

St. Louis City Ordinance 62607

FLOOR SUBSTITUTE

BOARD BILL NO. [91] 396

INTRODUCED BY ALDERMAN JOANNE WAYNE

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment, authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis, to execute on behalf of the City of St. Louis, a contract with APCOA SRP Parking V to operate Public Parking Facilities at Lambert St. Louis International Airport for a term of three years beginning May 1, 1992 and ending April 30, 1995 with provision that the Airport Commission may extend said contract for two additional one year periods under the terms and conditions in said contract which are set forth in Section One hereof; and containing an emergency clause.

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 are hereof authorized and directed to execute on behalf of the City of St. Louis, a contract with APCOA SRP Parking V to operate Public Parking Facilities at Lambert St. Louis International Airport to read substantially in terms as figures as follows:

AIRPORT NUMBER

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

OPERATING AGREEMENT

(PUBLIC PARKING FACILITIES)

THIS AGREEMENT, made and entered into as of the day of , 1992, by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and APCOA SRP Parking V, (the "Operator").

MARCH 13, 1992

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, Public Parking Facilities at the Airport are essential for proper accommodation of the public; and

WHEREAS, Operator is a qualified operator of the Public Parking Facilities.

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 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;

"Operator" is defined 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, fee computers, fee indicators, lane control lights, computerized data management systems, and any other management system existing or to be established related thereto. "Director of Airports" shall mean the Director of Airports of the Airport Authority of the City of St. Louis.

"Minority Business Enterprise" or "MBE" is defined as: a sole proprietorship, partnership, corporation, profit or non profit organization owned, operated and controlled by a minority group member who has at least 51% ownership. Minority group member means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are Blacks, Hispanics, Native Americans, Asian Pacific Americans or Asian Indian Americans.

Women's Business Enterprise or "WBE" is defined as: a sole proprietorship, corporation, profit or non profit organization owned, operated and controlled by a woman or women who have at least 51% ownership.

ARTICLE II PUBLIC PARKING FACILITIES

Section 201. Public Parking Facilities. Subject to all of the terms and conditions of this Agreement, City makes available to Operator parking areas designated as Garage, East Terminal Lot, Long Term Lots, and Intermediate Lot, together with all improvements as shown on Exhibit "A", attached hereto and made a part hereof. These parking areas shall hereafter be referred to collectively as the "Facilities".

The Facilities shall, at all times during the term of this Operating Agreement, be subject to the right of City to go upon the same and revise parking spaces, 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.

City reserves the right to diminish the size or increase areas available at the airport devoted to use as Public Parking Facilities and relocate lots as the City may, in its discretion, determine is sufficient or available for adequate Public Parking Facilities to meet demand. Such rights may be exercised by the City at any time during the term of this Operating Agreement by giving Operator 10 days' written notice.

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

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

ARTICLE III TERM

Section 301. Term. The term of this Agreement shall begin on May 1, 1992 and shall end on April 30, 1995 unless sooner terminated in accordance with other terms of this Agreement.

Section 302. Option Term. At its sole option, the Director of Airports with approval of the airport commission may extend the term of this Agreement for two one year periods. The Director of Airports must notify the Operator in writing of its decision to extend the term 90 days in advance of the expiration of this Agreement and the first Option Term. In the event that the Director of Airports exercises this right, the operator agrees to continue to perform under the terms of this Agreement for the Option Term(s). The management fee for the fourth and fifth year will be the same management fee as paid to the Operator during the initial term of this Agreement.

Section 303. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Operator covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Facilities in good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Facilities with or without due process of law.

ARTICLE IV FINANCIAL

Section 401. Management Fee. City shall pay to Operator a monthly management fee of .445% of the net receipts as defined in Section 403. The fee will be paid monthly within 15 days of the date the Statement of Gross Receipts and Operating Expenses required by Section 414 is submitted. However, the City shall have the right to deduct from the fee any unpaid amounts due the City from the Operator.

Section 402. Gross Receipts. The term "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.

Section 403. Net Receipts. The term "Net Receipts" means the Gross Receipts as defined in Section 402 above minus the total of the authorized Operating Expenses as defined in Section 404 below.

Section 404. Operating Expenses. Operating Expenses to be paid by City in accordance with the approved Annual Operating Budget (Section 408) shall include a detailing of Personnel Expenses, Administrative Expenses, Operating Expenses and any other Expenses approved by the Director of Airports.

