

1 [Approval of Tolling Agreement for America's Cup Litigation]

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3 **Resolution approving a tolling agreement to toll the statute of limitations to file a**  
4 **lawsuit challenging the approval of the 34<sup>th</sup> America's Cup Project.**  
5

6 WHEREAS, The City prepared one Final Environmental Impact Report ("Final EIR") for  
7 two projects, the 34th America's Cup Project ("America's Cup") and the James R. Herman  
8 Cruise Terminal and Northeast Wharf Project ("Cruise Terminal"). The Planning Commission  
9 certified the Final EIR on December 15, 2011 by its Motion No. 18514. The San Francisco  
10 Board of Supervisors upheld the certification on January 24, 2012 by its Motion M12-011; and

11 WHEREAS, On February 23, 2012, Petitioner commenced a citizen suit challenging  
12 the City's and Port's approval of the Cruise Terminal, entitled *Waterfront Watch v. City and*  
13 *County of San Francisco, et al.*, San Francisco Superior Court, Case No. CPF-12511968.  
14 Petitioner alleges that the City's approval of the Cruise Terminal violates the California  
15 Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.); and

16 WHEREAS, The City and the Port approved the America's Cup on January 24, 2012  
17 and April 24, 2012, respectively. The City filed a Notice of Determination for the Race Events  
18 on April 25, 2012. Therefore, the limitations period for any action to be filed pursuant to Public  
19 Resources Code § 21167 expires on May 25, 2012; and

20 WHEREAS, Prior to commencement of the February 23, 2012 action, Petitioner and  
21 the City had commenced self-initiated mediation efforts in an attempt to reach mutually  
22 agreeable terms that would prevent the need for filing suit. Petitioner, however, found it  
23 necessary to file the CEQA action as a protective matter on February 23, 2012, as the Parties'  
24 pre-litigation negotiations had not yet been completed when CEQA's short, 30-day statute of  
25 limitations was about to expire. Since the time of filing this action, Petitioner and the City have

1 continued settlement negotiations and are currently in the process of finalizing the terms of a  
2 settlement agreement; and

3 WHEREAS, Despite Petitioner and the City's ongoing efforts, it now appears that the  
4 settlement will not be finalized by May 25, 2012; and

5 WHEREAS, Petitioner has expressed an intent to file a lawsuit challenging the City's  
6 approval of the America's Cup on the grounds that the approval violates CEQA. The City  
7 disagrees with the assertion that its approval of the Project violates CEQA or any other law;  
8 and

9 WHEREAS, in order to facilitate the continuing efforts by the City and Petitioner to  
10 finalize the settlement and to avoid the need to file potentially unnecessary litigation, the City  
11 desires to ensure that the limitations period for Petitioner to file an action challenging the  
12 America's Cup pursuant to Public Resources Code § 21167 is tolled and extended to and  
13 including July 24, 2012; now therefore be it

14 RESOLVED, That the statute of limitations for Plaintiffs to file an action challenging the  
15 America's Cup pursuant to Public Resources Code § 21167 shall be tolled and extended to  
16 and including July 24, 2012 and shall not expire until July 24, 2012; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Tolling  
18 Agreement contained in Board of Supervisors File No.120535 and authorizes the Mayor to  
19 enter into such Agreement on behalf of the City and County of San Francisco.