

Commission on Community Investment and Infrastructure

RESOLUTION NO. 44-2014

**Adopted June 17, 2014**

PURSUANT TO SECTION 20.1 OF THE MAY 1, 2011 FILLMORE HERITAGE GARAGE MANAGEMENT AGREEMENT (THE "MANAGEMENT AGREEMENT") WITH PACIFIC PARK MANAGEMENT, INC., A CALIFORNIA CORPORATION ("PACIFIC PARK"), CONSENTING TO PACIFIC PARK'S ASSIGNMENT OF THE MANAGEMENT AGREEMENT TO IMPERIAL PARKING (U.S.), LLC, A DELAWARE LIMITED LIABILITY COMPANY ("IMPARK"), AS PART OF IMPARK'S PURCHASE OF PACIFIC PARK

WHEREAS, On March 15, 2011, the Commission of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the "SFRA"), approved by Resolution No. 30-2011, a Fillmore Heritage Garage Management Agreement with Pacific Park Management, Inc. ("Pacific Park") (the "Management Agreement") to manage an SFRA-owned parking garage at the Fillmore Heritage Center at 1310 Fillmore Street (the "Garage"). Pacific Park was selected after a competitive public procurement process; and

WHEREAS, On February 1, 2012, the SFRA was dissolved pursuant to California Assembly Bill 26 ("AB 26") and the California Supreme Court's decision and order in the case entitled California Redevelopment Association et al. v. Ana Matosantos, and the successor entity to the SFRA became the City and County of San Francisco (the "City"). Four months later, in June 2012, the California State Legislature passed a follow-up bill to AB 26, commonly called Assembly Bill 1484 ("AB 1484") (together with AB 26, "Redevelopment Dissolution Law"); and

WHEREAS, Under AB 1484, the successor entity to the SFRA became a separate legal entity, separate from the City (the "Successor Agency"). The Successor Agency is also known as the Office of Community Investment and Infrastructure, or OCII. Under Redevelopment Dissolution Law, the Successor Agency assumed all of the SFRA's enforceable obligations, including ownership of the SFRA's real property. The Successor Agency is charged with winding-down these enforceable obligations and disposing of all real property, pursuant to Redevelopment Dissolution Law, and subject to the oversight of the State Department of Finance, which is the lead implementing agency under Redevelopment Dissolution Law; and

WHEREAS, As a result of these legislative acts, the Successor Agency owns the Garage and is a party to the Management Agreement. The Garage was built under a Disposition and Development Agreement dated May 18, 2004 between the SFRA and Fillmore Development Associates, LLC, a California limited liability company; and

WHEREAS, On April 15, 2014, the Successor Agency Commission approved, by Resolution No. 26-2014, a First Amendment to the Management Agreement which extended

the term to June 30, 2015, with an option to extend for 12 additional months with the approval of the Successor Agency Commission (the “First Amendment”); and

WHEREAS, Pacific Park is in the process of selling its business to Imperial Parking (U.S.), LLC (“Impark”) and now wishes to assign the Management Agreement to Impark. Pursuant to Section 20.1 of the Management Agreement, Pacific Park “shall not assign, transfer or encumber its interest in this Management Agreement or any other right, privilege or license conferred by this Management Agreement, either in whole or in part, without obtaining the prior written consent of the [Successor] Agency which [Successor] Agency may give or withhold in its sole and absolute discretion;” and

WHEREAS, Pacific Park and Impark are parties to that certain Asset Purchase Agreement, dated as of May 9, 2014 (the “Asset Purchase Agreement”), pursuant to which Pacific Park among other things agreed to sell certain assets to Impark; and

WHEREAS, In furtherance of the terms and conditions of the Asset Purchase Agreement, Pacific Park and Impark are entering into an Assignment and Assumption of the Fillmore Heritage Garage Management Agreement (the “Assignment and Assumption Agreement”) to transfer all right, title, interest, obligations, duties, and responsibilities of Pacific Park under the Management Agreement to Impark, and are seeking the Successor Agency’s consent to the Assignment and Assumption Agreement, as required under Section 20.1 of the Management Agreement; and

