

File No. 130057

Committee Item No. 6

Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date 02/06/2013

Board of Supervisors Meeting

Date FEBRUARY 12, 2013

Cmte Board

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Completed by: Victor Young

Date February 1, 2013

Completed by: Victor Young

Date 2-7-13

AMENDED IN COMMITTEE

2/6/13

FILE NO. 130057

RESOLUTION NO.

1 [Lease Termination Agreement - Ellis-O'Farrell Parking Corporation - 123 O'Farrell Street -
2 January 31, 2013]

3 **Resolution authorizing the retroactively termination of the Lease Agreement with**
4 **Ellis-O'Farrell Parking Corporation and authorizing the Director of Transportation to**
5 **execute a Lease Termination Agreement for property located at 123 O'Farrell Street,**
6 **terminating on January 31, 2013.**

7
8 WHEREAS, The City and County of San Francisco (City), a municipal corporation,
9 owns the Ellis-O'Farrell Garage (Garage) located at 123 O'Farrell Street, San Francisco,
10 California; and

11 WHEREAS, The City of San Francisco Ellis-O'Farrell Parking Corporation
12 (Corporation), a non-profit 501(c)(2) corporation, was formed in 1963 for the sole purpose of
13 assisting the City in acquiring and/or improving the Garage by financing the cost through the
14 sale of bonds of the Corporation secured by a lease of the Garage from the City to the
15 Corporation; and

16 WHEREAS, The City leased the Garage to the Corporation under a lease agreement
17 dated July 20, 1965, which lease was subsequently replaced with another lease agreement
18 dated June 1, 1991, and recorded on January 22, 1992 (Lease); and

19 WHEREAS, On or about October 1, 2002, the Corporation issued certain parking
20 revenue bonds (Bonds) in the amount of \$5,465,000 to refinance existing bonds issued by
21 the Corporation to finance the acquisition and improvement of the premises, and the
22 indenture documents for said Bonds (Indenture) were recorded on August 23, 2002; and

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

1
2 WHEREAS, On June 18, 2012 the Corporation's Board of Directors executed a
3 Lease Amendment with the SFMTA to modify and continue the term of the Lease on an
4 interim basis until an agreement to terminate the Lease and set up an Advisory Committee
5 was in place; and

6 WHEREAS, The parties agreed to terminate the existing lease and create an
7 advisory body within 180 days of the Lease Amendment; and

8 WHEREAS, The SFMTA and the Corporation are developing Bylaws for an Advisory
9 Committee; and

10 WHEREAS, In July, 2012, the City, by and through the SFMTA, paid the remaining
11 balance owing on the Bonds as part of and as material requirement of issuing new revenue
12 bonds that are secured in part by revenues of the premises; and

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

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

19 WHEREAS, The termination of the Lease will result in complete transfer of control of
20 the Garage and retail tenants leases to the SFMTA, eliminating redundancy and Corporation
21 oversight expenses; and

22 WHEREAS, SFMTA and the Corporation negotiated the Lease Termination
23 Agreement; which agreement is on file with the Clerk of the Board of Supervisors in File No.
24 130057, and is hereby declared to be a part of this motion as if set forth fully herein; and,
25

1 WHEREAS, On January 15, 2013 the SFMTA Board of Directors adopted Resolution
2 No. 13-009, which authorized the Director of Transportation to execute the Lease
3 Termination Agreement between the City and the Corporation, terminating the lease
4 effective January 31, 2013, subject to approval from the Board of Supervisors of this Lease
5 Termination Agreement; now, therefore, be it

6 RESOLVED, That the Director of Transportation of the SFMTA is hereby authorized,
7 on behalf of the City, to retroactively execute the Lease Termination Agreement between the
8 Ellis-O'Farrell Parking Corporation and the City and County of San Francisco; and be it

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

12 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
13 Transportation of the SFMTA to enter into any amendments or modifications to the Lease
14 Termination Agreement (including without limitation, the exhibits) that the Director of
15 Transportation determines, in consultation with the City Attorney, are in the best interest of
16 the City, do not materially increase the obligations or liabilities of the City, are necessary or
17 advisable to effectuate the purposes of the Lease Termination Agreement or this Resolution,
18 and are in compliance with all applicable laws, including the City's Charter.

Item 6
File 13-0057

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 Ellis-O'Farrell Parking Corporation, a non-profit corporation, for the management of the Ellis-O'Farrell Parking Garage, and would authorize the Director of Transportation to execute a Lease Termination Agreement effective January 31, 2013.

