



# City of Grand Island

Thursday, September 11, 2008  
Special Meeting

## Item I2

**#2008-257 - Consideration of Amended and Restated Management Agreement with Heartland Events Center, Inc.**

Staff Contact: Jeff Pederson

**AMENDED AND RESTATED  
MANAGEMENT CONTRACT**

THIS AMENDED AND RESTATED MANAGEMENT CONTRACT ("Management Contract"), dated as of September \_\_\_\_, 2008, 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").

WHEREAS, the City and Heartland entered into that certain Management Contract dated December 1, 2004 ("Original Management Contract"); and

WHEREAS, the City and Heartland desire to amend and restate the Original Management Contract pursuant to the terms and conditions of this Management Contract.

NOW, THEREFORE, for good and valuable consideration receipt of which is hereby acknowledged, the City and Heartland hereby mutually agree as follows:

1. **STATEMENT OF PURPOSE.** The purpose of this Management Contract is to set forth the terms and conditions under which Heartland will manage an agricultural exposition and events center known as the Heartland Events Center which is the subject of a Lease Purchase Agreement dated October 9, 2001, as amended, by and between the City and Heartland (the "Heartland Agreement") and an approximately 50,000 square foot multi-purpose agricultural and recreation exposition building which is the subject of a Lease Purchase Agreement dated September \_\_\_\_, 2008 by and between the City and Wells Fargo Brokerage Services, LLC (the "Wells Fargo Agreement") The Heartland Agreement and the Wells Fargo Agreement are collectively referred to as the "Agreements." The structures under the Heartland Agreement and the Wells Fargo Agreement shall be referred to as the "Project." Under the terms of the Agreement, the City is to receive possession of the Project upon issuance of a certificate of substantial completion and thereafter the City requires the services of a manager for the Project. Heartland has been formed for the purposes of serving the City and its inhabitants through, among other things, operating and managing the Project.

2. **PROJECT MANAGEMENT BY HEARTLAND; RIGHTS OF HEARTLAND.** Upon issuance of the certificate of occupancy for the Project in accordance with the Agreements and the City taking possession of the Project, Heartland agrees to act for the City as manager of the Project and as such manager shall have the following rights, duties and responsibilities in regard to the management of the Project:

- a. to provide the Project with such equipment, supplies and other goods (in addition to the fixtures and equipment included in the Project under the terms of the Heartland Agreement Construction Contract and any construction agreement under the Wells Fargo Agreement which fixtures and equipment as included in the Project are herein referred to as the "Project Equipment") necessary and prudent for the efficient and effective operation of the Project as a public multi-purpose agricultural exposition and events center at Heartland' s expense, which

additional property shall not constitute a part of the Project or an addition to the Project and shall remain the sole and separate property of Heartland; the parties hereto acknowledge and agree that under the terms of the Agreement Heartland is selling and leasing to the City the Project, including the Project Equipment, and that Heartland shall use and manage both the Project Equipment and the equipment supplies and other goods (as separately acquired by Heartland under the terms of this Management Contract) in connection with its management of the Project.

- b. to enter into such agreements as necessary with Hall County Livestock Improvement Association, a Nebraska nonprofit corporation ("Fonner Park") for the use of property, facilities or grounds of Fonner Park during the term of this Management Contract in connection with the efficient and effective operation of the Project as a public multi-purpose agricultural exposition and events center at Heartland's expense, which property, facilities or grounds of Fonner Park shall remain the sole and separate property of Fonner Park subject to any rights therein of Heartland and the City under the Parking Rights and Access Agreement, and to enter into such agreements with Fonner Park for the use of the Project by Fonner Park during the term of this Management Contract as shall be consistent with the terms of this Management Contract;
- c. to manage and operate the Project efficiently and effectively and with proper economy with the goal of maximizing the use of the Project as a public multipurpose agricultural exposition and events center serving the recreational, cultural and economic needs of the City and its residents;
- d. to make any arrangements for the use of all or part of the Project by exhibitors, licensees, concessionaires and users of the Project in the ordinary course of business for such charges or payments as determined by Heartland; provided, however, that any such arrangements shall be cancelable consistent with the requirements of Rev. Proc. 82-26 and, specifically, the requirement that the City have the right to obtain unencumbered fee title to the Project (including additions thereto) and exclusive possession of the Project; in such connection, Heartland agrees, in the event that the City exercises its rights under the Agreement and the Indenture to defease all bonds outstanding under the Indenture, to immediately cancel all encumbrances on the Project, including leases, management contracts and other similar contracts relating the Project or the use of any portion thereof and further agrees to require the parties to any such encumbrances to vacate within not less than ninety (90) days;
- e. to receive all revenues from the general operations of the Project and retain or use such revenues for the general operation of the Project and the general operations of Heartland which are consistent with Heartland's corporate purposes and with the description of its activities set forth in Heartland's Determination Letter under Section 501(c)(3) of the Internal Revenue Code as issued by the Internal Revenue Service (the "Determination Letter");

