

File No. 230340

Committee Item No. 11

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: April 20, 2023

Board of Supervisors Meeting:

Date: _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU - FY2022-2024 - Clean
- MOU - FY2022-2024 - Redline
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract / DRAFT Mills Act Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER

- Tolling Agreement _____
- _____
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- _____

Prepared by: Stephanie Cabrera

Date: April 13, 2023

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

1 [Tolling Agreement - Treasure Island Series 1, LLC - Real Property Transfer Tax Dispute]

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3 **Resolution approving a Tolling Agreement to extend the statute of limitations for**
4 **Treasure Island Series 1, LLC and Treasure Island Community Development, LLC to**
5 **bring potential litigation against the City and County of San Francisco for a refund of**
6 **real property transfer tax to allow for possible resolution of the matter without**
7 **litigation.**

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9 WHEREAS, On May 28, 2021, \$1,776,000 in real property transfer taxes was paid in
10 connection with the transfer of Lot No. 6 of Final Map No. 9235 and Lot No. 2 of Final Map
11 No. 10297, San Francisco, California (Assessor’s Parcel Block No. 8906, Lot Nos. 007 and
12 008) (the “Subject Property”) based on a declared consideration paid of \$29,600,000; and

13 WHEREAS, On March 17, 2022, Treasure Island Series 1, LLC and Treasure Island
14 Community Development, LLC (collectively, the “Claimant”) filed a claim for refund for
15 \$1,776,000 (the “Claim”), alleging that (i) the City’s increased transfer tax rates do not apply to
16 the Subject Property; and (ii) the City’s transfer tax ordinance is invalid and illegal on its face
17 or as applied; and

18 WHEREAS, To give the Claimant and the City more time to resolve the case without
19 potentially unnecessary litigation, the City and the Claimant have agreed that the limitations
20 period for any potential litigation related to the Claim shall be extended under the terms set
21 forth in the Tolling Agreement on file with the Clerk of the Board of Supervisors in File No.
22 230340; and now, therefore, be it

23 RESOLVED, That the Board of Supervisors authorizes the City to agree that the
24 statute of limitations for Claimant to file an action against the City with respect to the Claim

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1 shall be extended to and including February 28, 2024, under the terms set forth in the Tolling
2 Agreement.

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TOLLING AGREEMENT

This tolling agreement (“Agreement”) is entered into by and between Treasure Island Series 1, LLC and Treasure Island Community Development, LLC, on behalf of themselves, their subsidiaries, successors and assigns, and each of them, if any (hereinafter referred to individually and collectively as “CLAIMANTS”), the City and County of San Francisco, together with its elective and/or appointive boards, agents, servants, employees, consultants, departments, commissioners, and officers (hereinafter referred to individually and collectively as “CITY”), hereinafter each referred to as a “Party” and collectively as the “Parties.”

I. Tolling Provision.

The statute of limitations for CLAIMANTS to file an action in San Francisco Superior Court for a refund of CLAIMANTS’ payment of real property transfer taxes under San Francisco Business and Tax Regulations Code Article 12-C for the amounts and on the grounds set forth in CLAIMANTS’ claim for refund filed on March 17, 2022, San Francisco Claim Number 22-01413, attached hereto as Exhibit A, is hereby extended to and including and, for the avoidance of doubt, no later than February 28, 2024.

II. Modification.

This Agreement can be extended or otherwise modified only in writing signed by the Parties. This Agreement shall constitute the entire understanding between the Parties concerning the subject matter of this Agreement.

III. Sole Purpose of the Agreement; No Effect on Liability.

Except as specifically stated in this Agreement, this Agreement shall in no way affect, waive, or limit any rights, claims, or defenses of any of the Parties to this Agreement, other than the statute of limitations as described above, if any. This Agreement shall not be deemed to constitute an admission of any liability by any of the Parties. This Agreement cannot be introduced into evidence in any action in court, arbitration, or mediation, except to enforce its terms.

IV. Applicability.

This Agreement shall bind and benefit each of the Parties and their respective predecessors, successors, and assigns, as applicable.

V. Governing Law.

This Agreement shall be governed by and interpreted pursuant to the law of the State of California without regard to California’s choice of law provisions.

VI. Severability of Provisions.

If any provision of this Agreement is found to be unenforceable or unlawful, the remaining provisions of this Agreement shall remain fully effective and enforceable.

VII. Counterparts.

This Agreement may be signed in counterparts and each signed counterpart shall be deemed an original document, but all of which together shall constitute one and the same instrument.

VIII. Entire Agreement.

This Agreement is the entire agreement of all who are bound by it with respect to the matters addressed herein.

IX. Understanding and Interpretation.

Each Party or other person bound by this Agreement has read and understood this Agreement and so warrants. Each Party or other person bound by this Agreement has received independent legal advice about the advisability of signing this Agreement. All Parties to this Agreement agree that the rule of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in interpretation of any provision of this Agreement. Headings in this Agreement are inserted for convenience only and shall not constitute part hereof for any purpose whatever.

X. Binding Agreement.

Each person signing this Agreement warrants that he or she has authority to bind the entity on whose behalf he or she signs. This Agreement shall be binding upon and inure to the benefit of each Party signing it and their respective successors, assigns, and legal representatives.

XI. Required Approval.

CLAIMANTS acknowledge that this Agreement is contingent upon the approval of the Board of Supervisors by resolution. This Agreement shall not be effective or binding as against any Party unless and until such approval has been obtained.

XII. Termination

The extension of the statute of limitations in paragraph 1 of this Agreement shall survive any termination of this Agreement, but no Party shall have the right to terminate this Agreement.

CLAIMANTS

Treasure Island Series 1, LLC

Dated: 3/15/23

By: 

Name: Christopher Meany

Title: Vice President

Treasure Island Community Development, LLC

Dated: 3/15/23

By: 

Name: Christopher Meany

Title: Vice President

CITY AND COUNTY OF SAN FRANCISCO

Dated: 3/20/2023

By: Carole F. Ruwart
Carole F. Ruwart
Deputy City Attorney

Exhibit A

REDACTED