

1 [One Year Tolling Agreement]

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3 **Resolution approving the City Attorney's entry into a mutual tolling agreement**  
4 **governing administrative claims or suit by the City of Daly City ("Daly City") against the**  
5 **City and County of San Francisco ("San Francisco") and/or San Francisco against Daly**  
6 **City.**

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8 WHEREAS, on or about February 25, 2004, heavy rainfall in portions of San Francisco  
9 and Northern San Mateo County resulted in flooding in the Westlake Neighborhood of Daly  
10 City and in the vicinity of Lake Merced in the City and County of San Francisco (hereinafter  
11 "the 2004 Flood"); and

12 WHEREAS, San Francisco and Daly City each have received Government Code  
13 claims for property damage and personal injuries arising out of the 2004 Flood, and have  
14 been named as defendants in subsequent litigation filed by these claimants (*Abbushi, et al., v.*  
15 *City and County of San Francisco*, San Francisco Superior Court Case No. CGC-04.436545);  
16 and,

17 WHEREAS, Daly City and San Francisco each claim, and/or desire to reserve their  
18 claim, that the other has a contractual and equitable duty to defend, indemnify, and hold it  
19 harmless from the pending and prospective third-party claims under the terms of contracts  
20 and/or land use permits, including but not limited to those awarded by San Francisco to Daly  
21 City dated December 20, 1954, September 16, 1971, and March 16, 1988, or pursuant to  
22 equitable principles ("Indemnity Claims"); and,

23 WHEREAS, in addition, San Francisco has asserted additional first-party claims  
24 against Daly City for flooding and natural resources damage to San Francisco's property,  
25 arising out of separate flooding events, including those that occurred on December 29, 2003,

1 February 25, 2004, and October 19, 2004, in the areas of John Muir Drive, Lake Merced  
2 Boulevard, the public recreational trail adjacent to Lake Merced Boulevard, and the banks of  
3 Lake Merced ("Affirmative Claims"); and,

4 WHEREAS, the City Attorney of the City and County of San Francisco has  
5 recommended that San Francisco enter into an agreement by which the statute of limitations  
6 on any proceeding or lawsuit by Daly City or San Francisco against the other be tolled or  
7 suspended for one year ("Tolling Agreement"), effective December 28, 2004; and

8 WHEREAS, a copy of the proposed Tolling Agreement is on file with the Clerk of the  
9 Board of Supervisors in File No. \_\_\_\_\_, which is hereby declared to be a part of this  
10 resolution as if set forth fully herein; now, therefore, be it

11 RESOLVED, That the entry by San Francisco into the proposed Tolling Agreement with  
12 Daly City is hereby approved.

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14 APPROVED:

RECOMMENDED:

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DENNIS J. HERRERA  
City Attorney

San Francisco Public Utilities Commission

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JOANNE HOEPER  
Chief Trial Deputy

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SUSAN LEAL  
General Manager

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APPROVED:

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SECRETARY OF THE COMMISSION  
Public Utilities Commission

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