

ORDINANCE #68352
Board Bill No. 26

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 the "First Amendment To Lambert-St. Louis International Airports® (the "Airport") Concession Agreement (Airport Spa)" (the "First Amendment") to the Airport Spa Concession Agreement AL-431 between the City and XpresSpa St. Louis Airport, LLC, (the "Concessionaire") a corporation organized and existing under the laws of the State of New York, and authorized by City Ordinance No. 67907, approved March 3, 2008 (the "Agreement"); the First Amendment, which is attached hereto as ATTACHMENT "1" and made a part hereto, was approved by the City's Airport Commission, and its terms more fully described in Section One of this Ordinance; providing that the provisions set forth in this Ordinance shall be applicable exclusively the Agreement as amended by the First Amendment; containing a severability clause; 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 (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the "First Amendment To Lambert-St. Louis International Airport® (the "Airport") Concession Agreement (Airport Spa) (the "First Amendment") to the Airport Spa Concession Agreement AL-431 between the City and XpresSpa St. Louis Airport, LLC (the "Concessionaire"), a corporation organized and exiting under the laws of the State of New York, and authorized by City Ordinance No. 67907, Approved March 3 2008 (the "Agreement"); the First Amendment to the Agreement, which was Approved by the City's Airport Commission, is to read in words and figures as set out in ATTACHMENT "1" and is attached hereto and made part hereof.

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

SECTION THREE. The sections, conditions, and provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a 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, 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.

ATTACHMENT 1

AIRPORT NUMBER...431

**FIRST AMENDMENT
TO**

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(AIRPORT SPA)**

THIS FIRST AMENDMENT, entered into this _____ day of _____, 2009, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and XpresSpa St. Louis Airport, LLC ("Concessionaire"), a corporation organized and existing under the laws of the State of New York, hereinafter the "**First Amendment**".

WITNESSETH THAT:

WHEREAS, City and Concessionaire are parties to a Concession Agreement (AL-431) for an Airport Spa dated April 3, 2008 ("**Agreement**") authorized by Ordinance 67907, approved March 3, 2008; and,

WHEREAS, the parties desire to revise certain terms and conditions of the Agreement and change the Concession Fees.

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

SECTION ONE: Section 101 Definitions. The definition of “**Build Out Period**” is changed to read as follows:

“**Build Out Period**” shall mean a period of eleven (11) months commencing on the first day of the month following full execution of the Agreement by the City.

SECTION TWO: Section 101 Definitions. The definition of “**Concession Period**” is changed to read as follows:

“**Concession Period**” shall mean a period of four (4) Contract Years and a partial Contract Year of seven (7) months immediately following the Build Out Period.

SECTION THREE: The original term of this Agreement consists of five (5) years and six (6) months commencing on May 1, 2008 and ending on October 31, 2013, unless sooner terminated in accordance with other provisions of the Agreement. It is hereby agreed that Section 401. Term., of the Agreement is hereby deleted in its entirety and the following is substituted:

Section 401. Term. The term of this Agreement shall consist of five (5) years and six (6) months which consists of a Build-Out Period of eleven (11) months commencing on the first day of the month following full execution of the Agreement by the City; and followed by the Concession Period of four (4) Contract Years and a partial Contract Year of seven (7) months immediately following the Build-Out Period.

Build-Out Period May 1, 2008 to March 31, 2009

Concession Period April 1, 2009 to October 31, 2013

SECTION FOUR: Section 502. Concession Fees. of the Agreement is hereby deleted in its entirety and the following is substituted:

Section 502. Concession Fee Payments. During the Build-Out Period, the Concessionaire agrees to pay to the City an amount equal to ten percent (10%) of Gross Receipts for the previous month.

For the period April 1, 2009 through June 30, 2009, the Concessionaire agrees to pay to the City one half of the Minimum Annual Guarantee (MAG) fee or one thousand eighty nine dollars and ninety three cents per month (\$1,089.93) or the Percentage Fee for each Contract Year, or portion thereof, as set out below. Commencing July 1, 2009 the Concessionaire agrees to pay to the City a Minimum Annual Guarantee (MAG) fee of twenty six thousand one hundred fifty eight dollars and twenty cents (\$26,158.20) or two thousand one hundred seventy nine dollars and eighty five cents (\$2,179.85) monthly, or the Percentage Fee for each Contract Year, or portion thereof, as set out below.

	Contract Year	Percentage Fee
	1	10 %
	2	10 %
	3	10 %
	4	10%
Partial Contract Year	5	10 %

SECTION FIVE: Section 506. Payment and Performance Bond. The following is added to the end of Section 506:

Upon the opening of the East Terminal XpresSpa location and the submission by Concessionaire to the City of a certificate of completion, certified copy of a St. Louis County Occupancy Permit and as-built drawings, the City agrees to reduce the required Performance and Payment Bond amount from fifty thousand dollars (\$50,000.00) to twenty five thousand dollars (\$25,000.00).

SECTION SIX: Section 701. Construction by Concessionaire. Subsection B. is deleted in its entirety and the following is substituted:

- B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
 - 1) Concessionaire has submitted a signed Tenant Construction or Alteration Application (TCA) including complete sealed construction drawings and specifications, as required by Section 702 hereof, to the Airport Properties Department for its initial as well as future construction.
 - 2) Concessionaire shall submit a copy of the St. Louis County building permit at the pre-construction meeting. (A building permit is required before construction can begin.)
 - 3) Concessionaire shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 704 and 705 hereof, to the Airport Properties Department at the pre-construction meeting.
 - 4) Concessionaire shall complete all construction and open the Premises fully fixtured and operational no later than July 1, 2009, subject to the provisions of Article XIII.
 - 5) Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit, to the Airport Properties Department, as required by Section 706 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

SECTION SEVEN: EXHIBIT "A" PREMISES. Page 43 of the Agreement showing the space on the C Concourse is deleted. Page 44 is renumbered 43. Page 45 is renumbered 44. Page 46 is renumbered 45 and page 47 is renumbered 46.

SECTION EIGHT: All of the terms, covenants, warranties, and conditions of the Agreement not inconsistent with this First Amendment are unchanged and are hereby ratified and approved and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto affixed their hands and seals as set forth below for themselves, their successors and assigns.

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

CONCESSIONAIRE

ATTEST

Title: _____

Title: _____

Date: _____

Date: _____

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

The foregoing Amendment to Agreement was approved by the Airport Commission at its meeting on _____, 2009.

Commission Chairman and Director of Airports

Date _____

The foregoing Amendment was approved by the Board of Estimate and Apportionment at its meeting on _____, 2009.

Secretary, Board of Estimate and Apportionment

Date: _____

APPROVED AS TO FORM ONLY BY:

City Counselor, City of St. Louis

Date: _____

COUNTERSIGNED BY:

Comptroller, City of St. Louis

Date: _____

ATTESTED TO BY:

Register, City of St. Louis

Date: _____

Approved: June 8, 2009