Section 405. Capital Expenditures. In addition to the Operating Expenses as defined in Section 404, the Airport may authorize the Operator to incur certain

costs for capital items such as, but not limited to, purchase of vehicles and Facilities modifications.

Section 406. Deposit of Gross Receipts. Operator shall collect, hold in trust for City, account for, and deposit in a bank account designated by City, and in the name of City each days' Gross Receipts from the parking 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 414. 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 Airport 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 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 Operator.

Section 407. Failure to Deposit Gross Receipts. All Gross Receipts due the Airport hereunder shall bear a service charge of 1 1/2% per month if same is not deposited in the City's account on the day on which said Gross Receipts are required by Section 402 to be deposited and the Operator agrees that it shall pay and discharge all costs and expenses including attorneys' fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 408. Budget. Operator shall submit to Director of Airports or his designee 30 days before the yearly anniversary date of this Agreement a budget of operational expenses to be charged to the Airport for the ensuing contract year. The Director of Airports or his designee shall within such 30 day period examine the budget of annual Operating Expenses. The Operator and Director of Airports or his designee shall meet to make any adjustment. Should any dispute arise the Director of Airports or his designee determination is final. Only the Director of Airports or his designee may change the budget and all changes must be in writing. The approved Annual Operating Budget shall include all ordinary direct costs and expense to be incurred by Operator in the operation of the Facilities including, but not necessarily limited to the items listed in Section 404.

The approved Annual Operating Budget will be a line item budget. (Separate amounts budgeted for each category of expense and will be in more detailed

form than is shown in Section 404 as specified by the Director of Airports or his designee.) Transfers between line items are not allowed without written approval of the Airport. If Operator exceeds the approved amount for any line item without written approval of the Director of Airports or his designee, such expenditures are to be paid by Operator.

Section 409. Unbudgeted Expense. The approved Annual Operating Budget may be revised by the Director of Airports or his designee from time to time, to permit the inclusion of unforeseen expenses as approved reimbursable expenses, but only if and to the extent the Director of Airports or his designee, in its sole discretion, deems such revisions necessary and appropriate under this Agreement. Operator shall comply with the Director of Airports 's request within 10 days after written notice thereof, or at such other time specified by the City.

Section 410. Reimbursement of Approved Expense to Operator. Operator shall pay all costs and expenses connected with its operations hereunder when due. Operator shall submit an itemized statement of all approved expenses incurred and paid in the operation of the Facilities on or before the 15th day of each month for the previous month of operation. Said statement shall be accompanied by such proof of disbursements as City may from time to time require. City shall reimburse 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 of Airports or his designee may adjust the frequency of reimbursement as operating condition may warrant, but not less than monthly.

Section 411. 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 1/12 of the Annual Operating Budget as defined in Section 408. These funds will be used by the Operator only for payment of costs authorized by the Annual Operating Budget. On or before the 15th day of the month following the termination date 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 Airport. The Airport will not pay the Operator any amounts due the Operator under Sections 401 and 409 for the final month of the term of this Agreement until the requirements of this Section are complied with in full.

Section 412. Equipment Provided by Airport. The Airport will provide and pay for the following capital equipment:

A. All revenue control equipment

B. All other capital expenditures, other than as provided in Section 405, which in the opinion of the Director of Airports, is necessary for the operation of the Facilities.

Section 413. Title to Equipment. Title to all equipment used by Operator in conjunction with this Operating Agreement, whether purchased from the Annual Operating Budget, capital expenditures, or directly by the City, shall vest in the City upon purchase.

Section 414. Reports. Operator shall provide Director of Airports, in a form and detail satisfactory to Director of Airports, 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 the approved procedure;

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

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

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

Within 60 days following the conclusion of each anniversary date during the term of this Agreement and any extension thereof, Operator shall file with the Director of Airports a report showing dollar amounts paid and received by MBE/WBE Participants.

Section 415. Accounting Records. Operator and its MBE/WBE 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 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, provided that the Operator shall not be required to retain such books of account and records for more than three (3) years after the end of each year of this Agreement.

