

GREATER ORLANDO AVIATION AUTHORITY
REVISED AGENDA

DATE: MAY 19, 2021

DAY: WEDNESDAY

TIME: 2:00 P.M.

PLACE: CARL T. LANGFORD BOARD ROOM, ORLANDO INTERNATIONAL AIRPORT, ONE JEFF FUQUA BOULEVARD

Due to the COVID-19 pandemic, the Centers for Disease Control (CDC) guidelines, and the Greater Orlando Aviation Authority's ongoing focus on safety regarding events and meetings, seating inside the Board Room will be limited to 16 and lobby seating will be limited to 10 seats. Attendance is on a first-come, first-served basis. No standing in the lobby will be permitted. Face coverings are required.

The Aviation Authority is subject to federal mask mandates. Federal law requires wearing a mask at all times in and on the airport property. Failure to comply may result in removal and denial of re-entry. Refusing to wear a mask in or on the airport property is a violation of federal law; individuals may be subject to penalties under federal law.

Individuals who wish to speak at the Board meeting on an item being considered on the agenda will be asked to fill out a speaker request card. Speakers that do not have inside seating will be asked to wait outside the GOAA offices until their name is called. Once done with their comments, they must promptly leave the Board Room. GOAA live streams the meeting over Orange TV and its own You Tube channel (OrlandoAirports) so that the public can monitor the proceedings. The meeting can also be streamed through the GOAA website, www.OrlandoAirports.net.

IT IS JEFF FUQUA DAY!

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. ELECTION OF OFFICER

V. CONSIDERATION OF AVIATION AUTHORITY MINUTES FOR MARCH 17, 2021

VI. RECOGNIZING YEARS OF SERVICE

VII. PRESENTATION(S)

- A. Concessions Program

VIII. CONSENT AGENDA

(These items are considered routine and will be acted upon by the Aviation Authority in one motion. If discussion is requested on an item, it will be considered separately. Items under this section are less than \$325,000 dollars)

- A. Recommendation to Accept Committee Minutes
- B. Recommendation of the Construction Committee to Approve Amendment No. 3 to Addendum No. 26 to the Construction Management at Risk (CM@R) Entity Services for South Terminal C, Phase 1, Agreement with Turner-Kiewit Joint Venture, for Project Bid Package (BP) No. S00149, South Terminal C, Phase 1, Ground Transportation Facility (GTF) - Florida Department of Transportation (FDOT) (Guaranteed Maximum Price (GMP) No. 8-S) at the Orlando International Airport
- C. Recommendation of the Construction Committee to Approve Amendment No. 3 to Addendum No. 7 to the Construction Management at Risk (CM@R) Entity Services for the South Terminal C, Phase 1, Agreement with Turner-Kiewit Joint Venture, for Bid Package (BP) No. S00150, South Terminal C, Phase 1, Parking Facility (Guaranteed Maximum Price (GMP) No. 9-S) at the Orlando International Airport

NOTE: Any person who desires to appeal any decision made at these meetings will need record of the proceedings and for that purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based.

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VIII. CONSENT AGENDA (con't)

