

# ORDINANCE RECORD

No. 728—REDFIELD & COMPANY INC., OMAHA

## ORDINANCE NO. 1023

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL, LA VISTA, NEBRASKA, TO APPROVE APPLICATION OF JOHN Q. HAMMONS UNDER THE CITY OF LA VISTA ECONOMIC DEVELOPMENT PROGRAM; TO MAKE CERTAIN FINDINGS; TO APPROVE RECOMMENDATIONS, DEVELOPMENT AGREEMENT, LOAN CLASSIFICATION, LOAN APPLICATION, AND GRANT OF \$3 MILLION AND LOAN OF \$18 MILLION; TO SPECIFY CERTAIN CONDITIONS AND AUTHORIZE FURTHER ACTIONS; AND TO PROVIDE FOR SEVERABILITY, PUBLICATION IN PAMPHLET FORM AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Findings. The Mayor and City Council find, determine, ratify, affirm and approve the following:

1. The Nebraska Legislature made the following findings in Neb. Rev. Stat. Section 18-2702:
  - a. There is a high degree of competition among states and municipalities in our nation in their effort to provide incentives for businesses to expand or to locate in their respective jurisdictions;
  - b. Municipalities in Nebraska are hampered in their efforts to effectively compete because of their inability under Nebraska law to respond quickly to opportunities or to raise sufficient capital from local sources to provide incentives for the provision of new services or business location or expansion decisions which are tailored to meet the needs of the community;
  - c. The ability of a municipality to encourage the provision of new services or business location and expansion has a direct impact not only upon the economic well-being of the community and its residents but upon the whole state as well; and
  - d. There is a need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, whether for expansion of existing operations, the creation of new businesses, or the provision of new services, by the use of funds raised by local taxation when the voters in the municipality determine that it is in the best interest of their community to do so.
2. Based on these findings, the Legislature enacted the Local Option Municipal Economic Development Act ("Act"), Neb. Rev. Stat. Sections 18-2701 to 18-2738, in 1991, allowing municipalities including cities of the first class in Nebraska to establish economic development programs and use local sources of revenue for financial assistance to qualifying businesses upon voter approval.
3. In 2003, the Mayor and City Council proposed establishing an economic development program and use of local sources of revenue for financial assistance to qualifying businesses. The voters of La Vista approved the proposed economic development program by a majority affirmative vote of registered voters voting at a special election held September 30, 2003.
4. In accordance with said voter approval, the Mayor and City Council subsequently established the economic development program as codified in La Vista Municipal Code Sections 117.01 et seq. ("La Vista Economic Development Program"). In establishing the La Vista Economic Development Program, the Mayor and City Council stated the purpose of the Economic Development Program as giving the City flexibility to quickly respond to desirable opportunities for community or economic development using funds raised from local sources of revenue to provide incentives or investment in the La Vista community or its infrastructure for the location or expansion of services or businesses or rehabilitation of residential neighborhoods in or near the City.
5. Neb. Rev. Stat. Section 18-2738 provides that the powers conferred by the Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provisions of the law of Nebraska.
6. Neb. Rev. Stat. Section 18-2738 further provides that the Act and all grants of power, authority, rights, or discretion to the City under the Act shall be liberally construed, and all

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incidental powers necessary to carry the Act into effect are expressly granted to and conferred upon the City.

