

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5 and 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

**PARKING AUTHORITY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute an agreement assigning the management agreement for the Civic Center, Lombard Street, Mission Bartlett, Performing Arts, 16th & Hoff and Pierce Street garages and the 7th & Harrison Lot (Group A) to Imperial Parking (U.S.), LLC from Pacific Park Management.

SUMMARY:

- On December 6, 2011, the San Francisco Municipal Transportation Agency Board of Directors (SFMTAB) and the San Francisco Parking Authority Commission (SFPAC) approved resolutions that authorized the Director of Transportation to execute a management agreement with Pacific Park Management (PPM) for operation and management of the Group A parking facilities.
- The management agreement between the SFMTA and PPM has an initial term extending from February 1, 2012 through January 31, 2018.
- On May 9, 2014, PPM and Imperial Parking, LLC (Imperial) entered into an asset purchase agreement in which PPM agreed to sell, and Imperial agreed to purchase, PPM's agreement with the SFMTA for operation and management of the Group A facilities.
- Pursuant to terms of the management agreement, an assignment of the management agreement requires SFMTAB and SFPAC approvals.

ENCLOSURES:

1. SFMTAB Resolution
2. SFPAC Resolution
3. Assignment and Assumption Agreement

APPROVALS:

DATE

DIRECTOR _____ June 12, 2014

SECRETARY _____ June 12, 2014

ASSIGNED SFMTAB CALENDAR DATE: June 24, 2014

PURPOSE

This report requests that the San Francisco Municipal Transportation Agency Board of Directors (SFMTAB) and the San Francisco Parking Authority Commission (SFPAC) adopt the attached resolutions authorizing the Director of Transportation to execute an agreement, assigning the management agreement for the Group A parking facilities from Pacific Park Management to Imperial Parking (U.S.), LLC.

GOAL

This action is consistent with the SFMTA FY2013-2018 Strategic Plan.

- Goal 1: Create a safer transportation experience for everyone
 - 1.3 – Improve the safety of the transportation system.

- Goal 2: Make transit, walking, bicycling, taxi, ridesharing and car sharing the preferred means of travel
 - 2.1 – Improve customer service and communications.
 - 2.3 – Increase use of all non-private auto modes.
 - 2.4 – Improve parking utilization and manage parking demand.

- Goal 3: Improve the environment and quality of life in San Francisco
 - 3.1 – Reduce the Agency’s and the transportation system’s resource consumption, emissions, waste and noise.
 - 3.2 – Increase the transportation system’s positive impact to the economy.
 - 3.3 – Allocate capital resources effectively.
 - 3.4 – Deliver services efficiently.

DESCRIPTION

In December 2011, as a result of an open and competitive Request For Proposals (RFP) process, the SFMTA entered into agreements with three private parking operators for the management of 13 parking facilities. These operators include Pacific Park Management (Group A – six facilities), Imperial Parking (Group B – two facilities) and LAZ Parking (Group C – five facilities). The agreements are effective for six years, from February 1, 2012 through January 31, 2018.

Effective July 1, 2012, the Pierce Street Garage, a three-level metered garage at 3252 Pierce Street in the Marina District, was added to Group A pursuant to an amendment to the original management agreement with Pacific Park Management (PPM).

On May 9, 2014, PPM and Imperial Parking (U.S.) (Imperial), LLC, entered into an asset purchase agreement in which PPM agreed to sell, and Imperial agreed to purchase, the agreement for operation and management of the Group A facilities.

Imperial has very effectively managed the day-to-day operations of several SFMTA and Parking Authority facilities over the last decade. Imperial will continue to employ the existing staff at all seven facilities. Additionally, PPM will assist in the transition and provide necessary support

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over the next year to assure that these facilities continue to operate effectively. Staff does not anticipate any negative impact as a result of this assignment.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

An alternative was to request PPM to exclude the Group A management agreement from its sale of assets to Imperial. Given Imperial's good performance in managing several SFMTA garages over the last decade, staff expects Imperial will perform well in managing the Group A facilities. Therefore, it is not warranted to object to the assignment of the Group A agreement to Imperial. Not supporting the assignment could impede the implementation of the asset purchase agreement between PPM and Imperial, which could potentially affect the efficient operation and management of the Group A facilities.

FUNDING IMPACT

Approval of this resolution will have no fiscal impact on the FY2015 Operating Budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required.

