

File No. 221232

Committee Item No. 12

Board Item No. 12

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight  
Board of Supervisors Meeting:

Date: January 19, 2023  
Date: January 31, 2023

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

#### OTHER

- Tolling Agrmt 120522
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Stephanie Cabrera  
Prepared by: Stephanie Cabrera  
Prepared by: \_\_\_\_\_

Date: January 13, 2023  
Date: January 23, 2023  
Date: \_\_\_\_\_

1 [Tolling Agreement - A-N SFD Owner, LLC - Sir Francis Drake Hotel - Real Property Transfer  
2 Tax Dispute]

3 **Resolution approving a Tolling Agreement to extend the statute of limitations for A-N**  
4 **SFD Owner, LLC for the former Sir Francis Drake Hotel to bring potential litigation**  
5 **against the City and County of San Francisco for a refund of real property transfer tax**  
6 **to allow for possible resolution of the matter without litigation.**

7  
8 WHEREAS, SPL Express, Inc., on behalf of A-N SFD Owner, LLC, paid \$9,130,170 in  
9 transfer taxes for the April 1, 2021 change in ownership of the former Sir Francis Drake Hotel,  
10 based on a declared sales price of the real property of \$152,169,259; and

11 WHEREAS, A-N SFD Owner, LLC filed a claim for refund for \$1,780,158 plus interest  
12 on June 21, 2021 (the "Claim"), alleging that the declared amount erroneously included  
13 nontaxable assets; and

14 WHEREAS, The value of the Sir Francis Drake Hotel real property as of the  
15 April 1, 2021 change in ownership is currently the subject of an assessment appeal before the  
16 San Francisco Assessment Appeals Board, the outcome of which may permit the City and  
17 County of San Francisco (the "City") and A-N SFD Owner, LLC to resolve the Claim without  
18 litigation; and

19 WHEREAS, To avoid the need for potentially unnecessary litigation, the City and A-N  
20 SFD Owner, LLC have agreed that the limitations period for any potential litigation related to  
21 the Claim shall be extended under the terms set forth in the Tolling Agreement on file with the  
22 Clerk of the Board of Supervisors in File No. 221232; now, therefore, be it

23 RESOLVED, That the Board of Supervisors authorizes the City to agree that the  
24 statute of limitations for A-N SFD Owner, LLC to file an action against the City with respect to  
25

1 the Claim shall be extended to and including December 31, 2023, under the terms set forth in  
2 the Tolling Agreement.

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## **TOLLING AGREEMENT**

This tolling agreement (“Agreement”) is entered into by and between A-N SFD Owner, LLC, on behalf of itself, its subsidiaries, successors and assigns, and each of them, if any (hereinafter referred to individually and collectively as “CLAIMANT”), and 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 CLAIMANT to file an action in San Francisco Superior Court for a refund of CLAIMANT’s payment of real property transfer tax, under San Francisco Business and Tax Regulations Code Article 12-C for the amounts and on the grounds set forth in CLAIMANT’s claim for refund filed on June 21, 2021, San Francisco Claim Number 21-02010, attached hereto as Exhibit A, as amended by the updated claim form filed on August 12, 2021, attached hereto as Exhibit B, is hereby extended to and including December 31, 2023.

### **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 laws 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 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.**

CLAIMANT acknowledges 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 either Party unless and until such approval has been obtained.


Date: 11/28/2022

For Claimant A-N SFD Owner, LLC

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

  
Doug Profenius  
Vice President

Date: 12/5/22

For City and County of San Francisco

Signature: \_\_\_\_\_

  
Carole Ruwart, Deputy City Attorney

**Exhibit A - REDACTED**

**Exhibit B - REDACTED**