



City of Grand Island

Tuesday, August 26, 2003

Council Session

Item I1

#2003-249 - Approving Addendum to Lease Purchase Agreement with Fonner Park

On October 9, 2001 the City of Grand Island entered into a Lease Purchase Agreement with Fonner Park Exposition and Events Center hereinafter ("Heartland") to develop an exposition and events center that will be owned by the City when all of the lease payments have been made. Heartland was required to obtain commitments for all of the funds to be used for the construction of the events center other than the City portion which would consist of lease payments made over a ten year period. The original agreement required Heartland to have all of the fundraising complete by October 9, 2003. Heartland has raised approximately 86% of the funding to construct the event center; however, it will not be able to meet the deadline in the original agreement for having 100% of the funds raised. One of the provisions of the addendum to paragraph three of the original purchase agreement is to give Heartland until October 9, 2005 to complete the fundraising requirements.

Another issue addressed by the addendum to the lease purchase agreement is that of obtaining a sales tax exemption for the supplies and materials used to construct the events center. The addendum contains changes to paragraph number six to the original agreement which enhances the city's position for seeking and obtaining a ruling from the Nebraska Department of Revenue that will exempt the project from sales taxes. If the city is successful in obtaining an exemption this could result in significant savings on the original estimated cost of the project.

Another development that has occurred since the original Lease Purchase Agreement was signed is that the Nebraska Department of Economic Development has promulgated rules for municipalities to apply for grants pursuant to the Local Civic, Cultural and Convention Center Financing Act. The addendum to the purchase agreement states that the City will seek a grant to help provide some of the construction costs of the event center. If Grand Island is successful in obtaining a grant it would be eligible to receive up to \$500,000 for this project.

Staff Contact: Doug Walker

**ADDENDUM
TO
LEASE PURCHASE AGREEMENT
Heartland Event Center**

THIS ADDENDUM TO AGREEMENT is executed and delivered on _____, 2003, by the CITY OF GRAND ISLAND, NEBRASKA, a city of the first class of the State of Nebraska ("City") and FONNER PARK EXPOSITION AND EVENTS CENTER, INC., a Nebraska nonprofit corporation ("Heartland").

RECITALS

WHEREAS, the City and Heartland entered into a Lease Purchase Agreement dated October 9, 2001 (hereinafter referred to as "the Lease Purchase Agreement"), a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference, for the planning, designing, constructing and financing of an agricultural exposition and events center which will be leased to and purchased by the City in accordance with Neb. Rev. Stat., §19-2421; and

WHEREAS, the City and Heartland desire to amend the Lease Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree and contract as follows:

1. The City and Heartland agree that the Lease Purchase Agreement shall be amended as of the date of this Addendum to Agreement as follows:

1.1 Paragraph 3. of the Lease Purchase Agreement is hereby amended to read as follows:

3. **CONDITIONS PRIOR TO COMMENCEMENT.** The parties agree that this Agreement shall bind the parties upon approval and execution as required by law but that neither party shall commence performance of its respective duties and responsibilities with respect to the construction of the Project, the issuance of the Building Bonds and the payment of lease rentals by the City under this Agreement until all of the following conditions have been satisfied:

a. Heartland shall obtain commitments for all costs of the Project from Other Funding Sources in excess of the amount determined by adding \$7,500,000.00 (the net amount to be deposited to the Construction Fund) to the investment earnings on amounts in the Construction Fund applied to pay costs of the Project under Paragraph 12. below .

- b. The Board of Directors of Heartland must approve and adopt a resolution in accordance with Heartland's Articles of Incorporation and Bylaws and applicable to federal and state statutes, describing the scope of the Project, the estimated costs of the Project and confirming that funds and financing are available to Heartland to pay for:
 1. The costs of construction and acquisition of the Project.
 2. The costs of any equipment to be provided by Heartland as contemplated by the management contract with Heartland.
 3. The costs related to any other portions of the Site described in the Declaration and the Plans and Specifications which is to be improved or constructed in connection with the construction of the Project as contemplated by the management agreement with Heartland.

Estimates for all costs of the Project and any and all such related equipment and improvements shall be set forth in such resolution. Such resolution of the Board of Directors of Heartland must be approved by Fonner Park.