RECOMMENDATION

Staff recommends that the SFMTAB and the SFPAC adopt the attached resolutions supporting the assignment of the management agreement for the Group A facilities from PPM to Imperial.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On December 6, 2011, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors authorized the Director of Transportation to execute an agreement with Pacific Park Management (PPM) for operation and management of the Civic Center, Lombard Street, Mission Bartlett, Performing Arts and 16th & Hoff garages and the 7th & Harrison Lot (Group A); and

WHEREAS, A management agreement was subsequently executed between the SFMTA, Parking Authority of the City and County of San Francisco and PPM for operation and management of the Group A facilities for the term of February 1, 2012 through January 31, 2018; and

WHEREAS, A first amendment to the management agreement effective July 1, 2012, added the Pierce Street Garage to the list of Group A facilities; and

WHEREAS, PPM and Imperial Parking (U.S.) (Imperial), LLC, on May 9, 2014, entered into an asset purchase agreement wherein PPM agreed to sell, and Imperial agreed to purchase, the agreement for operation and management of the Group A facilities; and

WHEREAS, Pursuant to terms of the management agreement, an assignment of the management agreement requires SFMTA Board of Directors approval; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute an agreement assigning the management agreement for the Civic Center, Lombard Street, Mission Bartlett, Performing Arts, 16th & Hoff, and Pierce Street garages and the 7th & Harrison Lot (Group A) to Imperial Parking (U.S.), LLC from Pacific Park Management.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 24, 2014.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SAN FRANCISCO
PARKING AUTHORITY COMMISSION

RESOLUTION No. _____

WHEREAS, On December 6, 2011, the San Francisco Parking Authority Commission authorized the Director of Transportation to execute an agreement with Pacific Park Management (PPM) for operation and management of the Civic Center, Lombard Street, Mission Bartlett, Performing Arts and 16th & Hoff garages and the 7th & Harrison Lot (Group A); and

WHEREAS, A management agreement was subsequently executed between the San Francisco Municipal Transportation Agency, Parking Authority of the City and County of San Francisco and PPM for operation and management of the Group A facilities for the term of February 1, 2012 through January 31, 2018; and

WHEREAS, A first amendment to the management agreement effective July 1, 2012, added the Pierce Street Garage to the list of Group A facilities; and

WHEREAS, PPM and Imperial Parking (U.S.) (Imperial), LLC, on May 9, 2014, entered into an asset purchase agreement wherein PPM agreed to sell, and Imperial agreed to purchase, the agreement for operation and management of the Group A facilities; and

WHEREAS, Pursuant to terms of the management agreement, an assignment of the management agreement requires SFPAC approval; now, therefore, be it

RESOLVED, That the San Francisco Parking Authority Commission authorizes the Director of Transportation to execute an agreement assigning the management agreement for the Civic Center, Lombard Street, Mission Bartlett, Performing Arts, 16th & Hoff and Pierce Street garages and the 7th & Harrison Lot (Group A) to Imperial Parking (U.S.), LLC from Pacific Park Management.

I hereby certify that the foregoing resolution was adopted by the San Francisco Parking Authority Commission at its meeting of June 24, 2014.

Secretary to the Commission
San Francisco Parking Authority Commission

**CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT (this “Assignment”) is made as of July 1, 2014, in San Francisco, California, by and between Pacific Park Management, Inc., a California corporation (“Assignor”) and Imperial Parking (U.S.), LLC, a Delaware limited liability company (“Assignee”).

RECITALS

WHEREAS, Assignor is a party to the Agreement (as defined below); and

WHEREAS, Assignor desires to assign the Agreement, and Assignee desires to assume the Agreement, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** The following definitions shall apply to this Assignment:

(a) **Agreement.** The term “Agreement” shall mean the Agreement dated December 12, 2011, between Assignor and the San Francisco Municipal Transportation Agency (“SFMTA”). The term “Agreement” shall include any amendments or modifications set forth in Appendix A attached hereto and made a part hereof.

(b) **Effective Date.** “Effective Date” shall mean the date of this Amendment.

(c) **Other Terms.** Terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreement.

2. **Assignment.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor’s right, title and interest in and to the Agreement and all of Assignor’s duties and obligations thereunder, to the extent arising on or after the Effective Date.

