



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

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

**SUBJECT: THIRD AMENDMENT TO THE
RENTAL CAR OPERATIONS
AGREEMENT AND LEASE**

DATE: October 17, 2011

Approved

Date

10/24/11

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Approve Third Amendments to the On-Airport Rental Car Operations and Lease Agreements ("Agreement") with Avis Budget Car Rental, LLC; DTG Operations, Inc.; EAN, LLC; Fox Rent A Car, Inc.; and Hertz Corporation to update space layouts to reflect current operations at the Airport and to clarify certain Agreement provisions, including the commencement date and the ground rent appraisal schedule.

OUTCOME

Approval of the Third Amendment will permit the City to accurately capture all space within the Consolidated Rental Car Facility ("CRCF") according to as-built plans and accurately establish the pro-rata share of each rental car company ("RAC"). Identification of the commencement date as July 1, 2010, will clarify future rent adjustment, expiration and option dates that are based on the original commencement date. Revision of the ground rent appraisal language is necessary to ensure appraisals occur every five years.

BACKGROUND

On October 2, 2007, 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. All ten of the rental car company brands operating on-Airport at that time executed the On-Airport Rental Car Operations and Lease Agreement.

On February 26, 2008, 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 30 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 would be credited to either the Rent Stabilization Fund or the repayment of debt on the CRCF.

On April 13, 2010, Council approved the Second Amendment to the On-Airport Rental Car Operations and Lease Agreements, memorializing details regarding construction of a 1 megawatt solar facility on the roof of the CRCF. In addition, the City agreed to perform the demolition of improvements in the former rental car premises, the full cost of which is incorporated in the CRCF Facility Rent paid by the On-Airport RACs.

The On-Airport RACs commenced business in the CRCF on June 30, 2010. The opening was originally planned for June 3, 2010, but was delayed to June 30, 2010, due to construction related issues and a desire to ensure the entire CRCF was fully ready for operation upon opening.

ANALYSIS

Upon completion of construction of the CRCF, a project began to measure the facility for the purpose of confirming the square footage and preparing "as-built" exhibits for the Agreement. That project is complete and updated exhibits have been prepared that reflect the actual configuration and measurement of space in the CRCF. Those exhibits and measurements are used to not only identify specific spaces within the CRCF, but to establish the pro-rata share of space between the various rental car companies to accurately assess rents and charges.

The Third Amendment establishes July 1, 2010, as the formal commencement date of the Agreement. The commencement date is used for calculating future rent adjustments, option dates, and expiration dates. While the opening date of the CRCF was June 30, 2010, it is less administratively burdensome and confusing to use July 1, 2010, as the commencement date:

Ground rent for the CRCF is adjusted annually based on the change in the Consumer Price Index (CPI) and provides for an appraisal of the ground rental rate after the first five years of the term. The Third Amendment will provide for a ground rent appraisal every five years through the remaining original term and option terms.

The Third Amendment also corrects an interest rate set forth in Section 14.3 of the Agreement with regard to certain costs that may be paid by the Airport that are subject to reimbursement by

October 17, 2011

Subject: **Third Amendment to the Rental Car Operations Agreement and Lease**

Page 3

the rental car companies, so that it is consistent with the interest rate charge on late fees throughout the rest of the Agreement.

EVALUATION AND FOLLOW-UP

The Director of Aviation will provide regular updates to the Council on the status of the CRCF and rental car activities at the Airport.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Website for the November 8, 2011 Council Meeting.

COORDINATION

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

CEQA

Not a project. File No. PP10-066(f), Lease of existing space for same use.

/s/ Kimberly B. Aguirre for
WILLIAM F. SHERRY, A.A.E.
Director of Aviation
Airport Department

For questions please contact William F. Sherry, Director of Aviation at (408) 392-3611.