File No. 121138

Committee Item No. 13
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date** 12/05/2012

Board of Supervisors Meeting **Date** _____

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Completed by: Victor Young **Date** November 30, 2012
Completed by: Victor Young **Date** _____

[Lease Termination Agreement- Downtown Parking Corporation - 833 Mission Street]

Resolution authorizing the termination of the lease agreement between the City and County of San Francisco and the Downtown Parking Corporation and authorizing the Director of Transportation to execute a Lease Termination Agreement that will expire on December 31, 2012.

WHEREAS, The City and County of San Francisco (City), a municipal corporation, owns the Fifth & Mission Garage (Garage) located at 833 Mission Street, San Francisco, California; and

WHEREAS, The City of San Francisco Downtown Parking Corporation (Corporation), a non-profit 501(c)2 corporation, was formed in 1955 for the sole purpose of assisting the City in designing and constructing the Garage by financing the cost through the sale of bonds of the Corporation secured by a lease of the Garage from the City to the Corporation; and

WHEREAS, The City leased the Garage to the Corporation under a lease agreement dated October 28, 1957, which lease was subsequently replaced with another lease agreement dated April 1, 1992, and recorded on February 18, 1993 (Lease); and

WHEREAS, On or about June 15, 2002, the Corporation issued certain parking revenue bonds (Bonds) in the amount of $13,550,000 to refinance existing bonds issued by the Corporation to finance the construction and maintenance of the premises, and the indenture documents for said Bonds (Indenture) were recorded on July 16, 2002; and

WHEREAS, Section 2 of the Lease provides that the Lease shall terminate upon the Corporation's payment of the debt incurred under the Bonds, and Article X of the Indenture sets out the requirements for the discharge and defeasance (payment) of the Bonds; and

WHEREAS, In July 2012, the City, by and through the San Francisco Municipal Transportation Agency (SFMTA), paid the remaining balance owing on the Bonds as part of and as material requirement of issuing new revenue bonds that are secured in part by revenues of the premises; and

WHEREAS, Because the Bonds issued by the Corporation have been fully paid, the Corporation's Board of Directors therefore wishes to be relieved of its obligations and liability as the leaseholder of the Garage; and

WHEREAS, The Corporation Board of Directors unanimously approved the attached Lease Termination Agreement at its Board meeting on October 31, 2012; and

WHEREAS, Upon termination of the Lease, the SFMTA will assume existing agreements with contractors, vendors and service providers deemed necessary for continued operation of the Garage; and

WHEREAS, The termination of the Lease will result in complete oversight of the Garage under the SFMTA, eliminating redundancy and Corporation oversight expenses; now, therefore, be it

RESOLVED, That the Director of Transportation of the SFMTA is hereby authorized, on behalf of the City, to execute the Lease Termination Agreement and to take all actions under the Lease Termination Agreement; and, be it

FURTHER RESOLVED, That all actions heretofore taken by the officers of the City with respect to the Lease Termination Agreement are hereby approved, confirmed and ratified; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Transportation of the SFMTA to enter into any amendments or modifications to the Lease Termination Agreement (including without limitation, the exhibits) that the Director of Transportation determines, in consultation with the City Attorney, are in the best interest of

the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Lease Termination Agreement or this Resolution, and are in compliance with all applicable laws, including the City's Charter.

Item 13 File 12-1138	Department: San Francisco Municipal Transportation Agency

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the termination of the lease agreement between the City and County of San Francisco and the Downtown Parking Corporation for the Fifth & Mission Garage and would authorize the Director of Transportation to execute a Lease Termination Agreement effective December 31, 2012.

Key Points

- The Downtown Parking Corporation is a non-profit 501(c) 2 entity, formed in 1955 for the sole purpose of assisting the City by financing the costs of the Fifth & Mission Garage through the sale of bonds. In July 2012, the Downtown Parking Corporation's bonds were fully paid off from the proceeds of the issuance of Revenue Bonds issued by the SFMTA. Since the bonds issued by the Downtown Parking Corporation have been fully paid, the Corporation's Board of Directors wants to terminate the lease with the City which was previously entered into between the City and the Downtown Parking Corporation to enable the Corporation to manage the day-to-day operations of the Garage.

