

AN ORDINANCE 2010-06-17-0543

AUTHORIZING A SIX-YEAR LEASE COMMENCING JANUARY 1, 2007 WITH THE HERTZ CORPORATION FOR BUILDING AND GROUND SPACE AT THE SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, the Hertz Corporation has operated a rental car facility at San Antonio International Airport premises on a month-to-month basis since January 1, 2007 while issues related to the reconfiguration of the Hertz facility resulting from the expansion of San Antonio Aerospace were being addressed; and negotiations for a new lease have been completed; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute a lease with the Hertz Corporation for premises at San Antonio International Airport in the same form and content as the document set out in **Attachment I**. The lease is for a term commencing January 1, 2007 and ending January 31, 2012.

SECTION 2. Funds generated by this Ordinance will be deposited as per the table below:

Amount	Fund	General Ledger	Internal Order
\$811,927.96	51001000	4409040	233000000008
-\$200,000.00	51001000	4405955	233000000004
\$228,821.60	51001000	4409016	233000000004
Total Amount: \$840,749.56			

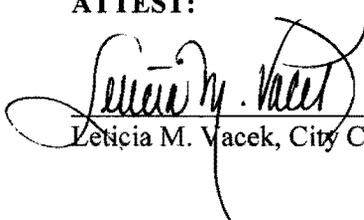
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

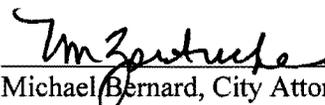
PASSED AND APPROVED this 17th day of June, 2010.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 13

Name:	6, 7, 8, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26A, 26B, 26C, 26D, 26E, 27, 29, 30, 32A, 32B, 32D, 32E, 33, 35, 36, 37, 39, 40, 41, 42						
Date:	06/17/2010						
Time:	02:23:40 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a six-year lease agreement beginning January 1, 2007, with The Hertz Corporation for building and ground space at the San Antonio International Airport located in Council District 9. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

**Item No. 13 - Ordinance Attachment I
06/17/2010 Agenda**

SAN ANTONIO INTERNATIONAL AIRPORT LEASE

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This San Antonio International Airport Lease (hereinafter "Lease") is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting by and through its City Manager, pursuant to Ordinance No. _____, adopted on _____, 2009 ("Lessor" or the "City") and **The Hertz Corporation**, a Delaware corporation duly authorized to do business in Texas, (hereinafter "Lessee"), acting by its authorized officer pursuant to its articles of organization and bylaws, **WITNESSETH:**

WHEREAS, Lessee is a current tenant at the San Antonio International Airport of the real property having the street address of 10219 John Saunders Road, San Antonio, Texas, 78216, under Lease No. 122130 (the "Existing Lease"), and operates therefrom a retail rental car facility; and

WHEREAS, the City has elected, pursuant to its rights under the Existing Lease, to recapture certain portions of the premises necessary for the expansion project of San Antonio Aerospace; the City has also made available to Lessee substitute premises (for the recaptured portions) adjacent to the existing leasehold; and

WHEREAS, the City and Lessee have agreed that Lessee shall be permitted to enter into a new lease agreement for the modified premises, being the real property hereinafter defined as the "Leased Premises" with a physical address at 910 West Cargo Road, San Antonio, Texas, and to be allowed to operate its retail rental car facility from such location pursuant to the terms hereof; and

WHEREAS, due to the "reconfiguration" of the Leased Premises, Lessee has had to contract for and pay the cost of conducting certain renovations and repairs in order to continue operating its business from the reconfigured premises; and

WHEREAS, the City has agreed to provide reimbursement in the form of future rent credits to Lessee for certain costs incurred by Lessee in connection with the Renovations, as more particularly described below; and

WHEREAS, it is in the best interest of the City to enter into a new Lease Agreement in order to effectuate the agreement of the parties as to these matters; **NOW THEREFORE:**

Lessor and Lessee for and in consideration of the mutual covenants and promises herein expressed do hereby agree as follows:

I. DESCRIPTION OF LEASED PREMISES

1.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, for Lessee's exclusive possession and use subject to the terms and conditions hereof, and Lessee does hereby accept from Lessor the following premises, located at 910 West Cargo Road, San

Antonio, Texas together with all improvements now or hereafter situated thereon (collectively referred to as "Leased Premises"):

From January 1, 2007 through October 31, 2008:

299,948 square feet of ground space and a building situated thereupon consisting of 7,907 square feet, more particularly shown on the attached Exhibit 2

From November 1, 2008 and on:

310,179 square feet of ground space and a building situated thereupon consisting of 7,907 square feet, more particularly shown on the attached Exhibit 3

II. RENTAL

2.1 Lessee agrees to pay Lessor as rental as indicated on the table below, monthly in advance (without notice or demand, both of which are expressly waived) for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided.

