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## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") has been made and entered into by and between San Diego County Regional Airport Authority (the "Authority"), a local government agency, on the one hand, and the San Diego Unified Port District (the "District"), a public corporation, on the other. Authority and the District will be collectively referred to as the "Parties;" and, individually as a "Party."

### RECITALS

WHEREAS, on April 10, 2018, the District's Board of Port Commissioners ("Board") adopted Resolution No. 2018-065 entitled "Resolution Resuming Collection of Previously Adopted User Fee to be Collected by Transportation Vendors Doing Business on Tidelands;"

WHEREAS, on June 8, 2018, Enterprise Rent-A-Car Co. of Los Angeles, LLC and The Hertz Corporation (collectively, "Plaintiffs") filed an action in San Diego Superior Court, Case No. 37-2018-00028276-CU-MC-CTL naming the District and "all persons interested" as defendants, and which asserts a reverse validation claim to invalidate the fee that is the subject of Resolution No. 2018-065 ("User Fee") and related relief in the form of a writ of mandate, declaratory relief, and injunctive relief (hereinafter, the "Lawsuit");

WHEREAS, on June 18, 2018, the San Diego Superior Court entered an order approving the form and service by publication of Plaintiffs' summons ("Summons");

WHEREAS, on July 24, 2018, Authority filed its answer in intervention to the Lawsuit, which also challenged the ability of the District to charge the User Fee;

WHEREAS, on July 26, 2018, the District filed its answer to the Lawsuit;

WHEREAS, July 27, 2018 was the deadline for interested parties to respond to the Summons;

WHEREAS, the District is trustee of the tidelands in the District, including those underlying the San Diego International Airport ("Airport");

WHEREAS, the Parties have reached a mutual understanding regarding the purpose, applicability, and duration of the User Fee; and

WHEREAS, the Parties desire to fully and finally resolve all Authority's disputes, claims, or demands with respect to the User Fee on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the above recitals, the mutual promises and conditions contained in this Agreement, and for other valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

1. **Use of User Fee.** The District agrees that the proceeds of the User Fee for cars rented from facilities located on property owned, leased or controlled by the Authority (collectively " Airport Property") shall be used solely to fund the construction of a 1600-space parking structure (Parking Structure) that will be adjacent to and principally intended to serve the planned Chula Vista convention center located on District tidelands. The Authority will not oppose the District charging the User Fee for cars rented from facilities located on Airport Property until the initial construction and/or financing costs for the Parking Structure construction is paid off , at which time the User Fee will no longer be charged for cars rented from facilities located on Airport Property. The District shall not increase the amount of the User Fee for cars rented from facilities located on Airport Property. The District shall provide the Authority with not less than thirty (30) calendar days advanced written notice and shall meet and confer with Authority before the District imposes any other fees, charges, taxes or other costs or expenses of any sort on any business or activities taking place on Airport Property, including but not limited to the business or activities of any transportation vendors including but not limited to ride sharing companies (e.g., Uber, Lyft), shuttle services, limousine services, or any other such providers or businesses.

2. **Applicability of User Fee.** The District agrees that the User Fee shall be limited to car rental transactions. In particular and without limitation, the User Fee does not apply to taxis, shuttle services, limousine services or ride-sharing companies.

3. **Reservation of Rights.** Notwithstanding any other part of this Agreement, the following are not included in, impaired by, or limited in any way by, the waiver and release of claims below: (i) any right of the Authority to challenge any future user fee imposed by the District, including but not limited to any future fee imposed pursuant to Ordinance 2030, (ii) any right of the District to enforce Resolution 2018-065 consistent with the terms and conditions of this Agreement or Ordinance No. 2030, (iii) any right of the District to impose a future user fee, including and without limitation, under Ordinance No. 2030, (iv) any claims for breach of this Agreement. Subject only to the terms of this Agreement, each Party expressly reserves and does not release or waive any and all claims, actions and causes of action of any sort that each Party may have against the other Party now or in the future.

4. **Dismissal of Answer with Prejudice.** In return for the covenants, terms and conditions set forth herein, upon execution of this Agreement, Authority shall:

- a. File with the San Diego Superior Court a request for dismissal with prejudice of its Answer (the "Dismissal"), within five (5) business days of final execution of this Agreement.
- b. Provide the District with a true and correct copy of the Dismissal; and
- c. Serve Notice of Entry of Dismissal within five days of receipt of the entered Dismissal.
- d. If Authority is required to take other action in the Lawsuit in order to dismiss its Answer or otherwise withdraw its challenge to the User Fee, it agrees to do so within five (5) business days of final execution of this Agreement.

5. **Cooperation.** The Parties to this Agreement agree to cooperate with each other and to execute such additional documents, papers and pleadings and take actions as may be necessary to give effect to this Agreement at each Party's own expense.. Nothing herein shall prohibit a Party from taking any action it is legally

obligated to do. The Parties shall also issue a joint press release announcing the terms of this Agreement after each Party's Board approves the Agreement.

6. **Non-Disparagement.** Regardless of the outcome of the Lawsuit, neither Party shall disparage or cause a third party to disparage the other Party related to the Lawsuit or the User Fee. Nothing herein shall prohibit a Party from taking any action or failing to act if it is legally obligated to do so or not do so. Furthermore, nothing herein shall prohibit a Party from asserting in good faith that the other is in breach of this Agreement.