- D. Recommendation of the Construction Committee to Approve Amendment No. 2 to Addendum No. 18 to the Construction Management at Risk (CM@R) Entity Services for South Terminal C, Phase 1, Agreement with Turner-Kiewit Joint Venture, for Project Bid Package (BP) No. S00151, South Terminal C, Phase 1, Parking Facility - Phase 2 (GMP No. 9-S.1) at the Orlando International Airport
- E. Recommendation of the Construction Committee to Approve No-Cost Addenda to the Continuing Mechanical-Electrical-Plumbing (MEP) Engineering Consulting Services Agreements at the Orlando International Airport, Orlando Executive Airport, and Other Facilities operated by the Aviation Authority, to Exercise the Second and Final One-Year Renewal Option
- F. Recommendation of the Construction Committee to Approve a No-Cost Addenda to the Continuing Electrical Construction Services Agreements to Exercise the First One-Year Renewal Option
- G. Recommendation to Accept a Public Transportation Grant Agreement (PTGA) for Orlando International Airport from the Florida Department of Transportation (FDOT)
- H. Recommendation to Accept a Public Transportation Grant Agreement (PTGA) for Orlando Executive Airport from the Florida Department of Transportation (FDOT)
- I. Recommendation of the Professional Services Committee to Approve Multiple Amendments to the Information Technology Consulting Services Agreement with Faith Group Consulting, LLC
- J. Recommendation of the Professional Services Committee to Rank Firms Shortlisted for Continuing Transportation Planning Services at the Orlando International Airport and the Orlando Executive Airport
- K. Recommendation to Approve an Amendment to the Lease Agreement, at Colonial Promenade Shopping Center, Orlando Executive Airport, with DMANSR Enterprises, Inc.
- L. Recommendation of the Concessions/Procurement Committee to Approve Amendment No. 3, Increase in Value for Purchasing Agreement PS-542, Financial Consulting Services with Linda George, CPA
- M. Recommendation to Approve a Modification to the Premises and Concept for the South Terminal Complex Food & Beverage Package 3 Concession Awarded to Orlando Hospitality Airport Partners, LLC
- N. Recommendation of the Capital Management Committee to Approve the reallocation of scope to the CIP Health and Safety Program
- O. Recommendation of Reappointments to the Aviation Noise Abatement Committee (ANAC)
- P. Recommendation to Grant an Exception to Organizational Policy 120-15 - Art Program Administration

IX. PROCUREMENTS

(Notification for release of documents for different services at the Aviation Authority in excess of \$500,000)

- A. Request for Proposal for North Terminal Complex Mobile Order and Delivery Application Concession

X. CHIEF EXECUTIVE OFFICER'S REPORT

XI. NEW BUSINESS

(Pursuant to Florida Statute 332.0075, contracts in excess of \$325,000 are listed under this section as separate line items)

- A. Recommendation of the Construction Committee to Approve Amendment No. 11 to Addendum No. 16 to the Construction Management at Risk (CM@R) Entity Services for South Terminal C, Phase 1, Agreement with Hensel Phelps Construction, for Project Bid Package (BP) No. S00168, South Terminal C, Phase 1, Airside Terminal Interiors, Finishes and Specialties (Guaranteed Maximum Price (GMP) No. 6-S.4) at the Orlando International Airport
- B. Recommendation of the Concessions/Procurement Committee to Award Purchasing Invitation for Bids (IFB) 93174-21, Lock Shop Supplies to Accredited Lock Supply Co.
- C. Recommendation of the Concessions/Procurement Committee to Approve Amendment No. 1, First Renewal Option for Purchasing Contract 18-18, Vehicle and Equipment Maintenance Services with First Vehicle Services, Inc. (FVS)
- D. Recommendation to Approve the Amended and Restated Global Agreement, the Chilled Water Service Agreement, the Back-Up Generation Facility Service Agreement, the Access and Use License Agreement and that Certain Ancillary Services Agreement all by and between the Greater Orlando Aviation Authority (Aviation Authority) and the Orlando Utilities Commission (OUC)
- E. Recommendation to Authorize a Mediated Resolution with Hertz Corporation **Subject to Court Approval**

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XII. INFORMATION SECTION

(No action is required on the item(s). Board members should feel free to ask questions on the item(s).)

