



City of Grand Island

Thursday, September 11, 2008
Special Meeting

Item I1

**#2008-256 - Consideration of Ground Lease with Hall County
Livestock Improvement Association (Fonner Park)**

Staff Contact: Jeff Pederson

GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into September ____, 2008, by and between HALL COUNTY LIVESTOCK IMPROVEMENT ASSOCIATION, a Nebraska nonprofit corporation ("Fonner Park") and CITY OF GRAND ISLAND, NEBRASKA, a city of the first class of the State of Nebraska ("City").

WHEREAS, the Nebraska Unicameral has passed L.B. 1116, 100th Leg., 2d Sess. (Neb. 2008) ("LB 1116") and a purpose of which is that the Nebraska State Fair be permanently located within the City upon real property owned by Fonner Park (the "State Fair Project");

WHEREAS, the City and Fonner Park have determined that the City should have title to a multi-purpose agricultural and recreational exposition building and associated infrastructure improvements (the "Building") in order to issue certain funds in the amount of \$5,000,000 ("Building Funds") as part of the City's obligations under LB 1116;

WHEREAS, the City and Wells Fargo Brokerage Services, LLC ("Wells Fargo") have entered into a Lease Purchase Agreement dated September ____, 2008 ("Lease Purchase Agreement") regarding the Building in order to facilitate the issuance of the Building Funds; and

WHEREAS, the City and Fonner Park Exposition and Events Center, Inc. ("HEC") have entered into amended and restated Management Contract dated September ____, 2008 ("Management Contract") to establish the rights, privileges, duties, commitments and responsibilities of the City and HEC in connection with the Building.

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties do hereby agree and contract as follows:

1. **Certain Definitions.** For purposes of this Lease, the following terms are defined:

(a) "Leased Premises" shall mean that certain real property located in Hall County, Nebraska, and reasonably identified by the Fonner Park upon completion of the plans and specifications for the State Fair Project between the Fonner Park and the Nebraska State Fair Board. The Leased Premises shall be suitable to construct the Building and shall be located outside the restricted security envelope of the State Racing Commission so as to be used throughout the year. When the exact location and legal description of the Leased Premises is determined, such legal description shall be attached hereto as Exhibit "A" and made a part hereof. As part of this Lease, the City shall be granted during the term of the lease proper ingress and egress across the land of Fonner Park and suitable parking, as is necessary for proper utilization of the Building.

(b) "Building" shall mean the building, structures, fixtures and improvements constructed or installed upon the Leased Premises and infrastructure improvements serving such building.

Certain other defined terms shall have the respective meanings assigned to them elsewhere in this Lease.

2. **Demise and Term.** Fonner Park hereby leases and rents to City, and City hereby leases and rents from Fonner Park, the Leased Premises for the period commencing with the date hereof and ending on December 31, 2048; provided, that this Lease shall terminate if the Management Contract is terminated by the City (the "Term"). Thereafter, the Term shall automatically continue for five (5) year successive terms unless terminated by either party upon ninety (90) days prior written notice.

3. **Use.** The Leased Premises shall be used for the construction and operation of the Building under the Management Contract in connection with the operations of the Fonner Park, including without limitation, the State Fair Project.

4. **Building.** Any improvements to the Leased Premises shall be made under the terms and conditions of the Management Contract.

5. **Rent.** City shall pay to Fonner Park as gross rent ("Rent") for the Term hereof the sum of \$10.00, payable in advance on the first day of the Term.

6. **Maintenance and Repair.** The maintenance, repairs and replacements of and to the Leased Premises and the Building shall be governed by the terms and conditions of the Management Contract.

7. **Insurance and Casualty.** During the Term of this Lease, the City shall, at its own expense, insure the Leased Premises and the Building against loss or damage by fire and extended perils coverage in an amount not less than the full replacement value thereof, with such insurance to be under policies issued by responsible insurers authorized to do business in the State of Nebraska. The insurance policy shall name the City and Fonner Park as insured as their respective interests may appear, but so long as the City is not in default of this Lease, any loss shall be adjusted by and paid to the City. Upon occurrence of any damage covered by the foregoing property insurance, the City shall repair, replace or reconstruct the Building. The parties agree that if the available proceeds of the property insurance are insufficient to fully restore the Building to the condition existing prior to the loss, the City shall provide funds for restoration beyond the funds available from such insurance; provided, however, the City shall not be obligated to make up any shortfall of insurance if the agreement between Fonner Park and the Nebraska State Fair Board does not require the same.

