

File No. 150617 Committee Item No. 12  
Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date July 9, 2015

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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|-------------------------------------|--------------------------|----------------------------------------------|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU                                          |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

OTHER (Use back side if additional space is needed)

- |                                     |                          |                                       |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>TOLLING AGREEMENT - 05/12/2015</u> |
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Completed by: Erica Major Date July 2, 2015  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

[Tolling Agreement - Gene Gee]

**Resolution approving a tolling agreement to toll the statute of limitations on Gene Gee's claim against the City in exchange for a dismissal without prejudice in *Gene Gee v. ARB Construction, et al.*, San Francisco Superior Case No. CGC-14-542509.**

WHEREAS, Gene Gee filed a lawsuit on December 23, 2014, against ARB, Inc., Pacific Gas and Electric Company ("PG&E") and the City and County of San Francisco (the "Action"), for personal injuries he allegedly sustained after tripping and falling in a hole in a City-owned sidewalk at or near 81 Marcela Avenue in San Francisco; and

WHEREAS, The City's tender of defense and indemnity of the Action was accepted without a reservation of rights by ARB, Inc.; and

WHEREAS, Gene Gee and the City have tentatively agreed to a Tolling Agreement, the terms of which are subject to the approval of the Board of Supervisors, which provides that the City will be dismissed from the Action without prejudice in exchange for the City's waiver of any statute of limitations or similar defenses that were not otherwise available to the City as of the effective date of the Tolling Agreement; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves the Tolling Agreement, on file with the Clerk of the Board in File No. 150617, and authorizes the City Attorney to enter such Agreement on behalf of the City and County of San Francisco.

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### **Tolling Agreement**

This Tolling Agreement ("Agreement") is made and effective as of May 12, 2015, by and between Gene Gee, an individual (the "Plaintiff"), and the City and County of San Francisco, a municipal corporation (the "City").

WHEREAS, Plaintiff filed a complaint in San Francisco Superior Court December 23, 2014 (the "Action"), naming as defendants ARB, Inc.; Pacific Gas and Electric Co. ("PG&E"); and the City (referred to collectively as "the parties"), arising out of an trip and fall on the sidewalk at or near 81 Marcela in San Francisco on May 20, 2014 (the "Incident");

WHEREAS, the City maintains that PG&E was permitted to do excavation work at the subject location on the subject date pursuant to Permit #14EXC-2194. Accordingly, the City tendered its defense and indemnity to PG&E pursuant to the terms of the Permit. PG&E in turn tendered its defense and indemnity and the City's defense and indemnity to its subcontractor, ARB. ARB and its insurer have picked up the City's tender without a reservation of rights.

WHEREAS, Plaintiff is amenable to dismissing the City from the lawsuit without prejudice in exchange for the City's agreement that it will waive and not plead any statute of limitations, laches or similar defenses to any civil causes of action arising out of the Incident, except for those defenses in existence on May 12, 2015;

In consideration of the mutual agreements and covenants in this Tolling Agreement, the parties agree as follows:

1. This Agreement is subject to the approval of the San Francisco Board of Supervisors, and is null and void without such approval.
2. Counsel for the City shall notify Plaintiff's counsel in writing of the Board's final approval of this Agreement. Within fourteen (14) days of the date that the City's counsel provides such notification in writing, Plaintiff shall dismiss the City from the Action without prejudice.
3. In exchange for the dismissal without prejudice, the City agrees to waive any statute of limitations, laches or other similar defenses to any civil causes of action arising out of the Incident, except for those defenses in existence as of the date of this Agreement.
4. The resolution of Plaintiff's claims against PG&E and ARB, Inc. in the Action (whether by dismissal, final judgment, written release, etc.) shall operate as a full and final release of Plaintiff's claims against the City and its employees arising out of the Incident, unless the City has been re-named in the Action prior to such a resolution.

By:

Date: 5/22/15

DENNIS J. HERRERA  
City Attorney



KIMBERLY A. BLISS, Deputy City Attorney  
Counsel for City and County of San Francisco

Date: 5/19/2015

WELTIN, STREB & WELTIN



MICHAEL J. VILLEGGIANTE  
Counsel For Plaintiff

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By:

Date: 5/22/15

DENNIS J. HERRERA  
City Attorney



KIMBERLY A. BLISS, Deputy City Attorney  
Counsel for City and County of San Francisco

Date: 5/19/2015

WELTIN, STREB & WELTIN



MICHAEL J. VILLEGGIANTE  
Counsel For Plaintiff

**LEGISLATION RECEIVED CHECKLIST**Date 6/4/15 File Number (if applicable) \_\_\_\_\_

- ☒ Legislation for Introduction (**NEW**)      ▶▶▶ Legislative Clerk  
☐ Legislation Pending in Committee (**AMENDED**)      ▶▶▶ Committee Clerk  
☐ Legislation for Board Agenda (**AMENDED**)      ▶▶▶ Deputy Clerk

**Supervisor, Mayor, and Departmental Submittals****Grant Ordinance**

- ☐ **Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format  
☐ **Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller  
☐ **Supporting documents:** 1 full set, and separate **pdf** copies of each in email  
☐ Cover letter (original)  
☐ Grant budget/application  
☐ Grant information form, including signed disability checklist  
☐ Letter of Intent or grant award letter from funding agency  
☐ Contract, Leases/Agreements (if applicable)  
☐ Ethics Form 126 (if applicable) in **Word** format  
☐ Other support documents *as identified in the cover letter and legislation*  
☐ **E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

**Ordinance**

- ☐ **Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format  
☐ **Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)  
☐ **Supporting documents:** 1 full set, and separate **pdf** copies of each in email  
☐ Cover letter (original)  
☐ Settlement Report/Agreement (for settlements)  
☐ Other support documents *as identified in the cover letter and legislation*  
☐ **E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

**Grant Resolution**

- ☐ **Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format  
☐ **Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller  
☐ **Supporting documents:** 1 full set, and separate **pdf** copies of each in email  
☐ Cover letter (original)  
☐ Grant budget/application  
☐ Grant information form, including signed disability checklist  
☐ Letter of Intent or grant award letter from funding agency  
☐ Contract, Leases/Agreements (if applicable)  
☐ Ethics Form 126 (if applicable) in **Word** format  
☐ Other support documents *as identified in the cover letter and legislation*  
☐ **E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

**Resolution**

- ☒ **Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format  
☐ **Signature:** None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)  
☒ **Supporting documents:** 1 full set, and separate **pdf** copies of each in email  
☒ Cover letter (original)  
☒ Settlement Report/Agreement (for settlements)  
☐ Other support documents *as identified in the cover letter and legislation*  
☒ **E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Joy Perez 554-3869 City Attorney  
 Name and Telephone Number Department