- f. to receive such portion of the proceeds of any city occupation taxes from the City under Neb. Rev. Stat. § 16-205 which the City and Heartland have separately agreed to and retain or use such proceeds for the general operation of the Project and the general operations of Heartland consistent with Heartland's corporate purposes and the description of its activities set forth in the Determination Letter;
- g. to administer, supervise, staff and direct the general operations of the Project at Heartland's expense;
- h. to establish and enforce rules of conduct for supervisors, staff, exhibitors, licensees, concessions, patrons, and any other individual or group using the Project to protect and preserve the Project and the health, safety and welfare of individuals and the public at Heartland's expense;
- i. to provide maintenance, repair, janitorial and security services necessary and prudent to protect and preserve the Project and provide a clean orderly facility for users, exhibitors, patrons and others; provided, however, that any alterations, additions and improvements to the Project requested by the City shall be paid for by the City and shall become part of the Project subject to the terms of the Agreement;
- j. to pay all expenses for utility services and operational expenses for the Project on a timely basis excluding any local property taxes and special assessments against the Project, which taxes and special assessments shall be paid for by the City in accordance with the terms of the Agreements.
- k. to ensure that the Project, any administrator for the Project employed by Heartland, supervisors and staff and all users of the Project conform to all valid statutes, laws, ordinances, regulations, rules, orders, judgments and requirements of all federal, state, local and other governmental authorities, now or hereafter applicable to the Project;
- l. to provide the City and Trustee an annual accounting of all receipts and expenditures of the Project, from whatever source derived within sixty (60) days following the close of the fiscal year for Heartland; at the request of the City, such accounting shall include a balance sheet and a profit and loss statement prepared to government accounting standards and audited by a mutually agreeable certified public accounting firm with an office in the State of Nebraska; provided, however, that the cost of such accounting and audit shall be paid for by the City;
- m. to negotiate and administer such licensing, catering and concession contracts and naming, pouring and signage right contracts as Heartland deems appropriate; provided, however, that all such contracts shall comply with the requirements of Rev. Proc. 82-26 and, specifically, the requirement that the City have the right to obtain unencumbered fee title to the Project (including additions thereto) and

exclusive possession of the Project; in such connection, Heartland agrees, in the event that the City exercises its rights under the Agreement and the Indenture to defease all bonds outstanding under the Indenture, to immediately cancel all such contracts relating the Project or the use of any portion thereof and further agrees to require the parties to any such contracts to vacate or cease any usage of the Project within not less than ninety (90) days; and

- n. to make such alterations, additions and improvements to the Project requested by the City; provided, however, that the City shall pay for the costs of such alterations, additions and improvements and any such additions and improvements shall become part of the Project and shall be subject to the terms of the Agreement.

The City and Heartland each expect that the Project will provide substantial social, cultural, recreational and economic benefits to the citizens of the City but that the Project will at best operate on a break-even basis. Any net revenue from the operation of the Project shall belong to Heartland as its separate property and shall be used by Heartland in manner consistent with Heartland's corporate purposes and the description of its activities set forth in the Determination Letter. Such net revenues shall not inure to or be paid to the City under any circumstances during the term of the Agreement.