3. **Assumption.** Assignee hereby accepts the assignment transfer and conveyance set forth in Section 2 and agrees to perform all of Assignor’s duties and obligations under the Agreement, to the extent arising on or after the Effective Date.

4. **Mutual Indemnities**

(a) **Assignor.** Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys’ fees) arising out of (a) any failure of Assignor to convey its interest pursuant to Section 2, free and clear of all third-party liens, claims or encumbrances or (b) any breach by Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

(b) **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

5. **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

6. **Headings.** All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

7. **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.

8. **Further Assurances.** From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment or as may be required by SFMTA.

9. **Severability.** Should the application of any provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Assignment shall not be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and SFMTA.

10. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as set forth in Section 12, nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than SFMTA and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

11. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via email. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or SFMTA may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

Pacific Park Management, Inc.
Sam Tadesse, CEO & Founder
465 California St., Suite 473
San Francisco, CA 94101
Email: stadesse@pacificparkonline.com

If to Assignee:

Imperial Parking (U.S.), LLC
Joe Braucher, General Manager
401 Terry Francois, Suite 110
San Francisco, CA 94158
Email: jbraucher@impark.com

With a copy to:

Imperial Parking
Attn: General Counsel
601 W. Cordova Street, Suite 300
Vancouver, BC Canada V6B 1G1

If to SFMTA:

Amit M. Kothari, P.E.
Director of Parking
San Francisco Municipal Transportation Agency
1 So. Van Ness Ave., 7th Floor
San Francisco, CA 94103
Email: amit.kothari@sfmta.com

12. **Consent of SFMTA; No Release of Assignor; Waivers.** Each of Assignor and Assignee acknowledges that the prior written consent of SFMTA to this Assignment is required under the terms of the Agreement. SFMTA shall be a third party beneficiary of this Assignment (other than Section 4) and shall have the right to enforce this Assignment. Neither this Assignment nor the consent of SFMTA set forth below shall release Assignor in whole or in part from any of its obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor has entered into this Assignment and obtained such consent of SFMTA based solely upon Assignor's independent investigation of Assignee's financial condition and ability to perform under the Agreement, and Assignor assumes full responsibility for obtaining any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor waives any right to require SFMTA to (a) proceed against any person or entity including Assignee, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreement, or (c) pursue any other remedy in SFMTA's power. Assignor waives any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Assignor shall not have and hereby waives any right of subrogation to any of the rights of SFMTA against Assignee or any other person and Assignor waives any right to enforce any remedy of Assignor against Assignee (including, without limitation, Section 4(b)) or against any other person unless and until all obligations to SFMTA under the Agreement and this Assignment have been paid and satisfied in full. Assignor waives any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by SFMTA with respect to the obligations under the Agreement. Assignor authorizes SFMTA, without notice or demand and without affecting Assignor's liability hereunder or under the Agreement to: (i) renew, modify or extend the time for performance of any obligation under the Agreement; (ii) take and hold security for the payment of any obligation under the Agreement and exchange, enforce, waive and release such security; and (iii) release or consent to an assignment by Assignee of all or any part of the Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

ASSIGNOR

ASSIGNEE

PACIFIC PARK MANAGEMENT, INC.
CITY VENDOR NUMBER: 58079

IMPERIAL PARKING (U.S.), LLC
CITY VENDOR NUMBER: 58607

Sam Tadesse
CEO & Founder

Allan Copping
Chief Executive Officer

Date

Date

Subject to Section 12 of this Assignment, SFMTA hereby consents to the assignment and assumption described in Sections 2 and 3 of this Assignment.

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY**

Recommended:

By: _____
Amit M. Kothari, Director

Date

APPROVED:

By: _____
Edward Reiskin
Director of Transportation
San Francisco Municipal
Transportation Agency and authorized
Agent for the Parking Authority of the
City and County of San Francisco

Date

Approved as to Form:
Dennis H. Herrera, City Attorney

By: _____
David A. Greenburg
Deputy City Attorney

Date

San Francisco Municipal Transportation Agency
Board of Directors

Parking Authority of the City and County of San
Francisco Parking Authority Commission

Resolution No. _____

Resolution No. _____

Adopted: _____

Adopted: _____

Attest: _____
Secretary, SFMTA Board

Attest: _____
Secretary, Parking Authority
Commission

APPENDIX A

Amendment

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103**

First Amendment to Agreement for Operation and Management of Off-Street Parking Facilities, Group A, Contract No. SFMTA-2011/12-09

THIS AMENDMENT (this "Amendment") is effective as of July 1, 2012, in San Francisco, California, by and between Pacific Park Management ("Contractor"), and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, hereinafter referred to as "SFMTA," the Parking Authority of the City and County of San Francisco ("Parking Authority"), a public body corporate and politic, acting by and through the SFMTA (collectively, "City"), acting by and through its Municipal Transportation Agency ("SFMTA").