7. **Attorneys' Fees and Costs.** The Parties agree to bear their own attorneys' fees and costs, and that no attorneys' fees or costs are owed between them, in connection with the Lawsuit or the negotiation, preparation and execution of this Agreement.

8. **Effective Date.** The "Effective Date" of this Agreement is the date the latter of the two Parties to do so signs the Agreement.

9. **No Admissions.** The Parties acknowledge and agree that nothing herein contained, and no act of any Party, shall be treated in any way as a concession or an admission of liability on behalf of such Party as to any claim, allegation, contention or cause of action in any court or other proceeding.

10. **Negotiated Agreement.** The Parties acknowledge that the terms of this Agreement were negotiated and drafted by the Parties with the assistance of counsel. Accordingly, any rule of construction to the effect that any ambiguity is to be construed against the drafting party shall not apply to interpretation of this Agreement.

11. **Titles and Captions.** Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or any provision within it.

12. **Entire Agreement.** Each Party warrants for the benefit of all other Parties that no promise, inducement, or agreement not expressed herein has been made to it in connection with this Agreement, and that this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and

supersedes all prior agreements and understandings of the Parties relating to the subject matter hereof. It is expressly understood and agreed this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by an executed written agreement signed by the Party to be bound by the amendment. The Parties hereto agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

13. **Authority Regulated.** It is understood and agreed that the Authority is subject to various legal and regulatory constraints, including without limitation federal airport law and Federal Aviation Administration (FAA) regulations. The Airport Authority makes no representation or warranty as to the legality of the User Fee or whether any or all of the provisions of this Agreement comply with or are contrary to any such legal or regulatory constraints. The Authority may cooperate with, to the extent required by law, and shall not be obligated to challenge, any regulatory or legal action regarding the User Fee.

14. **Severability.** If for any reason any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to any existing or future law to any extent, such provision will be enforced to the extent permissible under the law and such invalidity, unenforceability or illegality will not impair the operation of or otherwise affect those portions of this Agreement that are valid, enforceable, and legal.

15. **Binding Effect.** This Agreement is and will be binding upon and will inure to the benefit of the Parties hereto and their respective representatives, agents, successors, affiliates, predecessors, and assigns.

16. **Applicable Law.** This Agreement shall be governed by, construed and enforced in accord with the laws of the State of California.

17. **Jurisdiction to Enforce.** This Agreement may be enforced by the San Diego Superior Court pursuant to California Code of Civil Procedure Section 664.6. The Parties agree to request the Court to retain jurisdiction to enforce this Agreement, notwithstanding the Authority's withdrawal from the Lawsuit or any dismissal of or judgment in the Lawsuit.

18. **Specific Enforcement.** The Parties agree that the Superior Court shall issue injunctive or other relief to specifically enforce this Agreement as damages would not be an adequate remedy to enforce those provisions.

19. **Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The Parties further agree that this Agreement may be transmitted by facsimile or other electronic means and that the reproduction of signatures by facsimile or other electronic means will be treated as binding as if originals.

20. **Board Approval.** This Agreement must be approved by the District's Board of Port Commissioners and by the Authority's Board of Directors.

21. **Authority to Execute Agreement.** Each person executing this Agreement warrants that the signing Party is the sole owner of any rights and obligations referred to and released herein, has not assigned or otherwise transferred any interest in any such rights or obligations, and is authorized to execute this Agreement on behalf of the Party for whom he or she is acting.

### SIGNATURES ON FOLLOWING PAGE ###

SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY

DATED: August \_\_, 2018

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address for Notice:

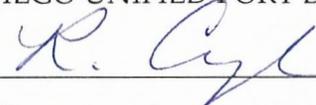
Amy Gonzalez, General Counsel  
San Diego Regional Airport Authority  
3225 North Harbor Drive  
San Diego, CA 92101

APPROVED AS TO FORM AND  
LEGALITY: GENERAL COUNSEL

By \_\_\_\_\_  
Deputy

SAN DIEGO UNIFIED PORT DISTRICT

DATED: August 27, 2018

By: 

Its: President & CEO

Address for Notice:

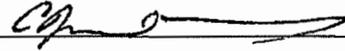
Thomas A. Russell, General Counsel  
Port of San Diego  
3165 Pacific Highway  
San Diego, CA 92101

APPROVED AS TO FORM AND  
LEGALITY: GENERAL COUNSEL

By   
Deputy

SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY

DATED: August \_\_, 2018

By: 

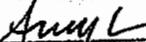
Its: Chairman of the Board

Address for Notice:

Amy Gonzalez, General Counsel  
San Diego Regional Airport Authority  
3225 North Harbor Drive  
San Diego, CA 92101

APPROVED AS TO FORM AND  
LEGALITY: GENERAL COUNSEL

APPROVED AS TO FORM

AUG 27 2018  
  
Amy Gonzalez, General Counsel  
SDCRAA

By \_\_\_\_\_

Deputy

SAN DIEGO UNIFIED PORT DISTRICT

DATED: August \_\_, 2018

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address for Notice:

Thomas A. Russell, General Counsel  
Port of San Diego  
3165 Pacific Highway  
San Diego, CA 92101

APPROVED AS TO FORM AND  
LEGALITY: GENERAL COUNSEL

By \_\_\_\_\_

Deputy