



November 1, 2012

## Sustainable Streets—Off-Street Parking Signature Routing

<b>SUBJECT:</b>	The Downtown Parking Corporation (DPC) Lease will be terminated. Attached is the Assignment and Assumption Agreement between DPC and parking operator IMCO Parking to maintain continuity of service at the Fifth & Mission Garage.
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### Summary of Signature Request:

***This is to request your review and approval of the attached Agreement (three copies attached) for signature by Edward D. Reiskin, SFMTA Director of Transportation.***

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

Final Routing	Approval Authority	Signature	Date	Comments
4	Edward D. Reiskin Director of Transportation			
3	Sonali Bose CFO/Director of Finance & Information Technology	<i>Smah</i>	11/5/12	
2	Bond Yee Director of Sustainable Streets	<i>amit</i>	11/02/12	
1	Amit M. Kothari Director of Off-Street Parking	<i>amit</i>	11/01/12	

When routing complete, please return to Kathryn Nicholas, 7-5421.

Thank you.



## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made as of SEPTEMBER 24, 2012, in San Francisco, California, by and between the City of San Francisco Downtown Parking Corporation, a nonprofit public benefit corporation ("the Corporation" or "Corporation") and IMCO Parking LLC ("IMCO" or "Garage Manager") and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency ("SFMTA").

### RECITALS

WHEREAS, the Corporation holds a lease to a public off-street parking facility, commonly known as the 5<sup>th</sup> and Mission Streets Garage ("the Garage"), which is owned by the City and County of San Francisco ("City") and is under the administrative jurisdiction of the San Francisco Municipal Transportation Agency ("SFMTA");

WHEREAS, the Corporation and IMCO are parties to the Agreement (as defined below) under which IMCO provides professional parking facility management services to the Corporation ; and

WHEREAS, the Corporation will not be present on, have any interest in or manage the Garage following termination of the lease on or about December 31, 2012 (or to such date that the lease termination may be extended) which will terminate the Agreement if it is not assigned; and

WHEREAS, to maintain continuity of services to the Garage, the Corporation desires to assign the Agreement to the City, the City desires to assume the Agreement, and the Garage Manager agrees that the Agreement should be assigned, each on the terms and conditions set forth herein;

WHEREAS, this Agreement was approved by the San Francisco Civil Service Commission by Resolution No. 4033-11/12;

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, the Corporation, the Garage Manager, and the Contractor agree as follows:

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

**1.1 Agreement.** The term "Agreement" shall mean the contract titled "Agreement between the City of San Francisco Downtown Parking Corporation and IMCO Parking LLC (Imperial Parking (US) LLC and Convenience Parking LLC) for the Operation and Management of the Fifth and Mission /Yerba Buena Parking Garage," dated January 9, 2012, a copy of the which is appended to this Assignment Agreement as Appendix A. The term "Agreement" shall include this Assignment upon the Effective Date of Assignment, and other any amendments or modifications set forth on Appendix A attached hereto and made a part hereof.

**1.2 Assignment** shall mean this document, fully executed.

**1.3 City** shall mean the City and County of San Francisco, acting by and through the SFMTA.



**1.4 Effective Date of Assignment** shall mean December 31, 2012, unless notice is given by the City and acknowledged by the Corporation that the Assigned shall be affected on an earlier date specified in the notice.

**1.5 Garage Manager** shall mean IMCO Parking LLC, whose principal place of business is located at 401 Terry Francois Street, Suite 110, San Francisco, CA 94158.

**1.6 Lease** means the lease for certain real property including the Garage between the City and the Corporation, dated October 28, 1957, which lease was subsequently replaced with another lease agreement dated April 1, 1992, and was recorded on February 18, 1993. A copy of the Lease is attached hereto as Appendix B.

**1.7 SFMTA** shall mean the San Francisco Municipal Transportation Agency.

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

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

**3. Assumption.** The City, acting by and through the SFMTA, hereby accepts the assignment, transfer and conveyance set forth in Section 2 and agrees to perform all of the Corporation's duties and obligations under the Agreement, to the extent arising on or after the Effective Date.

**4. Garage Manager's Approval.** IMCO hereby approves of the assignment transfer and conveyance of the Agreement from the Corporation to the City. IMCO agrees to continue to perform all of its duties and obligations under the Agreement, to the extent arising on or after the Effective Date, for the benefit of the City.

**5. Terms and Conditions of the Agreement.**

**5.1 Services.** Contractor shall provide the services described in the Agreement and as set out herein:

Contractor shall provide said services for the benefit of the City in accordance with the Agreement and to the reasonable standards determined by the SFMTA.

**5.2 Compensation.** The City shall pay IMCO the compensation described in the Agreement and as set out herein as consideration and full compensation of its performance of the services described in the Agreement, subject to the requirements of this Assignment.

**5.3 Term of Agreement.** The Agreement shall be effective as of the Effective Date and shall continue for the term set out in the Agreement at Section 5.1, unless extended as provided in the Agreement at Section 5.2, unless sooner terminated in accordance with the requirements of the Agreement.

