

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 20-0061

APPROVAL OF SETTLEMENT OF EXISTING LITIGATION, THE HERTZ CORPORATION ET. AL. v. CITY AND COUNTY OF SAN FRANCISCO

- WHEREAS, on October 16, 2018, by Resolution Nos. 18-0341 through 18-0344, the Commission awarded new leases (New Leases) for the Rental Car Center (Rental Car Center) at San Francisco International Airport (Airport) to (i) Hertz Corporation (Hertz); (ii) Enterprise Rent-A-Car Co. of San Francisco, LLC (Enterprise); (iii) Avis Budget Car Rental, LLC (Avis) and (iv) Sixt Rent a Car (Sixt) (collectively, Awardees), subject to the approval of the San Francisco Board of Supervisors (Board) under Charter § 9.118 (Charter § 9.118); and
- WHEREAS, following the award but prior to Board approval of the New Leases, the San Francisco Office of Labor Standards (OLSE) determined that the prevailing wage under San Francisco Administrative Code 21C.3 (21C.3) applied to the New Leases rather than the San Francisco Minimum Compensation Ordinance (MCO) as specified in the Request For Bids and the New Leases; and
- WHEREAS, under such circumstances, the Airport notified the Awardees that it intended to seek Commission approval to (i) rescind the awards of the New Leases; (ii) commence a new request for bids process for Rental Car Center leases and (iii) extend the current holdover tenancies of the existing leases at the Rental Car Center; and
- WHEREAS, on September 24, 2019, Hertz, Enterprise, and Avis filed a lawsuit in California Superior Court in San Mateo County (the Action) seeking a Temporary Restraining Order against the City, OLSE, the Airport and the Commission to prohibit (i) the application of 21C.3 to the New Leases; (ii) the rescission of the award of the New Leases and (iii) the issuance of a new request for bids; on October 10, 2019, Sixt joined the Action by filing a complaint-in-intervention; and
- WHEREAS, on January 23, 2020, the court granted plaintiffs' motion for a preliminary injunction, prohibiting the Commission from rescinding the awards of the New Leases and re-bidding, and finding on a preliminary basis that OLSE misapplied 21C.3 to the New Leases; and
- WHEREAS, the parties have reached a potential settlement agreement that requires approval by the Commission and the Board (Settlement Agreement); and
- WHEREAS, the Settlement Agreement, in summary, provides as follows: (i) the Airport will seek Board approval of the New Leases in conformance with Charter § 9.118; (ii) upon final Board and mayoral approval of the New Leases, the Awardees will dismiss the Action, and all parties will pay their own legal fees and expenses; (iii) OLSE will issue a letter to the Airport and Awardees indicating that it will not seek to apply Section 21C.3 to the New Leases; and (iv) the Commission will make a settlement payment to Sixt in the amount of \$500,000; and

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WHEREAS, the Airport Director recommends that the Commission and the Board approve the proposed Settlement Agreement; now, therefore, be it

RESOLVED, that this Commission hereby authorizes and approves the settlement of the Action with the Awardees, including the payment by the Commission to Sixt in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00), for Sixt's and the other Awardee's full and final release of the City, the Airport, the Airport Commission and OLSE for all of their claims, as more fully provided in the proposed Settlement Agreement; and, be it further

RESOLVED, that the Airport Director is authorized, in the name and on behalf of the Commission, to submit the proposed Settlement Agreement with Awardees to the Board of Supervisors of the City and County of San Francisco for final approval.

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I hereby certify that the foregoing resolution was adopted by the Airport Commission
at its meeting of **MAR 17 2020**


Secretary