CONSENT CALENDAR ITEM J

City of Brisbane
Agenda Report

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Extension of Tolling Agreement with County

DATE: For Council Meeting on July 27, 2007

City Council Goals:

To provide for effective and efficient delivery of City services.

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents.

Purpose:

The purpose of the Tolling Agreement is to preserve the respective rights of the parties by suspending the running of any applicable statute of limitations on the filing and prosecution of claims during the period required for the state-wide legal issues to be resolved.

Recommendation:

Approve First Addendum to Tolling Agreement to include claims for the 2008-2009 Fiscal year.

Background and Discussion:

The City of Brisbane joined other cities in San Mateo County in filing a claim against the County for refund of property tax administration fees that the cities allege were improperly collected. Similar claims were filed by cities in Southern California and became the subject to litigation to determine the validity of these claims. The San Mateo County cities and the County agreed to suspend all activity pending the final outcome of the Southern California action. On January 5, 2009, the City executed a tolling agreement with the County to suspend the statute of limitations on the City's claim relating to the 2006-2007 and 2007-2008 fiscal years.

A claim was subsequently filed for refund of administrative fees charged by the County for the 2008-2009 fiscal year. The First Addendum will serve to bring this claim

within the Tolling Agreement so that no action will need to be taken by either party until the legal issues have been determined.

Fiscal Impact:

None. The First Addendum will preserve the City's claim.

Measure of Success:

Recovery of the claimed administrative fees.

Attachments:

1. Proposed First Addendum
2. Copy of Executed Tolling Agreement

City Attorney

City Manager

FIRST ADDENDUM TO AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE CITY OF BRISBANE TO TOLL STATUTES OF LIMITATIONS FOR CLAIMS REGARDING PROPERTY TAX ADMINISTRATION FEES

WHEREAS, the City of Brisbane (the "City") and the County of San Mateo (the "County") (collectively the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fee (the "PTAF") as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-2005;

WHEREAS, the City filed a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-2007 and 2007-2008 fiscal years;

WHEREAS the County denied the claim and the Parties entered into a tolling agreement, on February 18, 2009, a copy of which is attached hereto as Exhibit "A" (the "Tolling Agreement");

WHEREAS, the City has now submitted a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2008-2009 fiscal year (the "2008-2009 Claim");

WHEREAS, the Parties now wish to bring the 2008-2009 claim within the scope of the Tolling Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF for the 2008-2009 fiscal year, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2008-2009 fiscal year, which the City contends resulted in an under-allocation of property taxes to the City for the 2008-2009 fiscal year.

2. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2008-2009 fiscal year while this agreement is in effect.

3. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City's and the County's claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

4. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in

writing and signed by the Parties. The Parties anticipate that they may amend this Agreement to include claims brought by the City regarding the calculation of PTAF for future fiscal years.

5. The Parties hereby also incorporate sections 2, 3, 5, 8, 9, 10, and 11 of the Tolling Agreement into this Addendum.

FOR THE COUNTY OF SAN MATEO

Dated:_____ By:_____
Michael P. Murphy
County Counsel of the County of San Mateo

FOR THE CITY OF BRISBANE:

Dated:_____ By:_____
A. Sepi Richardson
Mayor of the City of Brisbane

Approved as to form for the City of Brisbane:

Dated: 7/20/09 By:_____
Hal Toppel
City Attorney of the City of Brisbane

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE CITY OF BRISBANE TO TOLL STATUTES OF LIMITATIONS FOR CLAIMS REGARDING PROPERTY TAX ADMINISTRATION FEES

WHEREAS, the City of Brisbane (the "City") and the County of San Mateo (the "County") (collectively, the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fees (the "PTAF") as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-2005;

WHEREAS, conflicting legal opinions as to the calculation of the PTAF have been rendered by various state and local agencies and their counsel;

WHEREAS, the City filed a claim against the County on or about June 27, 2008, seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-2007 and 2007-2008 fiscal years and the County has not yet formally denied the claim;

WHEREAS, the County contends that it may have undercharged the City for the PTAF in the 2004-2005 and 2005-2006 fiscal years;

WHEREAS, the City and County are aware that other cities and counties in other areas of the State are involved, or may become involved, in litigation concerning the calculation of the PTAF;

WHEREAS, the Parties desire to avoid litigation in order to allow for additional time to evaluate the law as it develops on this state-wide issue;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2006-2007 and 2007-2008 fiscal years, which the City contends resulted in an under-allocation of property taxes to the City; and including, but not limited to, the applicable statutes of limitations for the County to file a complaint, petition, or administrative claim seeking an increase or reallocation to the County of the PTAF the County contends the County may have undercharged the City in the 2004-2005 and 2005-2006 fiscal years.

2. This tolling agreement does not revive any statute of limitations period or deadline that expired before the effective date of this tolling agreement. This tolling agreement applies solely to those claims that could be alleged as of the effective date of this tolling agreement in either (i) an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or a County or City ordinance or (ii) a lawsuit. The tolling agreement does not apply to any claims that could not be alleged as of the

effective date of this tolling agreement in an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or any County or City ordinance or in a lawsuit.

3. The purposes of this tolling agreement are to avoid litigation and to permit the Parties additional time to evaluate the law as it develops on this state-wide issue.

4. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 fiscal years while this agreement is in effect.

5. The tolling period for the City and the County extends from the effective date of this tolling agreement until the earlier of the following:

a. The expiration of forty-five (45) days from the date one Party ("the terminating party") delivers to the other Party via certified mail and facsimile at the addresses and facsimile machine numbers set forth in Section 8 below, written notice that the terminating party desires to terminate this tolling agreement, and is in fact terminating this tolling agreement; or

b. July 1, 2012.

6. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City's and the County's claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

7. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in writing and signed by the Parties. The Parties anticipate that they are likely to amend this Agreement to include claims brought by the City regarding the calculation of PTAF for the 2008-2009 fiscal year and further fiscal years.

8. Notices under this agreement, including specifically notice under Section 5.a above, shall be given as follows:

a. To the City, notice shall be given to both the City Attorney and to the attorney specially representing the City in this matter, Benjamin P. Fay, at the following addresses:

City Attorney
City of Brisbane
50 Park Place
Brisbane, CA 94005
Fax: (415) 467-4989

Benjamin P. Fay
Jarvis, Fay, Doporto & Gibson, LLP
475 14th Street, Suite 260
Oakland, CA 94612
Fax: (510) 238-1404

b. To the County, notice shall be given to the County Counsel at the following address:

Michael P. Murphy
County Counsel of the County of San Mateo
400 County Center, 6th Floor
Redwood City, CA 94063
Fax: (650) 363-4034

9. The Parties agree that this agreement shall be effective upon its execution by both Parties. The Parties further agree that the County will deny the City's claim on the date immediately preceding its execution of the Agreement.

10. Each of the undersigned hereby represents and warrants that he or she is authorized to execute this agreement on behalf of the respective parties to this agreement.

11. This tolling agreement may be executed in counterparts, and each fully executed counterpart will be considered an original document.

FOR THE COUNTY OF SAN MATEO

Dated: 2/18/05

By: _____
Michael P. Murphy
County Counsel of the County of San Mateo

FOR THE CITY OF BRISBANE:

Dated: 1/5/09

By: A. Sepi Richardson
A. Sepi Richardson
Mayor of the City of Brisbane

Approved as to form for the City of Brisbane:

Dated: 1/5/09

By: Hal Toppel
Hal Toppel
City Attorney of the City of Brisbane