

Kearney, Nebraska
March 24, 2009
7:00 p.m.

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on March 24, 2009, in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, and Bob Lammers. Absent: Don Kearney. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Carroll Sheldon, Doug Sheldon, Marvin Dawes, Tim Loewenstein, Don Frost, Larry Nordhues, Mary Nordhues, Sara Giboney from Kearney Hub, Steve Altmaier from KGFW Radio and NTV.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

I. ROUTINE BUSINESS

INVOCATION

With the absence of a member of the Kearney Ministerial Association, the Council held a moment of silent prayer.

PLEDGE OF ALLEGIANCE

One Boy Scout from Troop 158 led the Council members and audience in the Pledge of Allegiance.

ANNOUNCEMENT

Mayor Clouse announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and is posted towards the back of the Council Chambers.

ORAL COMMUNICATIONS

Carroll Sheldon addressed the Council on the State's project on Highway 30 (25th Street) between Avenue B and Avenue L. He stated there are a lot of business people that are concerned about the refurbishing of this road this summer. He stated that he made two appearances at the Highway Commissioner's meeting in Lincoln. He believed that sometimes the State engineers don't listen closely enough. Property owners want to know when this project is going to start, is demolition of the entire road going to be

immediate or is it going to be done in sections several blocks at a time, will one lane remain open. He has tried for about six months to find out what the plan is and he still does not know. It will affect certain events, such as Cruise Nite in July from Central Avenue east on Highway 30 with thousands of vehicles. He requested that the Council ask the State to come out here at some date in the near future when they have nailed down their plans and specs and let the people know when they need to shut down their driveway and the length of time it will be closed. There are a lot of businesses along this route that are going to be hurting due to the construction. They do not want to see a repeat of what happened on 39th Street when they moved a bunch of dirt in and then the crew disappeared for about six weeks. The request is to have City Manager Michael Morgan notify the State to have a hearing in the Council Chambers to outline the project phases and provide a timeline for the property owners so they can be prepared.

City Manager stated the City always tried to be sensitive to the property owners; however, this is a State project and the City's communication is with the State. The State is completely in charge of this project, but the Director of Public Works has some information on there strategy.

Director of Public Works Rod Wiederspan stated the bid date on this project has moved as they finalized the plans. They have been working with property owners on their right-of-way and the right-of-way negotiations. The scope of this project has change from what they started with which Mr. Sheldon is aware of. The bid date is tentatively set to be in May. If they bid the project in May, start date will be approximately July 20th which is after Cruise Nite. He found that the late start date was because of Cruise Nite and they do not want to have it torn up during that event. The anticipated completion date is November 28th. Weather and other factors can affect that completion date. The last plans that he looked at showed that one side was going to shift all the traffic to one side at a time similar to what they did on south 2nd Avenue. He was not sure what avenues were going to be completed in each phase. There were meetings held with the State early on in the design process. Typically, what they do is after they bid the project and there is a contractor awarded, he will set up an informational meeting because he will set his own schedule. They can pick a location and there have been times when they have held them in the Council Chambers and they are willing to work with them.

City Manager Michael Morgan stated that he has set in on some of the contractor meetings and a lot of things change as they get everybody in one room. Many things are discussed in those meeting which affect the staging and signs, etc. Following that would be the perfect time for a meeting with the property owners. The City's practice is to have these meetings and the State is very cooperative in putting additional signage when businesses are affected as they did on 2nd Avenue. The biggest concerns are the late start and the weather.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

None.

IV. CONSENT AGENDA

Mayor Clouse stated that the Agenda has been amended to include Subsection 15 to approve an application for a Special Designated License submitted by El Tropico.