- A. Notification of Committee Recommendations to the Chief Executive Officer for Approval for May 19, 2021, Aviation Authority Board Meeting
- B. Notification of Amendment No. 3 to PO No. 1005653, Purchase of Security Fencing, Installation and Training with Florida Door Control of Orlando, Inc. for Additional Security Fencing, Installation and Training for H-00299, AOA Security Fence Upgrade at Orlando International Airport
- C. Notification of Release of RFP/RFB/RFQ'S
- D. Notification of the Professional Services Committee's Approval of the Lists of Pre-Qualified Subcontractors/Suppliers for Major Trade Packages for the South Terminal C, Phase 1, Program, at the Orlando International Airport
- E. Construction Progress Report

For individuals who conduct lobbying activities with Aviation Authority employees or Board members, registration with the Aviation Authority is required each year prior to conducting any lobbying activities. A statement of expenditures incurred in connection with those lobbying instances should also be filed prior to April 1 of each year for the preceding year. Lobbying any Aviation Authority Staff who are members of any committee responsible for ranking Proposals, Letters of Interest, Statements of Qualifications or Bids and thereafter forwarding those recommendations to the Board and/or Board Members is prohibited from the time that a Request for Proposals, Request for Letters of Interests, Request for Qualifications or Request for Bids is released to the time that the Board makes an award. The lobbyist shall file a Notice of Lobbying (Form 4) detailing each instance of lobbying to the Aviation Authority within 7 calendar days of such lobbying. Lobbyists will also provide a notice to the Aviation Authority when meeting with the Mayor of the City of Orlando or the Mayor of Orange County at their offices. The policy, forms, and instructions are available on the Aviation Authority's offices web site. Please contact the Chief Administrative Officer with questions at (407) 825-7105.

NEXT SCHEDULED AVIATION AUTHORITY BOARD MEETING IS ON WEDNESDAY, JUNE 16, 2021



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4392

REVISED MEMORANDUM

TO: Members of the Aviation Authority

FROM: Carolyn Fennell, Senior Director, Public Affairs and Community Relations

DATE: May 19, 2021

ITEM DESCRIPTION

Recommendation to Grant an Exception to Organizational Policy 120-15 - Art Program Administration

BACKGROUND

The Greater Orlando Aviation Authority has codified its support of public art at Orlando International Airport and Orlando Executive Airport in Organizational Policy 120-15 - Art Program Administration. Art has long been a part of Orlando International Airport's design, contributing to "The Orlando Experience™." Throughout the North and South Terminal complexes, art has been incorporated to enhance the design concepts and the architectural statement of space while reflecting the transformative and natural environment experiences available in Central Florida. Additionally, the art serves as wayfinding landmarks for passengers.

ISSUES

On May 20, 2020, the Aviation Authority Board recognizing the adverse fiscal impact of the COVID-19 pandemic, reduced the scope of the South Terminal Complex. A portion of the budget reduction included elimination of the Iconic Art Piece project budget.

There is still a need and opportunity for the placement of visual art in the South Terminal Complex, at this time. However, there are not sufficient funds in the project budget to provide for acquisition of the art pieces suitable for the South Terminal Complex. Staff with input of our design professionals and the Aviation Authority's Art Committee have identified two locations that would be suitable for installation of art pieces in the South Terminal Complex. However, Organizational Policy 120-15 limits annual acquisitions from non-project funds to \$50,000. In order to provide for acquisition and installation of two art pieces in the South Terminal Complex, an exception to the policy is requested for to approve up to \$300,000 for acquisition and installation of two art pieces. A call to artists would be issued for art pieces already constructed of specified dimensions. The submissions would be reviewed by the Aviation Authority's Art Committee, which in turn will make a recommendation to the Aviation Authority Board. The intent of this process is to have art pieces installed on or about the opening of the South Terminal Complex next year.

ALTERNATIVES

There are no alternatives under consideration.

FISCAL IMPACT

The fiscal impact of this recommendation is \$300,000 to be funded from previously-budgeted Discretionary and Capital Expenditure Funds.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board resolve to approve an exception to Organizational Policy 120-15 - Art Program Administration to allow the expenditure of up to \$300,000 from previously-budgeted Aviation Authority Discretionary and Capital Expenditure Funds to acquire and install art pieces for the South Terminal Complex.



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4392

REVISED MEMORANDUM

TO: Members of the Aviation Authority
FROM: Phillip N. Brown, AAE, Chief Executive Officer
DATE: May 19, 2021

ITEM DESCRIPTION

Recommendation to Approve the Amended and Restated Global Agreement, the Chilled Water Service Agreement, the Back-Up Generation Facility Service Agreement, the Access and Use License Agreement and that certain Ancillary Services Agreement all by and between the Greater Orlando Aviation Authority (Aviation Authority) and the Orlando Utilities Commission (OUC)

BACKGROUND

On September 22, 2017, the Aviation Authority and the Orlando Utilities Commission (OUC) entered into an Interlocal Agreement, which recognized the strengths of both parties and outlined a partnership allowing the parties to capitalize on their strengths. Pursuant to the Interlocal Agreement, the Authority is to identify projects that could expand the current utility partnership beyond the traditional power and water services.

On October 10, 2018, the Aviation Authority Board approved a Letter of Intent (LOI) between the Aviation Authority and OUC to negotiate a series of agreements to be presented to the Boards of both entities for approval as a comprehensive transaction structure. With authorization from the Aviation Authority Board, Aviation Authority staff, consultants and legal counsel entered into negotiations with OUC, resulting in the Global Agreement, to effectuate the intent of the LOI.

On June 19, 2019, the Aviation Authority Board approved the Global Agreement, which contains the terms and conditions under which OUC and GOAA proceeded to negotiate a series of agreements as described in the LOI based on the terms, conditions, principles and understandings set forth in the Global Agreement (the "Global Agreement"). The Global Agreement was fully executed on August 16, 2019.

Within the South Terminal Complex (STC) the Global Agreement encompasses the following, which are collectively, the Projects:

- OUC Ownership, operation and maintenance of the Back-up Generation Facility,
- OUC Construction, ownership, operation and maintenance of the 12KV Emergency Distribution Services,
- OUC Ownership, operation and maintenance of the Central Energy Plant,
- OUC Ownership, construction, operation and maintenance of a solar energy facility,
- OUC Ownership, operation and maintenance of electrical vehicle charging stations.

The Aviation Authority desires to utilize OUC core competencies to provide the above services allowing the Authority to focus on operating a world class airport.

The Aviation Authority will fund on an interim basis the engineering, procurement and construction of the Back-up Generation Facility and Central Energy Plant. OUC will

design, engineer, and construct the 12KV electrical distribution system and solar energy facilities at MCO. Additionally, OUC will waive the system development charge and connection charges (SD") in the amount of \$4,000,000.00. The current estimate for the STC SDC is \$4,300,000.00. The actual SDC charge will be trued up pursuant to the current Memorandum of Agreement by and between the Authority and OUC after the second year of operation of the STC. In the event the actual SDC exceeds the \$4,000,000.00, the Authority will pay OUC the overage and in the event it is less than \$4,000,000.00, OUC will provide a credit to the Aviation Authority up to \$4,000,000 for use on other Projects at MCO.

Upon Substantial Completion of the STC Phase 1 by the Aviation Authority and OUC, OUC will purchase and assume ownership, as well as risk of loss, of the Back-Up Generation Facility and Central Energy Plant(CEP) capital assets and will begin operating and maintaining all of the Projects for the twenty-year term. The purchase price to be paid by OUC at closing is \$54,983,191.00, inclusive of the Capital Reserve in the amount of \$2,647,000.00. OUC is responsible for all capital improvements subsequent to turn over during the term.

Pursuant to the Global Agreement, the Aviation Authority will make monthly payments to OUC over the next twenty years with two components, a variable maintenance and usage charge and a fixed capacity charge as detailed in the Global Agreement and the Project agreements. The variable usage charge is to be a pass through where OUC charges the Aviation Authority an amount equal to its utility costs based on market rate for the Projects and the variable maintenance charge is based on the cost to maintain the Projects with annual increases based on a percentage of CPI. The Capacity Charge is fixed at a rate of 6.5% and represents the cost of OUC to acquire the assets and the risk of maintaining the facilities over the life of the contract. All payments will be subordinate to all Aviation Authority obligations.