<u>Period</u> <u>(mm/dd/yyyy)</u>	<u>Leased</u> <u>Premises</u>	<u>Area</u> <u>(sq.ft)</u>	<u>Annual Rate</u> <u>Per Sq. Ft.</u>	<u>Annual</u> <u>Rental</u>	<u>Monthly</u> <u>Rental</u>
<u>01/01/2007 – 10/31/2008</u>	<u>Ground</u>	299,948	\$0.373	\$111,880.60	\$9,323.38
	<u>Building</u>	7,907	\$4.8491	\$38,341.83	\$3,195.15
			TOTAL	\$150,222.43	\$12,518.53
<u>11/01/2008 – 10/31/2009</u>	<u>Ground</u>	310,179	\$0.373	\$115,696.77	\$9,641.40
	<u>Building</u>	7,907	\$4.8491	\$38,341.83	\$3,195.15
			TOTAL	\$154,038.60	\$12,836.55
<u>11/01/2009 – end of term</u>	<u>Ground</u>	310,179	\$0.50	\$155,089.50	\$12,924.13
	<u>Building</u>	7,907	\$4.80	\$37,953.60	\$3,162.80
			TOTAL	\$193,043.10	\$16,086.93

2.2 All rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in equal monthly installments on or before the first day of each calendar month beginning on the Rent Commencement Date, as defined below, and continuing throughout the remainder of the term of this Lease Agreement and any extension(s) hereof.

2.3 All rentals and payments that become due and payable by the Lessee shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas, unless otherwise notified in writing.

2.4 All rentals and payments unpaid for ten (10) days after the date due shall bear an interest from that date until paid. From January 1, 2007 through March 31, 2010 such interest rate shall be ten percent (10%) per annum. From April 1, 2010 through end of term the interest rate shall be eighteen percent (18%) per annum.

2.5 As part of the reconfiguration of premises due to the Lessor's partial recapture of premises in 2008, Lessee incurred approximately \$500,000.00 in costs ("Renovations") to make the premises suitable for its rental car operation. The City has agreed to grant Lessee a rent off-set as provided in Section 2.6 below for the "Renovations". The renovations generally include:

- a. Relocation of guard booths, canopy, and signage.
- b. Relocation of entrance, and bus lanes, including demolition and pouring of concrete for entrance/exit to premises and bus lane, and installation of passive and active tiger teeth.
- c. Additional guard rail, striping, and electrical work.

2.6 Lessor is in receipt of itemized contractors invoices, detailing costs incurred for the Renovations by Lessee (the "Costs"). Lessor agrees to provide Lessee with an off-set not to exceed \$200,000.00 for all such Costs against Lessee's rent payments due to Lessor under this Lease (the "Rent Credits"). The rent payable by Lessee hereunder shall be abated on a monthly basis in an amount not greater than \$13,333.33 per month until such time as all Costs shall have been offset and in accordance with a schedule approved by the Aviation Director or his designee.

III. USE OF LEASED PREMISES

3.1 Lessee shall use the Leased Premises solely for (a) the operation of a commercial rental car facility, and all other uses reasonably incidental thereto, including, without limitation, passenger shuttle service, motor vehicle maintenance and repair, motor vehicle cleaning (exterior and interior), and motor vehicle refueling; (b) general office uses relating to the activities described in Section 3.1(a) above and all other uses reasonably incidental thereto.

IV. LEASE TERM

4.1 The term of this Lease Agreement shall commence on January 1, 2007 and shall continue for a period of six (6) years ending at midnight on December 31, 2012 (unless earlier terminated in accordance with this Lease). The Lease term will be at all times subject to the provisions for early termination herein contained.

~~4.2 Notwithstanding Section 4.1 above, in the event that Lessor constructs a consolidated rental car facility and the facility's date of beneficial occupancy occurs during the term of this Agreement, this Agreement shall automatically terminate on such date of beneficial occupancy. Lessor will keep Lessee informed of any such expected termination date as soon as possible and shall endeavor to give Lessee 180-day advance notice of such lease termination.~~

V. INDEMNIFICATION

5.1 LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY OF SAN ANTONIO ("CITY") and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LESSEE's activities under this LEASE, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this LEASE, all without however, the City waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSEE shall promptly advise the CITY in writing of any claim or demand against the CITY known to LESSEE, and shall see to the investigation and defense of such claim or demand at LESSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.

