

ORDINANCE RECORD

No. 728—REDFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1039

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL, LA VISTA, NEBRASKA, TO FUND AND APPROVE DOCUMENTS FOR GRANT AND LOAN TO JOHN Q. HAMMONS UNDER THE CITY OF LA VISTA ECONOMIC DEVELOPMENT PROGRAM; TO MAKE CERTAIN FINDINGS, TO PROVIDE FOR SERVICING, ADMINISTRATION AND REPORTING OF SAID LOAN; TO SPECIFY CERTAIN CONDITIONS AND AUTHORIZE FURTHER ACTIONS; AND TO PROVIDE FOR SEVERABILITY 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 and approve the following:

1. 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.
2. Section 18-2738 of the Act 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.
3. Section 18-2738 of the Act 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 incidental powers necessary to carry the Act into effect are expressly granted to and conferred upon the City.
4. 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.
5. 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").
6. 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. "Qualifying businesses" includes limited liability companies and sole proprietorships that derive their principal source of income from tourism-related activities.
7. The Mayor and City Council in Ordinance No. 1022 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 Loan Fund Terms and Conditions approved by the Mayor and City Council.
8. 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"). The project consisted of a full service Embassy Suites Hotel having 257 guest suites, Marriott Courtyard Hotel having 221 guest rooms, and adjacent conference center having no less than 40,000 square feet of net rentable ballroom and meeting space. The John Q. Hammons Application asked the City for financial assistance for the development in the form of a \$3 million grant for land acquisition costs primarily associated with the conference center and parking ("Grant") and loan up to the lesser of \$18 million or 80% of the costs of construction of the conference center and parking, excluding land costs ("Loan"). Total costs of constructing the conference center and parking, including land costs, were estimated to be \$24 million. Total estimated cost of the hotel and conference center project was \$110 million.
9. Upon review and favorable recommendations of the Program Administrator and Application Review Committee of the La Vista Economic Development Program and

ORDINANCE RECORD

consultants of the City, and finding that all applicable requirements of the La Vista Economic Development Program and Loan Fund had been satisfied, the City Council in Ordinance No. 1023 approved the John Q. Hammons Application, Grant, Loan and related matters, subject to certain conditions, including availability of bond proceeds to fund the Grant and Loan and execution of a Master Development Agreement for the project and certain loan, security and other documents, instruments and agreements. The Master Development Agreement was executed and an original dated May 1, 2007 is on file with the City Clerk.

10. The Master Development Agreement allows John Q. Hammons to elect to carry out any of his obligations thereunder, with the exception of required guaranties, through any of several limited liability companies included as parties to the Master Development Agreement ("Companies"), so long as the performance of the Companies is guaranteed by John Q. Hammons, in his individual capacity and in his capacity as Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated, and by John Q. Hammons' wife, Juanita K. Hammons. All of the Companies are wholly owned and managed by John Q. Hammons either individually or in his capacity as Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated.
11. John Q. Hammons has elected to carry out obligations under the Master Development Agreement using three of the Companies. Specifically, JQH-La Vista III Development, LLC, JQH-La Vista CY Development, LLC and JQH-La Vista Conference Center Development, LLC will build, own and operate the Embassy Suites Hotel, Marriott Courtyard Hotel and Conference Center, respectively.
12. The Mayor and City Council have approved bonds for purposes of funding the Loan and Grant ("La Vista Economic Development Program Bond Issue"). Closing on the bond issue is scheduled for July 30, 2007. Closing of the Loan and Grant is scheduled for August 1, 2007, subject to satisfaction of all conditions set forth in the Master Development Agreement, below or elsewhere ("Closing").
13. The following documents for the Loan and Grant are presented at this meeting and incorporated into this Ordinance by this reference:

Construction Loan Agreement; Deed of Trust, Assignment of Rents and Security Agreement; Completion Guaranty (Juanita K. Hammons); Completion Guaranty (John Q. Hammons, Settlor and Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated); Completion Guaranty (John Q. Hammons); Unconditional Guaranty of Payment and Performance (Juanita K. Hammons); Unconditional Guaranty of Payment and Performance (John Q. Hammons, Settlor and Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated); Unconditional Guaranty of Payment and Performance (John Q. Hammons); Request for Notice; Notice of Commencement by the Contracting Owner; Borrower's Certificate, Acceptance and Estoppel Affidavit; Assignment of Leases and Rents; Security Agreement; Promissory Note (Construction); Notice Pursuant to Neb. Rev. Stat. § 45-1,113; Common Wall Agreement; and Grant Receipt ("Loan and Grant Documents").

14. The City desires to approve said Loan and Grant Documents, authorize the Mayor and City Clerk to execute and deliver said documents at Closing, provide for servicing, administration and reporting of the Loan, and authorize further action, subject to the conditions 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. The Loan and Grant Documents and all terms thereof, including Loan disbursements, interest rate, interest and principal payment schedule, and all other matters and transactions described or provided therein are hereby approved in their entirety, subject to any modifications as the Program Administrator of the La Vista Economic Development Program ("Program Administrator") determines necessary or appropriate in consultation with the City Attorney. The Mayor and City Clerk are authorized to execute and deliver the Loan and Grant Documents at Closing upon performance of all applicable conditions of Closing to their satisfaction.
2. The Loan and Grant shall be funded with proceeds of the La Vista Economic Development Program Bond Issue and such other amounts as may be deposited under

ORDINANCE RECORD

the La Vista Economic Development Program from time to time in accordance with applicable law.

