



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** William F. Sherry, A.A.E.

**SUBJECT: APPROVAL OF AMENDMENTS  
TO THE ON-AIRPORT RENTAL  
CAR OPERATIONS AND LEASE  
AGREEMENTS**

**DATE:** March 22, 2010

Approved

Date

3/25/10

## RECOMMENDATION

- (a) Approve second amendments to the On-Airport Rental Car Operations and Lease Agreements with Avis Budget Car Rental, LLC; DTG Operations, Inc.; EAN, LLC; Fox Rent A Car, Inc.; and The Hertz Corporation to provide for the City to demolish and remove all tenant improvements constructed by the On-Airport Rental Car Companies after the companies move to the new Consolidated Rental Car Facility, and to provide for the payment by the On-Airport Rental Car Companies of all such demolition costs incurred by the City.
- (b) Adopt a resolution authorizing the Director of Aviation to negotiate and execute any future amendments to the On-Airport Rental Car Operations and Lease Agreements as necessary to allocate maintenance, repair and utility expenses between the City and the On-Airport Rental Car Companies.

## OUTCOME

Approval of the second amendment will memorialize details regarding construction of a 1 megawatt solar facility on the roof of the new Consolidated Rental Car Facility ("CRCF") at the Airport. In consideration for the public support by the On-Airport Rental Car Companies (the On-Airport "RACs") of the City's construction of a solar facility on the roof of the CRCF and the payment by the On-Airport RACs of all demolition costs to be incurred by the City, the City agrees to perform the demolition of improvements in the current premises occupied by the companies, presently an obligation of those companies. The full cost of the Demolition Project will be incorporated in the CRCF Facility Rent to be paid by the On-Airport RACs.

## **BACKGROUND**

Nine rental car company brands currently operate on-Airport rental car concessions at an interim rental car facility that opened on May 7, 2000, pursuant to operations agreements and leases that extend through the opening date of the CRCF. On October 2, 2007, City Council authorized the City Manager to negotiate and execute operations and lease agreements with current and future on-Airport RACs to operate in the CRCF. City Council also increased the scope of the project to include 3,000 rental car spaces, 350 public parking spaces, rental car service and office areas, and customer service lobby, and approved a budget of \$275.4 million, including \$260.6 million for the rental car areas and \$14.8 million for ground floor public parking. All nine of the rental car company brands currently operating on-Airport rental car concessions executed the On-Airport Rental Car Operations and Lease Agreement for operations in the future CRCF.

On February 26, 2008, City Council approved the First Amendment to the On-Airport Rental Car Operations and Lease Agreements, providing for a term of ten years from commencement of operations at the CRCF, and up to two ten-year renewal periods, subject to mutual agreement of the City and the rental car companies, for a total maximum term of up to thirty years. In addition, the First Amendment established a Rent Stabilization Fund to be funded from excess facility rent payments in an amount not to exceed \$1,000,000, established a City-controlled program reserve for potential additions to the scope of the CRCF, in an amount not to exceed \$11,200,000, and provided that any unexpended Program Reserve on hand upon completion of construction of the CRCF will be credited to either the Rent Stabilization Fund or the repayment of debt on the CRCF.

The CRCF is currently under construction and the on-Airport rental car companies have commenced their tenant improvements in the facility. The commencement date for rental car operations in the CRCF is currently scheduled for June 3, 2010.

## **ANALYSIS**

During the course of construction of the CRCF, it became apparent that the economy of scale offered by the design build effort presents a cost effective means of constructing a City owned and operated solar photovoltaic electrical power generating facility (the "Solar Facility") on the roof of the CRCF to supply electricity to the CRCF. Previous efforts at implementing solar power facilities at the Airport, and in other parts of the City, through third party power purchase agreements were challenged due to the need to work out the business terms of the contracts. Studies indicated a 1 megawatt system would generate approximately 20% of the power required to operate the entire CRCF on an annual basis. The cost of construction of the Solar Facility is estimated at \$6 Million. As a result of savings during the course of construction of the CRCF, there are adequate funds available to cover the cost of construction of the Solar Facility within the total budget of the CRCF. The description of the CRCF in the proposed second amendment specifically includes the Solar Facility to be constructed on the roof of the CRCF. The proposed amendment further provides that the City will contract with third party utilities for the provision of electrical service at the CRCF and invoice the on-Airport RACs for their share of utility charges at the CRCF.