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

Section 416. Audit. City or its designated agent reserves the right to audit Operator's, its sub contractor's or others doing business under this Agreement, or any extension thereof, books and records at any time for the purpose of verifying the Gross Receipts and expenses 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, the Operator shall pay such receipt or overpayment to the City not later than fifteen (15) days after completion of such audit and written notice by the Director.

Section 417. Parking Rates. Operator shall charge users of the Facilities only those rates which are established from time to time in writing by the Director of Airports and shall permit only such complimentary use of parking space as may be established by the Director. The Director 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 Lambert St. Louis International Airport for public parking the Director of Airports shall set the rates thereof and the Operator shall abide by such rates.

Section 418. Prompt Payment of Taxes and Fees. 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.

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 Public 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 Budget, and all revenues therefrom shall be included in Gross Receipts.

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 Facilities described in Section 201 hereof is made available to the public and others. Accordingly, 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 an approved Annual Operating Budget as described in Section 408. 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. Operator shall also maintain at all times a reasonable sum for its cashier change fund.

Operator covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. 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. Operator shall operate the Facilities in a first class manner and maintain them in a safe, neat and orderly condition, and it shall take all reasonable steps to insure that prompt, courteous and efficient service is provided to all users thereof.

Section 503. Hours of Operation. Operator shall pursuant to a staffing plan prepared by Operator and approved by the Airport, have appropriate attendants on duty in the Facilities at the airport 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. 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. Operator shall obtain and maintain insurance covering any and all losses of funds belonging to the Airport while under the custody and control of Operator resulting from the dishonesty or negligence of its employees, and it shall provide proof thereof to the City in a form satisfactory to the City.

C. Operator shall employ a full time, qualified and experienced Resident Manager, who must be approved by the Director of Airports, whose sole duty shall be to supervise and be responsible for all aspects of this Agreement and whose office shall be on the premises. If the choice of Resident Manager is in dispute, the Director of Airports decision is final. Said Resident Manager, or a qualified and experienced assistant responsible for acting in the absence of said Manager, shall be on duty at all times at the airport within or near the Facilities.

D. Operator shall be responsible for the neat appearance, courtesy, efficiency and conduct of all Operator's personnel at all times. Such personnel shall be strictly impartial 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.

E. Operator shall, within 24 hours written notice by the Director of Airports, 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 the Airport is otherwise detrimental to the public interest at the Airport.

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

Section 505. Supplies & Equipment. Operator shall procure and pay for all supplies and equipment approved in the Annual Operating Budget. The costs of such supplies and equipment shall be reimbursed to the Operator by the City as provided in Section 410. Parking tickets will be purchased by the Operator, paid for from the Annual Operating Budget, but shall be delivered by the manufacturer to the Office of the Director of Airports.

Section 506. Parking Charges & Collection of Monies.

A. Operator shall collect and hold in trust for and on behalf of the Airport all monies collected from parking customers in accordance with the rate structure established by the Airport and it shall deposit all such monies in the bank account to be designated by the Airport and in the name of Airport, as provided in Section 406.

B. Operator shall charge users of the Facilities only those rates which are established from time to time in writing by the Airport, as provided in Section 417, and shall permit only such complimentary use of the parking space as may be directed or approved by the Airport.

C. If 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 Airport, 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 Airport by 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 Airport. 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, upon demand by the Airport, be paid by Operator into the bank account designated for the deposit of Gross Receipts hereunder.

Section 507. Patron Claims and Complaints. Operator shall handle and report, in a manner satisfactory to the Airport, 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 Airport 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 Airport.

Section 508. Fire, Flood, Etc. Operator shall notify the Airport 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. Operator shall operate the Facilities 24 hours a day, seven (7) days a week in accordance with the written procedures prepared by Operator and approved in writing by the Airport, and all such procedures shall be subject to change at any time at the sole discretion of the

Airport. Recommendations by Operator for improving service and procedures will be considered by but not binding upon the Airport.

Section 510. Removal of Vehicles. Except in an emergency involving public convenience and safety or pursuant to the Airport's written instruction, 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 Airport'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 511. Shuttle Bus Service. Operator will operate and maintain a fleet of vans and/or shuttle, provided by Airport, to transport parkers to and from Parking Facilities and between the Main Terminal Building and the East Terminal Building where the Airport determines such service is desirable. The service will be provided in accordance with operating procedures, schedules, and staffing requirements prepared by Operator and approved by the Airport, but meeting the following standards at a minimum:

A. Shuttle Bus service shall be available 24 hours a day, seven days a week. 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 minutes for Operator's shuttle bus operation during day time and evening hours (7:30 a.m. to 11:30 p.m.) nor more than ten 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 Airport. Operator is required to operate the shuttle bus according to any schedule change directed by the Airport.