- According to Mr. Michael Robertson, SFMTA's Deputy Director of Off-Street Parking, the SFMTA will assume all agreements that the Downtown Parking Corporation has entered into which includes 16 vendor agreements for services that support the operation and maintenance of the Garage and 17 corporate subtenant lease agreements for retail and commercial stores that occupy the ground floor.

- The Downtown Parking Corporation will transfer the title and control of all monies, deposits, and accounts of the Corporation to the SFMTA within five business days of December 31, 2012 and will provide an audit report and full accounting of all revenues, accounts, equipment, outstanding debts, and assets within 45 days of December 31, 2012. The SFMTA will review the audit and accounting and will provide comments to the Downtown Parking Corporation within 30 days. Subsequent to any corrective actions which the SFMTA states that the Downtown Parking Corporation must make, the SFMTA will hold the Downtown Parking Corporation, its Board of Directors, and officers harmless.

Fiscal Impact

- According to Mr. Robertson, the termination of the lease with the Downtown Parking Corporation will save the City an estimated $203,920 annually by discontinuing redundant corporate oversight services, including the costs for a corporate manager, corporate accounting staff, and attorney fees, as shown in Table 1 below. The Downtown Parking Corporation's Manager, Mr. John Brown, will be retained temporarily to perform administrative services including correcting the audit and accounting reports, transferring accounts, books and records from the Corporation to the City and will be compensated on an hourly basis. Mr. Robertson noted that Mr. Brown's services will be limited and will conclude upon the final close-out audit which is planned for March 31, 2013.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with City Charter Section 9.118(c), any lease exceeding ten years and/or having anticipated revenue of $1,000,000 or greater is subject to the Board of Supervisors approval.

Background

The Fifth & Mission Garage (Garage) is a City-owned garage under the jurisdiction of the San Francisco Municipal Transportation Agency (SFMTA), located at 833 Mission Street. The Garage has approximately 2,600 parking spaces and provides over 25,000 square feet of retail space, currently leased to various tenants and generates over $18,000,000 in annual gross revenue which are used to pay Garage operating expenses.

The Downtown Parking Corporation is a non-profit 501(c) 2 entity, formed in 1955 for the sole purpose of assisting the City by financing the costs of the Fifth & Mission garage through the sale of Downtown Parking Corporation bonds. In 1957, the City leased the Garage to the Corporation through a lease agreement which was subsequently replaced with a new lease agreement in 1992. Under the lease, the Corporation manages the day-to-day operations of the Garage with oversight and policy direction from the SFMTA.

In June 2012, the Corporation's Board of Directors executed a Lease Amendment with the SFMTA to modify and continue the term of the lease on an interim basis until an agreement to terminate the lease was in place. After this Lease Amendment, the parties agreed to terminate the existing lease and set up an unofficial, voluntary Advisory Committee, within 180 days of the Lease Amendment, composed of Corporation Board members who wish to continue to provide input on parking policies and rates on behalf of the community. A draft of the by-laws for this Committee is currently being reviewed by the Corporation.

In July 2012, the bonds were fully paid off through the issuance of a revenue bond by the SFMTA. Since the bonds issued by the Corporation have been fully paid, the Corporation's Board of Directors wants to terminate the lease. To initiate the termination, the Corporation's Board of Directors unanimously approved the Lease Termination Agreement at its Board of Directors meeting on October 31, 2012.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the termination of the lease agreement between the City and County of San Francisco and the Downtown Parking Corporation for the Fifth & Mission Garage and would authorize the Director of Transportation to execute a Lease Termination Agreement effective December 31, 2012.

According to Mr. Michael Robertson, SFMTA's Deputy Director of Off-Street Parking, SFMTA will assume all leases and agreements that the Downtown Parking Corporation has entered into, which includes 16 vendor agreements for services that support the operation and maintenance of the Garage and 17 corporate subtenant lease agreements for retail and commercial stores that occupy the ground floor. Mr. Robertson noted that the termination will have no material effect on the Downtown Parking Garage operations or its tenants.

The Downtown Parking Corporation will transfer the title and control of all monies, deposits, and accounts of the Corporation to the SFMTA within five business days of December 31, 2012, and will provide an audit report and full accounting of all revenues, accounts, equipment, outstanding debts, and assets within 45 days of December 31, 2012. SFMTA will review the audit and accounting and will provide comments and corrections within 30 days. Subsequent to any corrective actions which the SFMTA states that the Downtown Parking Corporation must make, SFMTA will hold the Downtown Parking Corporation, its Board Members, and officers harmless.

