



City of Grand Island

Tuesday, April 14, 2009

Council Session

Item E7

Public Hearing on Acquisition of Lease Agreement with the State of Nebraska for Property Located South of Eagle Scout Lake, West of Broadwell Avenue and North of Highway 2

Staff Contact: Jeff Pederson

Council Agenda Memo

From: Jeff Pederson, City Administrator

Meeting: April 14, 2009

Subject: Lease with Nebraska Department of Administrative Services for 78.39 Acres of Land South of Eagle Scout Lake, East of Broadwell and North of HW-2

Item #'s: E-7 & I-3

Presenter(s): Jeff Pederson, City Administrator

Background

In October of 2008, a new site design plan for the operation of the Nebraska State Fair at Fonner Park revealed the fact that facilities currently in place for softball and soccer activities would be displaced due to the need for vehicle parking. Fonner Park has heretofore granted use of land on it's site to the City of Grand Island for the construction and operation of softball facilities, and to the Grand Island Soccer club for soccer facilities.

It became immediately recognized that the likely loss of these facilities at Fonner Park would create a significant void for the hundreds of residents who recreate upon the two sets of facilities. With the assistance and involvement of State of Nebraska Officials and the Nebraska State Fair Board, the City engaged in a process of re-stating to the State of Nebraska an on-going interest in acquiring land associated with the Nebraska Veterans Home for potential use for development of recreational facilities.

For several weeks, the City has been in negotiations with the State of Nebraska Department of Administrative Services to acquire an interest in a parcel of land directly south of Eagle Scout Lake for development of athletic facilities that are expected to be displaced when the Nebraska State Fair re-locates to Fonner Park. The DAS conducted the necessary process to survey and appraise the land as a requisite to conveying ownership or lease of the property to the City. Purchase of the property was discussed as an option to a Lease, however that was deemed to be inadvisable at this time. Negotiations are now complete, and before the City Council is a 99-year lease for 78.39 acres of land for a nominal sum of \$1 per year, with a potential change in terms should the Nebraska Fair not locate in Grand Island prior to January 1, 2015.

Discussion

This Lease allows planning to proceed for development of a project to replace facilities that will be displaced by the State Fair, as well to develop concepts for future development and utilization of remaining space in the acreage under Lease. It is important to note that this lease is not conditional upon the location of the State Fair in Grand Island, however lease terms may change should that not occur prior to 2015.

The Parks and Recreation Department has prepared a preliminary cost estimate of \$1.5 for a project to replace softball and soccer facilities attributable to the State Fair move to Grand Island. This City is in discussions with the State Fair Board about a partnership in the project funding. Should this project be authorized by the City Council at a later date, the Parks and Recreation Department will undertake a process to identify other potential resources that could be utilized for project design, funding, construction, etc.

Alternatives

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

Approve the Lease Agreement between the City and the Department of Administrative Services, State building Division, for the period of May 1, 2009-April 30, 2108.

Sample Motion

A Resolution authorizing the Agreement is attached for formal action to approve the Agreement and authorize execution.

**STATE OF NEBRASKA
ADMINISTRATIVE SERVICES
STATE BUILDING DIVISION
LEASE AGREEMENT**

This Lease is by and between Administrative Services, State Building Division, an agency of the State of Nebraska, hereinafter known as "Lessor", and the City of Grand Island, a Nebraska Political Subdivision, hereinafter known as "Lessee".

1. **Land.** Lessor hereby leases, subject to the terms, covenants and conditions set forth in this Lease, to the Lessee, the Land as generally described below (hereinafter "Demised Land"), which consists of 78.39 acres of land shown on the map attached hereto as Exhibit A, which is hereby incorporated into this Lease. Lessor warrants and represents that it is the owner of the Demised Land. The Demised Land is described as follows:

A TRACT OF LAND LOCATED IN PART OF THE EAST HALF (E1/2) OF SECTION FIVE (5), TOWNSHIP ELEVEN (11) NORTH, RANGE NINE (9) WEST OF THE 6TH P.M., HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER (E1/4) CORNER OF SECTION 5-T11N-R9W; THENCE ON AN ASSUMED BEARING OF N88°50'06"W UPON THE SOUTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION 5 A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE WESTERLY RIGHT-OF-WAY (ROW) LINE OF BROADWELL AVENUE; THENCE S00°51'43"W UPON AND ALONG SAID WESTERLY ROW LINE A DISTANCE OF 179.46 FEET; THENCE N88°10'08"W A DISTANCE OF 254.75 FEET; THENCE S29°09'23"W A DISTANCE OF 250.49 FEET; THENCE N88°50'06"W PARALLEL WITH SAID SOUTH LINE OF NE1/4 A DISTANCE OF 1,748.67 FEET; THENCE N00°37'43"E A DISTANCE OF 397.71 FEET TO SAID SOUTH LINE OF THE NE1/4; THENCE N00°37'43"E A DISTANCE OF 1,233.17 FEET; THENCE S88°25'59"E A DISTANCE OF 69.05 FEET; THENCE N00°43'20"E A DISTANCE OF 59.94 FEET; THENCE S88°21'19"E A DISTANCE OF 259.64 FEET; THENCE S88°20'18"E A DISTANCE OF 498.58 FEET; THENCE S88°24'58"E A DISTANCE OF 1,150.41 FEET TO A POINT BEING ON SAID WESTERLY ROW LINE OF BROADWELL AVENUE, SAID POINT ALSO BEGIN THE WESTERLY LINE OF NEBRASKA STATE ROW DESCRIBED IN STATE OF NEBRASKA DEPARTMENT OF ROADS DOCUMENT NO. 93-104239, RECORDED MAY 26, 1993, REGISTER OF DEEDS, HALL COUNTY, NEBRASKA; THENCE S11°16'37"E UPON AND ALONG SAID WESTERLY ROW LINES OF BROADWELL AVENUE AND STATE DEED A DISTANCE OF 212.80 FEET; THENCE S00°38'41"E UPON AND ALONG SAID WESTERLY ROW LINES A DISTANCE OF 489.24 FEET; THENCE S20°27'26"E UPON AND ALONG SAID WESTERLY ROW LINES A DISTANCE OF 243.20 FEET; THENCE S00°00'05"E UPON AND ALONG SAID WESTERLY ROW LINES A DISTANCE OF 354.81 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 3,414,493.776 SQUARE FEET OR 78.39 ACRES MORE OR LESS.

The parties recognize there is an abandoned well within the Demised Land. During the term of the lease Lessee shall be responsible for appropriate security and safety related to the abandoned well.

2. **Term and Termination.**

- 2.1. The term of this Lease shall be for a period of 99 years, commencing on _____, 2009 (hereinafter the "Commencement Date") and ending on _____, 2108 (hereinafter the "Expiration Date") unless sooner terminated as hereinafter provided. This Lease shall in no case become effective until all required signatures have been obtained. If Lessee occupies said

Demised Land prior to the Commencement Date, rental will commence at time of said occupancy. Regardless of any change in the Commencement Date due to early occupancy by Lessee, the Expiration Date shall remain fixed as stated above.

- 2.2. It is agreed that if the Lessor and the Lessee shall have fully complied with all the terms of this lease, the Lessee at the expiration of the original term of the Lease shall have the right to extend this Lease for a period of up to 20 years. The extension shall be on the same terms and conditions as those set forth for the original term in this lease. The Lessee shall notify Lessor in writing of its intent to exercise such right within One year of the end of the original Lease.
- 2.3. If for any reason Lessor cannot deliver possession of the Demised Land to Lessee by the Commencement Date, Lessee shall not, except as otherwise provided herein, be obligated to perform any other obligation of Lessee under the terms of this Lease until Lessor delivers possession of the Demised Land to Lessee. If Lessor does not deliver possession of the Demised Land on the Commencement Date, the term of the Lease shall commence on the date Lessee takes possession of the Demised Land for the purpose described herein and the term of the lease, identified above, shall begin running from the possession date. If possession of the Demised Land is not delivered to Lessee within 60 days after the Commencement Date and such delay is not due to Lessee's acts, failure to act or omissions, Lessee may by notice in writing to Lessor within 10 days after the end of said 60 day period cancel this Lease and the parties shall be discharged from all obligations hereunder.
- 2.4. If Lessee, with or without Lessor's consent, remains in possession of the Demised Land or any part thereof after the expiration of the term or executed options hereof, such occupancy shall be a tenancy from month-to-month upon all the provisions of this Lease.
- 2.5. The Demised Land shall be used for the sole purpose of providing recreational ball fields and other such recreational outdoor events. If Lessee fails to use the Demised Land for such purposes or fails to show substantial effort toward effectuating such use by December 31, 2010, the Lease shall terminate on January 1, 2011 and the parties shall be discharged from all obligations hereunder. If Lessee at any time thereafter discontinues use of the Demised Land for such purposes, Lessor may, by serving 30 days notice upon Lessee, terminate the Lease.
- 2.6. The Lessor and Lessee may terminate the lease by mutual written consent.
- 2.7. The Lessor may terminate the lease if directed to do so by statute.