Moved by Lammers seconded by Lear that Subsections 1 through 15 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

1. Approve Minutes of Regular Meeting held March 10, 2009.

2. Approve the following Claims:

- PS Personnel Services
- SMCS Supplies, Materials & Contractual Services
- ER Equipment Rental
- CO Capital Outlay
- DS Debt Service

AT&T \$117.56 smcs; Ace Irrigation \$94.57 smcs; Adams Co Sheriff \$1,000.00 smcs; Aden,J \$27.08 smcs; Albright,D \$709.35 smcs; Alexander,R \$40.00 smcs; Alltel \$61.18 smcs; Amer First Aid \$40.13 smcs; AMI Graphics \$224.00 smcs; Ask Supply \$263.95 smcs; Aurora Coop \$52.80 smcs; Baker & Taylor Books \$5,049.81 smcs; Bamford \$200.00 smcs; Barney Abstract \$75.00 smcs; BBC Audiobooks \$167.88 smcs; Beacon Athletics \$7,487.00 smcs; Bennett,T \$963.00 smcs; Blevins,D \$211.20 smcs; Bluecross Blueshield \$105,424.72 smcs; Boersma,C \$59.99 smcs; Bosselman \$26,661.91 smcs; Brauer,E \$20.37 smcs; Broadfoot's \$1,950.00 smcs; Broeker,C \$15.20 smcs; Buffalo Co Dist Court \$231.80 ps; Buffalo Co Treasurer \$3,122.16 smcs; Cash-Wa \$222.75 smcs; CH Diagnostic \$445.00 smcs; Charter \$678.93 smcs; Child's World \$1,153.40 smcs; City Glass \$3404.00 smcs; City of Ky \$18,019.84 smcs,ps; College Savings Plan of NE \$100.00 ps; Community Action Mid-NE \$7,298.95 co; Copycat Printing \$207.68 smcs; Cummins Central Power \$552.46 smcs; Dawson Co PPD \$14,162.62 smcs; DBSP \$1,000.00 smcs; Dish Network \$54.82 smcs; Dutton Lainson \$44.04 smcs; Eakes \$605.48 smcs; Ecolab \$30.00 smcs; EMC Insurance \$320.00 smcs; Emerson Network Power \$3,202.56 smcs; Farmers Union Coop \$475.00 smcs; Fedex \$100.95 smcs; Fireguard \$701.93 smcs; Frontier \$9,807.40 smcs,co; Gale \$148.30 smcs; Garrett Tires \$983.55 smcs; GE Money Bank \$1,080.51 smcs; Gerrard,B \$25.30 smcs; Guideposts \$17.24 smcs; H&H Distributing \$508.20 smcs; Hance,C \$20.78 smcs; HD Supply \$3,724.45 smcs; Hollinger Metal Edge \$85.79 smcs; Hotsy Equipment \$594.00 smcs; Hydrite Chemical \$1,766.86 smcs; ICMA RC \$4,748.60 ps; Intellicom \$200.00 co; IRS \$105,596.17 ps; Int'l Ass'n Identification \$70.00 smcs; Isaac Drywall \$200.00 smcs; Jack Lederman \$1,555.94 smcs; Ky Catholic \$1,200.00 smcs; Ky Clinic \$925.00 smcs,ps; Ky Concrete \$2,435.84 smcs,co; Ky Glass \$293.10 co; Ky Hub \$1,190.18 smcs; KHGI/KWNB TV \$1,495.00 smcs; Klingsmith,J \$125.00 smcs; Konica Minolta \$52.13 smcs; Kuk,S \$7.28 smcs; Lifeguard Store \$2,405.00 co; Linweld \$34.84 smcs; Location Technologies \$776.00 smcs; Magic Cleaning \$3,760.00 smcs; Metlife \$8.10 ps; Mine Safety Appliances \$2,203.56 co; Murphy,K \$22.84 smcs; NCVV \$60.00 smcs; NE Child Support \$2,797.89 ps; NE Dept of Aeronautics \$995.00 ds; NE Dept of

Revenue \$29,792.72 smcs; NE DOL/Boiler Inspection \$180.00 smcs; NE Statewide Arboretum \$400.00 smcs; NE Trails Council \$100.00 smcs; NE Nat'l Bank \$191,376.00 smcs; NEland Distributors \$506.00 smcs; Neopost \$4,000.00 smcs; NLA Public Library \$15.00 smcs; Northwestern Energy \$20,054.34 smcs; Norwood Construction \$1,957.00 co; NTOA \$40.00 smcs; NUCPS/TI Alumni Ass'n \$50.00 smcs; Paramount Linen \$80.86 smcs; Pat's Plumbing \$735.00 smcs; Platte Valley Comm \$175.00 smcs; Presto-X \$155.00 smcs; Quinn,D \$6.34 smcs; Random House \$143.20 smcs; Ready Mixed Concrete \$736.88 co; Recorded Books \$717.83 smcs; Resource Management \$670.50 smcs; RK Digital \$86.14 smcs; Rourke Publishing \$399.95 smcs; Rutt's Heating \$955.30 smcs; Salem Press \$273.00 smcs; Schutte,O \$35.00 smcs; Sensus Metering Systems \$176.00 smcs; S-F Analytical Labs \$490.00 smcs; Sheldon,S \$55.00 smcs; Sherman,B \$175.00 smcs; Sherwin-Williams \$1,460.50 smcs; Solid Waste Agency \$38,387.33 smcs; Stitt,J \$29.51 smcs; Strategic Materials \$360.12 smcs; Sun Life Financial \$29,319.22 smcs; Sydow,J \$216.10 smcs; Turner Body Shop \$2,309.80 smcs; Underground Construction \$550.00 smcs; Underwriters Labs \$3,850.00 smcs; Unique Management \$286.40 smcs; Upstart \$721.90 smcs; Video Service of America \$124.98 smcs; Village Uniform \$475.51 smcs; Watchguard \$29,520.00 co; We Care Tree Care \$520.00 smcs; West Payment Center \$1,294.44 smcs; Williams,M \$55.70 smcs; Winlectric \$1,258.13 co; Wolfe,B \$191.10 smcs; Wolski,P \$49.15 smcs; Wooden,T \$598.00 co; Woolen,L \$9.26 smcs; WPCI \$78.50 ps; Zimmerman Printers \$795.62 smcs; Payroll Ending 3-14-2009 -- \$310,734.75. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Receive recommendations of Planning Commission and set April 14, 2009 at 7:00 p.m. as date and time for hearing on those applications where applicable.

4. Approve Change Order No. 7 showing an increase in the amount of \$1,386.00, Change Order No. 8 showing an increase in the amount of \$2,494.80 and Application and Certificate for Payment No. 7 in the amount of \$24,019.10 submitted by Blessing, LLC and approved by Brungardt Engineering for the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and approve **Resolution No. 2009-32.**

RESOLUTION NO. 2009-32

WHEREAS, Blessing, LLC has performed services in connection with the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and the City's engineer, Brungardt Engineering, have filed with the with the City Clerk Change Order No. 7 showing an increase in the amount of \$1,386.00 and Change Order No. 8 showing an increase in the amount of \$2,494.80 as shown on Exhibits "A" and "B" attached hereto and made a part hereof by reference; and

WHEREAS, Blessing, LLC and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 7 in the amount of \$24,019.10 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$1,004,396.00
Change Order No. 1 (4-8-2008)	- 136,500.00
Change Order No. 2 (10-14-2008)	+ 9,872.50

Change Order No. 3 (10-28-2008)	+ 3,241.00
Change Order No. 4 (10-28-2008)	+ 4,380.00
Change Order No. 5 (10-28-2008)	+ 12,517.30
Change Order No. 6 (12-23-2008)	- 3,450.60
Change Order No. 7 (3-24-2009)	+ 1,386.00
Change Order No. 8 (3-24-2009)	<u>+ 2,494.80</u>
Contract Sum to Date	898,337.00
Total Completed and Stored to Date	892,285.60
Retainage	.00
Amount Due to Date	892,285.60
Less Previous Certificates for Payment	<u>868,266.50</u>
Current Payment Due	\$ 24,019.10

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order Nos. 7 and 8 as shown on Exhibits "A" and "B", and Application and Certificate for Payment No. 7 as shown on Exhibit "C" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

STANLEY A. CLOUSE
 PRESIDENT OF THE COUNCIL
 AND EX-OFFICIO MAYOR

5. Approve the Agreement between the City of Kearney and McDermott & Miller for auditing services and approve **Resolution No. 2009-33**.

