

AGENDA REPORT

Resolution: Consent to Change in Control in Ownership of Fox Rent A Car, Inc. and Assignment of a *Space/Use Permit for Non-Exclusive Rental Car Concession* and a *License and Concession Agreement* at Oakland International Airport, from the Current Shareholders of Fox Rent A Car, Inc. to Europcar Mobility Group (**Aviation**)

MEETING DATE: 10/24/2019

AMOUNT: \$2,500 (One-Time Processing Fee)
Revenue

PARTIES INVOLVED: **Fox Rent A Car, Inc.**
Los Angeles, California
Joe Knight, Vice President, Business Development

Europcar Mobility Group
Paris, France
Franck Rohard, Secretary General

SUBMITTED BY: Bryant L. Francis C.M., Director of Aviation

APPROVED BY: Danny Wan, Interim Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This action (i) consents to the change in control of ownership and assignment of a *Space/Use Permit for Non-Exclusive Rental Car Concession* and a *License and Concession Agreement* from the current shareholders of Fox Rent A Car, Inc. to Europcar Mobility Group; (ii) waives the requirement of payment of Bonus Value for such consent; and, (iii) authorizes the Executive Director to execute appropriate documentation to effect the transaction.

BACKGROUND

Fox Rent A Car, Inc. ("Fox") has been operating at Oakland International Airport ("OAK") since June 2007 and has been a tenant in good standing. During fiscal year 2018-19, Fox paid \$793,196 in percentage of gross revenues and fixed rentals to the Port under their two current agreements with the Port related to their space and operations at the OAK Rental Car Center and Quick Turn Around Facility ("QTA"): a *Space/Use Permit for Non-Exclusive Rental Car Concession* ("*2017 SUP*") and a *License and Concession Agreement* ("*LCA*") for the QTA.

At its meeting on May 18, 2017, the Board approved a *Space Use Permit for Non-Exclusive Rental Car Concession* and an *Amendment to Space Use Permit for Non-Exclusive Rental Car*

Concession with Fox to operate at the Rental Car Center located at the North Field of OAK (Ordinance No. 4419). At its meeting on April 25, 2019, the Board approved a *Second Amendment to Space Use Permit for Non-Exclusive Rental Car Concession* with Fox in order to amend the Minimum Annual Guarantee for Year 1 and issue a rent credit for Expansion Space (Ordinance No. 4517).

The *2017 SUP* was approved for an initial term of four years, eight months, commencing on November 1, 2017 and expiring on June 30, 2022. The *2017 SUP* includes an option for the Port and Fox to mutually extend the initial five-year term for two additional five (5) year periods. The *2017 SUP* was originally planned to commence on July 1, 2017, but due to construction-related issues, was delayed which shortened Year 1 of the *2017 SUP* from one (1) year to eight (8) months.



At its meeting on October 7, 2008, the Board approved a *License and Concession Agreement* with Fox to operate a QTA facility located at the North Field of OAK. At its meeting on August 1, 2011, the Board approved a *First Supplement Agreement* with Fox in order to add approximately 28,000 square feet of land. At its meeting on December 1, 2011, the Board approved a *Second Supplement Agreement* with Fox in order to add approximately 31,000 square feet of land. At its meeting on April 11, 2013, the Board approved a *Letter Amendment to License and Concession Agreement at Oakland International Airport* with Fox in order to extend the Termination Date to June 30, 2018. At its meeting on June 28, 2018, the Board approved a *Letter Amendment to License and Concession Agreement at Oakland International Airport* with Fox in order to extend the Termination Date to June 30, 2023.



In August 2019, Fox entered into a Stock Purchase Agreement with Europcar Mobility Group (“Europcar”) whereby Europcar will acquire Fox’s outstanding stock (the “Transaction”), and is requesting the Board’s consent to this change in control of ownership and assignment of the *2017 SUP* and the *LCA*. Such consent is a requirement to the completion of the Transaction.

