

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Dean Preston, Chair
Government Audit and Oversight Committee

FROM: Stephanie Cabrera, Assistant Clerk

DATE: September 19, 2022

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, September 20, 2022

The following file should be presented as COMMITTEE REPORT at the regular Board meeting on Tuesday, September 20, 2022. This RESOLUTION was acted upon at the regular Government Audit and Oversight Committee meeting on Thursday, September 15, 2022, at 10:00 a.m., by the votes indicated.

Item No. 28 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.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Dean Preston - Aye
 Supervisor Connie Chan - Aye
 Supervisor Shamann Walton - Aye
 Supervisor Rafael Mandelman - Excused

Cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

File No. 220800

Committee Item No. 9

Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight
Board of Supervisors Meeting:

Date: September 15, 2022

Date: September 20, 2022

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 Agmt 070622 _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Prepared by: Stephanie Cabrera

Date: September 7, 2022

Prepared by: Stephanie Cabrera

Date: September 16, 2022

Prepared by: _____

Date: _____

1 [Tolling Agreement - PK Domestic Property LLC - Le Meridien Hotel - Real Property Transfer
Tax Dispute]

2

3 **Resolution approving a Tolling Agreement to extend the statute of limitations for**
4 **PK Domestic Property LLC for the Le Meridien Hotel to bring potential litigation against**
5 **the City and County of San Francisco for a refund of real property transfer tax to allow**
6 **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 18, 2019 change in ownership of the
10 Le Meridien Hotel, based on a consideration or value of the real property of \$259,260,000
11 rather than the declared consideration or value of the real property of \$181,000,000; and

12 WHEREAS, PK Domestic Property LLC paid the transfer taxes, penalties, and interest
13 on October 5, 2020, and filed a claim for refund on November 16, 2020 (the “Claim”); and

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

18 WHEREAS, To avoid the need for potentially unnecessary litigation, the City and
19 PK Domestic Property LLC have agreed that the limitations period for any potential litigation
20 related to the Claim shall be extended under the terms set forth in the Tolling Agreement on
21 file with the Clerk of the Board of Supervisors in File No 220800; now, therefore, be it

22 RESOLVED, That the Board of Supervisors authorizes the City to agree that the
23 statute of limitations for PK Domestic Property LLC to file an action against the City with

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

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TOLLING AGREEMENT

This tolling agreement (“Agreement”) is entered into by and between PK Domestic Property 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 21-00848, 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 PK Domestic Property LLC

Signature:

Spw VP

Name and Title

City and County of San Francisco

Dated: 7-6-2022

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.

ASSESSOR Ref. 21-00246 **21-00848**

<p>1. CLAIMANT'S NAME: <u>PK Domestic Property LLC</u> (DBA) Owner's Name: <u>c/o Park Hotels & Resorts</u> Address: <u>1775 Tysons Blvd., 7th Floor</u> <u>McLean, VA 22102 c/o Brigham Manrique</u> Telephone: <u>(571) 302-5716</u></p>	<p>2. IF CLAIMANT IS A BUSINESS:</p> <p>Type of Ownership</p> <p><input type="checkbox"/> Individual</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Corporation</p> <p><input checked="" type="checkbox"/> Other: <u>LLC</u></p>
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3. FEDERAL TAXPAYER ID # 27-4010510

4. TAX PAID INFORMATION					
Business Account Number or Assessor's Parcel Number	Paid By	Date Paid	Receipt Number	Amount Paid	Period Covered
a. 0229-020	PK DomesticPropertyLLC	10/05/2020	202026100	\$3,451,266	N/A
b.					
c.					

<p>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.</p> <p>The real property transferred on 9/18/19 for a sales price of \$181,000,000. Transfer tax paid was \$5,430,000. Subsequently notice of a deficiency determination was received indicating a real property value of \$259,260,000 and requiring that additional transfer tax of \$2,347,800, penalties in the amount of \$821,730, and interest of \$281,736 for a total of \$3,451,266 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.</p>	<p style="text-align: center;">Applicable Tax (check one)</p> <p><input type="checkbox"/> Gross Receipts Tax</p> <p><input type="checkbox"/> Hotel Tax</p> <p><input type="checkbox"/> Parking Tax</p> <p><input type="checkbox"/> Payroll Expense Tax</p> <p><input type="checkbox"/> Stadium Operator's Tax</p> <p><input checked="" type="checkbox"/> Real Property Transfer Tax</p> <p><input type="checkbox"/> Utility User's Tax</p> <p><input type="checkbox"/> Other _____</p>
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6. REFUND AMOUNT: \$ 3,451,266.00 plus interest at 3% from date of payment.

<p>7. SIGNATURE OF CLAIMANT OR REPRESENTATIVE:</p> <p>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.</p>	
<p><u>X</u> <u>Scott Winer</u> Signature of Claimant or Representative</p>	<p><u>11.09.2020</u> Date</p>
<p><u>Scott Winer</u> Print Name</p>	<p><u>Senior Vice President</u> Title</p>

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

BEV / JLL Analysis

**Le Meridien San Francisco
San Francisco, CO**

Net Operating Income To The Going Concern		\$17,920,949
Less Brand Premium		\$ 164,630
Personal Property Value	\$ 11,340,000	
TPP Yield Rate (Interest Rate plus Risk)	<u>9.50%</u>	
Less Total Return On and Of Income Attributable to Personal Property		\$ 1,077,300
Net Income Attributed to Property and Brand / Ownership Transition Cost		\$ 16,679,019
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)	\$ 1,440,000	
Working Capital (\$4,000/Room)	\$ 1,440,000	
	<u>\$ 3,591,900</u>	
Return on/of Brand / Ownership Transition Cost (Inte:	<u>14.50%</u>	
Less Total Income Attributed to the Brand / Ownership Transition Cost		\$ 520,826
NET INCOME ATTRIBUTED TO REAL & TANGIBLE PERSONAL PROPERTY		\$ 16,158,194
Capitalization Rate Including Effective Tax Rate		8.25%
Indicated Value of Real and Tangible Personal Property		\$ 195,856,892
Return of Personal Property		\$ 11,340,000
Reserve Fund Transfer (Cash)		\$ 3,737,450
Indicated Value of Real Property		\$ 180,779,442
Rounded		\$ 181,000,000
Per Room		\$ 502,778



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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To whom it may concern:

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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



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