RESOLUTION NO. 2009-33

WHEREAS, Requests for Proposals were received and opened on May 30, 2003 for auditing services for the City of Kearney, Nebraska and the City of Kearney Community Redevelopment Authority;

WHEREAS, the City received one proposal from McDermott & Miller, P.C. and City Administration reviewed the proposal and recommended the proposal offered by McDermott & Miller, P.C. of Kearney Nebraska, be accepted;

WHEREAS, the recommendation from City Administration was accepted and approved on June 24, 2003 by the Kearney City Council; and

WHEREAS, on August 14, 2006 the City received a proposal from McDermott & Miller, P.C. to extend the existing agreement an additional three years; and

WHEREAS, on March 3, 2009 the City received a proposal from McDermott & Miller, P.C. to extend the existing agreement an additional three (3) years.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the recommendation from City Administration is hereby accepted and approved, that McDermott & Miller, P.C. of Kearney, Nebraska, be accepted for auditing services for the City of Kearney, Nebraska, and the City of Kearney Community Redevelopment Authority for the three-year period beginning with the fiscal year ending on September 30, 2009, to be performed in accordance with the Proposal for Professional Audit Services, a copy of which marked "Exhibit A" is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

STANLEY A. CLOUSE
 PRESIDENT OF THE COUNCIL
 AND EX-OFFICIO MAYOR

6. Approve the application to extend Conditional Use Permit No. 1995-02 granted to Cathleen Headlee to operate a dog grooming business located at 211 East 30th Street for a period of one year.
7. Approve the request submitted by the Kearney Police Department/Buffalo County Sheriff's Office to temporarily block off Avenue B from North Railroad Street to 21st Street for the auto auction to be held on April 4, 2009 from 7:30 a.m. until 1:00 p.m.
8. Approve Application and Certificate for Payment No. 3 in the amount of \$185,760.00 submitted by Hausmann Construction and approved by Wilkins Hinrichs Stober for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2009-34**.

RESOLUTION NO. 2009-34

WHEREAS, Hausmann Construction of Lincoln, Nebraska has performed services in connection with the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Application and Certificate for Payment No. 3 in the amount of \$185,760.00 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$2,879,000.00
Change Order No. 1 (11-25-2008)	- 21,081.00
Change Order No. 2 (11-25-2008)	- 40,000.00
Change Order No. 3 (11-25-2008)	- 25,000.00
Change Order No. 4 (11-25-2008)	+ 4,900.00
Change Order No. 5 (2-24-2009)	- 1,959.00
Change Order No. 6 (3-10-2009)	<u>- 7,226.00</u>
Contract Sum to Date	\$2,788,634.00
Total Completed and Stored to Date	614,140.00
Retainage	61,414.00
Amount Due to Date	552,726.00
Less Previous Certificates for Payment	<u>366,966.00</u>
Current Payment Due	\$ 185,760.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 3, as shown on Exhibit "A", be and are hereby accepted and approved.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

STANLEY A. CLOUSE
 PRESIDENT OF THE COUNCIL
 AND EX-OFFICIO MAYOR

9. Approve the recommendation from the Utilities Department on the purchase of various Water Distribution Division Supplies from Municipal Supply of Hastings, Nebraska in the amount of \$47,662.63.

10. Approve Supplemental Agreement No. 1 between the City of Kearney and the Nebraska Department of Roads for Project No. STPD-30-4(148) to improve Highway 30 from Avenue B to Avenue L and approve **Resolution No. 2009-35**.

RESOLUTION NO. 2009-35

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be and is hereby authorized and directed to execute Supplemental Agreement No. 1 for Project No. STPD-30-4(148) on behalf of the City of Kearney. A copy of said Supplemental Agreement No. 1, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

11. Approve **Resolution No. 2008-72AA** correcting the legal description for the final plat of New Viaero Addition to the City of Kearney, Buffalo County, Nebraska for property located at 1918 and 1920 West 24th Street.

RESOLUTION NO. 2008-72AA

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "NEW VIAERO ADDITION" an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of Lot 7, part of Lot 8 (now vacated), and part of the vacated street abutting Lot 8 on the west, all in Lincoln Way Villa Plots, an addition to the City of Kearney, Buffalo County, Nebraska, and being part of the Northeast Quarter of Section 3, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the northwest corner of Lot 7 in said Lincoln Way Villa Plots; thence N89°35'44"E (an assumed bearing) on the north line of said Lot 7 a distance of 41.5 feet; thence S00°30'50"E a distance of 243.23 feet; thence S89°35'19"W a distance of 13.5 feet; thence S00°25'13"E a distance of 66.39 feet; thence S89°31'55"W a distance of 60.35 feet; thence N00°29'34"W a distance of 66.50 feet; thence S89°03'41"W a distance of 107.67 feet to the west line of said vacated street; thence N19°19'19"W along said west line a distance of 233.03 feet to the south line of right-of-way of U.S. Highway 30 (said line lying 10 feet southerly and parallel with the north line of said Lot 8); thence N89°30'24"E along said south line a distance of 139.29 feet to the west line of said Lot 7; thence N03°00'02"E along said west line a distance of 10.0 feet to the place of beginning, containing 1.07 acres, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of

Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

BE IT FURTHER RESOLVED that the President of the Council be and is hereby authorized and directed to execute the final plat on behalf of the City of Kearney, Nebraska.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

12. Approve Application and Certificate for Payment No. 1 in the amount of \$182,880.00 submitted by Judds Brothers Construction and approved by Miller & Associates for the 2008 Part 7 improvements consisting of Water District No. 2008-553 for 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition and approve **Resolution No. 2009-36**.

RESOLUTION NO. 2009-36

WHEREAS, Judds Brothers Construction of Lincoln, Nebraska has performed services in connection with the construction of the 2008 Part 7 Improvements consisting of Water District No. 2008-553 for 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 1 in the amount of \$182,880.00 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$379,370.00
Contract Sum to Date	\$379,370.00
Total Completed and Stored to Date	203,200.00
Retainage	20,320.00
Amount Due to Date	182,880.00
Less Previous Certificates for Payment	<u>.00</u>
Current Payment Due	\$182,880.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 1, as shown on Exhibit "A", be and are hereby accepted and approved.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

13. Approve the Tenant Use and Operations Agreement for Loading Dock at the Kearney Regional Airport between the City of Kearney and Buffalo Air Service and approve **Resolution No. 2009-37.**

RESOLUTION NO. 2009-37

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the Tenant Use and Operations Agreement for Loading Dock at the Kearney Regional Airport, on behalf of the City of Kearney, with Rick Boardman on behalf of Buffalo Air Service, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

14. Approve the bids received for the Harmon Park Fountain Improvements and approve **Resolution No. 2009-38** awarding the bid to Sorensen Group in the amount of \$74,195.00.

RESOLUTION NO. 2009-38

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on March 17, 2009 at 2:00 p.m. for the Harmon Park Fountain Improvements; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$91,000.00; and

WHEREAS, the said engineers have recommended the bid offered by Sorensen Group Inc. of Kearney, Nebraska in the sum of \$74,195.00 be accepted as the lowest responsible bid for the Harmon Park Fountain Improvements.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Sorensen Group Inc. of Kearney, Nebraska be and is the lowest responsible bidder for the Harmon Park Fountain Improvements to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Sorensen Group Inc. in the sum of \$74,195.00 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$91,000.00 be and is hereby accepted.

BE IT FURTHER RESOLVED that the President of the Council of the City of Kearney, Nebraska, be and is hereby authorized and directed to execute contracts for such improvements in accordance with the bid, plans, specifications, and general stipulations pertaining thereto.

PASSED AND APPROVED THIS 24TH DAY OF MARCH, 2009.

ATTEST:
MICHAELLE E. TREMBLY

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL

CITY CLERK

AND EX-OFFICIO MAYOR

15. Approve the application for a Special Designated License submitted by Juan Lazo, dba "El Tropic" in connection with their IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on April 25, 2009 from 6:00 p.m. until 1:00 a.m. for a Mexican dance.

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

TRAFFIC CONCERNS AT 35TH STREET AND AVENUE A

Mayor Clouse opened for discussion the report from City staff on the request to place 3 or 4-way stop sign located at 35th Street and Avenue A and parking concerns adjacent to the Kearney Catholic High School.

Because of a conflict of interest, Council member Lear vacated his seat and abstained from discussions and voting.