C. Operator shall be responsible for the complete maintenance of shuttle vehicles in clean, safe, and good running order in accordance with a maintenance schedule prepared by the Operator and approved by the Airport.

D. 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).

E. 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.

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

G. 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.

H. 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 512. Procedures Manual. As of the commencement date of this Agreement, Operator shall submit to the Airport for review and approval a Procedures Manual including all procedures to be followed by Operator's personnel relating to control of revenue and expenses; employee standards of conduct, courtesy, appearance, and disciplinary guidelines; maintenance of Facilities and equipment; and other matters as the Operator considers prudent or the Authority may require. The Procedures Manual shall be updated and/or amended at such time as changes in the operation occur.

Section 513. Non Compete. Operator agrees that no officer or owner of the Operator or business organization owned wholly or partially by Operator shall own or operate any parking operation within a five (5) mile radius of the centerpoint of the Main Terminal Building which would be in competition with Lambert St. Louis International Airport Parking Facilities during the term of this Agreement or any extension thereof.

ARTICLE VI CONSTRUCTION ON PREMISES

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

Section 602. Signs. 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 of Airports and that any such signs shall conform to reasonable standards established by the Director of Airports with respect to wording, type, size, design, color and location.

ARTICLE VII
USE OF FACILITIES

Section 701. Compliance with Laws and Regulations. 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. Airport shall provide maintenance service for the following Facilities:

A. Garage:

Structural members including surface parking area
Lighting and relamping
Escalators
Sidewalk surface and curbing

B. Surface Lots:

Pavement
Fencing
Lighting and relamping
Sidewalk surface and curbing

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

Section 703. Maintenance by Operator. Operator shall provide maintenance services as provided for in the budget for the following Facilities:

A. Garage:

Signage
Cashier booths
Sweeping, oil and fuel spilling
Janitorial service
Snow and ice removal
Electrical system*
HVAC*
Plumbing*
Striping*

Janitorial service for escalators and in escalator wells
Revenue control equipment

* Operator shall first notify Airport of necessary maintenance or repair.

Airport has the first right to perform required maintenance, or Airport will inform Operator to maintain or repair facility.

B. Surface Lots:

Cashier booths
Sweeping oil and fuel spills
Signage
Janitorial service
Snow removal
Striping
Revenue control equipment
Weed control
Landscaping

C. All Vehicles.

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 Airport.

Section 704. Right to Enter, Inspect and Make Repairs. The Airport 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 Operator's operations as is reasonably practicable) enter upon and in the Facilities for the following purposes:

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

B. To perform maintenance and make repairs in any case where Operator is obligated, but has failed to do so, after the Airport has given Operator notice so to do, in which event Operator shall reimburse the Airport for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 705. Utilities. City will pay for all utilities required.

Section 706. Shutdown of Services. City through the Director of Airports shall have the absolute right to take over the operation of the Facilities, either by itself or through others, in the event the Facilities should remain closed, or the service substantially interrupted, for a period of 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 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.

ARTICLE VIII BONDS

Section 801. Performance Bond. The Operator agrees to furnish to the City, and shall keep in full force and effect throughout the entire term or any extension thereof of this Agreement, a Performance Bond, in a form and drawn on such company as is acceptable to Director of Airports, in the amount of \$500,000.00. Operator's failure to provide and maintain current, said performance bond shall be grounds for automatic termination of this Agreement. Said Performance Bond may be drawn upon by Director if Operator fails to perform any of its obligations under this Agreement. If the Director shall draw on Operator's Bond, then Operator shall have 15 days to replace said Bond in a form and drawn on such company as is acceptable to Director in the amount stated above before said failure to maintain said Performance Bond shall constitute a default by Operator and subject to automatic termination.

Section 802. Fidelity Bond. Operator agrees to provide and maintain Fidelity Bonds in an amount not less than \$50,000 for the Resident Manager, and employees handling or responsible for the handling of daily Gross Receipts, in a form and drawn on such surety as is acceptable to City. Director of Airports may increase this amount to conform to industry standards.