WHEREAS, As part of Impark’s assumption of the Management Agreement, Impark intends to retain the two part-time employees currently employed at the Garage and, at a minimum, pay them according to the same compensation rates and weekly schedule as Pacific Park during the term of the Management Agreement, so long as said employees are performing satisfactorily; and

WHEREAS, As of the Closing Date in the Asset Purchase Agreement, Pacific Park does hereby irrevocably and unconditionally assign, transfer, set over and convey unto Impark all of Pacific Park’s right, title, privilege and interest in and to the Management Agreement, subject to the terms and conditions of the Management Agreement; and

WHEREAS, As of the Closing Date in the Asset Purchase Agreement, Impark does hereby assume all right, title, interest, obligations, duties, and responsibilities of Pacific Park under the Management Agreement, and hereby assumes and agrees to be bound by and perform, as a direct obligation of Impark to the Successor Agency, each and all of the obligations, terms, covenants and agreements of the Manager under the Management Agreement, including, without limitation obligations under Section 8 of the Management Agreement which covers staffing, employees and contracting and the Successor Agency’s equal opportunity program, including the Minimum Compensation Policy, the Health Care Accountability Policy, the Small Business Enterprise Agreement, the Nondiscrimination in Contracts and Benefits Policy, the Permanent Workforce Agreement, the Construction Workforce Agreement, and Prevailing Wage Provisions, all of which are attached to the Management Agreement; and

WHEREAS, Impark submitted to the Successor Agency signed declarations certifying compliance with the Successor Agency's Minimum Compensation and Health Care Accountability Policies, which are attached to the Assignment and Assumption Agreement. Also, as of June 3, 2014, Impark was certified for equal benefits under Chapter 12B of the San Francisco Administrative Code (commonly called the City's Equal Benefits Ordinance) as shown on the City's website at <http://www.sfgsa.org/Modules/ShowDocument.aspx?documentID=11784> and the Successor Agency recognizes this certification as compliance with the Successor Agency's Nondiscrimination in Contracts and Benefits Policy; and

WHEREAS, The Assignment and Assumption Agreement complies with the terms of the Successor Agency's enforceable obligation under Redevelopment Dissolution Law (i.e., the Management Agreement) and is consistent with the Successor Agency's Long-Range Property Management Plan ("PMP") approved by the Successor Agency Commission on November 19, 2013 by Resolution No. 53-2013 and submitted to the State Department of Finance ("DOF") in November 2013 (California Health and Safety Code, Section 34191.5). In its PMP, which was also approved by the Successor Agency's Oversight Board on November 25, 2013 by Resolution No. 12-2013, the Successor Agency proposed selling the Garage. DOF must approve the Successor Agency's PMP before the Garage can be sold and does not have a statutory deadline for a decision on the PMP. By assuming the Management Agreement, Impark acknowledges that the Garage must be sold and that the Management Agreement may or may not be assigned to the new owner as part of the sale transaction; and

WHEREAS, Consenting to the Assignment and Assumption Agreement, which will assign the Management Agreement to Impark and allow for the continued operation of the public parking garage at the Fillmore Heritage Center, will not independently result in a physical change in the environment. This action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3); and

WHEREAS, Staff recommends consenting to the Assignment and Assumption Agreement between Pacific Park and Impark; now therefore, be it

RESOLVED, that the Executive Director of the Office of Community Investment and Infrastructure is authorized to consent to Pacific Park's assignment of the Management Agreement to Impark, as part of Impark's purchase of Pacific Park, pursuant to Section 20.1 of the Management Agreement between the Successor Agency and Pacific Park, in substantially the form of the Assignment and Assumption Agreement on file with the Secretary of the Commission, approved as to form by the Interim General Counsel to the Successor Agency.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of June 17, 2014.

*Natasha Jones*

---

Commission Secretary