The Fiscal Impact as approved by the Board in June of 2019 is the premium that the Authority is paying to OUC over the term in the amount of \$295,000 per year in 2019 dollars, or approximately \$5,900,000.00 over the twenty-year term.

The following Project agreements have been fully negotiated, approved by the Board and in operation:

Installation, Operation, Maintenance and Access License Agreement (Solar)

Installation, Operation, Maintenance and Access License Agreement was approved by the Aviation Authority Board on August 21, 2019 ("Solar License") and the Aviation Authority and OUC have completed the installation of the solar energy facility anticipated by the Global Agreement and the Solar License.

The License Agreement required OUC to procure and own the solar facilities, with financial contribution of up to five hundred thousand dollars (\$500,000.00) from OUC and with no contribution from the Aviation Authority, unless a mutually agreed change in design is made. OUC shall have the right to install, operate, and maintain the solar facilities, together with the rights and privileges necessary for the full use and enjoyment thereof and in return OUC shall assign the LEED credit associated with the solar facilities to Authority. OUC shall be entitled to all of the solar energy generated at no cost.

The parties acknowledge that OUC is undertaking this work prior to the closing of the Global Agreement. If the Global Agreement fails to close, the Aviation Authority agrees to purchase the solar facilities from OUC at the actual cost, but in no event shall said cost exceed \$500,000.00.

The solar facilities are a floating installation located in pond 22, just north of the Intermodal Transit Facility.

There are no changes sought for this agreement.

12KV Line Installation Agreement

The Aviation Authority Board approved the 12KV Line Installation Agreement on April 15, 2020 ("12KV Agreement").

The Aviation Authority desired to have OUC complete the installation of the electrical cable and transformers related to the 12KV emergency distribution system as it is a core

competency of OUC and OUC was able to complete the work for approximately \$558,776 less than the estimate provided by the CM@R for the STC. This work and the \$5,500,000.00 cost to complete the work were contemplated and approved by the Board both as part of the Global Agreement and STC GMP 14s. The 12KV Agreement further defines the required coordination between OUC and the Authority relating to the schedule, payment, the work to be completed and liquidated damages.

The Agreement requires OUC to install the electrical cable, including splicing, and transformers that connect the Emergency Power Generation plant to the STC. Upon satisfactory completion, the Authority will pay OUC \$5,500,000.00 for the work.

This Agreement is contemplated by the Global Agreement, but other than application of specific terms from the Global Agreement as stated therein, it is meant to be a stand-alone construction contract for the work. In the event this Agreement is terminated pursuant to its terms, there shall be no impact on OUC's obligation to purchase the 12KV System at the value and pursuant to the terms and conditions for such purchase set forth in the Global Agreement. The purchase price for this asset in the Global Agreement is set at \$5,500,000.00, thus at closing on the Global Agreement OUC will reimburse GOAA the cost of the work.

The schedule set forth in the Agreement has OUC beginning work in late April 2020 and completing most of the work by August 2020 with three remaining deliverables to be completed by May 2021. The work is nearing completion as planned.

There are no changes sought to the 12KV Agreement.

ISSUES

Subsequent to approval and execution of the Global Agreement in August of 2019, the OUC and Authority staff have been working diligently to negotiate the balance of the individual project agreements described below. In completing those negotiations, the parties determined it necessary to amend the Global Agreement as well.

Amended and Restated Global Agreement

The proposed Amended and Restated Global Agreement (the "ARGA") includes the following changes:

1. Deletion of the Electrical Vehicle Charging Station portion of the Global Agreement.
2. The addition of the guaranteed thirty (30) minute response time to a primary power outage.
3. The Parties' agreement for the Authority to reimburse the cost of OUC's installation of (British Thermal Unit (BTU) meters at the CEP out of the Capital Reserve at Closing.
4. The Global Agreement contains a Condition Precedent which requires OUC acceptance of liquidated damages provisions in the Project Agreements, which are acceptable to the Authority, in the Authority's sole and absolute discretion. By approving the Chilled Water Service Agreement and the Back-Up Facility Service Agreement, which both contain liquidated damages clauses, described below, the condition precedent to the Authority's obligation to proceed with the transaction is satisfied.