3. **Rent.**

The State of Nebraska recognizes the importance of recreational facilities to the well being of the citizens of Nebraska. The State further recognizes the need to facilitate development of new recreational facilities as a result of the implementation of LB 1116 (2008) related to the move of the Nebraska State Fair from Lincoln, Nebraska to Grand Island, Nebraska. In recognition thereof, the State agrees to lease the Demised Premises to the Lessee for \$1.00 per year, payable on January 1 of each year beginning January 1, 2010 for the term of this lease. Notwithstanding the forgoing, should the Nebraska State Fair remain in Lincoln Nebraska or be relocated to a City other than Grand Island, the parties agree to negotiate a revised rental rate in good faith for the lease term beginning January 1, 2015. Under no circumstance shall the rental rate, if revised under this agreement, exceed the lost farm rental payments Lessor would have received had it not leased the land to the Lessee. At the time of signing this agreement, the value of the lost rental is \$158.00 per acre or \$12,385.62 per year for the Demised Land.

4. **Notices.** All notices herein provided to be given, or which may be given, by Lessor or Lessee to the others, shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

To the Lessor at: State of Nebraska
AS – State Building Division
P.O. Box 98940
Lincoln, Nebraska 68509-8940

To the Lessee at: City of Grand Island
P.O. Box 1968
Grand Island, Nebraska 68802-1968

5. Assignment and Subletting.

Lessee shall not assign this Lease without the written consent of the Lessor, which shall not be unreasonably withheld. Any occupant, assignee, or sub-lessee must agree to abide by all of the terms and provisions of this Lease. Lessor shall not assign this Lease without the written consent of Lessee, which shall not be unreasonably withheld. Any successor in interest of the Lessor shall abide by all of the terms and provisions of this Lease. Nothing in this Section shall be construed to limit the ability of the Lessee to enter into agreements and to impose and collect fees from facilities users for use or maintenance of the leased property and for such related facilities as the Lessee intends and may construct upon the leased property.

6. Disposition of Property. Upon termination of this lease or any extension thereof, the Demised Land shall remain the property of the Lessor. Any buildings or appurtenances the Lessee may have constructed or installed shall remain the property of the Lessee. Lessor may purchase the Lessee's interest in such buildings or appurtenances for the Fair Market Value of the same. "Fair Market Value" shall mean the value of such interest, as determined by agreement of the parties or by a board of three independent licensed appraisers chosen jointly by the parties. The Lessee's interest may be purchased as determined by state or federal law or by agreement of the parties. If Lessor elects not to purchase the buildings or appurtenances, Lessee will remove all buildings and appurtenances at Lessee's cost. Each party shall retain ownership of all personal property placed or installed on the Demised Land. Lessee shall remove all of its personal property from the Demised Land within one hundred and twenty (120) days of the termination, unless the parties otherwise agree to extend such time.

7. Compliance With Law. Lessor and Lessee shall, at their respective expense, comply with all applicable statutes, charters, laws, ordinances, building and maintenance codes, rules, regulations, requirements and orders of duly constituted public authorities now or hereafter in any manner affecting the Demised Land, or the use thereof, or the sidewalks, alleys, streets, and ways adjacent thereto, whether or not any such statutes, charters, laws, ordinances, rules, regulations, requirements, or orders which may be hereinafter enacted involve a change of policy on the part of the governmental body enacting the same.

8. Amendments and Binding Effect. This Lease may not be amended except by an instrument in writing signed by Lessor, Lessee and the Tenant Agency. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing signed by the applicable party and no custom or practice which may evolve between the parties in the administration in the terms hereof shall waive or diminish the right of either party to insist on the performance of the other party in strict accordance with the terms hereof.

9. Severability. If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

10. Entire Agreement. This Lease constitutes the entire agreement between Lessor and Lessee regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties or agreements have been made by Lessor or Lessee to the other with respect to this Lease or the obligations of Lessor or Lessee in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

11. Indemnification. Nothing in this lease shall be construed as an indemnification by Lessor or Lessee of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during the performance of this lease. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this lease shall be determined according to applicable law including but not limited to the Political Subdivision and State Tort Claims Acts.

APPROVAL

Lessor

Director, Administrative Services

Date

SUBSCRIBED AND SWORN TO before me this ____ day of April, 2009.

Notary Public

Administrator, AS – State Building Division

Date

SUBSCRIBED AND SWORN TO before me this ____ day of April, 2009.

Notary Public

Lessee

Authorized Representative, City of Grand Island

Date

SUBSCRIBED AND SWORN TO before me this ____ day of April, 2009.

Notary Public