Key Points

- The Ellis-O'Farrell Parking Corporation is a non-profit corporation, formed in 1963 for the sole purpose of assisting the City by financing the costs of the Ellis-O'Farrell Garage through the sale of bonds. In July 2012, the bonds were fully paid off from the proceeds of the issuance of Revenue Bonds issued by the San Francisco Metropolitan Transportation Agency (SFMTA). Since the bonds issued by the Ellis-O'Farrell Parking Corporation have been fully redeemed, the Corporation's Board of Directors wants to terminate the lease with the City, which was previously entered into between the City and the Ellis-O'Farrell 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 agreements that the Ellis-O'Farrell Parking Corporation has previously entered into with ten vendors and two subtenants.
- The Ellis-O'Farrell 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 January 31, 2013 and will provide an audit report and full accounting of all revenues, accounts, equipment, outstanding debts, and assets within 45 days of January 31, 2013. The SFMTA will review the audit and accounting and will provide comments to the Ellis-O'Farrell Parking Corporation within 30 days. Subsequent to any corrective actions which the SFMTA states that the Ellis-O'Farrell Parking Corporation must make, the SFMTA will hold the Ellis-O'Farrell Parking Corporation, its Board of Directors, and officers harmless.

Fiscal Impact

- According to Mr. Robertson, the termination of the lease with the Ellis-O'Farrell Parking Corporation will save the City an estimated \$174,174 annually by discontinuing redundant corporate oversight services, including the costs for a corporate manager, trustee fees, and attorney fees, as shown in Table 2 below. The Corporate Manager, Ms. Daphne Handelin, will be retained temporarily to perform administrative services including finalizing the audit and accounting reports, transferring accounts, books and records from the Corporation to the SFMTA and will be compensated on an hourly basis. Mr. Robertson noted that Ms. Handelin's services will be retained on an as-needed basis for no longer than 90 days following the effective termination date of January 31, 2013.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with City Charter Section 9.118(c), any amendment to or termination of a lease, which when entered into was for a period of ten or more years, and/or had anticipated revenue of \$1,000,000 or greater, is subject to the Board of Supervisors approval.

Background

The Ellis-O'Farrell Garage (Garage) is a City-owned parking garage under the jurisdiction of the San Francisco Municipal Transportation Agency (SFMTA), located at 123 O'Farrell Street. The Garage has approximately 950 parking spaces and provides over approximately 11,000 square feet of retail/commercial space, currently leased to two tenants and generates approximately \$6,764,129 in annual gross revenue (see Table 2 below).

The Ellis-O'Farrell Parking Corporation is a non-profit 501(c) 2 entity, formed in 1963 for the sole purpose of assisting the City with the acquisition of, and improvements to, the Garage through the sale of Ellis-O'Farrell Parking Corporation bonds. In 1965, the City leased the Garage to the Corporation through a lease agreement which was subsequently replaced with a new lease agreement in 1991. Under the existing 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 a month-to-month 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 to provide input on parking policies and rates on behalf of the community.

In July 2012, the Ellis-O'Farrell Parking Corporation 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 redeemed, the Corporation's Board of Directors wants to terminate the lease. In anticipation of the lease termination, the SFMTA assumed the daily operation of the Garage beginning January 1, 2013 through its existing agreement for garage operations with LAZ Parking. On January 15, 2013, the SFMTA Board of Directors approved a resolution authorizing the Director of Transportation to execute the proposed Lease Termination Agreement.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the termination of the lease agreement between the SFMTA and the Ellis-O'Farrell Parking Corporation for the management of the Ellis-O'Farrell Garage and would authorize the Director of Transportation to execute a Lease Termination Agreement effective January 31, 2013.

According to Mr. Michael Robertson, SFMTA's Deputy Director of Off-Street Parking, SFMTA will assume two leases with subtenants and ten agreements with vendors that the Ellis-O'Farrell Parking Corporation has entered into.

The Ellis-O'Farrell 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 January 31, 2013, and will provide an audit report and full accounting of all revenues, accounts, equipment, outstanding debts, and assets within 45 days of January 31, 2013. SFMTA will review the audit and accounting reports and will provide comments and corrections within 30 days. Subsequent to any corrective actions which the SFMTA states that the Ellis-O'Farrell Parking Corporation must make, SFMTA will hold the Ellis-O'Farrell Parking Corporation, its Board Members, and officers harmless.

FISCAL IMPACT

According to Mr. Robertson, the termination of this lease will save the SFMTA an estimated \$174,174 annually by discontinuing redundant corporate oversight services, including costs for a corporate manager, attorney and trustee fees, and vendor services that are no longer needed as shown in Table 1 below.

Table 1: Annual Savings from the Proposed Lease Termination

Corporation Expenditures	Savings
Corporate Manager *	\$104,854
Attorney Fees	55,029
Trustee Fees	1,091
Vendor Services	13,200
TOTAL Estimated Savings	\$174,174

*Includes salary & benefits

The proposed termination of the Ellis-O'Farrell Parking Corporation Lease Agreement is consistent with the analysis and findings of the Controller's June 2011 audit that questioned the need for continuing to have such leases with non-profit corporations when SFMTA could provide these services on an in-house basis. The Controller's Office found that "leasing garages to non-profit corporations is unnecessarily costly to the City."

Under the proposed lease termination agreement, the City will have no obligation to any employee of the Ellis-O'Farrell Parking Corporation, with the exception of the Corporate Manager, Ms. Daphne Handelin, 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 SFMTA. According to Mr. Robertson, Ms. Handelin will be retained on an as-needed basis for no longer than 90 days following the effective termination date of January 31, 2013. After the Effective Termination Date, the City will pay Ms. Handelin on an hourly basis for her services at \$40.86 per hour.

Under the current lease agreement between the City and the Ellis-O'Farrell Parking Corporation, the revenue from parking and other sources totaling \$6,764,129 for FY 2011-12, as shown in Table 2 below, is collected by the Corporation which, in turn, pays for the Ellis-O'Farrell 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, net revenues of \$1,183,713 were paid to the SFMTA.

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

Expenditures	
Operating Expenses*	\$4,432,136
Parking Tax	<u>1,148,280</u>
Subtotal Expenditures	5,580,416
Revenue	
Parking Revenue**	\$5,741,400
Non-Parking Revenue	<u>1,022,729</u>
Subtotal Revenues	6,764,129
Total Balance Paid to SFMTA	\$1,183,713

*Includes personnel costs, utilities, services, supplies, and garage management as well as expenditures related to the Ellis-O'Farrell Parking Corporation including corporate management personnel costs, corporate legal fees, trustee fees, and repayment for bonds.

**Includes transient and monthly parking.

RECOMMENDATION

Approve the proposed resolution.

LEASE TERMINATION AGREEMENT

Agreement between the City and County of San Francisco and the Ellis-O'Farrell Parking Corporation to Terminate the Lease of the Ellis-O'Farrell Garage

Recitals

- A. Whereas, the City and County of San Francisco ("the City"), a municipal corporation, owns certain real property located at 123 O'Farrell Street, San Francisco, California ("the Premises"), which is used as an off-street parking facility commonly referenced as the Ellis-O'Farrell Garage; and
- B. Whereas, the City of San Francisco Ellis-O'Farrell Parking Corporation ("the Corporation"), a non-profit 501(c)(2) corporation, was formed on November 6, 1963 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 February 1, 1965, 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 July 20, 1965, which lease was subsequently replaced with another lease agreement dated June 1, 1991, and recorded on January 22, 1992 ("the Lease"); and
- E. Whereas, on or about October 1, 2002, the Corporation issued certain parking revenue bonds ("the Bonds") in the amount of \$5,465,000 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 October 23, 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, the Board has fulfilled its duties 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 have substantial historical knowledge and expertise regarding the Premises and wishes 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 January 31, 2013 at 11:59 PM, which date and time shall be the "Early Termination Date." This Agreement effecting said termination is dated for convenience as January 1, 2013. 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, unless extended by mutual agreement, 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 written comments and indicate

Ellis-O'Farrell Parking Corporation Lease Termination Agreement	page 2 of 9	n:\pte\as2012\1000448\00806204.doc 11-3-12
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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 9 of this Agreement; otherwise, the hold harmless shall be provided upon confirmation of the transfer of assets and 10 days after receipt of the accepted audit report.

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 unless such time is extended by written agreement with the City.

- a. Daphne Handelin
- b. Applied Pest Control
- c. Datapark/Inter Technomics
- d. GMG Systems, Inc.
- e. Julie O'Keefe (Bookkeeping Services - Financials)
- f. Macke Water Systems
- g. OK Heating and Air Conditioning
- h. Keil & Connolly
- i. J. Michael Phelps (Tenant Attorney)
- j. AC Energy (CO Monitoring System)
- k. Dover (Elevator Maintenance)
- l. SF Vending
- m. Sprint (Cellular Phones)
- n. Cornish and Carey
- o. Dunbar Armored Service
- p. T&S Office Systems (Copier & Laser printer)
- q. Carol Gilbert

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, unless such time is extended by written agreement with the City.

- a. Grace Jewelry
 - b. Les Joulins USA, Inc. (Jazz Bistro)
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 15 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 within the discretion of the SFMTA based on considerations of the best interests of the City.
 - 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 errors and omissions insurance for the Board shall be maintained by the City through November 30, 2013. 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 and Landlord of the Premises, 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, including claims by any third party based on actions within the course and scope of their duties as a Board member.

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. Subsequent to the early termination date, Daphne Handelin, Corporation Manager, 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 Ms. Handelin's services are required beyond the Early Termination Date and after the Corporation has transferred its accounts to the City, the City shall compensate Ms. Handelin for necessary effort on an hourly basis derived from her current annual salary (hourly rate = annual salary divided by 2080 hours). The City will so compensate Ms. Handelin 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. Ms. Handelin shall be paid in her last check from the Corporation contractual benefits legally due: accrued vacation and sick leave cash out.

- d. The Corporation shall prior to the Early Termination Date offer access to health insurance under COBRA or other applicable laws and determine whether Ms. Handelin wishes to receive such benefits. If Ms. Handelin wishes to receive health insurance under COBRA or other benefits that she would have to purchase through the Corporation, prior to the Early Termination Date, the Corporation shall calculate the cost to be paid by Ms. Handelin for said health insurance. The Corporation will make arrangements with Ms. Handelin 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 this Agreement, 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. The City shall maintain the current errors and omissions insurance coverage for the Board for the existing policy term.
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.

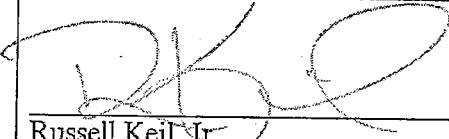
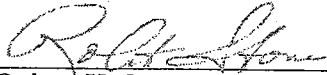
19. Execution by Counterparts. This Agreement may be executed in counterparts and each of such counterparts shall for all purposes be deemed to be an original, all such counterparts shall together constitute but one and same instrument. Executed counterparts may be delivered by facsimile or PDF via e-mail, 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 Russell Keil, Jr., as President of the Corporation to sign this Agreement on behalf of the Corporation.

21. Approval by Counterparts. This Agreement may be approved by counterpart signature pages electronically delivered in PDF format, each of which shall be read together as a single approval of the agreement.

The remainder of this page has been intentionally left blank.

Signed this ____ day of January 2013 at San Francisco, California.

<p>Edward D. Reiskin Director of Transportation SFMTA</p>	 <p>Russell Keil, Jr. President City of San Francisco Ellis-O'Farrell Parking Corporation</p>
<p>Approved as to Form:</p>	<p>San Francisco Municipal Transportation Agency Board of Directors</p>
<p>Dennis J. Herrera City Attorney</p>	<p>Resolution No. _____</p>
<p>by:  1-10-2013 Robert K. Stone Deputy City Attorney</p>	<p>Adopted: _____</p>
	<p>Attest: _____ Secretary, SFMTA Board of Directors</p>

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 13-009

WHEREAS, The City and County of San Francisco (City), a municipal corporation, owns the Ellis-O'Farrell Garage (Garage) located at 123 O'Farrell Street, San Francisco, California; and

WHEREAS, The City of San Francisco Ellis-O'Farrell Parking Corporation (Corporation), a non-profit 501(c)(2) corporation, was formed in 1963 for the sole purpose of assisting the City in acquiring and/or improving 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 July 20, 1965, which lease was subsequently replaced with another lease agreement dated June 1, 1991, and recorded on January 22, 1992 (Lease); and

WHEREAS, On or about October 1, 2002, the Corporation issued certain parking revenue bonds (Bonds) in the amount of \$5,465,000 to refinance existing bonds issued by the Corporation to finance the acquisition and improvement of the premises, and the indenture documents for said Bonds (Indenture) were recorded on August 23, 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, On June 18, 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 and set up an Advisory Committee was in place; and

WHEREAS, The parties agreed to terminate the existing lease and create an advisory body within 180 days of the Lease Amendment; and

WHEREAS, The SFMTA and the Corporation are developing Bylaws for an Advisory Committee; and

WHEREAS, In July, 2012, 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

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, 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 and retail tenants under the SFMTA, eliminating redundancy and Corporation oversight expenses; now, therefore, be it

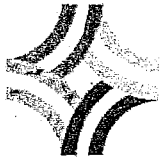
RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a Termination Agreement with the City of San Francisco Ellis-O'Farrell Parking Corporation for the Ellis-O'Farrell Garage on terms substantially similar to the attached agreement, and execute agreements with vendors, consultants, and commercial tenants of the Ellis-O'Farrell Garage to effect assignment of their respective contracts and subleases to the San Francisco Municipal Transportation Agency; and be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency's Board of Directors requests the Board of Supervisors' approval of the termination of the Lease.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of January 15, 2013.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

SFMTA
Municipal Transportation Agency

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January 11, 2013

**Angela Calvillo, Clerk of the Board
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 Ellis-O'Farrell Parking Corporation***

Dear Ms. Calvillo:

Enclosed are an original and four copies of the proposed ordinance for the Board of Supervisor's consideration. The ordinance requests authorization, under Charter Section 9.118, to terminate the lease agreement between the City and County of San Francisco and the Ellis-O'Farrell Parking Corporation. To meet the lease termination requirements, we respectfully request that this item be scheduled for committee hearing the week of January 21, 2013 so it can be heard at the January 29, 2013 full Board of Supervisors meeting.

Enclosed are the following:

1. Briefing Letter
2. Proposed Resolution
3. Lease Termination Agreement between the City and County of San Francisco and the Ellis-O'Farrell Parking Corporation
4. SFMTA Board Resolution (This item will be heard at the SFMTA Board of Directors meeting on January 15, 2013. We will add the signed resolution to the file at that time.)

Please contact Janet Martinson of my staff at 701.4693 if you have any questions regarding this matter.

Sincerely,

**Edward D. Reiskin
Director of Transportation**

Enclosures

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





January 11, 2013

**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 Ellis-O'Farrell Parking Corporation*

Dear Members of the Board of Supervisors:

Enclosed for your consideration is a Resolution authorizing the termination of the lease agreement (Lease) between the City and County of San Francisco and the Ellis O'Farrell Parking Corporation (Corporation).

Background

The Garage was built in 1964 and provides nearly 950 parking spaces and three retail/commercial lease spaces at the ground level. The facility generates approximately \$6 million in annual gross revenue.

The Corporation is a non-profit 501(c)(2) entity, formed in 1963 for the sole purpose of assisting the City with the acquisition of, and improvements to, the Garage by financing the costs through the sale of bonds. In 1965, the City leased the Garage to the Corporation through a lease agreement, which was subsequently replaced with another lease agreement dated June 1, 1991. Under the Lease, the Corporation manages the day-to-day operation of the Garage with oversight and policy direction from the San Francisco Municipal Transportation Agency (SFMTA).

In October 2002, the Corporation issued certain parking revenue bonds in the amount of \$5,465,000 to refinance existing bonds issued by the Corporation to finance the acquisition of, and improvements to, the Garage.

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 and set up an Advisory Committee was in place. The parties agreed to terminate the existing lease and create an advisory body within 180 days of the Lease Amendment. The Corporation's Board of Directors and the SFMTA are developing bylaws to enable the establishment of an Advisory Committee to advise the Director on various matters related to the Garage.

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 wishes to terminate the Lease and be relieved of its obligations and liability as the leaseholder of the Garage.

In anticipation of the lease termination, the SFMTA assumed the day-to-day operation of the garage effective January 1, 2013 through its current agreement for garage

Min 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. Rejskin
Director of Transportation

South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103
Tele: 415.701.4500
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Termination of the Lease Agreement between the City and County of San Francisco and the Ellis-O'Farrell Parking Corporation
January 10, 2013
Page 2

management with LAZ Parking. Staff from the Corporation, SFMTA and City Attorney's Office have reviewed all current tenant leases and agreements with various service providers and vendors. The SFMTA will assume all leases and agreements that are required for the continued operation of the Garage and/or that support SFMTA operations. It is anticipated that the termination of the Lease, effective 11:59 p.m. on January 31, 2013, will have no material effect on Garage operations or on its tenants.

Funding Impact

The termination of the Lease will result in discontinuing redundant services, which is anticipated to save the City over \$160,000 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 the 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 January 15, 2013 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 San Francisco Board of Supervisors approve this termination of the lease agreement between the City and County of San Francisco and the Ellis-O'Farrell Parking Corporation and authorize the Director of Transportation to execute the termination agreement with the Corporation, as well as agreements with vendors, consultants and commercial tenants of the Garage to effect assignment of their respective contracts and subleases to the SFMTA.

If you have any questions regarding this matter, please contact Amit Kothari, Director of Off-Street Parking at 701-4462 or amit.kothari@sfmta.com.

Sincerely,

Edward D. Reiskin
Director of Transportation

Enclosures

cc: Bond Yee, SFMTA Director of Sustainable Streets
Sonali Bose, SFMTA CFO
Amit Kothari, SFMTA Director of Off-Street Parking
Janet Martinsen, SFMTA Local Government Affairs Liaison