In review of the terms for OUC to provide electric vehicle charging stations in the North Terminal and South Terminal parking garage, Aviation Authority staff and OUC staff mutually agreed that the Aviation Authority can procure, install, and operate electrical vehicle charging stations at a more economical cost, both in purchasing and maintaining the equipment. As such the parties desire to remove all references to the electric vehicle charging station language from the Global Agreement.

The Aviation Authority and OUC, as part of the ongoing coordination as the CEP is constructed, have determined that installation of BTU meters will allow for more efficient operation and more consistent billing over the term of the Agreement. OUC will undertake to install additional piping and the BTU meters at its cost prior to closing. The cost of OUC's installation of BTU meters and required modification of piping at the CEP and will be funded from the maintenance Capital Reserve fund referenced above at Closing, subject to a not to exceed of \$125,000.00. There is no fiscal impact

as the Capital Reserve has already been approved as part of the Global Agreement, however the Capital Reserve will decrease by the amount not to exceed \$125,000.

Chilled Water Services Agreement

Upon Closing pursuant to the Global Agreement, OUC will take ownership of the CEP and OUC will operate and monitor the Central Energy Plant in order to provide chilled water to the STC from on-site 24/7/365 for the term of the ARGA. The on-site operators will be trained in initial troubleshooting of the backup generation facilities. This will provide OUC expertise on airport 24/7/365 to provide immediate initial response.

GOAA shall pay the Capital Charge, Capacity Charge and Consumption Charge as set forth in the Amended and Restated Global Agreement and in the Chilled Water Services Agreement.

PRICES FOR SERVICE:

- A. CAPITAL CHARGE
\$170,000 per month
- B. CAPACITY CHARGE
\$12.50 per Ton x 75% of CPI Adjustment
- C. CONSUMPTION CHARGE

The Consumption Price has two components:

- 1) Basic Consumption Price:
 $\$0.04963 \text{ per Ton Hour} \times (\text{Electric Price Index ("EPI") Adjustment} \times 90\% + \text{CPI Adjustment} \times 10\%)$

The Basic Consumption Price effective October 1, 2019 is \$0.04910 per Ton Hour.

- 2) Adjustable Consumption Price:
 $\$0.02977 \text{ per Ton Hour} \times (\text{EPI Adjustment} \times 90\% + \text{CPI Adjustment} \times 10\%) \times \text{DTR}$

The Adjustable Consumption Price effective October 1, 2019 is \$0.02945 per Ton Hour, assuming a Weighted Average Differential Temperature of 16 degrees Fahrenheit.

If OUC is unable to provide the service in accordance with the provisions of this Agreement, then the Agreement contains liquidated damages which adjust the Aviation Authority's bill by adjusting the Capacity Charge and the Capital Charge based on the amount of time that the service is curtailed or suspended.

The Chilled Water Service Agreement may be terminated by either party in the event of a material breach or in the event of a change in the law as to refrigerant. Upon such termination, the Aviation Authority will repurchase the assets from OUC pursuant to the ARGA.

The terms regarding insurance and indemnity are controlled by the ARGA.

At the end of the term, the Authority has an option to purchase the CEP equipment in accordance with the ARGA.

Back-Up Facility Service Agreement

Upon Closing of the ARGA, OUC will take ownership of the Back-Up Facilities, which include both the Back-Up Generation Facility and the 12KV Distribution System for the term of the ARGA.

OUC agrees to operate, maintain, and monitor the Back-Up Facilities in order to provide emergency back-up power to the Aviation Authority for the STC during the Term of the Back-Up Facility Agreement. OUC agrees that the Back-Up Facilities shall be its primary source of emergency power for the STC and that the Back-Up Facilities have been designed by GOAA's engineers to meet GOAA's needs.

