



City of Grand Island

Tuesday, October 12, 2010

Council Session

Item G23

#2010-291 - Approving Extension of the Escrow Agreement for the Fieldhouse at Fonner Park

Staff Contact: Mary Lou Brown

Council Agenda Memo

From: Mary Lou Brown, Finance Director

Meeting: October 12, 2010

Subject: Approving Extension of the Escrow Agreement for the Fieldhouse

Item #'s: G-23

Presenter(s): Mary Lou Brown, Finance Director

Background

The City of Grand Island (Lessee), Wells Fargo Brokerage Services, LLC (Lessor) and Wells Fargo Bank, NA (Escrow Agent) entered into an escrow agreement dated July 1, 2009. The escrow agreement is related to the financing of the Fieldhouse.

Discussion

Section 2.03 of the escrow agreement states that "Amounts for payment of costs of the Project shall be disbursed no later than August 31, 2010." Since payments of costs related to the Project are continuing, it is appropriate to make a change to the existing escrow agreement. The Lessor is proposing that an amendment to the escrow agreement be executed and that the amendment move the date from August 31, 2010 to June 30, 2011.

Costs totaling \$4,494,253.12 have been submitted to Council through the September 28, 2010 Council meeting. It is expected that the remainder of the \$5,000,000 will be expended prior to June 30, 2011; however, in order to accommodate the unknown, it is recommended that the date be extended to June 30, 2011.

Alternatives

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

1. Move to approve the amendment to the escrow agreement by and between the Lessor, the Lessee and the Escrow Agent. The amendment extends the payment of costs from August 31, 2010 to June 30, 2011.

2. Postpone the issue to a future meeting.
3. Take no action.

Recommendation

City Administration recommends that Council approve the amendment to the escrow agreement by and between the Lessor, the Lessee and the Escrow Agent. The amendment extends the payment of costs from August 31, 2010 to June 30, 2011

Sample Motion

Move to approve the amendment to the escrow agreement by and between the Lessor, the Lessee and the Escrow Agent.

Exhibit C to Escrow Agreement

AMENDMENT

THIS AMENDMENT TO ESCROW AGREEMENT is dated as of September 27 2010 (this "Amendment") by and between Wells Fargo Securities, LLC formerly known as Wells Fargo Brokerage Services, LLC (the "Lessor"), the City of Grand Island, Nebraska, (the "Lessee") and Wells Fargo Bank, National Association, (the "Escrow Agent").

RECITALS

A. The Lessor, the Lessee and the Escrow Agent have entered into an Escrow Agreement dated as of July 1, 2009 (the "Escrow Agreement").

B. Pursuant to Section 7.09 of the Escrow Agreement, the Lessor and the Lessee may, without the consent of the Escrow Agent, amend the date specified in Section 2.03 of the Escrow Agreement to a date no more than three years after the date of delivery of the Lease.

C. The Lessor and the Lessee desire to amend the date specified in Section 2.03 of the Escrow Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. The Lessor and the Lessee amend Section 2.03 of the Escrow Agreement by replacing the date "August 31, 2010" as it appears in the second sentence thereof with the date "June 30, 2011."

2. This Amendment shall become effectively only upon execution hereof by duly authorized officers or representatives of the Lessor and the Lessee.

3. All other terms and conditions of the Escrow Agreement not specifically amended by this Amendment shall remain in full force and effect and are hereby ratified and confirmed by the Lessor and the Lessee.

4. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in their respective corporate names by their duly authorized officers, all as of the date first written above.

WELLS FARGO SECURITIES, LLC,
Lessor

By: _____
Title: _____

THE CITY OF GRAND ISLAND, NEBRASKA,
Lessee

By: _____
Title: _____

RESOLUTION 2010-291

WHEREAS, Wells Fargo Securities, LLC (Lessor), the City of Grand Island (Lessee) and Wells Fargo Bank, NA (Escrow Agent) entered into an escrow agreement dated July 1, 2009; and

WHEREAS, Section 7.09 of the escrow agreement allows for the amendment of the date specified in Section 2.03 of the escrow agreement to no more than three years after the date of delivery of the Lease; and

WHEREAS, Section 2.03 of the escrow agreement states that project costs shall be disbursed no later than August 31, 2010; and

WHEREAS, the lessor and the lessee desire to amend the date specified in Section 2.03 of the escrow agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to sign on behalf of the City of Grand Island, the Exhibit C to Escrow Agreement that extends the end date for disbursement of project costs from August 31, 2010 to June 30, 2011.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such amendment with Wells Fargo Securities, LLC on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 12, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 7, 2010	☐ City Attorney