Director of Public Works Rod Wiederspan presented this matter to the Council. On January 27th, City Engineer Bruce Grupe presented the traffic study for the 4-way stop signal. At that time they were looking at four different items, the traffic counts, the delay times (resulted in average six seconds) and accident history. There was only one accident in the past three years that actually pertained to the stop sign. There was one other accident that was not related to a stop sign type of accident. It was determined there is adequate site distance to stop at the stop sign on 35th Street and look to the north. The site distance that is required is 125 feet. Currently, there is 230 feet at this intersection. About four years ago, they did remove approximately four parking stalls on the north side and extended that site distance to 230 feet to the north. The site distance is measured by the speed of the traffic coming down Avenue A. If a vehicle is stopped at the stop sign, it may not be 230 feet. Stopping at the stop sign allows the pedestrians to cross, so going past that line and edging out a little (not into traffic) allows for that additional site distance. This is the standard method of measuring site distance allowing for the pedestrian crossing line. If it is a curb sidewalk, it would obviously be closer than with some of the setback sidewalks.

At the January 27th meeting, it was requested that the Police Department take a look at the average speed on Avenue A. The average speed was determined at 24 mph. The 85 percentile traffic was traveling at 28 mph. Those were taken approximately 200 feet north and 200 feet south of the intersection which is in a 25 mph zone which drops to a 20 mph zone as they approach that intersection. The study was done just outside that 20 mph zone. Some of that higher speed to get to the 28 mph for the higher 85th percentile may be because of ambulances or citizens following ambulances. This is the emergency route to the hospital for ambulances from the north. The study was done

with the speed trailer which was set up from 7:00 a.m. to 5:00 p.m. It did not take into account only the traffic speeds or volumes at the time that school is starting in the morning or dismissing in the afternoon. This is average speed during that time period when school was in session.

Don Frost, 3603 Avenue C, stated he was the one that started the request for this 3 or 4 way stop sign. He has been told that if it does not meet the requirements for a stop sign then the City is liable and could get sued. He asked who is going to be liable if someone gets hit or killed in that intersection.

Mayor Clouse stated that he has seen comments about the liability issue and in his mind that is just one piece of the issue. That is only one reason he would consider as he does the assessment on this issue. The City is subject to lawsuits any day over any subject so the liability piece is a very low consideration as he looks at this particular request. He would look at the traffic flow, the counts, the standards that the City has to follow which are used across the country. These standards provide criteria that must be used. We now have facts and figures to base decisions on.

Don Frost stated that since the lights were installed on Avenue A and 39th Street, the traffic has increased in the mornings and after school. There are people parking in the middle of the street on 35th Street and you cannot see when you go around them. They are waiting to pick up their kids and it is difficult to look around them to see what is coming from the north. People do not drive the 20 mph in that speed zone; only if they see the radar detector or the Police car then they keep the speed down to 20 mph. When Kearney Catholic has their suburban parked on Avenue A, you cannot see around it and when the Cash-Wa truck is delivering it is even worse to see. He believed that going by statistics was ignoring the real problem. He predicts that it will happen and he just wants to prevent it and keep his neighborhood safe, the Kearney Catholic kids safe and his family safe.

During Kearney Catholic events, they cannot go down Avenue C because of the vehicles parked on the street. He had been told that they did not put a parking lot by the gym because they ran out of money. His neighbors agree that parking is a problem on their street and could not be accessed by emergency vehicles in case of an emergency. Kearney Catholic cannot always use the church parking lot because they have other activities going on at the church especially on weekends. He suggested that someone from Kearney Catholic be out there to direct people attending their events where to park and not on Avenue C.

Council member Randy Buschkoetter stated that his daughter goes to Kearney Catholic. He dropped kids off at school many times every school year before she had her driver's license. He knows exactly what the road conditions are in that area during the busy times. Statistics aside, he has driven it and he does not believe that another stop sign is warranted there. He did not think there is a need for it. No one could say that he is not interested in keeping his daughter or son safe as Mr. Frost has indicated that he is about his kids and others.

Council member Lammers stated he has also driven that street several times. He lives in northeast Kearney and goes by there many times as he did on the way to this

meeting. He has driven this street during busy times when dropping his son off for school and picking him up. He is very familiar with the situation and does not see it as a compelling reason for a stop sign. They now have all the statistics that back up his original thoughts.

