

ORDINANCE #65616
Board Bill No. 153

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 a first amendment to the Lambert-St. Louis International Airport (the "Airport") Concession Agreement (AL-395) for the Ground Transportation Concession between the City and GEM Transportation, L.L.C. (the "Concessionaire") dated June 21, 2000 (the "Agreement"), authorized under Ordinance 64937 approved May 24, 2000; this first amendment, which was approved by the Airport Commission and the Board of Estimate and Apportionment and is attached hereto as **Attachment "A"** and made a part hereof, extends the term of the Agreement by five (5) years and amends certain other terms and conditions of the Agreement; providing that the provisions set forth in this ordinance shall be applicable exclusively to the Agreement; and containing a severability clause, and an emergency clause.

WHEREAS, the City of St. Louis (the "City") and GEM Transportation L.L.C. (the "Concessionaire") are parties to a Lambert-St. Louis International Airport (the "Airport") Concessionaire Agreement (AL-395) for the Ground Transportation Concession between the City and the Concessionaire dated June 21, 2000 (the "Agreement"), authorized under Ordinance 64937 approved May 24, 2000; and

WHEREAS, the City and Concessionaire desire for their respective mutual benefit to amend certain terms and conditions of the Agreement.

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

SECTION ONE. The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City, a first amendment to the Lambert-St. Louis International Airport (the "Airport") Concession Agreement (AL-395) for the Ground Transportation Concession between the City and GEM Transportation, L.L.C. (the "Concessionaire") dated June 21, 2000 (the "Agreement"), authorized under Ordinance 64937 approved May 24, 2000; this first amendment, approved by the Airport Commission and the Board of Estimate and Apportionment, to read in words and figures as set out in **ATTACHMENT "A"** which is attached hereto and made a part hereof.

SECTION TWO. The terms, covenants, and conditions set forth in this ordinance shall be applicable exclusively to the agreement approved and authorized by this ordinance and shall not be applicable to any other existing or future concession agreements or other agreements, documents, or instruments unless specifically authorize by ordinance enacted after the effective date of this ordinance. All provisions of other City ordinances that are in conflict with this ordinance shall be of no force or effect as to the Agreement.

SECTION THREE. The sections, conditions, or provisions of this ordinance or portions thereof shall be severable. If any section, condition, or provision of this ordinance or portion thereof contained herein is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this ordinance.

SECTION FOUR. This being an ordinance for the preservation of public peace, health, or safety or providing for a public work or improvement, it is hereby declared an emergency measure as designed 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-395

FIRST AMENDMENT
TO
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
GROUND TRANSPORTATION CONCESSION
WITH
GEM TRANSPORTATION, L.L.C
("Attachment A")

THIS FIRST AMENDMENT entered into this _____ day of _____, _____ ("First AMENDMENT"), by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City"), and GEM TRANSPORTATION, LLC., a Missouri Limited Liability Company (the "Concessionaire").

WITNESSETH THAT:

WHEREAS, City and Concessionaire are parties to a Ground Transportation Concession Agreement dated June 21, 2000 (the "Agreement").

WHEREAS, the Agreement was originally entered into by Concessionaire and City for a two year period, and subsequently the Concessionaire and City agree to a five year extension, to provide Ground Transportation services at Lambert-St. Louis International Airport ("Airport");

WHEREAS, City has determined that Concessionaire is a qualified operator of this service and is willing to provide Ground Transportation service under terms deemed advantageous to the public and City;

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

Section 1. Section 101 of the Agreement as amended shall add the following definitions.

"Concession Fee" shall mean the greater of the Minimum Annual Guarantee or ten percent (10%) of Gross Revenue.

"Contract Year" shall mean one of seven (7) consecutive twelve month periods commencing July 1, 2000.

Section 2. Section 101 of the Agreement as amended shall insert a fourth and additional exclusion to the definition of "Gross Revenue" as follows.

Revenues derived from any and all ground transportation services in connection with any separate Agreement Concessionaire operates under at the Airport (i.e. Ground Transportation Use Agreement(s)).

Section 3. Section 401 of the Agreement as amended is deleted in its entirety and the following is substituted in its place:

Section 401. Term. The term of this Agreement shall consist of seven (7) Contract Years commencing on July 1, 2000 and ending on June 30, 2007, unless sooner terminated in accordance with other provisions of the Agreement.

Section 4. Sections 502, 503 and 504 of the Agreement as amended are deleted in their entirety and the following are substituted in their place.

Section 502. Space Rental Fee Payment. Concessionaire covenants and agrees to pay to the City for Contract Years one (1) and Contract Year two (2) a space rental fee of three hundred dollars (\$300.00) per month for counter area at the Main and East Terminals. Concessionaire shall have no separate charge for space rental for Contract Year three (3) through Contract Year seven (7).