- c. Heartland shall provide a copy of the Plans and Specifications to the City.
- d. Heartland must cause Fonner Park to execute and deliver a Declaration in accordance with Neb. Rev. Stat., §§76-825 to 76-894, as amended, or other related instrument which shall, among other things, specify the unit of real estate constituting the Project based upon the Plans and Specifications and the rights and easements through common elements or otherwise for the benefit of such unit, including, but not limited to, the easement under Paragraph 4. below.
- e. Heartland shall provide a copy of the Declaration to the City. The Declaration shall be executed, delivered and recorded against the Site.
- f. The Board of Directors of Heartland shall reaffirm the covenants of Heartland made in this Agreement and notify the City of Heartland's intent to proceed by resolution duly approved and adopted and forwarded to the Mayor and City Council of the City.
- g. Heartland shall cause its Bylaws to be amended by Fonner Park to provide that the City shall have the power to remove for cause any member of the governing board of Heartland and appoint a successor consistent with the requirements of Rev. Proc. 82-26.
- h. Heartland shall amend any existing agreements with any person or entity that does not comply with the requirements of Rev. Proc. 82-26 so that such existing

- b. The Board of Directors of Heartland must approve and adopt a resolution in accordance with Heartland's Articles of Incorporation and Bylaws and applicable to federal and state statutes, describing the scope of the Project, the estimated costs of the Project and confirming that funds and financing are available to Heartland to pay for:
 1. The costs of construction and acquisition of the Project.
 2. The costs of any equipment to be provided by Heartland as contemplated by the management contract with Heartland.
 3. The costs related to any other portions of the Site described in the Declaration and the Plans and Specifications which is to be improved or constructed in connection with the construction of the Project as contemplated by the management agreement with Heartland.

Estimates for all costs of the Project and any and all such related equipment and improvements shall be set forth in such resolution. Such resolution of the Board of Directors of Heartland must be approved by Fonner Park.

- c. Heartland shall provide a copy of the Plans and Specifications to the City.
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- e. Heartland shall provide a copy of the Declaration to the City. The Declaration shall be executed, delivered and recorded against the Site.
- f. The Board of Directors of Heartland shall reaffirm the covenants of Heartland made in this Agreement and notify the City of Heartland's intent to proceed by resolution duly approved and adopted and forwarded to the Mayor and City Council of the City.
- g. Heartland shall cause its Bylaws to be amended by Fonner Park to provide that the City shall have the power to remove for cause any member of the governing board of Heartland and appoint a successor consistent with the requirements of Rev. Proc. 82-26.
- h. Heartland shall amend any existing agreements with any person or entity that does not comply with the requirements of Rev. Proc. 82-26 so that such existing

costs of such acquisitions from the funds of the Construction Fund held by the Trustee as stated above and from Other Funding Sources. The City shall make any payments to suppliers and contractors in excess of such funds of the Construction Fund and Other Funding Sources as additional rent.

The award of any contracts under this Agreement for the planning, design, construction and acquisition of the Project shall be the responsibility of Heartland and shall not be subject to any public bidding requirements of the City.

The City shall be financially responsible to Heartland for the costs of the Project under any contracts awarded by Heartland for the planning, design, construction and acquisition of the Project and entered into by Heartland with payment for such costs of the Project to be made from the funds in the Construction Fund held by the Trustee, which fund shall contain the proceeds from the sale of Building Bonds issued by Heartland and interest on such funds while invested in the Construction Fund, and from Other Funding Sources or otherwise by the City as provided hereinabove. The City shall take all action to appoint Heartland or any project contractor, subcontractor, supplier or other designee of Heartland as purchasing agent; it being the intention of the City and Heartland that the City shall make such appointment of purchasing agents in regard to the construction and acquisition of the Project for the purposes of altering the status of Heartland or any project contractor, subcontractor, supplier or other designee of Heartland as the ultimate consumer of property which is physically annexed to the Project and which belongs to the City under the terms and conditions of this Agreement as provided in Neb. Rev. Stat. §77-2704.15(2). To the extent that property is annexed to the Project without the City first issuing a purchasing agent authorization within the meaning of Neb. Rev. Stat. §77-2704.15(3), the City shall apply for a refund of sales and use tax paid on property physically annexed to the Project and any such refund shall be paid to Heartland and shall constitute a part of the Other Funding Sources for the Project. The City and Heartland shall make any further amendments to this Agreement required by the Nebraska Department of Revenue so that purchases in connection with any contracts awarded by Heartland for the planning, design, construction and acquisition of the Project and entered into by Heartland are considered to be purchases by the City under Neb. Rev. Stat. §77-2704.15 and the City may effectively appoint Heartland or any project contractor, subcontractor, supplier or other designee of Heartland as purchasing agent for the purposes of altering the status of Heartland or any project contractor, subcontractor, supplier or other designee of Heartland as the ultimate consumer of property which is physically annexed to the Project and which belongs to the City under the terms and conditions of this Agreement as provided in Neb. Rev. Stat. §77-2704.15(2).