FISCAL IMPACT

According to Mr. Robertson, the termination of this lease will save the City an estimated $203,920 annually by discontinuing redundant corporate oversight services, including costs for a corporate manager, corporate accounting staff, and attorney fees as shown in Table 1 below.

Table 1: Annual Savings from the Proposed Lease Termination

Corporation Expenditures	Savings	Notes
Corporate Manager	$139,000	Salary & Benefits
Attorney Fees	24,000	Budgeted ($32K Actual FY11-12)
Corporation Accounting Staff	40,920	Elimination of redundant staffing
TOTAL Estimated Savings	**$203,920**	

The proposed termination of the Downtown Parking Corporation Lease Agreement is consistent with the analysis and findings of the City Services Auditor's June 2011 audit that questioned the need for continuing to have such leases with non-profit corporations that require corporate oversight services, such as those shown in Table 1 above, when SFMTA could provide these services on an in-house basis.

Under the proposed lease termination agreement, the City will have no obligation to any employee of the Downtown Parking Corporation, with the exception of the Corporate Manager, Mr. John Brown, who will be temporarily retained to perform administrative services including correcting the audit and accounting reports, and transferring accounts, books and records from the Corporation to the City. According to Mr. Robertson, Mr. Brown will be retained until the final close-out audit is approved by the City and a hold-harmless is issued to the Corporation's Board which is planned for late March 2013. Mr. Robertson further noted that Mr. Brown's needed services will be very limited. After the Effective Termination Date of December 31, 2012, the City will pay Mr. Brown on an hourly basis for his services at $66.83 per hour.

Under the current lease agreement between the City and the Downtown Parking Corporation, the revenue from parking and other sources totaling $18,355,578 for FY 2011-12, as shown in Table 2 below, is collected by the Corporation who, in turn, pays for the Fifth and Mission Garage operating expenses upon SFMTA's approval; any balance that is left over is paid to the SFMTA. As shown in Table 2 below, for FY 2011-12, $9,123,500 was paid to the SFMTA. Upon the Lease's termination, SFMTA will collect the Garage's revenues and pay monthly bills on an in-house basis.

Table 2: The Garages' Expenditures & Revenues for FY 2011-12

Expenditures	
Operating Expenses*	$5,818,170
Parking Tax	3,413,908
Subtotal Expenditures	9,232,078
Revenue	
Parking Revenue	17,044,295
Non-Parking Revenue	1,311,283
Subtotal Revenues	18,355,578
Total Balance Paid to SFMTA	$9,123,500

*Includes operating expenses, bond interest payments, corporate legal services, depreciation and amortization, and trustee fees.

RECOMMENDATION

Approve the proposed resolution.

SFMTA
Municipal Transportation Agency

November 29, 2012

The Honorable Board of Supervisors
City and County of San Francisco
1 Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

RE: Termination of the Lease Agreement between the City and County of San Francisco and the Downtown Parking Corporation

Dear Members of the Board of Supervisors:

Attached for your consideration is a Resolution authorizing the termination of the lease agreement (Lease) between the City and County of San Francisco and the Downtown Parking Corporation (Corporation).

Background

The Fifth & Mission Garage (Garage) was originally built in 1957 and has expanded over the years to meet the growing demand. It provides nearly 2,600 parking spaces and several retail/commercial lease spaces at the ground level. The facility generates over $18 million in annual gross revenue.

The Corporation is a non-profit 501(c)2 entity, formed in 1955 for the sole purpose of assisting the City with the design and construction of the Garage by financing the costs through the sale of bonds. In 1957, the City leased the Garage to the Corporation through a lease agreement, which was subsequently replaced with another lease agreement in1992. Under the Lease, the Corporation manages the day-to-day operations of the Garage with oversight and policy direction from the San Francisco Municipal Transportation Agency (SFMTA).

In June 2002, the Corporation issued certain parking revenue bonds in the amount of $13,550,000 to refinance existing bonds issued by the Corporation to finance the construction of the Garage. In July 2012, those bonds were fully paid off through the issuance of a revenue bond by the SFMTA. Since the bonds issued by the Corporation have been fully paid, the Corporation's Board of Directors wishes to terminate the Lease and be relieved of its obligations and liability as the leaseholder of the Garage. To initiate the termination, the Corporation's Board of Directors unanimously approved the attached Lease Termination Agreement at its Board meeting on October 31, 2012.

