

ORDINANCE #68560
Board Bill No. 266

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 (Public Communications Services)" (the "First Amendment") to the Airport Public Communications Services Concession Agreement AL-434, dated December 16, 2008, between the City and Power Station LLC (the "Concessionaire"), a corporation organized and existing under the laws of the State of Nevada, and authorized by City Ordinance No. 68179, approved November 24, 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 are more fully described in Section One of this Ordinance; 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 Airports® (the "Airport") Concession Agreement (Public Communications Services)" (the "First Amendment") to the Airport Public Communications Services Concession Agreement AL-434, dated December 16, 2008, between the City and Power Station LLC (the "Concessionaire"), a corporation organized and existing under the laws of the State of Nevada, and authorized by City Ordinance No. 68179, approved November 24, 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 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 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.

ATTACHMENT "1"

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



POWER STATION LLC

PUBLIC COMMUNICATIONS SERVICES

FIRST AMENDMENT

CONCESSION AGREEMENT

NO. AL-434

AIRPORT NUMBER AL-434

**FIRST AMENDMENT
TO
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(PUBLIC COMMUNICATIONS SERVICES)**

THIS FIRST AMENDMENT made and entered into as of the ____ day of _____ 200__, by and between the CITY OF ST. LOUIS (City), a municipal corporation of the State of Missouri and Power Station LLC (Concessionaire), a corporation organized and existing under the laws of the State of Nevada.

WITNESSETH, THAT:

WHEREAS, City and Concessionaire are parties to a Concession Agreement for a Public Communications Services Concession dated December 16, 2008 (Agreement) authorized by Ordinance 68179, approved November 24, 2008;

WHEREAS, certain conditions have delayed the implementation of the original terms of the Agreement, causing a redesign of Concessionaire's equipment components to maximize the user friendliness of the airport;

WHEREAS, a Public Communications Services Concession at the Airport is essential for proper accommodation of the public; and,

WHEREAS, the parties agree to revise and add certain terms and conditions of the Agreement to support the equipment redesign;

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

1. Section 101. Definitions. adds the definition of "Build Out Period" as follows:

"Build Out Period" shall mean a period of 18 months beginning on the Commencement Date of the Agreement, January 1, 2009 and ending on June 30, 2010.

2. Section 101. Definitions. adds the definition of "Concession Period: as follows:

"Concession Period" shall mean a period of four Contract Years and six months immediately following the Build Out Period.

3. Section 101. Definitions. the meaning of "**Contract Year**" is hereby deleted in its entirety and the following is substituted:

"Contract Year" shall mean a period of twelve consecutive months commencing on the first day of the month following the expiration of the Build Out Period.

4. Section 401. Term. of the Agreement is deleted in its entirety and the following is substituted:

Section 401. Term. The term of this Agreement shall consist of five years and six months, consisting of a Build Out Period of 18 months; followed by the Concession Period of five Contract Years and six months immediately following the Build Out Period as written below:

Build Out Period: January 1, 2009 to June 30, 2010

Concession Period: July 1, 2010 to June 30, 2015

5. Section 502. Concession Fee Payments. subsection (A) of the Agreement is deleted in its entirety and the following is substituted:

Section 502. ConcessionFee Payments.

A. The Concessionaire agrees to pay to City the greater of a Minimum Annual Guarantee (MAG) for each Contract Year or the Percentage for each product or service, as set out below:

<u>Contract Year</u>	<u>Minimum Annual Guarantee</u>
1	\$27,600
2	\$22,080
3	\$17,664
4	\$14,132
5	\$11,304

<u>Product or Service</u>	<u>Percentage</u>
Payphone Operations	10%
Prepaid Phone Cards	15%
Video Games	15%
Internet Service	15%
Laptop Rentals	15%
Battery Charging Bay	15%

6. Section 701. Construction by Concessionaire. subsection (A) is deleted in its entirety and the following is substituted:

A. Concessionaire takes the Premises "AS IS" and agrees at Concessionaire's sole cost and expense, to design, erect, construct equip and furnish all necessary Equipment that complies with the Payphone Operating Specification in Exhibit D of this Agreement and design, construct and install related facility changes such as reinforcing walls and installing required flooring as needed to provide Public Communication Services ("PCS") pursuant to this Agreement, in accordance with plans and specifications approved by the Director subject to the requirements of this Article VII.

1. Each PCS kiosk will be allowed to have either one or two 32" upper video monitors attached;
2. The video monitors shall only display information and instructions regarding the functionality of the kiosk system (e.g. operating the cell phone chargers);
3. Sound will be set at levels where a customer must be within six feet to understand the audio; and
4. The City shall have the final approval of all video and audio content.

7. All other terms, covenants, 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.

(The balance of this page is intentionally blank.)

IN WITNESS WHEREOF, the parties hereto execute this First Amendment for themselves, their successors and assigns, as of the day and year first written above.

POWER STATION LLC BY:

ATTESTED TO BY:

Title: _____

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID# _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 200_:

The foregoing First Amendment to Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 200_.

BY:

Commission Chairman and Director of Airports Date

The foregoing First Amendment to Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 200_.

BY:

Secretary, Board of Estimate and Apportionment Date

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTESTED TO BY:

Register, City of St. Louis Date

Approved: January 29, 2010