### **3. PROJECT MANAGEMENT; OBLIGATIONS OF HEARTLAND.**

Heartland hereby agrees to manage the Project on behalf of the City as an agricultural exposition and events center in such a manner as will:

- (a) attract agricultural and horticultural fairs, expositions and exhibitions of livestock, farm equipment and farm products;
- (b) bring in for the enjoyment of the general public of the City cultural and entertainment events that appeal to the general public of the City, including but not limited to:
  - (i) music concerts;
  - (ii) plays and theatrical productions;
  - (iii) other artistic, cultural or educational performing groups; and
  - (iv) professional and amateur athletic events;
- (c) attract trade shows, meetings, expositions and conventions, including but not limited to:
  - (i) trade shows and meetings, expositions and exhibitions of an agricultural or horticultural nature;

- (ii) other trade shows and meetings, expositions and exhibitions;
  - (iii) meetings of businesses, nonprofit organizations and governmental entities;  
and
  - (iv) other conventions; and
- (d) to promote, conduct and manage all types and kinds of artistic, scientific, athletic, agricultural, horticultural and educational expositions, events, exhibitions, trade shows, meetings and conventions for the development and advancement of the people of the City and its surrounding area.
- (e) Heartland and the City shall meet quarterly or as needed for the purpose of scheduling dates for use of the Project by the City and to negotiate such fees to be paid by the City for such use. The City acknowledges that Project Equipment shall not include any equipment necessary for the use of the Project by the City under this Paragraph.

All such activities shall be carried out in accordance with the corporate purposes of Heartland and the description of the activities of Heartland set forth in the Determination Letter. The City shall retain such supervisory control of the Project as may be necessary to insure that the Project is being operated in the public interest with reasonable charges relating to both the conducting and the attending of events. In connection with such management of the Project, Heartland is authorized to impose or agree to such schedule or schedules of rates and charges for use of the Project as Heartland shall in its reasonable discretion determine appropriate. Any such schedules shall be filed with the City Clerk upon request by the City and shall be deemed approved within thirty (3) days of the time of any such filing. The City shall have the right but not the obligation to review any such filing of schedules of rates and charges as it determines appropriate from time to time but any such review shall be conducted on the basis of the understanding between the City and Heartland as set forth in this Management Contract that Heartland, in undertaking to provide management services hereunder, shall have reasonable discretion to exercise its best business judgment for the operation of the Project for the benefit of the City and its inhabitants. It is further acknowledged and agreed by the parties hereto (i) that the purpose of hiring Heartland as manager is to lessen the burdens of government in connection with the operation and management of the Project; (ii) that Heartland shall have the right to make reasonable charges in connection with the operation and management of the Project, the approval of which shall not be unreasonably withheld by the City; (iii) that the charges which Heartland imposes for use of the Project shall be reasonable and that Heartland shall manage and operate the Project in the public interest. Notice of any contract with respect to the Project having a term in excess of three (3) years entered into by Heartland shall be given to the City. Any contracts entered into by Heartland shall not run with the land as to the Project or commit the City to making any payments thereunder. The contracts made by Heartland listed on Exhibit A hereto attached, without regard to length of term, are hereby approved by the City. Each contract entered into by Heartland after the date of this Management Contract with respect to the Project shall contain the following provision:

"Any rights hereunder shall in all events be subject to the requirements of that Lease Purchase Agreement dated October 9,2001 (the "Original Agreement"), by and between the City and Heartland, as amended and supplemented by that Addendum to Lease Purchase Agreement dated August 26, 2003 (the "First Addendum") by and between said parties, as further amended and supplemented by that Second Addendum to Lease Purchase Agreement dated as of December 1, 2004 (the "Second Addendum" and collectively, with the Original Agreement and the First Addendum, the "Agreement"), including, but not limited to, requirements for cancellation under Rev. Proc. 82-26 and, specifically, the requirement that the City have the right to obtain unencumbered fee title to the Project (including additions thereto) and exclusive possession of the Project."

4. **LIABILITY INSURANCE.** During the term of this Management Contract, Heartland shall at its own expense maintain comprehensive general liability insurance on the Project and its operation in amounts not less than \$1,000,000 for bodily injury and property damage for each occurrence with an annual aggregate limitation of not less than \$2,000,000. During the term of this Management Contract, Heartland shall also maintain excess liability or umbrella liability insurance coverage on the Project and its operation in an amount not less than \$1,000,000 for bodily injury and property damage for each occurrence and with an annual aggregate limitation of not less than \$2,000,000. Any policy for liability insurance maintained under the terms of this paragraph 4 shall show the City as an additional named insured. Heartland shall provide evidence of such insurance upon request by the City as made from time to time. The City shall have the right to obtain such additional liability insurance with respect to the Project as it shall determine appropriate from time to time.

