

File No. 230535

Committee Item No. 16

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Date: June 1, 2023

Board of Supervisors Meeting:

Date: \_\_\_\_\_

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Prepared by: Stephanie Cabrera

Date: May 24, 2023

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Tolling Agreement - The Mexican Museum - Lawsuit Statute of Limitations]

2

3 **Resolution approving a tolling agreement to toll the statute of limitations on The**  
4 **Mexican Museum’s lawsuit against the City in exchange for a dismissal without**  
5 **prejudice in *The Mexican Museum v. City and County of San Francisco, et al.*, San**  
6 **Francisco Superior Case No. CGC-14-542509.**

7

8 WHEREAS, The Mexican Museum (“Museum”) filed a lawsuit against the City and  
9 County of San Francisco (“City”) in the San Francisco Superior Court, Case No. CGC-22-  
10 599833 (the “Action”), alleging breach of a Purchase Agreement between the City and the  
11 Museum, among others, and a lease agreement between the City and the Museum for the  
12 rental by the Museum of a four-story parcel of the property located at 706 Mission Street in  
13 San Francisco; and

14 WHEREAS, The City and Museum wish to avoid the expense and uncertainty of  
15 litigation of the Action if possible; and

16 WHEREAS, The City and the Museum have tentatively agreed, subject to approval of  
17 the Board of Supervisors, that tolling the limitations period will permit the Museum to dismiss  
18 the Action without prejudice; and

19 WHEREAS, The City and the Museum have agreed that the limitations and time  
20 related defenses for claims by both parties shall be tolled pursuant to the terms set forth in the  
21 Tolling Agreement, now, therefore, be it

22 RESOLVED, That the Board of Supervisors hereby approves the Tolling Agreement,  
23 on file with the Clerk of the Board in Filed No. 230535, and authorizes the City Attorney to  
24 enter into such Agreement on behalf of the City and County of San Francisco.

25

## TOLLING AGREEMENT

This Tolling Agreement (the “Agreement”) shall be deemed effective as of the \_\_\_ day of \_\_\_\_\_, 2023<sup>1</sup> (the “Effective Date”) by and between The Mexican Museum (“TMM”), on the one hand, and the City and County of San Francisco (“CCSF”) on the other hand. TMM and CCSF are referred to individually as “Party” and collectively referred to as the “Parties.”

WHEREAS, TMM filed an action against CCSF with the San Francisco Superior Court (Action No.CGC-22-599833) asserting Claims, as that term is defined in Paragraph 1(a) below (the “Action”).

WHEREAS, upon full execution of this Agreement and subject to approval of this Agreement by the San Francisco Board of Supervisors, TMM will dismiss the Action without prejudice.

WHEREAS, the Parties deem it to be in their mutual benefit that the whatever Claims the Parties may have against each other and defenses thereto as of the Effective Date not be asserted or continue to be asserted in litigation at the present time;

WHEREAS, the Parties desire to encourage resolution of the Claims as may result without litigation and wish to avoid the expense and uncertainty of litigation of the Claims if at all possible, and are willing to make the stipulations, covenants and agreements hereinafter set forth in order to defer and postpone the continuation and/or commencement of litigation;

WHEREAS, the Parties desire that for the period of this Agreement, notwithstanding any deadlines to file suit or exhaust applicable administrative remedies that may deem the Action already untimely, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations;

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<sup>1</sup> The Effective Date shall be the date the San Francisco Board of Supervisors approves this agreement, if such approval occurs.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:

(a) “Claims” shall mean any and all claims, causes of action and/or cross-claims, if any, known or unknown, that are described in TMM’s complaint in the Action and which the Parties may have against each in connection with the agreement entered into by CCSF to purchase 706 Mission Street, San Francisco (the “Purchase Agreement”) and the lease entered into by the Parties for the rental by TMM from CCSF of the condominium unit or parcel that is a portion of floors 1 through 4 of the real property located at 706 Mission Street, San Francisco (the “Lease”).

(b) “Tolling Period” shall mean the period from and including the Effective Date of this Agreement until and including the Expiration Date (as defined below) of this Agreement.

(c) “Expiration Date” shall mean the earlier of March 31, 2024, or 30 days from the date that written notice of termination of this Agreement has been served by either of the Parties on the other in accordance with paragraph 10 of this Agreement.

(d) “Timing Defenses” shall mean and include, and shall be limited to, any affirmative defenses to a Party’s Claims that the other Party may have based upon (1) any statute of limitations, (2) laches, (3) the exhaustion of administrative remedies, and/or (4) any argument based on any legal authority regarding the failure of the opposing Party to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.

2. TMM and CCSF stipulate, covenant and agree that Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.

3. TMM and CCSF stipulate, covenant, and agree that this Agreement shall have no effect on any Timing Defenses that may be available to the Parties prior to the Effective Date,

and that all time periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding by either Party subject to paragraph 5 of this Agreement) shall be included in the calculation of and running of any applicable Timing Defenses. Nothing contained herein shall preclude either Party from asserting any Timing Defenses to the extent that such defenses already exist as of the Effective Date, and nothing herein shall be deemed to revive any Claims barred as of the Effective Date.

4. TMM and CCSF stipulate, covenant, and agree that by executing and entering into this Agreement, the Parties are not waiving or otherwise impairing by estoppel or any other means each Party's right and ability to raise any Timing Defenses available to them for the periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding by either Party subject to paragraph 5 of this Agreement).

5. The provisions of this Agreement comprise all of the terms, conditions, agreements and representations of the Parties respecting the tolling of the Timing Defenses. Notwithstanding the termination options detailed in Paragraph 10, this Agreement may not be altered or amended except by written agreement executed by both the TMM and the CCSF. Both the TMM and the CCSF hereby agree that terms of this Agreement have not been changed, modified, or expanded by any oral agreements or representations entered into or made by the TMM or the CCSF prior to or at the execution of this Agreement.

6. The Parties hereto acknowledge that each of them has had the benefit of counsel of their choice and has been offered an opportunity to review this Agreement with chosen counsel. The Parties hereto further acknowledge that they have, individually or through their respective counsel, participated in the preparation of this Agreement, and it is understood that no provision hereof shall be construed against any party hereto by reason of either party having drafted or prepared this Agreement.

7. This Agreement may be executed in one or more original or facsimile counterparts, each of which shall be deemed an original, but also which together will constitute one and the same instrument.

8. This Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.

9. Either Party may terminate this Agreement, effective 30 days after the date of serving a written notice of termination, by serving notice of termination by letter to the other party. Such notice letter shall be served by facsimile transmission, followed by the delivery of an original of the notice letter by United States certified mail, return receipt requested, to the following persons at the following addresses and facsimile numbers:

If to TMM:

James A. Quadra  
Quadra & Coll, LLP  
649 Mission Street, 5<sup>th</sup> Floor  
San Francisco, California 94105

If to CCSF:

Ari A. Baruth  
Deputy City Attorney  
Office of City Attorney David Chiu  
1390 Market Street, 4<sup>th</sup> Floor  
San Francisco, California 94102

10. On or after the Expiration Date of this Agreement, each Party shall have the right to file and pursue any and all Claims and to seek any and all legal remedies against the other Party that may be available, if any, and other Party shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

11. Nothing in this Agreement shall be construed as an admission or denial by a Party as to the merits of any of the Claims against the other Party or the merits of any of the defenses to any Claims by the other party.

12. Neither TMM nor CCSF nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling

Period in any way, directly or indirectly, before a jury or any fact finder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

13. TMM represents and warrants that the individual signing this Agreement on behalf of any of TMM has authority to sign on behalf TMM. CCSF represents and warrants that the individual signing this Agreement on behalf CCSF has the authority to sign on behalf of CCSF. The Parties acknowledge that this Agreement is subject to approval by the San Francisco Board of Supervisors, and such approval is not made through the execution of this Agreement. Should the San Francisco Board of Supervisors decide not to approve this Agreement, this Agreement shall be null and void. The City Attorney’s office will advise TMM shortly after the San Francisco Board of Supervisors makes its decision on whether to approve this Agreement.

SO AGREED:

TMM:


Date: 5/2/2023

DocuSigned by:  
By: ANDREW KLUGER  
10F63637F6094367  
Andrew Kluger, President of the TMM Board of Directors

SO AGREED:

San Francisco City Attorney’s Office

Date: May 1, 2023

By:   
Ari Baruth  
Deputy City Attorney  
Attorneys for City and County of San Francisco