8. **Assignment and Subletting.** Except as may be provided in the Lease Purchase Agreement and the Management Contract, City may not assign this Lease or sublet, in whole or in part, the Leased Premises, by operation of law or otherwise.

9. **No Subordination.** Upon the prior written consent of Fonner Park, City shall have the right to grant a mortgage or deed of trust upon the leasehold interest evidenced hereby subject to and upon the condition that the mortgagee or beneficiary shall execute an acknowledgment in form acceptable to Fonner Park acknowledging and agreeing that: (a) any such mortgage or deed of trust shall be junior and inferior in all respects to the interest of Fonner Park in the Leased Premises, (b) upon any foreclosure, such mortgagee or beneficiary shall be subject to the terms and conditions of

this Lease, and (c) the expiration or termination of this Lease shall terminate any mortgage or deed of trust and such mortgagee or beneficiary shall cause the mortgage or deed of trust to be released and reconveyed upon any such termination. Fonner Park agrees that it will provide written notice of any default by City to the holder of any mortgage or deed of trust of which it has knowledge.

10. **Default.** In the event City shall fail to observe and perform the terms and provisions of this Lease, and such failure continues for a period of thirty (30) days after written notice from Fonner Park to City (provided, in the event the nature of such failure reasonably requires more than thirty (30) days to cure, such thirty (30) day period shall be extended for as long as it is reasonably necessary provided City commences to cure such failure within such thirty (30) day period and thereafter diligently pursues the same to completion), then Fonner Park may terminate this Lease, City shall forfeit all rights, titles and interests in and to the Leased Premises and City shall remove the Building within ninety (90) days of such termination and shall immediately vacate the Leased Premises.

11. **Surrender.** City shall, upon termination of this Lease, whether by lapse of time or otherwise, peaceably and promptly surrender the Leased Premises, shall forfeit all rights, titles and interests in and to the Leased Premises and City shall remove the Building within ninety (90) days of such termination and shall immediately vacate the Leased Premises. If City remains in possession after the termination of this Lease, without a written lease duly executed by the parties, City shall be deemed a tenant at will.

12. **Notices.** All notices, demands, requests, approvals, consents, offers, statements, and other instruments of communication required or permitted to be given pursuant to the provisions of this Lease, shall be in writing and shall be deemed to have been given when delivered in person, by Federal Express or other 24-hour delivery service, or three (3) business days after being deposited in the United States mail by certified mail, return receipt requested, postage prepaid, addressed to the other party at its address hereinbelow set forth:

City of Grand Island
Attn: Mayor
P.O. Box 1968
100 East First Street
Grand Island, NE 68802-1968
mayor@grand-island.com

Hall County Livestock Improvement Association
Attn: Registered Agent
P.O. Box 490
700 East Stolley Park Road
Grand Island, NE 68802
fonnerpark@aol.com

For the purposes of this paragraph, any party may substitute its address by giving fifteen (15) days notice to the other party in the manner provided above.

13. **Recordation.** Fonner Park and City each agree, upon the request of the other, to execute and record a short form notice of this Lease.

14. **Entire Agreement.** This Lease is intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement.

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Margaret Hornady, 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 _____, 2008.

Notary Public

STATE OF NEBRASKA)
) SS:
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Larry Toner, President of Hall County Livestock Improvement Association., a Nebraska nonprofit corporation, on behalf of the corporation.

Witness my hand and notarial seal, this ____ day of _____, 2008.

Notary Public

R E S O L U T I O N 2008-256

WHEREAS, the Nebraska State Unicameral passed Legislative Bill 1116 which allows for the relocation of the Nebraska State Fair from Lincoln, Lancaster County, to Grand Island, Hall County, on property known as Fonner Park; and

WHEREAS, the City Council, for the City of Grand Island, in consideration of LB 1116 has considered the impact of the State Fair upon the City of Grand Island; and

WHEREAS, the City of Grand Island wishes to participate with the relocation efforts; and

WHEREAS, for the City to participate, it intends to assist by the construction of a facility to be used for the Nebraska State Fair and also for a broader public purpose on land leased from the Hall County Livestock Improvement Association.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, execute the Lease agreement in accordance with the terms and conditions generally outlined in the Lease enclosed in the packet to allow for the construction of a fifty thousand (50,000) square foot building, with the project cost not to exceed five million dollars (\$5,000,000.00).

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Adopted by the City Council of the City of Grand Island, Nebraska, September 11, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk