

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 2, 2014 AGENDA

Subject:	Type:	Submitted By:
TOLLING AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared to ratify an amendment to the agreement related to security for conference center financing.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

The City of La Vista in 2007 provided financing for the La Vista conference center, to be repaid in interest installments and a single lump sum principal payment in 10 years, as guaranteed by Mr. and Mrs. Hammons and related trust. A tolling agreement between La Vista and the estate and trust of John Q. Hammons was approved at the October 7, 2014 Council meeting to extend the time for La Vista to assert claims it may have with respect to the estate and trust, considering Mr. Hammons died last year. The purpose of the agreement was to preserve the status quo while La Vista follows up with the estate and trust. An amendment to the tolling agreement is presented at this meeting further extending the time for La Vista to assert claims it may have with respect to the estate and trust and thereby preserve the status quo while La Vista continues to follow up with the estate and trust.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO RATIFY AN AMENDMENT OF AN AGREEMENT RELATED TO SECURITY FOR CONFERENCE CENTER FINANCING.

WHEREAS, an amendment to an agreement has been presented to extend the time until January 8, 2015 or thereafter with respect to certain claims and security for La Vista conference center financing and related performance; specifically as related to personal guarantees of John Q. Hammons, individually and as trustee ("Guarantees").

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of La Vista, Nebraska, that the amendment to the agreement, and execution thereof by the City Administrator, in form and content presented at this meeting is hereby ratified, affirmed, authorized and approved ("Amendment").

BE IT FURTHER RESOLVED, that the Mayor, City Administrator or his or her designee shall be authorized to take any further actions on behalf of the City as he or she determines necessary or appropriate to carry out the Amendment or the agreement as modified by the Amendment, or as he or she otherwise determines necessary or appropriate with respect to the Guarantees, conference center financing or other security, including without limitation adopting and executing further amendments extending times for performance under the agreement.

PASSED AND APPROVED THIS 2ND DAY OF DECEMBER, 2014.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

AMENDMENT TO TOLLING AGREEMENT

This Amendment to Tolling Agreement (the "Amendment") is entered into as of November 21, 2014 (the "Effective Date") between Jacqueline A. Dowdy, as Personal Representative of the Estate of John Q. Hammons, Deceased (the "Estate"), and Jacqueline A. Dowdy and Greggory D. Groves, as the successor trustees of the John Q. Hammons Revocable Trust dated December 28, 1989 (the "Hammons Revocable Trust") (collectively referred to herein as the "Hammons Parties"), on the one hand, and the City of La Vista, Nebraska, a municipal corporation ("La Vista"), and John P. Mullen, Special Administrator for the Estate of John Q. Hammons, ("Special Administrator") on the other hand.

* * *

WHEREAS, the Hammons Parties, La Vista, and the Special Administrator (collectively referred to herein as the "Parties") entered into that certain Tolling Agreement (the "Agreement") effective as of May 24, 2014; and

WHEREAS, the Agreement provides that it may be amended by a writing signed as the Agreement is signed by each and all of the parties; and

WHEREAS, the Parties now desire to amend the Agreement.

NOW, THEREFORE, in consideration of the recitals above, the mutual agreements of the parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, all parties hereto agree as follows:

1. The parties hereto agree that, by entering into this Amendment, the Hammons Parties will not waive any defense (including but not limited to a defense asserting a lack of personal jurisdiction over the Hammons Parties, lack of subject matter jurisdiction, or improper venue or forum) and that neither La Vista nor the Special Administrator will argue that this Amendment waived, forfeited, or otherwise affected the Hammons Parties' ability to raise or assert any such defense.
2. La Vista and the Special Administrator agree the Hammons Parties need not file responsive pleadings in *In the Matter of the Estate of John Q. Hammons, Deceased*, Sarpy County Court, Case No. PR 14-168 and *John P. Mullen v. Jacqueline A. Dowdy, et al.*, Sarpy County District Court, Case No. CI 14-792 until January 8, 2015. The deadline to file a responsive pleading may be extended by written agreement of the parties.
3. The Hammons Parties each agree that the statutes of limitations, statutes of repose, laches periods, and all other periods or time limitations related to La Vista or the Special Administrator bringing any action in a Nebraska court or other court pursuant to Neb. Rev. Stat. § 30-3850 shall be tolled and suspended so that they expire on February 16, 2015. The term may be extended by written agreement of the parties.
4. The Hammons Parties each agree that the statutes of limitations, statutes of repose, laches periods, and all other periods or time limitations related to La Vista commencing an

action under Mo. Rev. Stat § 461.300 shall be tolled and suspended so that they expire on February 16, 2015. The term may be extended by written agreement of the parties.

5. La Vista and the Special Administrator agree the time period in Mo. Rev. Stat § 461.300, under Nebraska law or elsewhere for the Hammons Parties to act in response to La Vista's May 23, 2014, demand shall be tolled and suspended so that it expires on January 8, 2015, unless another creditor of the Estate files an action prior to January 8, 2015, for an accounting. In that event, La Vista may commence an action under Mo. Rev. Stat. §461.300, Nebraska law or elsewhere at any time prior to January 8, 2015. The term may be extended by written agreement of the parties.
6. La Vista and the Special Administrator agree that the time period for the Hammons Parties to answer or otherwise respond to any action initiated pursuant to Neb. Rev. Stat. § 30-3850 shall be tolled and suspended until the later of January 8, 2015, or the deadline prescribed by applicable law. The term may be extended by written agreement of the parties.
7. The Hammons Parties waive and agree not to assert the defenses of statute of limitations, statute of repose, laches, estoppel, or any other defense based on any delay of La Vista in bringing any action pursuant to Neb. Rev. Stat. § 30-3850 prior to February 16, 2015.
8. The Hammons Parties further waive and agree not to assert the defenses of statute of limitations, statute of repose, laches, estoppel, or any other defense based on any delay of La Vista in bringing any action pursuant to Mo. Rev. Stat § 461.300 prior to February 16, 2015.
9. The term of this Amendment shall be from the Effective Date, regardless of the date of execution of the last signatory to this Amendment.
10. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but also, which together shall constitute one and the same instrument. A facsimile copy or electronic copy shall also serve as an original.
11. This Amendment shall be governed by the laws of the State of Missouri.
12. The undersigned represent that they are fully authorized to enter into this Amendment and to bind the parties they represent.
13. This Amendment may not be altered or amended except by a writing signed as this Agreement is signed by each and all of the parties.
14. The parties hereto agree that this Amendment modifies, supplements, and forms a part of the Agreement. Except as expressly provided herein, the terms and conditions of the Agreement shall remain unchanged and in full force and effect. The terms and conditions of this Amendment shall control over any conflicting or inconsistent terms and conditions in the Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, each of the parties has executed this Amendment on or as of the date first set forth above.

Jacqueline A. Dowdy, as Personal Representative of the Estate and as Trustee of the Hammons Revocable Trust

Greggory D. Groves, as Trustee of the Hammons Revocable Trust

Brenda Gunn, as City Administrator for the City of La Vista, Nebraska

John P. Mullen, as Special Administrator for the Estate of John Q. Hammons