The Aviation Authority is responsible for the Programmable Logic Controls, which control when the generators are required to provide back-up power, the procurement, storage and

delivery of fuel and fuel additives, and all electrical systems on the low side of transformer.

OUC is responsible for the Back-Up Generation Facility, which encompasses all equipment required for electrical generation inclusive of engine, electrical generator, and generator power connections including generator breakers, and auxiliaries to be located in the Emergency Power Generation (EPG) building

OUC is also responsible for the 12KV System which includes emergency back-up distribution facilities, including the conduit systems, transformer equipment pads and all necessary electrical equipment (cable, transformers, splices, terminations, and meters) between the load-side cable connections at the 12KV switchgear in the Emergency Power Generation Building and the low-voltage cable connections at each emergency transformer.

GOAA shall pay the "Capital Charge" and "Capacity Charge", and all other applicable charges and fees for service, subject to a CPI adjustment.

PRICES FOR SERVICE:

- A. CAPITAL CHARGE
\$239,590 per month
- B. CAPACITY CHARGE
\$2.28 x 75% of CPI per installed kW per month.

OUC is obligated to obtain and keep in place all required air permits for the Back-Up Generation Facility.

The Back-Up Facility Service Agreement may be terminated by either party in the event of a material breach or in the event of a change in the law pursuant to the ARGAs. Upon such termination, the Aviation Authority will repurchase the assets from OUC pursuant to the ARGAs.

The Aviation Authority is entering this Agreement with OUC because OUC is the Reliable One and has expertise in operation and maintenance of facilities such as the Back-up Facilities. If the STC experiences a loss of primary power causing a demand for back-up power and a start command is given by the PLC (other than routine testing) and fewer generators start than are needed to meet the STC electrical load demand, OUC shall pay GOAA, as liquidated damages and not a penalty, the amount calculated pursuant to the formula set forth below for each twenty-four (24) hour period the incident continues:

$$(\text{GOAA Total Revenue Previous Year}) / (\text{GOAA Annual Enplanements previous Year}) \times (\text{GOAA budgeted passengers for the STC for the day(s) of Dispatch Incident}) = \text{Liquidated Damages}$$

At the end of the term, the Aviation Authority has an option to purchase the Back-Up Generation Facility equipment in accordance with the ARGAs.

The terms regarding insurance and indemnity are controlled by the ARGAs.

Access and Use License Agreement

Upon Closing, as part of the purchase of the equipment by OUC and OUC's agreement to operate and maintain the CEP and Back-Up Facilities, the Authority shall grant to OUC a non-exclusive license for the access and use of the CEP Building, portions of the EPG Building, the 12KV System, and over the Fiber Optic License Property, hereinafter defined. The Aviation Authority has made available to OUC one conduit run from the intersection of Wetherbee Road and Boggy Creek to the STC for purpose of OUC pulling its own fiber to provide internet service to its equipment in the CEP Building and EPG Building.

The Aviation Authority retains the right to concurrent use of the license area provided the use does not unreasonably interfere with OUC's use and enjoyment of the license.

The Access and Use License Agreement contains terms that allow for the Aviation Authority to relocate any portion of the license area, including improvements and facilities associated therewith provided that such relocation shall be at the Authority's sole cost and expense, be preceded by sufficient notice and performed in accordance with reasonable

specifications agreed to by the Parties. The removal of relocation shall be coordinated in order to mitigate the disruptions to operations of OUC.

The Term of License is equal to the Term of the ARGA.

Ancillary Services Agreement

Upon Closing, the Ancillary Services Agreement will provide the maintenance matrix for the EPG building and the CEP building. The maintenance matrix will determine the portions of the building maintenance and services that each party is responsible for under the ARGA or corresponding Project agreement.

The Aviation Authority is responsible for the maintenance of the CEP Building and the EPG Building, including landscape, hardscape, structural, roof membrane, windows, doors, fire alarm, plumbing systems (not related to the chilled water production and distribution), electrical and lighting systems and Authority fiber to the Authority closet.

