

File No. 220799

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: September 15, 2022

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 Agrmt - 070622 _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Prepared by: Stephanie Cabrera

Date: September 7, 2022

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

1 [Tolling Agreement - Park Intermediate Holdings LLC - Hyatt Centric Hotel - Real Property
2 Transfer Tax Dispute]

2

3 **Resolution approving a Tolling Agreement to extend the statute of limitations for Park**
4 **Intermediate Holdings LLC for the Hyatt Centric 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, The City and County of San Francisco (the "City") imposed real property
9 transfer taxes, penalties, and interest for the September 17, 2019, change in ownership of the
10 Hyatt Centric Hotel, based on a consideration or value of the real property of \$162,100,000
11 rather than the declared consideration or value of the real property of \$109,000,000; and

12 WHEREAS, Park Intermediate Holdings LLC paid the transfer taxes, penalties, and
13 interest on October 5, 2020, and filed a claim for refund on November 16, 2020 (the "Claim");
14 and

15 WHEREAS, The value of the Hyatt Centric Hotel real property as of the
16 September 17, 2019, change in ownership is currently the subject of an assessment appeal
17 before the San Francisco Assessment Appeals Board, the outcome of which may permit the
18 City and Park Intermediate Holdings LLC to resolve the Claim without litigation; and

19 WHEREAS, To avoid the need for potentially unnecessary litigation, the City and Park
20 Intermediate Holdings LLC have agreed that the limitations period for any potential litigation
21 related to the Claim shall be extended under the terms set forth in the Tolling Agreement on
22 file with the Clerk of the Board of Supervisors in File No 220799, now, therefore, be

23 RESOLVED, That the Board of Supervisors authorizes the City to agree that the
24 statute of limitations for Park Intermediate Holdings LLC to file an action against the City with

25

1 respect to the Claim shall be extended to and including June 30, 2023, under the terms set
2 forth in the Tolling Agreement.

3 n:\taxclm\cl2022\21-00847\01611298.docx

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TOLLING AGREEMENT

This tolling agreement (“Agreement”) is entered into by and between Park Intermediate Holdings 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 taxes, penalties, interest, and fees 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 November 16, 2020, San Francisco Claim Number 21-00847, attached hereto as Exhibit A, is hereby extended to and including June 30, 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 thereto. 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.

Dated: 7-2-2022

For Claimant Park Intermediate Holdings LLC

Signature:

[Handwritten Signature]

Name and Title

City and County of San Francisco

Dated: 7-6-2022

[Handwritten Signature]
Moe Jamil, Deputy City Attorney

Exhibit A

CITY AND COUNTY OF SAN FRANCISCO

Claim For Tax Refund

Before completing this form please read the instructions on the back. You have one year from the date of payment or the date the return accompanying the payment was due, whichever is later, to submit this form and supporting documentation to **CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94102-5402.**

You must file a separate claim for tax refund for each type of tax.

21-00847

ASSESSR Rf-21-00847

1. CLAIMANT'S NAME: <u>ParkIntermediateHoldingsLLC</u> (DBA) Owner's Name: <u>c/o Park Hotels & Resorts</u> Address: <u>1775 Tysons Blvd., 7th Floor</u> <u>Mclean, VA 22012 c/o Brigham Manrique</u> Telephone: <u>(571) 302-5716</u>	2. IF CLAIMANT IS A BUSINESS: Type of Ownership <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Other: <u>LLC</u>
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3. FEDERAL TAXPAYER ID # 37-1731774

4. TAX PAID INFORMATION					
Business Account Number or Assessor's Parcel Number	Paid By	Date Paid	Receipt Number	Amount Paid	Period Covered
a. 0029-007	ParkIntermediateHolding	10/05/2020	202026101	\$2,341,710	N/A
b.					
c.					

5. BASIS OF CLAIM: State all facts that support your claim for tax refund. If your refund applies to only a portion of the tax paid, please explain what portion it applies to. The real property transferred on 9/17/19 for a sales price of \$109,000,000. Transfer tax paid was \$3,270,000. Subsequently notice of a deficiency determination was received indicating a real property value of \$162,100,000 and requiring that additional transfer tax of \$1,593,000, penalties in the amount of \$557,550, and interest of \$191,160 for a total of \$2,341,710 be paid. We are requesting a refund for the additional transfer tax, penalties, and interest paid because they were based on an incorrect real property value.	Applicable Tax (check one) <input type="checkbox"/> Gross Receipts Tax <input type="checkbox"/> Hotel Tax <input type="checkbox"/> Parking Tax <input type="checkbox"/> Payroll Expense Tax <input type="checkbox"/> Stadium Operator's Tax <input checked="" type="checkbox"/> Real Property Transfer Tax <input type="checkbox"/> Utility User's Tax <input type="checkbox"/> Other _____
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6. REFUND AMOUNT: \$2,341,710 plus interest at 3% from date of payment.

7. SIGNATURE OF CLAIMANT OR REPRESENTATIVE: I declare under penalty of perjury that the foregoing is true and correct. "I certify I filed this claim within one year of my paying the tax or, within one year of the due date of my tax return." The undersigned is the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. I am not an agent or the taxpayer's attorney.	
X <u> </u> Signature of Claimant or Representative <u>Scott Winer</u> Print Name	<u>11.09.2020</u> Date <u>Senior Vice President</u> Title

RECEIVED
 NOV 16 PM 3:02
 CITY & COUNTY OF SAN FRANCISCO
 CONTROLLER



Park Hotels & Resorts Inc.
1775 Tysons Boulevard
7th Floor
McLean, VA 22102
+1 571 302 5757 Main

LETTER OF AUTHORIZATION

TO WHOM IT MAY CONCERN:

Property Owner Name: CHSP Fisherman Wharf LLC

Hereby appoints and authorizes JLL as agent to represent all matters pertaining to ad valorem taxes for tax years 2019, 2020 and 2021.

JLL has the right to file returns, examine records, obtain all tax statements and discuss or appeal any tax assessments to the proper authorities when, in their opinion, the assessment does not represent fair market value. Should an appeal be submitted, Agent will forward the property owner a copy of the completed assessment appeal application.

PROPERTY Location: Hyatt Centric Fisherman's Wharf 555 North Point St., San Francisco, CA
San Francisco County
Acct: 0029-007

Agents: Jones Lang LaSalle
Louis Breeding / Jodi Garman / Eliot Johnson / Tiffany Prince
3106 W. Bay to Bay Blvd.
Tampa, Florida 33629
(813) 229-0331

Property Owner Name: CHSP Fisherman Wharf LLC

BY: SPW
NAME: Scott Winer
TITLE: Vice President
DATE: Oct 11 2019

State of Virginia
County of Fairfax

Sworn to (or affirmed) and subscribed before me this 11th day of Oct, 2019
by Scott Winer

Claudia Ann Bartz
Signature of Notary Public
Claudia Ann Bartz
Name of Notary Typed, Printed, or Stamped



Personally known or Produced Identification

Type of Identification Produced _____

BEV / JLL Analysis

**Hyatt Centric Fisherman's Wharf
San Francisco, CO**

Net Operating Income To The Going Concern		\$11,490,228
Less Brand Premium		\$ -
Personal Property Value	\$ 11,000,000	
TPP Yield Rate (Interest Rate plus Risk)	<u>9.50%</u>	
Less Total Return On Personal Property		\$ 1,045,000
Net Income Attributed to Property and Brand / Ownership Transition Cost		\$ 10,445,228
Brand / Ownership Transition Cost		
Initial Franchise Fee	\$ 100,000	
Opening Advertising	\$ 125,000	
Pre-Opening Training and Service	\$ 172,900	
Reservation Systems	\$ 314,000	
Start-Up Costs (\$4,000/Room)	\$ 1,264,000	
Working Capital (\$4,000/Room)	\$ 1,264,000	
	<u>\$ 3,239,900</u>	
Return on/of Brand / Ownership Transition Cost (Inte	<u>14.50%</u>	
Less Total Income Attributed to the Brand / Ownership Transition Cost		\$ 469,786
NET INCOME ATTRIBUTED TO REAL & TANGIBLE PERSONAL PROPERTY		\$ 9,975,443
Capitalization Rate Including Effective Tax Rate		8.19%
Indicated Value of Real and Tangible Personal Property		\$ 121,809,460
Return of Personal Property		\$ 11,000,000
Reserve Fund Transfer (Cash)		\$ 1,851,410
Indicated Value of Real Property		\$ 108,958,050
Rounded		\$ 109,000,000
Per Room		\$ 344,937



October 28, 2020

USPS Certified Mail: 7020 0090 0001 7972 9883

Controller's Office – Claims Division
1390 Market Street – 7th Floor
San Francisco, CA 94102-5402

Re: Claim for Real Property Transfer Tax Refunds

To whom it may concern:

We are submitting the attached executed Claim for Real Property Transfer Tax Refund forms along with supporting documentation and letters of authorization for the following properties:

Hotel Adagio 0305-008/009
Le Meridien 0229-020

Hyatt Centric Fisherman's Wharf 0029-007
JW Marriott Union Square 0229-020

Please contact Jodi Garman either by email jodi.garman@am.jll.com or by phone (813) 229-3991 with any questions.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Malena Garcia Smith".

Malena Garcia Smith
Executive Assistant

Enclosures



November 10, 2020

USPS Certified Mail: 7020 0090 0001 7972 9883

City and County of San Francisco
Controller's Office – Claims Division
1390 Market Street – 7th Floor
San Francisco, CA 94102-5402

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JW Marriott Union Square 0229-020

Please contact Jodi Garman either by email jodi.garman@am.jll.com or by phone (813) 229-3991 with any questions.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Malena Garcia Smith", with a long horizontal flourish extending to the right.

Malena Garcia Smith
Executive Assistant

Enclosures

Member, Board of Supervisors
District 5



City and County of San Francisco

DEAN PRESTON

DATE: September 8, 2022
TO: Angela Calvillo
Clerk of the Board of Supervisors
FROM: Supervisor Preston
Chairperson
RE: Government Audit and Oversight Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee I have deemed the following matters to be of an urgent nature and request each be considered by the full Board on Tuesday, September 20, as Committee Reports:

Regular Agenda:

File No. 220506 Board Response - Civil Grand Jury Report - Shovel Ready: Best Practices and Collaboration to Improve San Francisco's Capital Construction Program

Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2021-2022 Civil Grand Jury Report, entitled "Shovel Ready: Best Practices and Collaboration to Improve San Francisco's Capital Construction Program;" and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.

File No. 220721 Board Response - Civil Grand Jury Report - Buried Problems and a Buried Process: The Hunters Point Naval Shipyard in a Time of Climate Change

Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2021-2022 Civil Grand Jury Report, entitled "Buried Problems and a Buried Process: The Hunters Point Naval Shipyard in a Time of Climate Change;" and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.

File No. 220723 Board Response - Civil Grand Jury Report - Safe and Accessible Parks for All

Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2021-2022 Civil Grand Jury Report, entitled "Safe and Accessible Parks for All;" and urging the Mayor to cause the implementation of accepted findings and recommendations through her department heads and through the development of the annual budget.



DEAN PRESTON

Litigation Agenda:

File No. [220798](#) Tolling Agreement - PK Domestic Property LLC - Hotel Adagio – Real Property Transfer Tax Dispute

Resolution approving a Tolling Agreement to extend the statute of limitations for PK Domestic Property LLC for Hotel Adagio to bring potential litigation against the City and County of San Francisco for a refund of real property transfer tax to allow for possible resolution of the matter without litigation.

File No. [220799](#) Tolling Agreement - Park Intermediate Holdings LLC - Hyatt Centric Hotel - Real Property Transfer Tax Dispute

Resolution approving a Tolling Agreement to extend the statute of limitations for Park Intermediate Holdings LLC for the Hyatt Centric Hotel to bring potential litigation against the City and County of San Francisco for a refund of real property transfer tax to allow for possible resolution of the matter without litigation.

File No. [220800](#) Tolling Agreement - PK Domestic Property LLC - Le Meridien Hotel - Real Property Transfer Tax Dispute

Resolution approving a Tolling Agreement to extend the statute of limitations for PK Domestic Property LLC for the Le Meridien Hotel to bring potential litigation against the City and County of San Francisco for a refund of real property transfer tax to allow for possible resolution of the matter without litigation.

These matters will be heard in the Government Audit and Oversight Committee during a regular meeting on Thursday, September 15, 2022, at 10:00 a.m.

A handwritten signature in blue ink that reads "Dean Preston".

Dean Preston