7. Section 117.14 of the La Vista Economic Development Program provides broad authority for the City to provide financial assistance to qualifying businesses, including direct loans and grants to qualifying businesses.
8. The Mayor and City Council have established a Loan Fund under the La Vista Economic Development Program for such loans as the Mayor and City Council may from time to time approve. The Loan Fund is governed by the Loan Fund Terms and Conditions approved by the Mayor and City Council, as amended from time to time.
9. National hotel developer, owner and operator, John Q. Hammons, submitted an application and request for funding under the La Vista Economic Development Program for a hotel and conference center development project in the Southport West area of the City, dated November 22, 2006 ("John Q. Hammons Application"). Total estimated cost of the proposed project is \$110 million. Applicant requests the City provide a \$3 million grant primarily for land for the conference center and parking ("Grant"), and an \$18 million loan to finance part of the estimated \$24 million cost of the conference center and parking construction ("Loan"). Applicant will directly pay or finance all remaining costs of the project.
10. The Program Administrator of the La Vista Economic Development Program made a preliminary determination that the John Q. Hammons Application appeared to be viable pursuant to La Vista Municipal Code Section 117.16(B), based on the following:
  - The John Q. Hammons Application states that the applicant thereunder is a sole proprietor or limited liability company in the tourism-related business, and said application contains a certification that applicant will comply with applicable employment requirements. Consequently, the applicant is eligible under the La Vista Economic Development Program;
  - Proposed direct loan and grant activities described in the John Q. Hammons Application are eligible under the La Vista Economic Development Program;
  - The John Q. Hammons Application indicates, and applicant's general counsel has confirmed, that the applicant does not have any actual or potential legal actions or other risks that may significantly impact its ability to perform; and
  - In the John Q. Hammons Application, the applicant has complied with the application requirements of the La Vista Economic Development Program.
11. The Program Administrator, pursuant to La Vista Municipal Code Section 117.16(C), referred the John Q. Hammons Application to the Application Review Committee of the La Vista Economic Development Program to review the application and any supplemental financial or other information furnished and otherwise perform the duties set forth in applicable provisions of La Vista Municipal Code Section 117.16.
12. Additionally, the Program Administrator advised that a copy of the John Q. Hammons Application was provided to Strategic Advisory Group, the City's consultant which specializes in assessing and advising municipalities regarding hotel and conference center developments that propose private and municipal financing.
13. Presented at this meeting is a copy of the Memorandum that the Program Administrator presented at the meeting of the Application Review Committee regarding the findings of Strategic Advisory Group on the hotel and conference center development proposed in the John Q. Hammons Application. In summary, Strategic Advisory Group concluded that the project described in the application is an excellent opportunity for the City.
14. The Application Review Committee reviewed the John Q. Hammons Application, any supplemental financial or other information furnished, and the above-referenced Memorandum regarding the findings of Strategic Advisory Group; and based on the same, the Application Review Committee found and determined that the applicant under the John Q. Hammons Application demonstrated to the satisfaction of the Application Review Committee:
  - The applicant's eligibility for funding under the La Vista Economic Development Program;
  - That the type and amount of assistance requested in the John Q. Hammons Application is appropriate and desirable for the City;
  - A desirable level, type and quality of public benefit to the City or its residents from the applicant's proposed use of the funding; and

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- That the timing, type, magnitude and probability of public benefit that the Application Review Committee determines is likely to be achieved from the funding is reasonable and efficient in relation to the cost of funding provided.
15. The Application Review Committee recommended approval of the John Q. Hammons Application; and that said application be submitted to the La Vista City Council for consideration of approval and funding (“Application Review Committee Recommendation”); subject, however, to fulfillment of certain conditions to the satisfaction of the Program Administrator; which conditions the Program Administrator advises have been satisfied unless set forth below as continuing conditions of this Ordinance.
  16. The Application Review Committee referred a draft of the La Vista, Nebraska Hotel and Conference Center Project Master Development Agreement to the Mayor and City Council for consideration, which agreement, as modified, is presented at this meeting (“Development Agreement”).
  17. The approved Loan Fund Terms and Conditions require the City Administrator, Treasurer or her designee to classify each application under the Loan Fund based on perceived risk of nonpayment and return in terms of direct and indirect benefit to the City and its residents under the La Vista Economic Development Program, subject to review and approval of the Mayor and City Council in their sole discretion.
  18. The City Administrator has reviewed the John Q. Hammons Application and additional or supplemental documents or information (“John Q. Hammons Loan Application”), and in reliance on said John Q. Hammons Loan Application, assistance of professional advisors and other documentation, resources, reports and information provided or obtained, the City Administrator classifies the John Q. Hammons Loan Application as having a perceived low risk of nonpayment and high return in terms of direct and indirect benefit to the City and its residents; and accordingly assigns said loan application a “AAA” classification under the Loan Fund Terms and Conditions.
  19. The City Council agrees with the findings, determinations, conclusions and recommendation of the Program Administrator and Application Review Committee with respect to the John Q. Hammons Application and John Q. Hammons Loan Application.
  20. The City Council finds and determines that the John Q. Hammons Application and John Q. Hammons Loan Application, and the applicant thereunder, have satisfied all applicable requirements, including requirements of the La Vista Economic Development Program and Loan Fund Terms and Conditions.
  21. The City Council desires to accept and approve the recommendation of the Application Review Committee and take further actions with respect to the John Q. Hammons Application and John Q. Hammons Loan Application, subject to such conditions as set forth below.