**5.4 Indemnity.** Commencing on the Effective Date, IMCO shall indemnify and defend the City to the same and full extent, degree and manner as was required to provide indemnity and defense to the Corporation under the Agreement.

**5.5 Insurance and Securities.**

a. IMCO shall name the City as an additional insured or loss payee, as applicable, on all insurance policies and to the same extent as IMCO had named the Corporation, said coverage to commence on the Effective Date unless required sooner by the Agreement.

b. IMCO shall name the City as an additional insured or loss payee, as applicable, on all bonds and other surety instruments and documents required under the Agreement and to the same extent as IMCO had named the Corporation, said coverage to commence on the Effective Date unless required sooner by the Agreement.

**5.6 Incidental and Consequential Damages.** IMCO shall be responsible for all damages, including incidental and consequential damages, resulting in whole or in part from Contractor's acts or omissions in performing the requirements set out in the Agreement and this Assignment.

**5.7 Independent Contractor.** IMCO or any agent or employee of IMCO shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work under the Agreement and this Assignment. IMCO is responsible for payment of any taxes that may be levied upon the Agreement and this Assignment.

**5.8 Termination of Lease Does Not Terminate Agreement.** The parties to this Assignment agree that this Assignment shall supersede those parts of in Section 15.2 of the Agreement that provide that the Agreement terminates upon termination of the Lease. The parties agree that contingent upon approval of this Assignment, the Agreement shall continue under the terms of the Agreement and this Assignment irrespective of the termination of the Lease.

**6. Amendment and Conflict.** This Assignment amends the Agreement. Should any provision of the Agreement conflict with the terms or requirements of this Assignment, the terms and requirements of this Assignment shall take precedence and shall govern.

**7. Mutual Indemnities between Corporation and Garage Manager**

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

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

**8 Governing Law; Venue.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Any action concerning this



Assignment or the Agreement shall be brought in the Superior Court for the County of San Francisco, California.

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

**10. Entire Agreement.** This Assignment sets forth the entire agreement between Corporation and Garage Manager relating to the Agreement and supersedes all other oral or written provisions.

**11. Further Assurances.** From and after the date of this Assignment, Corporation and Garage Manager 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 City.

**12. 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 Corporation, Garage Manager and City to transfer the rights, benefits and obligations of the Corporation under the Agreement from the Corporation to the City.

**13. Successors; Third-Party Beneficiaries.** This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than 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.

**14. 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(s) and address(es) 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, (c) sent via facsimile (if a facsimile number is provided below) or (d) sent via email with proof of receipt. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Corporation, Garage Manager or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Corporation:

Downtown Parking Corporation  
C/O: John Brown, Corporate Manager  
833 Mission Street  
San Francisco, CA 94103

If to Garage Manager:

IMCO Parking, LLC.  
C/O: Jeff Ogle  
401 Terry Francois Street  
Suite 110  
San Francisco, CA 94158

If to City:

SFMTA  
Amit Kothari, Director of Off-Street Parking  
1 South Van Ness Avenue, 3rd floor  
San Francisco, CA 94102  
Fax:  
Email: Amit.Kothari@sfmta.com

**15. Consent of City; No Release of Corporation; Waivers.**

15.1 Neither this Assignment nor the consent of City set forth below shall release Corporation in whole or in part from any of its obligations or duties under the Agreement if Corporation fails to perform or observe any such obligation or duty.

15.2 Corporation waives any right to require City to (a) proceed against any person or entity including IMCO, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreement, or (c) pursue any other remedy in City's power. Corporation waives any defense arising by reason of any disability or other defense of Garage Manager or any other person, or by reason of the cessation from any cause whatsoever of the liability of IMCO or any other person.

15.3 IMCO waives any right to require City to (a) proceed against any person or entity including the Corporation Manager, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreement, or (c) pursue any other remedy in City's power. IMCO any defense arising by reason of any disability or other defense of the Corporation or any other person, or by reason of the cessation from any cause whatsoever of the liability of Corporation or any other person.

15.4 Corporation shall not have and hereby waives any right of subrogation to any of the rights of City against Garage Manager or any other person and Corporation waives any right to enforce any remedy of Corporation against Garage Manager (including, without limitation, Section 4(b)) or against any other person unless and until all obligations to City under the Agreement and this Assignment have been paid and satisfied in full.

15.5 Corporation waives any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement.

15.6 Corporation authorizes City, without notice or demand and without affecting Corporation'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 Garage Manager of all or any part of the Agreement.

IN WITNESS WHEREOF, Corporation, Contractor, and Garage Manager have each reviewed, approved and duly executed this Assignment as of the date first referenced above.



**CORPORATION**

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

Title: President

City of San Francisco Downtown Parking  
Corporation

**GARAGE MANAGER**

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

Title: \_\_\_\_\_

IMCO Parking LLC

**CITY**

Edward D. Reiskin  
Director of Transportation  
SFMTA

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: Robert K. Stone 10.24.2012  
Deputy City Attorney