Staff from the Corporation, SFMTA and the City Attorney's Office have reviewed all current Garage retail/commercial tenant leases and agreements with various service providers and vendors. The SFMTA will assume all leases and agreements

Edwin M. Lee
Mayor
Tom Nolan
Chairman
Cheryl Brinkman
Vice-Chairman
Leona Bridges
Director
Malcolm Heinicke
Director
Jerry Lee
Director
Joél Ramos
Director
Cristina Rubke
Director
Edward D. Reiskin
Director of Transportation

One South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103
Tele: 415.701.4500
www.sfmta.com

that are required for the continued operation of the Garage and/or support SFMTA operations. It is anticipated that the termination of the Lease, effective 11:59 p.m. on December 31, 2012, will have no material effect on the Garage operations or its tenants

Funding Impact

The termination of the Lease will result in discontinuing redundant services, which is anticipated to save the City over $200,000 annually. This action is consistent with the analysis and findings of the June 2011 audit by the City Services Auditor that questioned the need and benefit for continuing such leases to non-profit Corporations.

Alternatives Considered

The Corporation's Board of Directors evaluated pros and cons of a new long-term lease versus termination and decided to terminate the Lease since payment of the debt fulfilled the main objective of the formation of the Corporation.

SFMTA Board of Directors' Approval

The SFMTA Board will be hearing this item at its December 4, 2012 Board meeting. A resolution authorizing the Director of Transportation to execute a Lease Termination Agreement is expected to be received at that time.

Recommendation

The SFMTA recommends that the Board of Supervisors approve this termination of the lease agreement between the City and County of San Francisco and the Downtown Parking Corporation and authorize the Director of Transportation to execute a Lease Termination Agreement.

If you have any questions regarding this matter, please contact Amit Kothari, Director of SFMTA's Off-Street Parking Section, at 415.701.4462 or amit.kothari@sfmta.com.

Sincerely,

Edward D. Reiskin
Director of Transportation

LEASE TERMINATION AGREEMENT

Agreement between the City and County of San Francisco and the Downtown Parking Corporation to Terminate the Lease of the Fifth and Mission Garage

Recitals

A. Whereas, the City and County of San Francisco ("the City"), a municipal corporation, owns certain real property located at 833 Mission Street, San Francisco, California ("the Premises"), which is used as an off-street parking facility commonly referenced as the Fifth and Mission/Yerba Buena Garage; and

B. Whereas, the City of San Francisco Downtown Parking Corporation ("the Corporation"), a non-profit 501(c)(2) corporation, was formed in 1955 for the sole purpose of assisting the City in acquiring the Premises by financing the purchase cost through the sale of bonds of the Corporation secured by a lease of the Premises from the City to the Corporation; and

C. Whereas, the Corporation and the City entered into an agreement dated July 30, 1956, under which the Corporation issued bonds, acquired the Premises, and conveyed the Premises to the City; and

D. Whereas, the City leased the Premises to the Corporation under a lease agreement dated October 28, 1957, which lease was subsequently replaced with another lease agreement dated April 1, 1992, and recorded on February 18, 1993 ("the Lease"); and

E. Whereas, on or about June 15, 2002, the Corporation issued certain parking revenue bonds ("the Bonds) in the amount of $13,550,000 to refinance existing bonds issued by the Corporation to finance the construction and maintenance of the Premises, and the indenture documents for said Bonds ("the Indenture") were recorded on July 16, 2002; and

F. Whereas, Union Bank of California, N.A. ("Trustee") serves as the trustee for the Bonds, performing the duties of trustee described in the Bonds Indenture and other issuing documents and as required by applicable laws; and

G. Whereas, Section 2 of the Lease provides that the Lease shall terminate upon the Corporation's payment of the debt incurred under the Bonds and Article X of the Indenture sets out the requirements for the discharge and defeasance (payment) of the Bonds; and

H. Whereas, sections 8A.102(b), 8A.112 and 8A.113 of the City Charter and section 17.8_ of the San Francisco Administrative Code vest authority over the Premises in the San Francisco Municipal Transportation Agency ("SFMTA"); and

I. Whereas, the City, by and through the SFMTA, paid the remaining balance owing on the Bonds as part of and as material requirement of issuing new revenue bonds that are secured in part by revenues of the Premises; and