ARTICLE IX

LOSS OF AND LIABILITIES PERTAINING TO FACILITIES

Section 901. Liability Insurance. Operator, at its expense, at all times during the term hereof, shall cause the City and its Board of Aldermen, Airport Commission, officers, agents and employees and Operator to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Operator its officers, agents, employees, and independent contractors pursuant to this Agreement both on the Facilities and the Airport under the following types of coverage:

A. Comprehensive General Liability

B. Garagekeeper's Legal Liability Comprehensive and Collision

The minimum limits of coverage for Comprehensive General Liability insurance shall equal a combined single limit of \$5,000,000 comprised of such primary and excess policies of insurance as Operator finds it feasible to purchase during the term of this Agreement. Operator will also provide Garagekeeper's Legal Liability in the amount of \$10,000,000 per occurrence.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured as respects to the ownership of the Parking Facilities at Lambert St. Louis International Airport. 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 and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as an additional named insured as respects to the ownership of the Parking Facilities at Lambert St. Louis International Airport is not intended to, and shall not, make the City a partner or joint venturer with Operator in its operations hereunder.

Section 902. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Operator in this Article, shall be delivered to the Director of Airports in form and content satisfactory to the City.

At least 15 days prior to the expiration of any such policy, Operator shall submit to the Director of Airports a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Operator

shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director of Airports, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 903. 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 all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the leased premises or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of Lambert St. Louis International Airport. The Airport Director or his/her designee shall give to Operator reasonable notice of any such claims or actions. The Operator shall also use counsel reasonably acceptable to the Airport Director or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this agreement.

Section 904. Adjustment of Claims. 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 Operator under this Agreement. Operator agrees that all such claims, whether processed by Operator or its insurer either directly or by means of an agent, will be handled by a person with a permanent office in the St. Louis metropolitan area.

ARTICLE X

ASSIGNMENT, SUBLETTING AND SUBCONTRACTING

Section 1001. Assignment. Operator shall not assign this Agreement, without first obtaining written approval of the Director of Airports and Airport Commission. At least 90 days prior to any contemplated assignment of this Agreement, Operator shall submit a written request to the Director of Airports.

Operator shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of the concession on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective unless Operator shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Agreement.

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

Section 1003. Subcontracting. Operator shall not subcontract this Agreement or any portion of the Facilities or services included in this Agreement, except as is necessary to develop the MBE/WBE participation goal in Section 1202 of 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 of Airports. This request must include a copy of the proposed subcontract. Any subcontract must have the prior written approval of the Director of Airports. 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 this 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 of Airports, 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 406 as provided herein.

B. If, during the term of this Agreement and any extension thereof, 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 Operator a bankrupt or insolvent, or approving a petition seeking a reorganization of Operator, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days;
6. Fail to meet the MBE/WBE goal as described in Section 1202.

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

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

Failure of the City to take any authorized action upon default by 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 herein contained to be performed, kept and observed by Operator. The acceptance of monies by the City from Operator for any period or periods after a default by Operator of any of the terms, covenants and conditions herein required to be performed, kept and observed by 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 Operator to so perform, keep or observe any of said terms, covenants or conditions.

Section 1102. Operator's Right to Terminate. 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 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 or of the use of motor vehicles or airplanes by the general public, or a limitation of the supply of automobiles or of automobile fuel, supplies, or parts for the general public use, and any of said events shall result in material interference with Operator's normal business operations or substantial diminution of Operator's gross revenue from the operation at the Airport, continuing for a period in excess of 60 days.

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

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than 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 45 day period, and if the party at default commences to correct such default within said 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 Operator agrees also to pay a reasonable attorney's fee to recover Gross Receipts.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and 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

MISCELLANEOUS PROVISIONS

Section 1201. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri, 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by the City to Operator shall be sent by certified mail, return receipt requested addressed to APCOA SRP Parking V, 25550 Chagrin Blvd., Cleveland, Ohio 44122.

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 Operator or said Director.

