File No. 240050 **Committee Item No.** 12
Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight **Date:** February 15, 2024
Board of Supervisors Meeting: **Date:** February 27, 2024

Cmte Board

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 Agreement
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Prepared by: Monique Crayton **Date:** February 22, 2024
Prepared by: **Date:**
Prepared by: **Date:**

[Tolling Agreement - Lyft, Inc. - Gross Receipts, Homelessness Gross Receipts, and Payroll Expense Tax Dispute - $5,156,634]

Resolution approving a Tolling Agreement to extend the statute of limitations for Lyft, Inc. to bring potential litigation against the City and County of San Francisco for a refund of $5,156,634 of gross receipts, homelessness gross receipts, and payroll expense taxes to allow for possible resolution of the matter without litigation.

WHEREAS, Lyft, Inc. has paid gross receipts and homelessness gross receipts taxes for the 2020 and 2021 tax years and payroll expense taxes for the 2020 tax year; and

WHEREAS, On February 28, 2023, Lyft, Inc. filed claims for refund totaling $5,156,634 or such greater amount as may be legally refundable, plus interest as provided by law (the "Claims"), alleging that it has overpaid its gross receipts and homelessness gross receipts taxes for the 2020 and 2021 tax years and payroll expense taxes for the 2020 tax year; and

WHEREAS, To give Lyft, Inc. and the City more time to resolve the Claims without potentially unnecessary litigation, the City and Lyft, Inc. have agreed that the limitations period for any potential litigation related to the Claims shall be extended under the terms set forth in the Tolling Agreement on file with the Clerk of the Board of Supervisors in File No. 240050; and now, therefore, be it

RESOLVED, That the Board of Supervisors authorizes the City to agree that the statute of limitations for Lyft, Inc. to file an action against the City with respect to the Claims shall be extended to and including February 28, 2025, under the terms set forth in the Tolling Agreement.

n:\taxclm\cl2024\23-01524\01729420.docx

TOLLING AGREEMENT

This tolling agreement ("Agreement") is entered into by and between Lyft, Inc., a Delaware corporation, on behalf of itself, its subsidiaries, successors and assigns, and each of them, if any (hereinafter referred to individually and collectively as "CLAIMANT"), 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 payroll expense tax, gross receipts tax, and homelessness gross receipts tax, and related penalties, interest, and fees, under San Francisco Business and Tax Regulations Code Articles 6, 12-A-1, and 28 and Former Article 12-A for the tax years, amounts, and on the grounds set forth in CLAIMANT's claims for refund filed on February 28, 2023, San Francisco Claim Numbers 23-01524, 23-01525, and 23-01526, attached hereto as Exhibit A, is hereby extended to and including and, for the avoidance of doubt, no later than February 28, 2025.

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 law of the State of California without regard to California's choice of law provisions.

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.

XII. Termination.

The extension of the statute of limitations in paragraph 1 of this Agreement shall survive any termination of this Agreement, but no Party shall have the right to terminate this Agreement.

Dated: 1/19/2024

LYFT, INC.

By: _____
Claimant

Name: Blaire Stokes
Title: Senior Director, Litigation

CITY AND COUNTY OF SAN FRANCISCO
DAVID CHIU, CITY ATTORNEY

Dated: _____

By: _____
Yvonne Meré
Chief Deputy City Attorney

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.

XII. Termination.

The extension of the statute of limitations in paragraph 1 of this Agreement shall survive any termination of this Agreement, but no Party shall have the right to terminate this Agreement.

LYFT, INC.

Dated: _____

By: _____
Claimant

Name: _____
Title: _____

CITY AND COUNTY OF SAN FRANCISCO
DAVID CHIU, CITY ATTORNEY

Dated: January 22, 2024

By: _____
Yvonne Mere
Chief Deputy City Attorney

Exhibit A - REDACTED