J. Whereas, because the bonds issued by the Corporation have been fully paid, and the members of the Corporation's Board of Directors therefore wish to be relieved of their obligations and liability under the Lease; and

K. Whereas, the Corporation's Board members wish to play a continuing advisory role to the SFMTA as to the parking policies and rates and the management and operation of the Premises;

Now therefore, based on the statements contained in the above Recitals, which are hereby incorporated into the terms and conditions of this Lease Termination Agreement ("Agreement") set out below, and based on the exchange of other good and valuable consideration, receipt and sufficiency of which the City and the Corporation hereby acknowledge, the City and the Corporation agree as follows:

Agreement

1. Payment of Bonds. The City shall pay all outstanding debts and other financial obligations of the Corporation related to the Bonds. The City shall obtain confirmation of the payment of the Bonds from the Trustee. The City shall record the notice from the Trustee confirming full payment and release of the Bonds, and shall provide the Corporation a copy of that recorded notice.

2. Early Termination Date. The Lease shall terminate on December 31, 2012 at 11:59 PM, which date and time shall be the "Early Termination Date." This Agreement effecting said termination is dated for convenience as November 1, 2012. The termination of the Lease is for the convenience of the City and the Corporation, and is not a termination for cause. Except as specifically provided in this Agreement, the termination of the Lease shall terminate the respective obligations of the City as landlord and the Corporation as tenant under the Lease.

3. Accounting and Transfer of Accounts.

    a. The Corporation shall within five business days of the Early Termination Date transfer title and control of all monies, deposits, and accounts of the Corporation to the SFMTA.

b. No more than 45 calendar days following the Early Termination Date, the Corporation shall provide an audit report and full accounting to the SFMTA of all revenues, accounts, equipment, outstanding debts, and other Premises assets and obligations held by the Corporation under the Lease and shall cooperate with the SFMTA to confirm that accounting.

c. Within 30 calendar days of receipt of the audit report and accounting described in Section 3.b., the SFMTA shall review and provide comments and required corrections to said audit report and accounting. If the SFMTA requires the Corporation to make corrections or address omissions in the audit report and accounting, within 10 calendar days following receipt of said corrections and confirmation of the transfer of accounts and assets (provided in Section 3.a.), the SFMTA shall in writing hold the Corporation, its Board, officers and agents harmless, as provided in Section 7 of this Agreement.

4. Corporation Vendor and Service Contracts. The Corporation has entered into contracts with the vendors and contractors listed below, which are in effect as of the date of this Agreement, and which may be assigned from the Corporation to the City or to the garage management company under contract with the City to manage the Premises. Each assignment of contract, to the extent any are assigned, shall be memorialized as provided herein by separate agreement approved by the City, the Corporation and the individual vendor or contractor. If a vendor or contractor agreement is not so formally assigned, then said vendor or contractor agreement shall be deemed terminated as of the Effective Date of this Agreement.

   a. 7-UP Bottling Company
   b. Brett & Company
   c. Clark Pest Control
   d. Danka Copier
   e. IMCO Parking
   f. Intertech/Datapark
   g. KD Architects
   h. Loomis
   i. Mitsubishi Elevators
   j. OK Heating and Air Conditioning
   k. SF Patrol Special Police
   l. SFPUC
   m. Green Radovski
   n. Cornish and Carey
   o. John Brown
   p. Keil and Company

5. Corporation Subtenants. The Corporation has entered into subleases with the individual and entities listed below, which subleases are in effect as of the date of this Agreement.

Each sublease shall be assigned to the City as provided herein by separate agreement approved by the City, the Corporation and the individual subtenant. If a sublease agreement is not so formally assigned, then said sublease agreement shall be deemed terminated as of the Effective Date of this Agreement or as required under the provisions of the sublease, whichever date is sooner.

a. Zpizza
b. Artists Alley
c. Sprint Spectrum Realty Co
d. SOMA Cleaners
e. Good Vibrations
f. Green Apple, Inc
g. Green Papaya Restaurant
h. Don Kim Nova Nail Spa
i. Mel's Drive-In #2
j. Starbucks
k. Chase Bank
l. Wells Fargo Bank (ATM-4)
m. Wells Fargo Bank (ATM-M)
n. AT&T (MacroCell Site Tower-A014)
o. AT&T (MacroCell Site Tower-CN5895)
p. T-Mobile (Cell Tower)
q. Verizon Wireless (Cell Tower)

