



City of Grand Island

Tuesday, November 23, 2004

Council Session

Item F3

#8944 - Consideration of Issuing Building Bonds for Heartland Events Center, Second Addendum to the Lease Purchase Agreement, Management Agreement and Parking Rights and Access Agreement

Staff Contact: David Springer

Council Agenda Memo

From: Douglas R. Walker, City Attorney

Meeting: November 23, 2004

Subject: Ordinance Approving the Second Addendum to the Lease Purchase Agreement on the Trust Indenture and Security Agreement, Management Contract Parking Rights Agreement, Bond Purchase Agreement, Appraisal, Accepting Title and Making Determinations with Respect to Municipal Bonds to be Issued

Item #'s: F-3

Presenter(s): Douglas R. Walker, City Attorney

Background

On October 9, 2001, the City entered into a Lease Purchase Agreement with the Fonner Park Exposition and Events Center, also known as Heartland. This Lease Purchase Agreement was subsequently amended by an Addendum dated August 26, 2003. Fonner Park has now raised the funds and has obtained a letter of credit assuring that funding will be available for construction of the Events Center when these funds are added to the City's commitment of \$7,500,000 to the project. To proceed with the Heartland Events Center project several agreements need to be approved by the City Council, which is the subject of this ordinance.

Discussion

An amendment to the original Lease Purchase Agreement is necessary to make provisions related to the financing and insuring of the bonded indebtedness to be issued by the City. In addition to the Second Addendum to the Lease Purchase Agreement, the Council also needs to accept the real estate title from Fonner Park for the land on which the Events Center will be constructed. In addition the Council needs to approve the appraisal that was recently done by Bill Fischer for the land as well as for the building when it is constructed. In addition to these actions, the ordinance will also include language in which the Council will approve the Trust Indenture and Security Agreement for the bonded indebtedness, approve a Management Contract between the City and Heartland, approve a Parking Rights Agreement between the City and Fonner Park,

approve the terms of a Bond Purchase Agreement between the City and Ameritas and make certain determinations with respect to the bonds to be issued under the Indenture Agreement.

City staff has been involved in negotiating these various agreements and taking steps to assure that the transfer of title to the real estate is handled properly. With the completion of these documents and with Council approval for the City to enter into these documents and to issue the bonds for funding the Heartland project, the Events Center will be able to proceed.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the ordinance to permit the Heartland Events Center project to proceed.
2. Do not approve the ordinance which would not permit the Heartland Events Center project to proceed.
3. Postpone taking action on the issue which would stop the project until further action was taken to approve the agreements authorized by the ordinance.
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the ordinance which would enable the City to enter into the necessary agreements and authorize the issuance of bonds so that the Heartland Events Center project can proceed.

Sample Motion

Motion to approve the ordinance as drafted.

Ordinance No. 8944

AN ORDINANCE PROVIDING FOR THE PURCHASE AND LEASING OF AN AGRICULTURAL EXPOSITION AND EVENTS CENTER FOR THE CITY OF GRAND ISLAND; AUTHORIZING EXECUTION AND DELIVERY OF A SECOND ADDENDUM TO LEASE PURCHASE AGREEMENT WITH FONNER PARK EXPOSITION AND EVENTS CENTER, INC., AMENDING AND CONFIRMING THE TERMS OF A LEASE PURCHASE AGREEMENT PREVIOUSLY ENTERED INTO, RELATING TO THE CONSTRUCTION AND ACQUISITION OF SAID EVENTS CENTER FOR USE BY THE CITY OF GRAND ISLAND, NEBRASKA; APPROVING THE EXECUTION OF DOCUMENTS WITH RESPECT TO SAID SECOND ADDENDUM; PROVIDING FOR THE ACCEPTANCE OF TITLE; APPROVING AN APPRAISAL; APPROVING THE TERMS OF A TRUST INDENTURE AND SECURITY AGREEMENT; APPROVING A MANAGEMENT CONTRACT AND PARKING RIGHTS AND ACCESS AGREEMENT; MAKING CERTAIN DETERMINATIONS WITH RESPECT TO BONDS TO BE ISSUED UNDER SUCH INDENTURE; APPROVING THE TERMS OF A BOND PURCHASE AGREEMENT; AND PROVIDING FOR THE PUBLISHING OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA (the "City") as follows:

Section 1. The Mayor and Council hereby find and determine: that the City has previously approved the execution and delivery of that Lease Purchase Agreement dated as of October 9, 2001 (the "Original Lease Purchase Agreement") by and between the City and Fonner Park Exposition and Events Center, Inc., ("Heartland"), a Nebraska nonprofit corporation, which agreement has been supplemented and amended by that Addendum to Lease Purchase Agreement dated August 26, 2003 (the "First Addendum" and together with the Original Lease Purchase Agreement, the "Existing Agreement"); that it is advisable and necessary to further supplement and amend the terms of the Existing Agreement in order to provide for the final agreed upon terms relating to the acquisition of a new agricultural exposition and events center to serve the City and its inhabitants (the "Project"); that Heartland has been formed under the Nebraska nonprofit corporation laws exclusively for purposes permitted by Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); that the Existing Agreement provides for the construction and acquisition of the Project pursuant to the provisions of Section 19-2421, R.R.S. Neb. 1997; that it is necessary and advisable for the terms of the Existing Agreement be modified to set forth the payments required to be made by the City for the purchase of the Project and relating to the financing to be obtained for the Project by Heartland on behalf of the City; that the documents necessary for such purposes have been prepared and said documents should be approved and their execution authorized.