Heartland shall enter into contracts for the acquisition of equipment or the planning, design and construction of work for units under the Declaration other than the unit constituting the Project as contemplated by the management contract.

Heartland may enter into any agreement or agreements with Fonner Park for purchases by Fonner Park under such contracts within the meaning of Neb. Rev. Stat. §77-2704.20.

Any dispute with any contractor or supplier concerning the Project or interpretation of contracts related to the Project shall be adjusted and settled by Heartland. Any additional pay-

ment related to the Project resulting from the resolution of a dispute with a contractor or supplier or resulting from any judgment, claim or liability related the Project in excess of funds in the construction fund and from Other Funding Sources shall be paid by the City as additional rent.

The City shall take possession of the Project upon issuance of certificate of substantial completion by the project architect; provided, there are no unresolved disputes with any contractor or supplier concerning the Project.

1.3 Paragraph 9. of the Lease Purchase Agreement is hereby amended to read as follows:

9. **COVENANTS OF CITY.** The City covenants that it is a city of the first class of the State of Nebraska, organized under Neb. Rev. Stat., Chapter 16, as amended, with full and lawful power and authority to enter into this agreement as a lease pursuant to Neb. Rev. Stat., §19-2421 and that it has taken all actions necessary to lawfully enter into this agreement. The City covenants that the lease rentals payable under this Agreement do not exceed any limitation imposed by law.

The City covenants that it will take action to apply for a grant of assistance from the Local Civic, Cultural and Convention Center Financing Fund and take all action necessary under the Local Civic, Cultural, and Convention Center Financing Act at Neb. Rev. Stat. §§13-2701 to 13-2710 in regard to such application for grant of assistance. Any grant of assistance received by the City under the Local Civic, Cultural, and Convention Center Financing Act at Neb. Rev. Stat. §§13-2701 to 13-2710 shall be considered part of the commitments for all costs of the Project from Other Funding Sources under Paragraph 3.a. of this Agreement. Any grant of assistance received by the City under the Local Civic, Cultural, and Convention Center Financing Act at Neb. Rev. Stat. §§13-2701 to 13-2710 shall be paid to Heartland to be deposited with the Other Funding Sources or, with the consent of Heartland, paid directly as designated by Heartland for the cost of the construction of the Project.

The City covenants that throughout the term of this Agreement it will observe all taxation, budget and spending limitations now or hereafter imposed by law. The City covenants and agrees that it shall levy and collect annually taxes, which may be either ad valorem taxes upon all the taxable property in the City under Neb. Rev. Stat., §16-702 (as now or hereafter amended or any successor statutory provision thereto) or sales and use taxes under Neb. Rev. Stat. §§77-27,142 to 77-27,148 (as now or hereafter amended or any successor statutory provision thereto) sufficient in rate and amount to pay the basic rents and all additional rent due hereunder. Receipts from such taxes in each year sufficient to pay the basic rent due hereunder shall be placed in a separate account of the City's general fund or otherwise segregated and applied to make the payments of basic rent due hereunder. The City covenants to include each fiscal year during the term of this Agreement in its annual budget appropriations sufficient to pay the amounts due hereunder during each budget year on the understanding that such commitment is a continuing contractual obligation of the City and not subject to discretion as to each such year, all in accordance with the authorization for contractual commitments set forth in Neb. Rev. Stat., §19-2421.