6. Assignment of Subleases and Vendor Contracts. The Corporation shall assign all subcontracts and subleases to the SFMTA as follows:

a. No less than 15 calendar days prior to the Early Termination Date, the Corporation shall provide notice of the termination of the Lease to all persons or entities with which it has current agreements for the provision of goods and/or services and to all subtenants. Said notice shall include a copy of this Agreement and shall note the Effective Date of this Agreement and applicable effective date of the termination or assignment of the notice recipient's service or vendor agreement, employment contract, or sublease, as applicable. The parties affirm that the vendors whose service contracts will be assigned to the City (as listed Section 4 of this Agreement) in have been notified and provided assignment agreements for signature.

b. No less than 30 calendar days prior to the Early Termination Date, the Corporation shall give notice to each of the subtenants listed in Section 5, above, informing each of the termination of the Lease and intended assignment to the City of their respective subleases.

c. No less than 30 calendar days prior to the Early Termination Date, Corporation shall provide original (signature) copies to the SFMTA of all subcontracts, subleases, and recorded notices in effect as of the Early Termination Date.

d. The Corporation shall cooperate with the SFMTA in obtaining said executed assignment agreements from the Corporation contractors, vendors and subtenants listed in Sections 4 and 5 of this Agreement.

e. The determination of whether to accept assignment of a vendor contract or sublease shall rest solely with the SFMTA.

f. The assignment to the City of any Corporation contract or sublease may be conditioned upon the addition of contract requirements required by City laws and existing SFMTA policies to said contract or sublease.

7. Indemnification. Except as specifically provided in Section 3 of this Agreement, the Corporation shall not be relieved of any of its obligations under the Lease that accrue prior to the Early Termination Date. The Corporation's indemnification obligations under the Lease shall survive the termination of the Lease with regard to events occurring prior to the later of (A) the Early Termination Date, or (B) the date on which the Corporation vacates and surrenders the Premises and transfers title and control of all accounts and monies, as provided in Sections 2, 3, and 9 of this Agreement.

8. Surrender Premises. On or before the Early Termination Date, the Corporation shall surrender the Premises and transfer title, ownership, possession and control of all equipment used in the operation of the Premises and accounts, revenues and monies held by the Corporation to the SFMTA.

9. Hold Harmless and Release. Upon the City's acknowledgment in writing from the Director of Transportation or his designee that all conditions and requirements of this Agreement have been met, that all assets, deposits, and accounts held by the Corporation under the Lease have been transferred to the City, and confirmation that the audit and accounting reports submitted by the Corporation are correct (all as set out in Section 3), the following hold harmless release shall take effect:

> As sole shareholder of the Corporation, the City and County of San Francisco hereby releases and holds harmless the members and each of them of the Board of the Directors of the Corporation from any and all personal liability arising from or related to the performance of their duties as Directors of the Corporation.

10. Corporation Employees.

a. Except as specifically provided in this Agreement, the City shall have no liability or obligation to any employee of the Corporation. The City's obligation to reimburse the Corporation its costs and expenses, except as provided in this

Section, including but not limited to employee wages, salaries, and benefits shall terminate on the Early Termination Date.

b. The Corporation's Manager, John Brown, will be retained to perform administrative services necessary to effect this Agreement, including but not limited to correcting audit and accounting reports (described in Section 3) and transferring accounts, books and records from the Corporation to the City (as described in Section 3). If Mr. Brown's services are required beyond the Early Termination Date and after the Corporation has transferred its accounts to the City, the City shall compensate Mr. Brown for necessary effort on an hourly basis derived from his current annual salary (hourly rate = annual salary divided by 2080 hours). The City will so compensate Mr. Brown for any required efforts until the Corporation corrects and the City accepts the aforesaid audit and accounting reports and the City issues a hold harmless notice to the members of the Corporation's Board of Directors, which time shall not exceed 90 calendar days from the Early Termination Date.

c. The Corporation shall prior to the Early Termination Date inform Mr. Brown of benefits due to him, including but not limited to any obligation the Corporation may have to cash out accrued vacation, sick leave or other benefits to Mr. Brown.

d. The Corporation shall prior to the Early termination date confirm its obligations to Mr. Brown to offer access to health insurance under COBRA or other applicable laws and confirm whether Mr. Brown wishes to receive such benefits. If Mr. Brown wishes to receive health insurance under COBRA or other benefits that he would have to purchase through the Corporation, prior to the Early Termination Date, the Corporation shall calculate the cost to be paid by Mr. Brown for said health insurance. The Corporation will make arrangements with Mr. Brown to either prepay those costs or have those costs deducted from final salary payments to be paid by the Corporation or the City (following the Early Termination Date).