SECTION 2. Approval. Subject to all conditions specified in this Section and in Section 3 below, the Mayor and City Council hereby approve the following:

1. All findings, determinations, conclusions, proceedings, actions and recommendations of the Program Administrator and Application Review Committee with respect to the John Q. Hammons Application and John Q. Hammons Loan Application are hereby ratified, affirmed, adopted and approved.
2. The Application Review Committee recommendation of approval of the John Q. Hammons Application is hereby accepted, adopted and approved; and said Application is hereby approved.
3. The Development Agreement is hereby approved in form and content presented at this meeting, subject to such revisions as the City Administrator and City Attorney determine necessary or appropriate.
4. The City Administrator’s review and classification of the John Q. Hammons Loan Application is hereby ratified, adopted and approved, including her classification of said loan application as having a perceived low risk of nonpayment and high return in terms of direct and indirect benefit to the City and its residents, and her assignment of a “AAA” classification to said loan application under the Loan Fund Terms and Conditions.
5. The John Q. Hammons Loan Application, \$18 million Loan and \$3 million Grant requested in the John Q. Hammons Application are hereby approved, subject to such loan and other documents, security, instruments and conditions required by the City.

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SECTION 3. Conditions. The actions and approvals contained in this Ordinance, including, but not limited to, approval of the City Grant and Loan above, shall be subject to the following conditions, in addition to any other conditions set forth elsewhere in this Ordinance:

1. The John Q. Hammons Application indicated that the applicant thereunder will directly pay or finance through a third party lender the costs of constructing and acquiring the facilities that will not be financed or provided by the City. The City has confirmed appropriate documentation evidencing negotiations with one or more primary lenders for financing construction of the Embassy Suites and the terms on which said financing will be provided. If applicant decides to finance any other part of the project through third party lenders, applicant shall provide the Program Administrator appropriate documentation evidencing negotiations with one or more primary lenders and the terms upon which said financing has been or will be received, within 30 days after said financing is obtained (or by such other date as the Program Administrator determines in her sole discretion). Applicant shall update said documentation from time to time as required by the Program Administrator;
2. Approval, closing, issuance and availability of proceeds of City bond financing to provide the Grant and Loan.
3. Execution of the Development Agreement by the applicant of the John Q. Hammons Application and City, in form and content satisfactory to the City Administrator and City Attorney.
4. Performance and satisfaction of all applicable terms, conditions and requirements of the Development Agreement and Loan Fund.
5. Compliance with all applicable laws, rules and regulations, as enacted or amended from time to time, including but not limited to, requirements of the La Vista Economic Development Program, Local Option Municipal Economic Development Act and all applicable levy, budget or appropriation requirements.
6. Such further information, assurances, certifications, requirements, guarantees or security from applicant as the Program Administrator from time to time may determine necessary or appropriate;

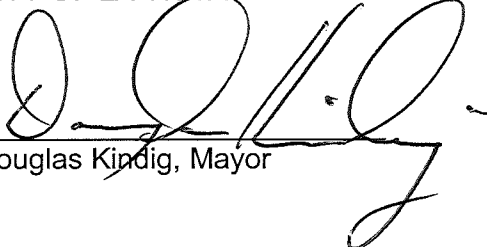
SECTION 4. Authorization of Further Actions. The Mayor and City Clerk are hereby authorized to take such further actions, including executing documents, that they determine necessary or appropriate to carry out the actions approved in this Ordinance.

SECTION 5. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 6. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 20TH DAY OF FEBRUARY 2007.

CITY OF LA VISTA

  
Douglas Kindig, Mayor

ATTEST:



Pamela A. Bueche, CMC  
City Clerk