The City covenants that it shall not take or omit any action that would have the effect of causing interest on the Building Bonds issued by Heartland for the Project to be no longer excludable from gross income under the Code.

The City covenants that it will take any action necessary to establish exemption of the Project from property taxes.

The City covenants that it will, before the Building Bonds are issued, adopt a resolution stating that it will accept title to the Project when the Building Bonds are discharged consistent with the requirements of Rev. Proc. 82-26.

The City Covenants that it will approve Heartland and the Building Bonds and adopt a resolution approving the purposes and activities of Heartland and the specific obligations to be issued by Heartland consistent with the requirements of Rev. Proc. 82-26.

2. Except as specifically modified by this Addendum to Agreement, all other terms and provisions of the Lease Purchase Agreement previously executed by and between the City and Heartland shall remain in full force and effect.

Dated: _____, 2003.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA,

RaNae Edwards, City Clerk

By: _____
Jay Vavricck, Mayor

ATTEST:

FONNER PARK EXPOSITION AND EVENTS
CENTER, INC.

Hugh Miner, Jr., Secretary

By: _____
Brian Hamilton, President

STATE OF NEBRASKA)
) SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a city of the first class of the State of Nebraska, on behalf of such city.

Witness my hand and notarial seal, this ____ day of _____, 2003.

Notary Public

STATE OF NEBRASKA)
) SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Brian Hamilton, President of Fonner Park Exposition and Events Center, Inc., a Nebraska nonprofit corporation, on behalf of the corporation.

Witness my hand and notarial seal, this ____ day of _____, 2003.

Notary Public

43-471672

RESOLUTION 2003-249

WHEREAS, on October 9, 2001, by Resolution 2001-288, the City of Grand Island (hereinafter "City") and the Fonner Park Exposition and Events Center, Inc., a Nebraska non-profit corporation (hereinafter "Heartland") entered into a Lease Purchase Agreement for the planning, designing, constructing and financing of an agricultural exposition and events center which will be leased to and purchased by the City in accordance with Neb. Rev. Stat. §19-2421; and

WHEREAS, the original Lease Purchase Agreement required Heartland to obtain its funding commitments for all costs of the project other than the costs to be paid by the City by October 9, 2003 and said funding commitments have not been completed; and

WHEREAS, Heartland has raised approximately 86% of the funding necessary to construct the project and is seeking a two (2) year extension of the time necessary to complete the fundraising for this project; and

WHEREAS, Heartland is seeking to clarify the original Lease Purchase Agreement so that Heartland will act as purchasing agent for the City and will be exempt from Nebraska State sales taxes pursuant to the provisions of Neb. Rev. Stat. §77-2704.15; and

WHEREAS, since the original Lease Purchase Agreement was signed, regulations have been adopted permitting applications to be submitted for grants pursuant to the Local Civic, Cultural and Convention Center Financing Act at Neb. Rev. Stat. §13-2701; and

WHEREAS, an Addendum to the original Lease Purchase Agreement between the City of Grand Island, Nebraska and Heartland has been drafted and approved by the City Attorney's office to address the issues set forth above.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

1. Heartland shall have until October 9, 2005 to complete the process of obtaining 100% of the funding commitments necessary to construct the Fonner Park Exposition and Events Center, as well as fulfill all of the items set forth in Paragraph 1.1 of the Addendum amending paragraph number 3 of the original Lease Purchase Agreement.
2. City will use its best efforts to enable Heartland or any project contractor, subcontractor, supplier or other designee of Heartland to act as its purchasing agent and to obtain an exemption from Nebraska State Sales Tax pursuant to the requirements of Neb. Rev. Stat. §77-2704.15 for supplies, materials and all other items or services eligible for such sales tax exemption.
3. City will use its best efforts to apply and qualify for any grant monies available pursuant to the Local Civic, Cultural and Convention Center Financing Act as set forth in Neb. Rev. Stat. §§13-2701 to

Approved as to Form	☐ _____
August 22, 2003	☐ City Attorney

13-2710.

4. The Addendum to the Lease Purchase Agreement is hereby approved; and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island and to take such action in furtherance of the Addendum to the Lease Purchase Agreement as is required and prudent.

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Adopted by the City Council of the City of Grand Island, Nebraska, August 26, 2003.

RaNae Edwards, City Clerk