

TOLLING AND STANDSTILL AGREEMENT

This Tolling and Standstill Agreement is entered with an effective date of July 10, 2015 (the "Effective Date") by and between Crossland Construction Company, Inc. ("CROSSLAND") and the Wichita Airport Authority ("AUTHORITY.")

WHEREAS, a dispute currently exists between CROSSLAND and AUTHORITY and

WHEREAS, CROSSLAND and AUTHORITY are contract parties to a Construction Contract Agreement dated January 8, 2013 for the Parking Structure, Rental Car Facility and Surface Parking Lot Project;

NOW, THEREFORE, for and in consideration of the mutual agreements of CROSSLAND and AUTHORITY as recited herein, CROSSLAND and AUTHORITY each agrees as follows:

1. As used herein, the following terms shall have the following meanings:
 - a. AUTHORITY means the Wichita Airport Authority.
 - b. CROSSLAND means Crossland Construction Company, Inc.
 - c. EFFECTIVE DATE means July 10, 2015.
 - d. TERMINATION DATE means November 1, 2015, unless extended by a written agreement signed by CROSSLAND and AUTHORITY.
 - e. TIMING DEFENSE means any defense based in whole or in part upon any statute of limitations, repose period, laches, or any other failure to institute or commence litigation or other proceedings within a specified period, before a specified date, or before the happening of a specified event.
 - f. TOLLED CLAIMS means all legal and equitable claims, actions, causes of action, demands, rights, damages, expenses and compensation whatsoever which could be asserted by AUTHORITY against CROSSLAND or by CROSSLAND against AUTHORITY, whether in tort, contract or equity, under state or federal law, statutory, common or otherwise.
2. CROSSLAND and AUTHORITY expressly agree and covenant not to sue each other from the Effective Date through and including the TERMINATION DATE concerning any TOLLED CLAIMS. This prohibition does not prevent an action to enforce this Tolling and Standstill Agreement.
3. CROSSLAND and AUTHORITY agree they each shall not assert any TIMING DEFENSE based in whole or in part on the time period from the EFFECTIVE DATE through and including the TERMINATION DATE.

4. CROSSLAND and AUTHORITY each hereby agrees that any TIMING DEFENSE that may be applicable to any claim or cause of action that CROSSLAND or AUTHORITY may have against the other, whether in tort, contract or equity, under state or federal law, statutory, common or otherwise, is hereby tolled as of the EFFECTIVE DATE and the running thereof is stayed until TERMINATION DATE so that any calculation of the applicable period of time under any such doctrine would be the sum of the applicable period of time plus the period between the EFFECTIVE DATE and the TERMINATION DATE. The calculation of any applicable period of time does not include the first date, but does include the last date.

5. CROSSLAND and AUTHORITY each hereby agree to toll the time for asserting any TOLLED CLAIMS as of the EFFECTIVE DATE and the time for asserting any TOLLED CLAIMS is stayed until TERMINATION DATE so that any calculation of the applicable period of time under any such claim would not include the applicable period of time between the EFFECTIVE DATE and the TERMINATION DATE. The calculation of any applicable period of time includes the first date and the last date.

6. The parties' agreement to suspend and toll as set forth in paragraphs 2 - 4 above, is good and sufficient consideration for the performance and enforcement of this Tolling and Standstill Agreement.

7. Execution of this Tolling and Standstill Agreement shall not be construed as a waiver by either party of any claim or defense it may have against the other, except as herein provided, or as an admission of any kind by either party.

8. This Tolling and Standstill Agreement does not excuse performance of any contractual obligation under the Construction Contract Agreement except as specifically referenced herein.

9. Each party represents and warrants that their execution of this document is binding upon their successors and assigns.

10. This Tolling and Standstill Agreement shall be construed in accordance with and governed by the laws of the State of Kansas, without regard to its principles of conflict of laws.

11. This Tolling and Standstill Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on the parties hereto, notwithstanding that all such parties are not signatories to the original or same counterpart.

12. This Tolling and Standstill Agreement constitutes the entire agreement between the parties concerning Timing Defenses and agreement not to institute suit. It supersedes any previous agreements or understandings. There are no agreements, covenants, conditions, or limitations of this Tolling and Standstill Agreement that are not expressly stated herein.

13. This Tolling and Standstill Agreement may not be modified except by an instrument in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this ____ day of September 2015.

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CROSSLAND CONSTRUCTION COMPANY, INC.

Bennie Crossland

WICHITA AIRPORT AUTHORITY

By: Karen Sublett, City Clerk

By: Mayor Jeff Longwell

APPROVED AS TO FORM:

Jennifer Magana
City Attorney and Director of Law