

File No. 180659

Committee Item No. 20

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight
Board of Supervisors Meeting:

Date: July 18, 2018

Date: _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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|--------------------------|--------------------------|-------|
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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Prepared by: John Carroll

Date: July 13, 2018

Prepared by: John Carroll

Date: _____

1 [Tolling Agreement - Fong & Chan Architects - Zuckerberg San Francisco General Hospital
2 Rebuild Dispute]

3 **Resolution approving a Tolling Agreement to toll the statutes of limitations for Fong &**
4 **Chan Architects to bring potential claims against the City and County of San Francisco**
5 **arising out of the rebuild of the new Zuckerberg San Francisco General Hospital**
6 **in 2016.**

7
8 WHEREAS, The City and County of San Francisco (the "City") completed construction
9 of the new Zuckerberg San Francisco General Hospital in 2016, for which Fong & Chan
10 Architects ("FCA") provided the City professional design services ("ZSFG Rebuild"); and

11 WHEREAS, The City is a party to litigation involving Keenan, Hopkins, Suder and
12 Stowell Contractors, Inc. and Webcor Construction L.P. regarding the ZSFG Rebuild (the
13 "Action"), which is described in paragraph one of the Tolling Agreement between the City and
14 FCA, on file with the Clerk of the Board of Supervisors in File No. 180659 ("Tolling
15 Agreement"); and

16 WHEREAS, The City and FCA have identified potential claims between them arising
17 from the ZSFG Rebuild and the Action; and

18 WHEREAS, The City and FCA have agreed to cooperate in defending against
19 Webcor's claims against the City at issue in the Action; and

20 WHEREAS, To avoid the need for potentially unnecessary or harmful litigation, the City
21 and FCA have agreed that the limitations period for any potential litigation related to the ZSFG
22 Rebuild shall be tolled pursuant to the terms set forth in the Tolling Agreement, on file with the
23 Clerk of the Board of Supervisors in File No. 180659; now, therefore, be

1 RESOLVED, That the Board of Supervisors authorizes the City to agree that the
2 statute of limitations for FCA to file an action against the City with respect to any claims
3 arising out of the ZSFG Rebuild shall be tolled as of the February 1, 2018.
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TOLLING AGREEMENT

The undersigned counsel (“Counsel”) and their respective Clients (as defined below) have entered into this tolling agreement (“Agreement”) regarding claims and legal proceedings arising from, relating to, or in connection with the Clients’ involvements in the San Francisco General Hospital Rebuild Program, 1001 Potrero Avenue, located in the City and County of San Francisco (the “Proceedings”). For purposes of this Agreement, “Client” and “Clients” mean the City and County of San Francisco, acting by and through San Francisco Public Works; Fong & Chan Architects; and their respective affiliated, associated, and successor entities (each a “Party” and together “the Parties”). “Counsel” means their respective counsel (together with the consultants retained by counsel) who sign this Agreement or later agree in writing to be bound by it. “Action” means the ongoing litigation, including any cross-complaints, between, among others, Keenan, Hopkins, Suder and Stowell Contractors, Inc.; Webcor Construction L.P.; and the City and County of San Francisco, *Keenan, Hopkins, Suder and Stowell Contractors, Inc. vs. Webcor Construction L.P. et al.*, San Francisco Superior Case No. CGC-16-555423.

I. Tolling Provision.

All statutes of limitation, statutes of repose, notice requirements, doctrines of laches, and all other time limitations, bars, and other time defenses under any applicable law, whether statutory, contractual, equitable, or otherwise, collectively the “Time Defenses,” relating to the Proceedings are hereby tolled and suspended until the settlement of, dismissal of, or entry of final judgment in the Action, provided that any Party may give 60 days’ written notice to all of the other Parties that such Party is terminating the tolling and suspension of the Time Defenses. The Parties agree that this provision constitutes compliance with any statute, rule, or other law requiring a written waiver of the Time Defenses.

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 Time Defenses, if any. This Agreement shall not be deemed to constitute an admission of any liability by any of the parties hereto. 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.

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 Client, Counsel, or other person bound by this Agreement has read and understood this Agreement and so warrants. Each Client, Counsel, 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 Client and Counsel signing it and their respective successors, assigns, and legal representatives.

IN WITNESS WHEREOF, Clients and Counsel have executed this Agreement as of the ___ day of February, 2018, which be the effective date of this Tolling Agreement.


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CLIENTS:



Fong & Chan Architects

City and County of San Francisco

By: Chiu Lin Tse-Chan, FAIA, LEED AP

By: Mohammed Nuru

Title: Principal

Title: Director
San Francisco Public Works

COUNSEL:



[NAME]
Severson & Werson
Counsel to Fong & Chan Architects

DENNIS J. HERRERA

[NAME]
Deputy City Attorney
City and County of San Francisco

005-11
COB, Aides
Bst Clerk
GPO Clerk

President, District 10
BOARD of SUPERVISORS



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San Francisco, CA 94102-4689

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Fax No. 554-7674
TDD/TTY No. 554-5227

Malia Cohen

PRESIDENTIAL ACTION

Date: June 29, 2018

To: Angela Calvillo, Clerk of the Board of Supervisors

BY
2018 JUL -9 AM 11:23
BOARD OF SUPERVISORS
SAN FRANCISCO

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No. 180659 Department _____
(Primary Sponsor)

Title. Resolution approving a Tolling Agreement to toll the statutes of limitations for Fong & Chan Architects to bring potential claims against

From: Budget & Finance Sub Committee

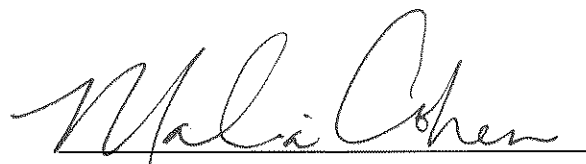
To: Government Audit & Oversight Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)


Malia Cohen, President
Board of Supervisors

Date 6/18/18 File Number (if applicable) _____

- Legislation for Introduction (NEW) ▶▶▶ Legislative Clerk
- Legislation Pending in Committee (AMENDED) ▶▶▶ Committee Clerk
- Legislation for Board Agenda (AMENDED) ▶▶▶ Deputy Clerk

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation: Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature: Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents: 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable) in **Word** format
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Ordinance

- Legislation: Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature: City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents: 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Grant Resolution

- Legislation: Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature: Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents: 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable) in **Word** format
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Resolution

- Legislation: Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature: None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents: 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org

Joy Perez 554-3869 City Attorney
 Name and Telephone Number Department

BOARD OF SUPERVISORS
 SAN FRANCISCO
 2018 JUN 18 AM 10:20
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