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In accordance with the terms of the current on-Airport rental car operations agreements and leases, the City has notified the on-Airport RACs that they must remove all improvements from their current ready/return premises at the "Green Lot". In consideration for public support of the Solar Facility by all the on-Airport RACs and the payment by the On-Airport RACs of all demolition costs to be incurred by the City, the second amendment permits the City to undertake the removal of such improvements after the surrender of the current premises by the on-Airport RACs, at an estimated cost of \$200,000 for the design, bid and management of the Demolition Project and \$1.5 Million for demolition. However, these estimates are not intended by the parties to be a limitation or cap upon the total compensation to be paid to the City's demolition contractor. Accordingly, the proposed amendments provide that the on-Airport RACs will pay the City's actual total demolition costs, amortized over a period of ten (10) years an interest rate equal to City's cost of funds, regardless of whether total compensation paid by City under the Demolition Project contract exceeds the estimated \$1,500,000 total.

The City will conduct the demolition as a public works project to be awarded to the lowest responsive and responsible bidder. In the event the lowest responsive bid amount is greater than \$1.5 Million for demolition and the City receives a written notice of objection from any on-Airport RAC, then the City will have no further obligation to proceed with or complete the Demolition Project and all on-Airport RACs would remain responsible to remove all improvements pursuant to their current agreements. Any demolition costs incurred by the City prior to receiving a timely written objection will be included in the facility rent paid by the on-Airport RACs and amortized over a period of ten (10) years an interest rate equal to City's cost of funds for the demolition project costs.

Any utilities provided by and billed directly to the City will be charged to the on-Airport RACs based upon their pro rata share of space in the CRCF.

In addition, unforeseen cost-sharing and maintenance responsibility related issues may arise between the City and the on-Airport RACs during activation and once the CRCF becomes operational. This is due to the fact that the building includes Airport operated public parking as well as rental car space. Therefore, staff recommends the Council authorize the Director to execute any future amendments to the On-Airport Rental Car Operations and Lease Agreements as necessary to allocate maintenance, repair, operational and utility expenses between the City and the on-Airport RACs.

### **EVALUATION AND FOLLOW UP**

Status of the rental car facility, including performance measurement, is reported regularly to Council in the Airport's Capital Improvement Program Quarterly Report.

### **PUBLIC OUTREACH**

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
  
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memo is posted on the City's website for the April 13, 2010 Council Agenda.

**COORDINATION**

This memo has been coordinated with the City Attorney's Office and the Budget Office.

**FISCAL/POLICY ALIGNMENT**

The San José Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. As the rental car facility is specifically identified in the Master Plan (Project "T-14"), the proposed actions are consistent with the Airport Master Plan pursuant to Municipal Code Section 25.04.210(B)(2).

**COST SUMMARY/IMPLICATIONS**

As a result of savings realized during the course of construction of the CRCF, approval of the second amendment will result in no costs being incurred above the previously approved GMP.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations which may be used to fund the contract recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	2009-2010 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
526 (528)	4164	Consolidated Rental Car Facility	\$ 19,783,000	V-838	10/20/09 Ord. No. 28653
526 (558)	5247	Public Parking Garage	\$ 936,000	V-840	N/A

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**CEQA**

Resolutions No. 67380 and 71451, PP 10-060.

/s/

WILLIAM F. SHERRY, A.A.E.

Director of Aviation

Airport Department

For questions please contact William F. Sherry, Director of Aviation at (408) 501-7669.