5.2 It is the EXPRESS INTENT of the parties to this LEASE, that the INDEMNITY provided for in this Article 6, is an INDEMNITY extended by LESSEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article 6 SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. LESSEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

VI. INSURANCE

6.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish original Certificates of Insurance to City, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits,

and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Lessor will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

6.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

6.3 A Lessee's financial integrity is of interest to the City; therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by the City, Lessee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Lessee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation & Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
(2) Commercial General Liability Policy to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000.00 per occurrence or its equivalent with an aggregate of not less than \$5,000,000.00
(A) Premises/Operations	
(B) Independent Contractors	
(C) Personal Injury	
(D) Contractual Liability	
(E) Broad Form Property Damage to include Fire and Legal Liability	
(F) Products/Completed Operations	
(3) Property Insurance for physical damage to any of Lessee's improvements and betterments to the leased Property (excluding the Existing Building and the Existing Building Renovations)	Replacement Cost coverage or eighty percent (80%) of actual cash value Coverage
(4) Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000.00 per occurrence or its equivalent.

- | | | |
|-----|--|-------------------------------------|
| (5) | Plate Glass Coverage for Leased Premises | Replacement Cost Insurance Coverage |
| (6) | Above Ground and/or Storage Tank Liability | \$10,000,000.00 per claim |

6.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Lessee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Lessee shall pay any costs incurred resulting from said changes.

City of San Antonio
Aviation Department
9800 Airport Blvd.
San Antonio, Texas 78216

6.5 Lessee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

6.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Lessee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

6.7 Nothing herein contained shall be construed as limiting in any way the extent to which Lessee may be held responsible for payments of damages to persons or property resulting from Lessee's or its subcontractors' performance of the work covered under this Agreement.

6.8 It is agreed that Lessee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

6.9 All personal property placed in the Leased Premises shall be at the sole risk of Lessee. CITY shall not be liable, and Lessee waives all claims for any damage either to the person or property of Lessee or to other persons: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of CITY or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. Lessee shall save and hold harmless CITY from any claims arising out of damage to Lessee's property or damage to Lessee's business, including subrogation claims by Lessee's insurers.

6.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

VII. PERFORMANCE GUARANTEE

7.1 Lessee shall deliver to the Aviation Director, on or before the execution of this Lease, and shall keep in force throughout the term hereof, either an irrevocable letter of credit in favor of Lessor, drawn upon a bank satisfactory to Lessor, or a surety bond, payable to Lessor. (the "Performance Guaranty"). The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants contained herein during the term hereof, and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company, authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond shall be **NINETY-SEVEN THOUSAND DOLLARS (\$97,000.00)**. Said amount shall be adjusted, as necessary, so that it shall at all times equal at least fifty percent (50%) of the total annual rental (without taking into account any rental offsets pursuant to Section 2.6 hereof), payable by Lessee to Lessor hereunder.

VIII. STANDARD PROVISIONS AND COVENANTS

8.1 Except as amended below, the Standard Provisions and Covenants (Rev. 11/04/08 gs), attached hereto as **Exhibit 1** (the "Standard Provisions") are incorporated herein and made a part hereof for all purposes.

8.2 Standard Provisions 1.3, 2.1 and 2.2 are hereby deleted.

8.3 In the event that the rental adjustment set out in Standard Provision 1.1 is triggered, the Base Rental Rate shall be the rental rate(s) in effect on November 1, 2009 for purposes of implementing the rental adjustment set forth in said provision.

IX. SPECIAL PROVISIONS

9.1 **"As Is" Acceptance.** Lessee understands, recognizes and agrees that Lessee takes the Leased Premises on an "As Is" basis. Lessor is not responsible for any improvements on the

Leased Premises, and Lessor does not warrant any of the ground, buildings, concrete, asphalt, or any other pavement thereupon.

9.2. Certificates of Occupancy. It is the express agreement of the parties that Lessee at Lessee's sole cost and expense will obtain and deliver to the Director any required Certificates of Occupancy for the Leased Premises prior to occupancy of the building to be constructed on the Leased Premises and any required building permits prior to any construction unless otherwise agreed to in writing by the Aviation Director.

EXECUTED THIS THE __ day of _____ 200__.

Lessee: The Hertz Corporation

Lessor: City of San Antonio

By: _____
Signature

By: _____
Sheryl Sculley, City Manager

Printed Name/Title

ATTEST:

City Clerk

ATTEST:

APPROVED AS TO FORM:

City Attorney