

TOLLING AGREEMENT

COUNCIL AGENDA ITEM NO. **D-12**
COUNCIL MEETING OF 5/5/09

This tolling agreement ("Agreement") is made by and between Stanton Jay Diamond, an individual ("Diamond"), and the City of Redlands ("City") (together, the "Parties"). City and Diamond are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promised contained herein, the Parties agree as follows:

RECITALS

WHEREAS, on December 10, 2008, Diamond filed a claim against City for damages as a result of injuries sustained to himself during an incident; and

WHEREAS, on January 13, 2009, City presented a Notice of Rejection of Claim to Diamond; and

WHEREAS, at the April 7, 2009, Redlands City Council meeting, staff apprised the Redlands City Council of the facts and circumstances of Diamond's claim during closed session; and

WHEREAS, City and Diamond desire to continue their discussions in an attempt to reach a settlement before legal action is taken and expenses incurred by the Parties; and

WHEREAS, Diamond alleges he must file an action by July 14, 2009, if this matter remains unresolved; and

WHEREAS, City and Diamond desire to agree to an extension of time to allow discussions to continue;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. Tolling Date: This Agreement shall be effective May 5, 2009 (the "Tolling Date").
2. Tolling: City and Diamond hereby agree that the running of any and all statutes of limitation and any other defenses based on the passage of time on any and all claims and causes of action that Diamond has against City based upon the claim filed by Diamond on December 10, 2008, which were not already barred by the statute of limitations or passage of time, as of the Tolling Date shall be tolled through September 12, 2009.
3. Lapsed Claims: This Agreement has no effect on Diamond's claims or causes of action that, prior to the Tolling Date, were already barred by the statute of limitations or otherwise barred by the passage of time, and this Agreement shall not be construed to revive any such time-barred claims or causes of action.

4. No Admission of Liability: This Agreement does not constitute an admission by either of the Parties of the existence of any claim, cause of action or defense, and this Agreement shall not be used or referred to in any proceeding for any purpose other than to establish the Tolling Date.

5. Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6. Complete Agreement: This Agreement represents the complete agreement between the Parties with respect to the subject matter hereof.

7. Signatures: This Agreement may be signed in counterparts. This Agreement is binding on the Parties when signed in the spaces provided below and signature pages are exchanged by the Parties by facsimile transmission.

8. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

Date: May 5, 2009

Stanton Jay Diamond

Date: May 5, 2009

Jon Harrison
Mayor

Attest:

City Clerk, City of Redlands