ANALYSIS

Europcar operates in over 140 countries covering Europe, North America, Western Asia, and Africa and has a net worth of \$1 billion USD. Europcar is the leader of car rental in Europe with a 27% percent market share. Europcar intends for Fox to be the platform for Europcar’s future developments in the U.S.

Fox is the fifth largest U.S.-based rental car company and operates over 100 locations in the U.S., including 21 airport locations. Provided the Board grants its consent, the parties plan to close the Transaction prior to end of Calendar Year 2019.

Pursuant to the Term Sheet reviewed by Port staff, the basic terms and conditions of the Transaction are as follows:

- Fox will remain the operating entity under the *2017 SUP* and *LCA* with all senior management and local staffing to remain.

- The stock in Fox is being transferred from the current shareholders to Europcar.

Section 14 of the *2017 SUP* covers “Assignment and Subletting” and details the information and documents that must be provided by Fox to the Port when an assignment is contemplated, including a payment of a processing fee of not less than \$2,500. Fox has provided substantially all of the required documents and paid the processing fee.

Section 14 also requires Fox to pay the Port 50% of any “Bonus Value” for its consent to an assignment. As defined in the *SUP*:

“Bonus Value means all consideration payable by or on behalf of an assignee to [Fox] (including key money, bonus money and any payment in excess of market value for (i) services rendered by [Fox] to or on behalf of assignee or (ii) for assets, fixtures, inventory, equipment, furniture or improvements transferred by [Fox] to or on behalf of an assignee in connection with an assignment).”

In 2017 Fox was one of four successful rental car companies to receive a *2017 SUP*. At that time, all minimum annual guarantees and rentals were set at market rates. Staff is recommending waiving the requirement of payment of Bonus Value which is contractually obligated as a condition to the Port’s consent.

BUDGET & STAFFING

The proposed action constitutes a change in control and an assignment of the *2017 SUP* and the *LCA*, but does not change any of the financial terms of the *2017 SUP* or the *LCA*. Except for the payment of the \$2,500 processing fee, there is no budget impact should the Board provide its consent.

There is no staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The work performed under this contract is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to this work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port’s Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Grow Net Revenues

Goal: Improve Customer Service

LIVING WAGE

Living wage requirements, in accordance with the Port’s Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the “Living Wage Regulations”), apply to this agreement as the tenant employs 21 or more employees working on Port-related work and the tenancy agreement is greater than \$50,000.

SUSTAINABILITY

The tenant has not proposed any development for the leased area. If the tenant decides to develop the site in the future, the tenant must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

CEQA Determination: This project has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

1. Adopt a resolution to (i) consent to the change in control of ownership and assignment of a *Space/Use Permit for Non-Exclusive Rental Car Concession* and a *License and Concession Agreement* from the current shareholders of Fox Rent A Car, Inc., to Europcar Mobility Group; (ii) waive the requirement of payment of Bonus Value for such consent; and, (iii) authorize the Executive Director to execute the appropriate documentation to effect the transaction. This is Staff's recommendation;
2. Do not consent to the change in control of ownership and assignment of a *Space/Use Permit for Non-Exclusive Rental Car Concession* and a *License and Concession Agreement* from Fox Rent A Car, Inc., to Europcar Mobility Group, which would preclude the parties from closing the proposed Transaction;
3. Do not consent to the change in control of ownership and assignment of a *Space/Use Permit for Non-Exclusive Rental Car Concession* and a *License and Concession Agreement* from Fox Rent A Car, Inc., to Europcar Mobility Group, but recommend different terms and conditions and instruct staff to negotiate with the Fox Rent A Car, Inc.

RECOMMENDATION

It is recommended the Board adopt a resolution to (i) consent to the change in control of ownership and assignment of a *Space/Use Permit for Non-Exclusive Rental Car Concession* and a *License and Concession Agreement* from the current shareholders of Fox Rent A Car, Inc., to Europcar Mobility Group; (ii) waive the requirement of payment of Bonus Value for such consent; and, (iii) authorize the Executive Director to execute the appropriate documentation to effect the transaction, subject to the Port Attorney's approval as to form and legality.