The CEP Building utilities will be a pass-through cost to the Aviation Authority pursuant to the Chilled Water Service Agreement. The EPG Building utilities will be an Authority cost as metered under the normal service agreements with OUC.

OUC shall be responsible for janitorial services, including trash removal, and cleaning of the entire CEP Building and the portions the EPG building that it occupies.

The term is equal to the term of the ARGA.

ALTERNATIVES

The Aviation Authority Board could elect to not approve the Amended and Restated Global Agreement, the Chilled Water Service Agreement and the Back-Up Facility Service Agreement and then GOAA and OUC staff would renegotiate the liquidated damages terms to be brought to the Board at a later date for its consideration.

FISCAL IMPACT

There is no fiscal impact from this action as the financial terms remain unchanged from the prior approval by the Board in 2019.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board resolve to: (1) approve the Amended and Restated Global Agreement, the Chilled Water Service Agreement, the Back-Up Generation Facility Service Agreement, the Access and Use License Agreement and that certain Ancillary Services Agreement, all by and between the Greater Orlando Aviation Authority and the Orlando **Utilities** Commission; (2) obtain consent from the City of Orlando as to the grant of Access and Use License Agreement; (3) subject to approval by the Orlando Utilities Commission at its next available meeting; and (4) authorize an Aviation Authority Officer or the Chief Executive Officer to execute the **Amended and Restated** Global Agreement, subject to final review by legal counsel.



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4399

REVISED MEMORANDUM

TO: Members of the Aviation Authority
FROM: Phillip N. Brown, Chief Executive Officer
DATE: May 19, 2021

ITEM DESCRIPTION

Recommendation to Authorize a Mediated Resolution with Hertz Corporation Subject to Court Approval

BACKGROUND

On May 22, 2020, Hertz Corporation and its subsidiary, DTG Corporation (a/k/a Thrifty Car Rental) filed for bankruptcy in Delaware. Pending at that time was an offer of the waiver of certain fees to On-Site Rental Automobile Companies authorized by the Aviation Authority Board on May 20, 2020. The Hertz bankruptcy has proceeded and its emergence from bankruptcy is expected in the near future. As part of its emergence from bankruptcy, Hertz is seeking bankruptcy court authority to assume both the Hertz and DTG contracts.

ISSUES

There is a dispute between Hertz and the Aviation Authority regarding the outstanding amount due under the contracts that must be satisfied in order to assume the contracts in bankruptcy. The key issue in this dispute is whether Hertz took the appropriate and necessary steps to avail itself of the fee waiver opportunity authorized on May 20, 2020.

The dispute has been raised before the bankruptcy court and a mediation of this dispute resulted in a tentative settlement. **The settlement is pending Aviation Authority Board approval and Bankruptcy court approval.**

Following discussions with Hertz and due diligence by staff, the amount in controversy, which GOAA has the right to claim, is approximately \$4.0 million. Negotiations resulted in a tentative settlement of \$2.5 million. This amount is approximately 63% of the amount the Aviation Authority's claim.

Legal Counsel and Staff recommend Board approval. The Aviation Authority and Hertz will frame the legal issues for the court as two mutually exclusive options with no middle ground. That is, either Hertz pays the Aviation Authority approximately \$4.0 million or Hertz pays nothing. Both parties have considered their legal positions and risk management issues. On balance, the Aviation Authority is well-served by entering into this tentative agreement because the claim is settled and minimal additional costs will be incurred to document the settlement.

ALTERNATIVES

The Aviation Authority could seek a bankruptcy court ruling to resolve the issues.

FISCAL IMPACT

The Aviation Authority would receive \$2.5 million; however, it would give up its right to approximately \$1.5 million subject to dispute. On the other hand, the Aviation Authority would eliminate the risk of losing its claim altogether.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board resolve to authorize a tentative mediation settlement of \$2.5 million subject to court approval. Staff and Counsel also request that the Aviation Authority Board authorize the Chief Executive Officer to enter into further agreements to facilitate the settlement, if approved by the court, in a form approved by counsel and the court.