



Office of the Chicago City
Clerk



O2012-67

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date: 1/18/2012

Sponsor(s): Zalewski, Michael R. (23)

Type: Ordinance

Title: Amendment of ordinance regarding concession license agreements for consolidated rental car facility at Chicago Midway International Airport

Committee(s) Assignment: Committee on Aviation

AVIATION

WHEREAS, the City of Chicago ("City") owns and operates an airport known as Chicago Midway International Airport ("Airport"); and

WHEREAS, the City may enter into leases and licenses for the use of Airport facilities, including licenses for the privilege of operating rental car concessions at the Airport; and

WHEREAS, the City may place restrictions on and establish fees and charges for the use of Airport facilities; and

WHEREAS, pursuant to this authority, the City has entered into concession license agreements with car rental companies identified in Exhibit A ("Licensees") to the ordinance passed by the City Council on July 27, 2005 entitled "AUTHORIZATION FOR EXECUTION OF CONCESSION LICENSE AGREEMENTS WITH VARIOUS ENTITIES FOR ESTABLISHMENT OF CONSOLIDATED RENTAL CAR FACILITY AT CHICAGO MIDWAY INTERNATIONAL AIRPORT"; and

WHEREAS, the City Council passed a subsequent ordinance on December 12, 2007 entitled "AUTHORIZATION FOR EXECUTION OF AMENDMENTS TO CURRENT RENTAL CAR CONCESSION LICENSE AGREEMENT AT MIDWAY INTERNATIONAL AIRPORT" to amend the concession license agreements authorized by the July 27, 2005 ordinance; and

WHEREAS, when the July 27, 2005 and December 12, 2007 ordinances were passed by the City Council, State of Illinois law specifically prohibited Licensees from charging a Concession Recovery Fee to anyone other than "Business renters" or "Business program sponsors"; and

WHEREAS, State of Illinois law has recently been amended to permit Licensees to charge a Concession Recovery Fee to all customers; and

WHEREAS, in order for Licensees to charge a Concession Recovery Fee to all of its customers, not just "Business renters" or "Business program sponsors", Exhibit C to the ordinance passed by the City Council on July 27, 2005 and Section 2 of the ordinance passed by the City Council on December 12, 2007 shall be amended as follows; and

WHEREAS, this City Council desires to authorize the Commissioner to negotiate and execute certain amendments to the Current License Agreements; now, therefore,

July 27, 2005 Ordinance Amendments

Be It Ordained by the City Council of the City of Chicago:

Exhibit "C".

Chicago Midway International Airport

Rental Car Concession License Agreement Terms.

Licensee.

Each On-Airport Rental Car Company.

Term of Agreement.

The License Agreement will expire at the same time as final maturity of the S.R.B.s, but the City will have the right (but not the obligation) to re-advertise at approximately five (5) year intervals for new on-airport rental car companies. Such re-advertisement may result in an incumbent On-Airport Rental Car Company being outbid and its License Agreement being terminated. Further, the City will have the right (but not the obligation) to adjust the Concession Fee percentage, the definition of Gross Revenues, and other business terms at approximately five (5) year intervals so as to conform to then current industry practices or applicable laws and regulations. A Licensee that does not agree to the adjusted terms will be deemed to have its License Agreement Terminated.

Concession Recovery Fee.

Ten percent (10%) of Gross Revenues. Permitted to the extent authorized by state law.

Definition of Gross Revenues.

Except as provided below, Gross Revenues shall include, but not be limited to, all time and mileage revenues and all revenues from the sale of personal accident insurance, or an insurance of a similar nature, and all other revenues paid or due to Licensee arising out of or in connection with its operation at the Airport. Gross Revenues shall not include: amounts of any federal, state or municipal taxes; amounts paid by customers and separately stated on the face of the Contract as additional charges for waiver by Licensee of Licensee's rights to recover damages from customers for loss of or damage to the Motor Vehicle rented; C.F.C.s collected by Licensee; sums received by the Licensee for damage to Motor Vehicles or the Licensee's property or premises, or for loss, conversion, or abandonment of Motor Vehicles; amounts for credits and refunds to customers for transactions made at the Airport; sums received by reason of Licensee's disposal of personal property (capital assets). Gross Revenues shall not be reduced by volume discounts accounted for after the transaction giving rise to the revenues occurs, unless at the time the discount is accounted for, it is accompanied by documentation identifying each Contract number or other transaction identification to which such adjustment relates. No retroactive, blanket or pro-rated distribution of volume discounts will be permitted to reduce Gross Revenues.

Minimum Annual Guarantee And Letter Of Credit.

The first (1st) year Minimum Annual Guarantee ("M.A.G") was bid by each Licensee during the solicitation process and is set forth in Exhibit A. Except to the extent that the City rebids the M.A.G.'s in connection with a solicitation for new licenses, the M.A.G. for each subsequent year

of the License Agreement will be eighty percent (80%) of the previous year's concession fees payable to the City, but in no event less than the first (1st) year's M.A.G. Licensee will be required to furnish the City with cash security deposit or an irrevocable letter of credit drawn on a local bank in the amount of one-quarter (1/4) of the M.A.G. bid by Licensee. The cash security deposit or letter of credit will be adjusted annually to reflect the then current M.A.G.