RECITALS

- A. City and Contractor have entered into the Agreement (as defined below).
- B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to add security and maintenance services at an additional facility to the services being performed under the Agreement, as allowed by the Agreement Section 4.5 "Addition or Deletion of Facilities."

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean the Agreement dated December 12, 2011, between Contractor and City.

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

a. Section 4.7. Section 4.7 is added to the Agreement to read as follows:

4.7 Services at Pierce Street Garage. Manager agrees to provide the maintenance and security services set forth in Exhibit F at the Pierce Street Garage. In the event that Manager and City agree that Manager shall perform additional services at the Pierce Street Garage, the Management Fee shall not be increased except as provided in Section 6.1(1).

b. **Section 6.1.** Section 6.1, Management Fee and Reimbursement of Operating Expenses, is amended in its entirety to read as follows:

6.1 Management Fee and Reimbursement of Operating Expenses.

(1) Manager shall be paid a monthly Management Fee of Eight Thousand Three Hundred Forty-Eight Dollars (\$8,348) for services performed by it under this Agreement, including any services performed at the Pierce Street Garage under Section 4.7 and Exhibit F to this Agreement. Beginning the first month of contract years four (4), and seven (7) if the term is extended, the monthly Management Fee will be increased by five percent (5%). Provided Manager is not in default under this Agreement, or an event has not occurred that, with the giving of notice or the passage of time, would constitute a default, the Management Fee shall be due and payable under the requisition procedure required by **Section 6.8 of the Facility Regulations**, provided the SFMTA receives the Monthly Report required by **Section 6.7 of the Facility Regulations**. Should the Commencement Date or the Expiration Date occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.

(2) Manager shall be entitled to reimbursement from the SFMTA for all Operating Expenses properly incurred and paid by Manager in the performance of Manager's duties hereunder and as specified in the approved Budget in accordance with the Facility Regulations. Such reimbursement shall be subject to Manager's compliance with the submittal procedures set forth in the Facility Regulations and shall be subject to all City approvals required under this Agreement. The SFMTA's obligation to reimburse Manager for wages, salaries or benefits is limited to reimbursement for time that employees of Manager are actually working at the Facilities for the benefit of the SFMTA. Manager shall not be reimbursed for overhead expenses that have not been specifically set out as reimbursable expenses. All costs not identified as reimbursable expenses shall be borne by Manager.

(3) The City shall make all payments to Manager at the address specified in **Section 17** (Notice Requirements).

c. **Exhibit A.** Exhibit A of the Agreement is amended to add the following:

“Pierce Street Garage:

Pierce Street Garage is a three-level, above-ground, 116-space metered parking facility with an entrance at 3252 Pierce Street, between Lombard and Chestnut streets, in the Marina District of San Francisco. The garage has dimensions of approximately 203 feet in the north-south direction (along Pierce Street) and approximately 138 feet in the east-west direction (parallel to Lombard Street).

Also known as Lots 9 through 13, Assessor's Block 490.”

d. **Exhibit C.** Exhibit C of the Agreement is amended to add the following:

“Pierce Street Garage:

Monday – Saturday: 9:00 a.m. – 10:00 p.m.”

e. **Exhibit F.** The Agreement is amended by adding the attached Exhibit F, "Scope of Services – Pierce Street Garage," to the Agreement.

3. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment.

<p>SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY</p> <p>Recommended:</p> <p>By: _____ Amit M. Kothari, Director Off-Street Parking Division</p> <p>APPROVED:</p> <p>By: _____ Edward Reiskin Director of Transportation San Francisco Municipal Transportation Agency and authorized agent for the Parking Authority of the City and County of San Francisco</p> <p>Approved as to Form: Dennis H. Herrera, City Attorney</p> <p>By: _____ David A. Greenburg Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>APPROVED:</p> <p>By: _____ Sam Tadesse, CEO & Founder Pacific Park Management</p> <p>City vendor number: 58079</p>
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