5. **USES TO CONFORM TO LAW.** During the term of this Management Contract, the parties shall promptly comply with all valid statutes, laws, ordinances, regulations, rules, orders, judgments and requirements of all federal, state, local and other governmental authorities, now or hereafter applicable to the Project as to the manner of use or condition of the Project. In the event compliance with any of the foregoing requires additions, improvements and/or modifications to the Project, Heartland agrees to plan, design and construct such additions, modifications and/or improvements and the City agrees to reimburse Heartland as additional rent under the Agreement for direct expenses of the Project including engineers, architects, contractors, supplies and materials. In connection with any such required additions, improvements and/or modifications, the cost thereof required to be paid by the City shall not include the cost of any services provided by Heartland or its officers or employees.

6. **CHOICE OF LAWS.** This Management Contract shall be governed by the laws of the United States and the State of Nebraska and the ordinances of the City.

7. **AMENDMENTS.** Any amendment to this Management Contract shall be made in writing, duly approved and executed by the City and Heartland, notwithstanding any verbal or informal understanding or commitment to the contrary.

8. **STATUS OF MANAGEMENT CONTRACT; SEVERABILITY OF PROVISIONS.** This Management Contract represents an independent agreement of Heartland

and the City. If any provisions of this Management Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity or unenforceability of any one or more phrases, sentences, clauses or paragraphs in this Management Contract contained shall not affect the remaining portions of this Management Contract or any part hereof. Any determination as to the invalidity or unenforceability of this Management Contract or any part hereof shall not affect the validity or enforceability of any other agreements of the parties with respect to the Project, specifically including, without limitation, the Agreement, the Indenture and the Parking Rights and Access Agreement, all of which shall remain in full force and effect in accordance with their respective terms.

9. **HEADINGS.** The headings of paragraphs in this Management Contract are to be deemed informational only, shall not be used in construing and shall not be construed as terms, or conditions of this Management Contract.

10. **LEGAL NOTICE AND CORRECTION OF DEFAULT.** Either party to this Management Contract shall notify the other in writing if it deems there is a default in any of the provisions of this Management Contract or any related documents. Such notice may be delivered in hand, by first-class U.S. mail or using electronic media, without limitation. The party to whom notice is sent shall have thirty (30) days from the receipt of the notice to respond in writing establishing that there is no default or to correct the condition creating the default. If either party has created a default which is not removed in accordance with this paragraph and such other provisions of this Management Contract as applied, the non-defaulting party may exercise its rights in the manner provided in this Management Contract or as provided at law or in equity to enforce its rights under this Management Contract. The addresses to which notices are to be sent as of the date of approval and execution of this Management Contract are:

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

Fonner Park Exposition and Event Center, Inc.  
Attn: Registered Agent  
P. O. Box 490  
700 East Stolley Park Road  
Grand Island, NE 68802  
[fonnerpark@aol.com](mailto:fonnerpark@aol.com)

11. **ASSIGNMENT.** Heartland agrees that it will not assign its rights under this Management Contract without the approval of the assignment by the City. Consent to any proposed assignment by Heartland shall not be unreasonably withheld by the City, provided that it shall not be deemed unreasonable for the City to require that any such assignment shall be to an organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended, (the "Code") qualified for such exemption under Section 501(c)(3) of the Code.



Heartland covenants that it will not make an assignment of any interest in this Management Contract which would have the effect of causing the interest on the Building Bonds to be includable in gross income under the Code.

12. **TERM OF MANAGEMENT CONTRACT.** It is the expectation of the parties that this Management Contract will be renewed and continued periodically until all bonds outstanding under the Indenture have been paid in full or satisfied prior to final maturity in accordance with the terms of the Indenture. The term of this Management Contract shall be deemed to commence upon execution by the City and Heartland and shall extend for a period of one year. At the end of this initial one-year term, the term of this Management Agreement shall be automatically extended for additional consecutive one year periods, until terminated as hereinafter provided. Anything in this Management Contract to the contrary notwithstanding, the term of this Management Contract including any and all extensions shall automatically terminate in the event that the City exercises its right to obtain unencumbered fee title to the Project under the terms of the Indenture and the Agreement, in accordance with and under the requirements of Rev. Proc. 82-26. Heartland shall have the additional right to terminate this Management Contract at any time upon one hundred twenty (120) days' notice to the City.

13. **RELATIONSHIP OF PARTIES.** The relationship between the City and Heartland is that of beneficial owner (the City) and agent manager (Heartland) and nothing contained in this Management Contract is intended to or shall be deemed to create any other relationship.

14. **Tax Exemptions.** Heartland hereby covenants, represents and agrees as follows:

(a) Heartland (1) is a private nonprofit corporation duly organized and validly existing under the laws of the State of Nebraska not operated for private or corporate profit, (2) has lawful power and authority to enter into, execute and deliver this Management Contract and to carry out its obligations under this Management Contract and (3) by all necessary corporate action, has been duly authorized to execute and deliver this Management Contract, acting by and through its duly authorized officers.

(b) Heartland (1) has been determined to be and is a nonprofit organization, organized under the laws of the United States of America or any state, that is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is exempt from federal income taxes under Section 501(a) of the Code and (2) has not declared and has not been determined to have any "unrelated business taxable income" (as defined in Code § 512) which could have a material adverse effect on its status as a such a tax-exempt organization or which, if such income were subject to federal income taxation, could have a material adverse effect on the condition, financial or otherwise, of Heartland. Heartland received a letter from the Internal Revenue Service to the effect that it is a such a tax-exempt organization, a copy of which has been furnished to the City. Such letter has not been withdrawn, and no audit or investigation by the Internal Revenue Service of the tax-exempt status of Heartland is presently being conducted. There has been no change or threatened change in the status of Heartland as such a tax-exempt organization as of the date of this Management Contract. At all times during the term of this Management Contract, Heartland has and will maintain its status as such a tax-

exempt organization and will take no action or permit any action to be taken that could result in the alteration or loss of its status as such a tax-exempt organization.

(c) In order to maintain the exclusion of the interest payable by the City under the terms of the Agreements for the financing of Project from gross income for federal income tax purposes, Heartland (1) will take whatever action, and refrain from whatever action, is necessary to comply with the applicable requirements of the Code and (2) will not use, or permit the use of, any portion of the project as so financed in a manner that would violate applicable provisions of the Code with respect to the exempt status of such interest.

15. **EFFECTIVE DATE.** This Management Contract has been dated for convenience of reference as shown on the initial page hereof. This Management Contract has been actually executed on the date set forth below for each of the parties.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA

\_\_\_\_\_  
RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Margaret Hornady, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Dale M. Shotkoski, City Attorney

ATTEST:

FONNER PARK EXPOSITION &  
EVENTS CENTER, INC.

\_\_\_\_\_  
Hugh Miner, Jr., Secretary

By: \_\_\_\_\_  
Vince Dowding, President

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF HALL        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 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 September, 2008.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF HALL        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2008, by Vince Dowding, President of FONNER PARK EXPOSITION & EVENTs CENTER, INC., a Nebraska nonprofit corporation, on behalf of the corporation.

Witness my hand and notarial seal this \_\_\_\_ day of September, 2008.

\_\_\_\_\_  
Notary Public

EXHIBIT A

1. Agreement with Saint Francis Medical Center dated July 15, 2002
2. Agreement with Hall County Agricultural Society, Incorporated dated August 2, 2002
3. Agreement with the county of Hall, Nebraska dated May 25, 2004
4. Agreement with We Aim to Please, Inc. dated June 10, 2004
5. Agreement with the State of Nebraska Department of Economic Development dated July 5, 2004.
6. Agreement with KWS, Inc. dated August 16, 2004
7. Agreement with Hall County Livestock Improvement Association dated July 12, 2000
8. Agreement with The Pepsi Bottling Group dated December 5, 2001 (Pepsi Bottling Group)

W490501.01

RESOLUTION 2008-257

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 to assist with the Nebraska State Fair desires to have constructed a fifty thousand (50,000) square foot facility, with a cost not to exceed five million dollars (\$5,000,000.00), located on land owned by the Hall County Livestock Improvement Association; and

WHEREAS, the Fonner Park Exposition and Events Center, Inc. currently has a Management Agreement for another facility owned by the City of Grand Island, the Heartland Events Center, and the City finds that it would be beneficial to have the same management agent for the fifty thousand (50,000.00) square foot facility; and

WHEREAS, Fonner Park Exposition and Events Center, Inc. should be positioned to most effectively fulfill the public purpose requirement of the lease purchase and furthermore coordinate the use of the facility as envisioned in LB 1116.

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 Amended and Restated Management Contract with the Fonner Park Exposition and Events Center, Inc. for the future management of the facility to be built by the Hall County Livestock Improvement Association to be used for the purposed outlined in LB 1116 and for the broader city public purposed.

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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

Approved as to Form    ☐ \_\_\_\_\_  
September 11, 2008    ☐ City Attorney