3. All amounts at any time received by the City by reason of the La Vista Economic Development Program, including funds related to the Grant and Loan, shall be deposited in a separate economic development fund pursuant to Neb. Rev. Stat. Section 18-2718 ("Economic Development Fund") and held and administered in accordance with the La Vista Economic Development Program, the Act and any other applicable law. The Finance Director (who also is the City Treasurer) shall invest any money in the Economic Development Fund in accordance with Neb. Rev. Stat. Section 77-2341.
4. The Finance Director shall have primary responsibility for servicing the Loan. She shall establish an account under the Economic Development Fund for the Loan at the Bank of Nebraska that is separate from any other loan under the Loan Fund. Bond proceeds and other amounts for funding the Loan, and interest and principal payments on the Loan, shall be received, held and disbursed in, by and from the account.
5. Disbursements of the Loan shall be made upon presentation and approval of properly completed and filed progress payment requests and other documentation in accordance with the Loan Documents. Progress payments shall be subject to approval of the Mayor and City Council upon review and verification of amounts requested and completion of the work to the satisfaction of the Finance Director, City Engineer and/or such other parties designated by the Program Administrator.
6. The Finance Director or her designee shall provide the Mayor and City Council on a monthly basis with an account of the status of the Loan, receipts of principal and interest and investment income, and current investments of unexpended funds.
7. Records kept on the Loan and reports made to the Mayor and City Council shall include the following information:
 - (i) The name of the borrower,
 - (ii) The purpose of the loan,
 - (iii) The date the loan was made,
 - (iv) The amount of the loan,
 - (v) The basic terms of the loan, including interest rate, maturity date and frequency of payments, and
 - (vi) The payments made to date and the current balance due.
8. Loan servicing functions may be delegated by contract to any appropriate business or financial institution upon approval of the Mayor and City Council.
9. The Finance Director shall monitor the status of the Loan and, subject to any necessary approval of the Mayor and Council, take appropriate action in accordance with the Loan Documents, Master Development Agreement, Loan Fund Terms and Conditions and La Vista Economic Development Program and other applicable law in the event of a delinquency or default on the Loan.

SECTION 3. Conditions. Actions, approvals and performance of the City under this Ordinance shall be subject to continuing satisfaction of the following conditions, in addition to any other conditions set forth elsewhere in this Ordinance, the Loan and Grant Documents, Master Development Agreement, Loan Fund or any other agreement, instrument, law, rule, requirement or regulation:

1. Updated loan commitment or other documentation issued within 30 days of Closing for the portion of the hotel and conference center project John Q. Hammons shall finance through a third party lender, satisfactory to the Program Administrator;
2. Approval, closing, issuance and availability of proceeds (without legal contest) of City bond financing to provide the Loan and Grant.
3. Performance of any unresolved conditions of Ordinance No. 1023 and all conditions and requirements of the Grant, Loan and Master Development Agreement, Loan Fund, La Vista Economic Development Program and other applicable laws, rules, regulations, agreements and instruments to the satisfaction of the Program Administrator.

ORDINANCE RECORD

No. 728—REDFIELD & COMPANY INC., OMAHA

Ordinance No. 1039

4. The amount to be expended by the City each year under the La Vista Economic Development Program shall be fixed at the time of making the annual budget required by law and shall be included in the City's budget.
5. Annual appropriations required for the Grant and Loan and compliance, performance and satisfaction of all applicable requirements, agreements, conditions, laws, rules and regulations, as enacted, executed, applicable or amended from time to time, including but not limited to, the Master Development Agreement, Loan Fund, La Vista Economic Development Program, the Act and applicable levy, budget and appropriation requirements.
6. Such further information, assurances, certifications, requirements, guarantees, security, documents or instruments as the Program Administrator from time to time determines necessary or appropriate;

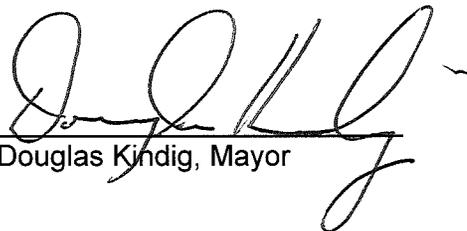
SECTION 4. Authorization of Further Actions. The Mayor, City Clerk and City Treasurer are hereby authorized to take such further actions, including, but not limited to, preparation, execution and delivery of further documents and instruments, as determined in consultation with the City Attorney to be necessary or appropriate to carry out the actions approved in this Ordinance, to proceed with Closing and/or to provide, document, service or administer the Grant or Loan.

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, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

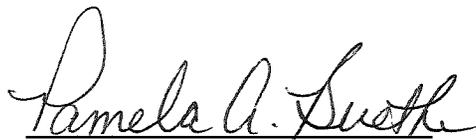
SECTION 6. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 19TH DAY OF JUNE 2007.

CITY OF LA VISTA


Douglas Kindig, Mayor

ATTEST:


Pamela A. Buethe, CMC
City Clerk