11. Legal Representation. The Corporation shall continue to retain or shall engage competent legal counsel to represent it as to the Corporation's legal obligations, including but not limited to issues concerning dissolution of the Corporation through the California Secretary of State and issues concerning the termination and/or assignment of subleases service, maintenance, vendor and employment contracts. The Corporation shall submit an annual budget for such legal services and shall seek prior written authorization for any service and reimbursement for such expenses as provided in the Lease until the dissolution of the Corporation is finally approved and effected.

12. Status of Corporation. This Agreement does not dissolve the Corporation, which if effected, shall be accomplished by separate agreement with the City. The Corporation's

Board members desire to have an advisory role to the SFMTA as to garage parking policies and rates and the management and maintenance of the Premises. The SFMTA and the Corporation shall cooperate to develop Bylaws for an advisory committee for adoption by the SFMTA.

13. Maintenance of Insurance. For a period of not less than 60 calendar Days following the Early Termination Date or until the City has accepted the accounting and audit report submitted by the Corporation as provided in Section 3, whichever date is later, the Corporation shall maintain in full force and effect the Director's Liability Insurance in the amount provided in the Lease.

14. Recording. The City shall record this Agreement. The Corporation and the SFMTA shall each cooperate with the other and shall take any action and execute and document necessary to effect the provisions and purposes of this Agreement.

15. No Third Party Beneficiaries. This Agreement shall inure to the benefit of only the Corporation and members of its Board of Directors, and to the City and the City's officers, officials, employees, agents, and successors, but to no other person or entity. There are no intended third party beneficiaries to this Agreement

16. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Wherever applicable, this Agreement shall be subject to the Charter of the City and all local codes and ordinances. Venue for any action concerning this Agreement or the Lease shall lie in San Francisco, California.

17. Interpretation of Agreement.

    a. This document contains the entire agreement of the parties as to the matters addressed herein, and this Agreement supersedes all prior agreements and understandings of the parties as to the matters addressed herein.

    b. If any provision of this Agreement or its application to any person or circumstance is held invalid by a court of competent jurisdiction, then the offending provision shall be severed and the remainder of this Agreement, or the application of such provisions to other persons or circumstances, shall not be affected thereby, but shall be construed to give maximum effect to the intent of the parties.

    c. Section titles and headings in this Agreement are for reference and convenience only, and shall not be used to interpret this Agreement.

    d. This Agreement is the product of negotiations between the City and the Corporation, and no law or rule of contract construction that would require any

provision of this Agreement to be construed against the drafter shall apply to the interpretation of this Agreement.

18. Included Appendices. A copy of the Lease is appended hereto as Appendix A to this Agreement. A copy of the Bonds Indenture is appended hereto as Appendix B to this Agreement. The documents appended to this Agreement and listed in this Section of the Agreement are incorporated by reference into the Agreement as if fully set out herein. In case of any conflict of terms, conditions, or requirements between this Agreement and any document incorporated by reference, the terms of this Agreement shall govern.

19. Execution by Counterparts. This Agreement may be executed in counterparts and each of such counterparts shall for all purposes be deemed to be an original, all such counterparts shall together constitute but one and same instrument. Executed counterparts may be delivered by facsimile or PDF via email, and such shall be given the same force and effect as an inked-signed document.

20. Authorized Signatories. This Agreement may be approved by the Director of Transportation under the authority granted by the City Charter. The Board of Directors for the Corporation approved this Agreement and authorized Andrew Bryant, as President of the Corporation to sign this Agreement on behalf of the Corporation at its meeting of October 31, 2012.

Signed this _____day of November, 2012 at San Francisco, California.

_____ Edward D. Reiskin Director of Transportation SFMTA	_____ Andrew Bryant President City of San Francisco Downtown Parking Corporation
Approved as to Form: Dennis J. Herrera City Attorney by: _____ Robert K. Stone Deputy City Attorney	