Section 503. Concession Fee Payments. The Concessionaire covenants and agrees to pay to the City for Contract Year one (1) and Contract Year two (2) a concession fee of one hundred dollars (\$100.00) per month. For Contract Year three (3) through Contract year seven (7) Concessionaire covenants and agrees to pay to City a Minimum Annual Guarantee or ten percent (10%) of Gross Revenue, whichever is greater. At the commencement of Contract Year three (3) the Minimum Annual Guarantee shall be seventy thousand dollars (\$70,000.00), to be adjusted at the commencement of Contract Year four (4) and each Contract Year thereafter at an amount equal to eighty percent (80%) of the previous Contract Year's Concession Fee paid to City, but in no event shall be less than seventy thousand dollars (\$70,000).

Section 504. Payment. Concessionaire shall pay City on or before the first day of each month for Contract Year one (1) and Contract Year two (2) a space rental fee of three hundred dollars (\$300.00) for counter area at the Main and East Terminals and a concession fee of one hundred dollars (\$100.00). Payments by Concessionaire to City for Contract Year three (3) through Contract Year seven (7) shall consist of (a) paid in advance on or before the first day of each month an amount equal to one twelfth (1/12) of the Minimum Annual Guarantee for the applicable Contract Year, and (b) paid on the twentieth (20th) day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which is greater than the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506. Unpaid Fees., for the amount of any applicable service charges.)

Section 5. Section 505 of the Agreement as amended adds a new Paragraph C. to be inserted as follows.

Section 505. Reports.

- C. Concessionaire shall submit an audit report of Gross Revenues within one hundred and twenty (120) days following the conclusion of Contract Year three (3) through Contract Year seven (7). These audit reports must be prepared by an independent Certified Public Accountant licensed to do business within the state of Missouri. The audit reports will at a minimum certify the accuracy of (i) reported total Gross Revenue, (ii) the calculation of the Percentage Fee payable to City, and (iii) the aggregate amount attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception. If through such audit report it is established that additional fees are due City, Concessionaire shall pay such additional fees to City not later than fifteen (15) days following receipt of invoice from City. If it is established that Concessionaire has over paid City, then such overpayment from the Concessionaire shall be credited to the fees and charges next thereafter due from Concessionaire.

Section 6. Section 507 of the Agreement as amended is deleted in its entirety and the following is substituted in its place.

Concessionaire agrees to furnish an Irrevocable Letter of Credit in favor of City, in a form and content acceptable to the Director, or a Performance Bond to City, during the entire term of the Agreement, either to be in the principal amount of twenty-five thousand dollars (\$25,000.00). If Concessionaire furnishes a Performance Bond, such bond will guarantee the payment of the concession and other fee and performances of all other terms, covenants and conditions of this Agreement. 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 C 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 Performance Bond, or Irrevocable Letter of Credit, Concessionaire agrees to furnish a replacement Performance Bond, or Irrevocable Letter of Credit, as the case may be, in the same principal amount within fifteen (15) days.

Section 7. Section 607., B., of the Agreement as amended is deleted in its entirety and the following is substituted in its place.

No vehicle older than sixty (60) months shall be entered into service under this Agreement and no vehicle shall be retained in service if more than seventy-two (72) months old. Vehicle age will be calculated from the first day of January of the vehicles model year.

Section 8. ARTICLE VII IMPROVEMENTS AND ALTERATIONS of the Agreement as amended adds Section 709 as a new Section.

Section 709. Counter Refurbishment. Concessionaire covenants and agrees to refurbish the counter and signage located next to exit MT-12 and the counter located next to exit MT-17 no later than the end of Contract Year three (3), and Concessionaire shall expend not less than fifteen thousand dollars (\$15,000.00) for such refurbishment. All such refurbishment shall be performed in accordance with the terms, covenants and conditions of this Article VII. Within sixty (60) days of completion of said refurbishment, Concessionaire will provide the Director proof of costs to include, but not necessarily limited to, an itemized account of all costs, supported by invoices and canceled checks. Concessionaire is encouraged to productively spend the entire amount of fifteen thousand dollars (\$15,000.00), but in the event that Concessionaire's actual refurbishment expenditures are less than fifteen thousand dollars (\$15,000.00), the difference shall be an item of additional rent paid to City within thirty (30) days after receipt of an invoice for such difference from City.

Section 9. Section 1201, Paragraph C., of the Agreement as amended is deleted in its entirety and the following is substituted in its place.

- C. Concessionaire warrants, represents, covenants, and agrees that it shall not terminate the subcontract or agreement between the Concessionaire and the DBE without cause (a material breach) or the written consent of the DBE participant(s). The Concessionaire must provide the Director with reasonable documentation of the