C.F.C. Collections.

Licensee must comply with all applicable provisions of the ordinance imposing the C.F.C., including but not limited to its obligations to collect and remit C.F.C.s. This ordinance will be incorporated by reference in the concession license agreement.

Space Locations And Allocation.

The following categories of space in the Consolidated Facility will be initially allocated in proportion to Licensee's M.A.G.. Minimum space allocations are in substitute of and not in addition to a Licensee's space allocation in proportion to its M.A.G.:

- Counters and back office space, to be denominated in linear feet for counters and square footage for back office space. (Minimum allocation is twelve (12) linear feet of counter and a proportionate amount of adjoining back office space.)
- Ready/return parking spaces, to be denominated in square footage. (Minimum allocation is square footage equivalent of thirty-five (35) parking spaces.)
- Vehicle storage spaces, in increments of rows. (Minimum allocation is sufficient space for twenty (20) vehicle queue.)
- Q.T.A. and vehicle staging lanes, in increments of bays, fueling positions and full staging lanes. (Minimum allocation is one (1) bay, one (1) fueling position, and staging lane(s) with sufficient space for a ten (10) vehicle queue; however, the Commissioner may require the On-Airport Rental Car Companies with the three (3) lowest M.A.G.s to share Q.T.A. bays and fueling positions.)

Selection of location will be by order of magnitude of the M.A.G., provided that the Commissioner will have the final right of approval as to location of space in the Consolidated Facility in order to ensure optimal operating efficiency of the Consolidated Facility.

Reallocation of space (subject to foregoing minimums) during the term of the License Agreement will be in accordance with market share, as calculated using reported Gross Revenues, and will occur at the following time intervals:

- counters and back office space -- every five (5) years;
- ready/return parking spaces -- every two (2) years;

- vehicle storage spaces -- every two (2) years;
- Q.T.A. and vehicle staging lanes -- every two (2) years.

Reallocation will generally result in an increase or decrease in the amount of space only, and a change in relative market share will not entitle a Licensee to a relocation of its originally selected space. In the event that the Commissioner does agree to a relocation of space, the Licensee desiring the relocation will be responsible for all costs associated with relocating itself as well as any other affected Licensee.

In the event that any Licensee ceases to operate at the Consolidated Facility during the term of the License Agreement, and the remaining Licensees do not otherwise agree upon an allocation of the vacating Licensee's space, then space and accompanying Facility Rent and Ground Rent for the portion of the Consolidated Facility allocated to the vacating Licensee shall be reallocated among the remaining Licensees by market share.

Disadvantaged Business Enterprises.

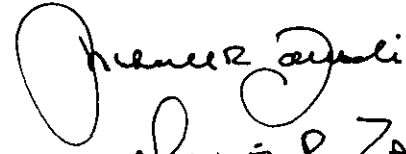
Licensees will be required to comply with the rules and regulations of the United States Department of Transportation and the City regarding participation by D.B.E.s in airport concessions.

December 12, 2007 Ordinance Amendments

Be It Ordained by the City Council of the City of Chicago:

SECTION 2. The Commissioner is hereby authorized to negotiate and execute amendments to the Current License Agreements to authorize the Licensees to impose and collect a Concession Recovery Fee as provided in this section. The Licensee must acknowledge that Concession Fee (as defined in the Current License Agreements, "Concession Fee") payments by the Licensee to the City under the Current License Agreement are for Licensee's privilege to use the Airport facilities and access the Airport market and are not fees imposed by the City upon Licensee's customers. The City does not require, but will not prohibit, a separate statement of and charge for the Concession Fee on customer invoices or rental agreements (such separate charge being referred to in this ordinance and any amendments as the "Concession Recovery Fee"), provided that such Concession Recovery Fee meets all of the following conditions: (i) such Concession Recovery Fee is permitted by the laws of the State of Illinois and all other applicable laws, including without limitation Federal Trade Commission requirements, as such laws and requirements exist on the effective date of this amendment, as well as any commitment to or contractual obligation by Licensee with the Attorney General of the State of Illinois or any group of State Attorneys General; (ii) such Concession Recovery Fee shall be titled "Concession Recovery Fee", "Concession Recoupment Fee" or such other name as is first approved by the City in writing; (iii) the Concession Recovery Fee must be shown on the customer rental car agreement and invoiced with other Licensee charges (ie. "above the tax line"); (iv) the Concession Recovery Fee as stated on the invoice and charged to the customer shall be no more

than eleven and eleven hundredths percent (11.11%) of the Gross Revenues; (v) Licensee shall neither identify, treat, or refer to the Concession Recovery Fee as a tax or levy, nor state or imply that the City is requiring the pass-through or collection of such Concession Recovery Fee; and (vi) Licensee shall not pass through, unbundle or list any fees (other than a Concession Recovery Fee, vehicle license fee payable to the City and/or the State of Illinois, and C.F.C.) as a separate item on its customer invoices, except with the City's prior written approval in each instance.


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