Section 2. The City of Grand Island shall enter into the Second Addendum to Lease Purchase Agreement to be dated as of December 1, 2004, with Heartland, modifying the terms of the Existing Agreement (the "Second Addendum" and together with the Existing Agreement, the "Agreement") and whereby Heartland will construct and acquire the Project in accordance with specifications approved by the City and with a set schedule of payments relating to the acquisition

of the Project and that the Second Addendum in the form presented at this meeting is hereby approved.

Section 3. The Mayor and City Clerk of the City be and they are hereby authorized and directed to execute and deliver on behalf of the City the Second Addendum, including any necessary counterparts, in substantially the form and content as presented to this meeting, but with such changes or modifications therein as to them seem necessary, desirable or appropriate on behalf of the City; and said Mayor and City Clerk are further authorized and directed to execute and deliver any other documents or certificates and to do all other things necessary or appropriate in connection with the Agreement.

Section 4. The Mayor and Council hereby approve the formation of Heartland, including the Articles of Incorporation and Bylaws thereof and the five directors thereof; and further approve the Trust Indenture and Security Agreement, dated as of December 1, 2004, (the "Indenture") from Heartland in favor of Wells Fargo Bank, National Association, under which Building Bonds (Heartland Events Center Project), Series 2004, in the aggregate principal amount of \$7,720,000 (the "Building Bonds") are to be issued, and the City hereby approves the issuance of the Building Bonds, in such principal amount and bearing interest as set forth in the Indenture and the sale of said bonds to Ameritas Investment Corp. (the "Underwriter") in accordance with the terms of a Bond Purchase Agreement dated November 23, 2004 (the "Bond Purchase Agreement"), at the price of _____% of the principal amount thereof plus accrued interest to the date of purchase and with an additional deduction for the payment by the Underwriter of bond insurance premium, is hereby approved. The Mayor is hereby further authorized to sign the approval form on the Bond Purchase Agreement on behalf of the City and to approve at the time of closing of the purchase of the Building Bonds the final form of the Indenture.

Section 5. In connection with the execution and delivery of the Second Addendum and the issuance by Heartland of the Building Bonds, the following determinations and approvals are hereby made by the Mayor and Council:

(a) The Complete Narrative Appraisal Report of Heartland Events Center dated November 8, 2004 made by William C. Fischer, MAI #4722 is hereby approved in accordance with Section 13-403, R.R.S. Neb. 1997.

(b) The City hereby declares, as provided in the Agreement, that it will take title to the Project (including additions) when the Building Bonds are discharged.

(c) The terms of the Second Addendum approving the Construction Contract (as defined in the Second Addendum) and the payment and performance bonds provided thereunder are hereby approved and authorized.

(d) The designation in the Indenture of Hugh Miner to act as Project Manager (as defined in the Indenture) is hereby approved.

Section 6. The Mayor and Council hereby state that it is the intention of the City that interest on the Building Bonds issued by Heartland shall be excludable from gross income under the federal income tax by virtue of Section 103 of the Code and Revenue Ruling 63-20 and Revenue Procedure 82-26 of the Internal Revenue Service and the Mayor and Council hereby authorize the Mayor, the City Clerk and the City Treasurer (Finance Director) (or any one of more of them) to take all actions necessary or appropriate to carry out said intention and for obtaining such interest exclusion. The City hereby covenants with Heartland for the benefit of the purchasers and holders of the Building Bonds that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payments set forth in the Second Addendum or principal and interest on the Building Bonds, which would cause the Building Bonds to be arbitrage bonds within the meaning of Section 103 and 148 and other related sections of the Code and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to reporting and payment of rebates, if applicable. The Building Bonds, as issued on behalf of the City are hereby designated by the City as “qualified tax-exempt obligations” under Section 265(b)(3)(B)(i)(III) of the Code and the City in connection with entering into the Agreement hereby covenants and warrants that it does not anticipate issuance directly by it or on its behalf of tax-exempt bonds or other tax-exempt interest bearing obligations in an amount exceeding \$10,000,000 in calendar 2004 (taking into consideration the exception for current refunding issues).

Section 7. The Mayor and Council hereby approve the Preliminary Official Statement dated November 12, 2004 with respect to the Building Bonds and hereby authorize the Mayor to approve the final Official Statement for the Building Bonds with appropriate changes to reflect the final terms for the Building Bonds as sold pursuant to the Bond Purchase Agreement.

Section 8. In connection with the City’s rights relating to the Project as provided for in the Agreement, the execution and delivery on behalf of the City are hereby authorized with respect to the following agreements:

(a) Management Contract between the City and Heartland providing for Heartland to manage the Project for the City (the “Management Contract”) and

(b) Parking Rights and Access Agreement among Hall County Livestock Improvement Association, Heartland and the City (the “Parking Rights and Access Agreement”).

The Mayor and City Clerk of the City be and they are hereby authorized and directed to execute and deliver the Management Contract and the Parking Rights and Access Agreement, including any necessary counterparts, each in substantially the form and content as presented to this meeting, but with such changes or modifications therein as to them seem necessary, desirable or appropriate on behalf of the City.

Section 9. This Ordinance shall be in force and take effect from and after its publication as provided by law.

Passed and approved this 23rd day of November, 2004.

Mayor

City Clerk

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