance indicating a possible obstacle to such compliance, and the steps being taken to avoid or overcome the obstacle.

B. A "Year 2000 problem" used in paragraph A means a date-handling problem relating to the Year 2000 date change that would cause a computer system, software or equipment to fail to correctly perform, process and handle date-related data for the dates within and between the twentieth and twenty-first centuries and all other centuries.

Section 1323. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1324. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1325. Required Approvals. When the consent, approval, waiver, or certification ("Approval") of other party is required under the terms of this Agreement, such approval must be in writing and signed by the party Approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized designee. The City and the Operator agree that extensions of time for performance may be made by the written mutual consent of the Director and the Operator or its designee.

Section 1326. Entire Agreement. This Agreement, together with all exhibits attached hereto and the Instructions to Bidders and Operator's Bid which are incorporated herein by reference, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto. In the event of any inconsistency or conflict between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

a. Agreement
b. Exhibits and Attachments to Agreement
c. Concessionaire's Bid
d. Instructions to Bidder

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

Pursuant to City of St. Louis Ordinance _____ approved on _____, _____.

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT:

The foregoing Agreement was approved by the Airport Commission at its meeting on the ____day of_____, _____.

_____

Commission Chairman Date
and Director of Airports

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

_____

Secretary, Date
Board of Estimate & Apportionment

APPROVED AS TO FORM:

COUNTERSIGNED:

City Counselor Date
City of St. Louis

Comptroller, Date
City of St. Louis

ATTEST:

Register, Date
City of St. Louis

APCOA-SRP Parking V, a Joint Venture
By: APCOA, Inc., Joint Venturer and Authorized Signatory

ATTEST:

Date

Secretary Date

Title: _____

65200~1.WPD

Approved: May 24, 2001