

File No. 200330

Committee Item No. 10

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: May 7, 2020

Board of Supervisors Meeting:

Date: _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER

- Airport Commission Reso No. 20-0061 – March 17, 2020
- _____
- _____
- _____
- _____

Prepared by: John Carroll

Date: May 1, 2020

Prepared by: John Carroll

Date: _____

1 [Settlement of Lawsuit - The Hertz Corporation, Enterprise Rent-A-Car Co. of San Francisco
2 LLC, Avis Budget Car Rental, LLC, and Sixt Rent A Car LLC - \$500,000]

3 **Ordinance authorizing settlement of the lawsuit filed by The Hertz Corporation,**
4 **Enterprise Rent-A-Car Co. of San Francisco LLC, Avis Budget Car Rental, LLC, and Sixt**
5 **Rent A Car LLC, against the City and County of San Francisco for \$500,000 (payment to**
6 **Sixt Rent A Car LLC only); the lawsuit was filed on September 24, 2019, in San Mateo**
7 **Superior Court, Case No. 19-CIV-05663; entitled The Hertz Corporation et al. v. City and**
8 **County of San Francisco et al.; the lawsuit involves a challenge to the City’s**
9 **application of prevailing wage requirements for City-owned off-street parking lots,**
10 **garages, and vehicle storage facilities to leases for the use of the Rental Car Center at**
11 **the San Francisco International Airport, and the Airport Commission’s failure to seek**
12 **approval by the Board of Supervisors of leases that do not require such payment of**
13 **prevailing wages applicable to.**

14
15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby
17 authorizes the City Attorney to settle the action entitled The Hertz Corporation et al. v. City
18 and County of San Francisco et al, San Mateo Superior Court, Case No. 19-CIV-05663, by
19 the payment of \$500,000.00 to Sixt Rent A Car LLC and by the Airport Commission’s
20 agreement to seek approval by the San Francisco Board of Supervisors of leases for the use
21 of the Rental Car Center at San Francisco International Airport previously awarded by the
22 Airport Commission, along with a commitment by the San Francisco Office of Labor
23 Standards Enforcement that it will not seek to apply Section 21C.3 of the San Francisco
24 Administrative Code, which requires payment of prevailing wages at City-owned off-street
25

1 parking lots, garages, and vehicle storage facilities, to these leases. The lawsuit involves a
2 challenge to the Airport Commission's decision not to seek approval by the Board of
3 Supervisors of leases previously awarded by the Airport Commission, after the Office of Labor
4 Standards Enforcement notified the Airport of its determination that Section 21C.3 of the San
5 Francisco Administrative Code applies to leases for the use of the Airport's Rental Car Center.

6 Section 2. The above-named action was filed in San Mateo Superior Court on
7 September 25, 2019, and the following parties were named in the lawsuit: Plaintiffs The Hertz
8 Corporation, Enterprise Rent-A-Car Co. of San Francisco LLC, and Avis Budget Car Rental,
9 LLC; Plaintiff-in-Intervention Sixt Rent A Car LLC; and Defendants City and County of San
10 Francisco, San Francisco Office of Labor Standards Enforcement, San Francisco Airport
11 Commission, San Francisco International Airport, and Fox Rent A Car Inc.

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

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 20-0061

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.

Page 2 of 2

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


Secretary