Section 1202. Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Participation. Operator agrees as a condition hereunder to meet a minimum MBE/WBE participation goal of not less than 30%, comprised of 25% MBE and 5% WBE of either the Management Fee earned as described in Section 401 or a percentage of the projected operating less Payroll Cost expenses as described in Section 404. This goal remains in effect throughout the term of this Agreement. Credit toward the MBE/WBE goal will only be given for the use of MBE/WBEs certified by process acceptable to the Director of Airports. The Operator submitted at time of bid a MBE/WBE participation plan which detailed the method(s) and percentage of MBE/WBE participation it offers in the performance of this Agreement. This MBE/WBE participation plan must be approved in writing by the Director of Airports before it may be implemented. The Operator is obligated to meet the greater of the minimum 30% MBE/WBE participation in the amount of participation detailed in its MBE/WBE participation plan as approved by the Director of Airports.

It is the policy of this Airport and the City of St. Louis that Minority Business Enterprises and Women Business Enterprise (MBE/WBE) as defined in the Mayor's Executive Order No. 11 dated January 10, 1990, and in Section 101 of this Agreement, shall have the maximum opportunity to participate in the performance of agreements as defined by documents. Consequently, this Agreement is subject to the Mayor's Executive Order No. 11 dated January 10, 1990, as applicable.

Substitutions of MBE/WBEs must be approved in writing by the Director of Airports. Substitution of a MBE/WBE will be allowed only when the MBE/WBE has failed to perform due to default of its subcontract. The Operator shall immediately take steps to obtain a replacement certified MBE/WBE through good faith efforts. If a replacement MBE/WBE cannot be located, the Operator must make good faith efforts to subcontract other rights to secure MBE/WBE participation. The Director of Airports will determine if the Operator has made acceptable good faith efforts. Operator must immediately begin operations in place of a MBE/WBE that has failed to perform.

Operator shall operate this public parking Facilities and shuttle service in compliance with all other requirements imposed by or pursuant to Mayor's Executive Order No. 11 dated January 10, 1990 as applicable and as said regulations may be amended or new regulations promulgated, or new City of St. Louis executive order, resolution or ordinance enacted, now or in the future. In the event of breach of any of the above covenants, the City shall have the right to terminate the Agreement.

Section 1203. Non Discrimination and Affirmative Action Program.

A. The Operator hereto understands and agrees that the City in operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21, Subtitle A of Title 49, of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Operator hereby agrees that his/her premises shall be posted to such effect as required by such regulation.

B. Operator agrees that in performing under this Agreement, neither he/she nor anyone under his/her control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. 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. 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". 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. Operator agrees that should it be determined by the Operator or City that he/she will be unable to conform to his/her approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he/she will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Operator to achieve the provisions of his/her program.

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

F. 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 Operator in all contracts or agreements he/she 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, Operator shall notify the City Counselor in writing of such suit or threatened suit within 10 days.

H. 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 of St. Louis and the United States Government may direct to enforce the above covenants.

I. 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 1204. 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 1205. Force Majeure. Neither the City nor 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, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1206. 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, sublessees and assigns of the respective parties hereto.

Section 1207. 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 1208. Title to Site. The Facilities from the date hereof until the 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 1209. 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. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to Operator herein.

Section 1210. Modifications for Granting FAA 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 amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be required to enable the City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes impair the right of Operator hereunder.

Section 1211. 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.

Section 1212. 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 1213. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1214. 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 Operator and the City.

Section 1215. Withholding Required Approvals. Whenever the approval of the City, or the Director of Airports, or of Operator is required herein, no such approval shall be unreasonably requested or withheld. Approvals of the City or the Director of Airports shall be by the Director of Airports or his/her designated representative.

Section 1216. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

Section 1217. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Operator in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1218. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year first above written, as authorized by Ordinance No. , approved on , 1992.

THE CITY OF SAINT LOUIS

Director of Airports Date

APPROVED AS TO FORM ONLY

City Counselor, Date
City of St. Louis

Register, Date
City of St. Louis

COUNTERSIGNED

Comptroller, Date
City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on the day of , 1992.

Secretary Date
Board of Estimate & Apportionment

OPERATOR

Title:
Date:

Section Two. This being an Ordinance necessary for the immediate preservation of the public safety and welfare, it is hereby declared to be an emergency measure within the meaning of Article IV, Sections 19 and 20 of the City Charter and shall become effective immediately upon its approval by the Mayor.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
03/13/92	03/13/92	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
03/20/92			03/27/92	03/31/92
ORDINANCE	VETOED		VETO OVR	
62607				