Mr. Frost stated when he went to Kearney High; it was tough to cross on 6th Avenue. The best thing that happened was putting a stop sign there. He believed this is the same situation. Council member Buschkoetter stated that stop sign was warranted because that traffic backed up there. He has never seen that kind of back up of traffic when he dropped kids off at Kearney Catholic. Mayor Clouse stated he views the traffic around Kearney Catholic differently than around Kearney High. Traffic around Kearney High is predominantly school traffic and this area there is a significant amount of traffic for the medical facilities and Avenue A is a collector street. The objective of a collector street is to move traffic and not stop traffic. Director of Public Works stated that Avenue A parallels 2nd Avenue so it acts as an upper level collector, but not to an arterial size.

Larry Nordhues, 3515 Avenue C, stated he has lived there since 1961. He has made it through this intersection one way or the other for all those years. He agreed that visibility to the north is difficult and that people do exceed the speed limit on Avenue A. One part of the solution would be not to have angle parking on the east side of Avenue A; that would provide half of the visibility that they really should have. He believed it is a dangerous intersection. The intersection of 5th Avenue and 29th Street was a 2-way stop sign on the north/south and allowed vehicles to go east and west. The collector street was 29th Street. That used to be one of the most dangerous intersections in the City of Kearney until they put the 4-way stop sign on it. He asked if that was feasible why this one is not feasible. He suggested eliminating parking on the east, they could live with that.

Mayor Clouse stated that typically when there are issues around public schools they have met with the PTO and schools and had them work through administration so that they could address some of those issues. He asked if Kearney Catholic had been approached. City Manager Michael Morgan stated the challenge on this issue is that it is not related to the school. This is not school traffic. Although it is created somewhat by the school, it is 235 feet away from the intersection. City staff can discuss with Kearney Catholic what their impact is.

City Manager stated if there is a parking violation or someone parking illegally, a call should be made to the Police Department. The reason that it was changed from parallel parking to angle parking is because four parking spots were eliminated to give more visibility a few years ago. City staff can talk to school officials about what vehicles they have parked there and the reason the Suburban has to be there. Cash-Wa unloads there because there is access to the cafeteria area. They will talk to Kearney Catholic about either removing some of the parking or parking different types of vehicles in there that do not stick out as far. People need to keep in mind that those parking areas are outside the clear zone according to the Code and it is very difficult to enforce parking on private property.

Director of Public Works stated this was addressed a few years ago because the school was concerned about the line of vision at that intersection. The parking is actually on

right-of-way so the City can regulate it and require them to change the parking set up. Where there is angle parking on the right-of-way, it has been approved by the Council at some point. They will talk to them to see if they can reach a compromise to move that a little further back. They would lose two parking spaces if they changed back to parallel parking along there. Staff will report back to the Council and Mr. Frost with the findings.

Mayor Clouse stated that he was sensitive to Mr. Frost's concern about the visibility and he would not mind working with the school to do some of the things suggested rather than putting a stop sign there. There are intersections like this all over the City and the City cannot add stop signs on all of those. He also understood that this concern is representative of the people who live in this area, but may not be representative to the community in general. The Council makes a decision based on input from staff, from the community and the surrounding area, from the schools and the facts and figures from the standards that the City follows. These are the standards that we use all over the City as do all other communities in the country.

Moved by Clouse seconded by Lammers to accept the report from City staff on the request to place 3 or 4-way stop sign located at 35th Street and Avenue A and parking concerns adjacent to the Kearney Catholic High School. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers. Nay: None. Lear abstained. Kearney absent. Motion carried.

OPEN ACCOUNT CLAIMS: NPPD - \$56,986.84, PLATTE VALLEY STATE BANK - \$47,601.93, SCHOOL DISTRICT #7 - \$2,937.70

Mayor Clouse stated with the absence of Council member Kearney and the abstention of Council members Buschkoetter and Lammers, the Open Account Claim for School District #7 in the amount of \$2,937.70 will be placed on the April 14, 2009 Council Agenda for consideration.

Moved by Lammers seconded by Lear that Open Account Claim in the amount of \$56,986.84 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers. Nay: None. Clouse abstained. Kearney absent. Motion carried.

Moved by Clouse seconded by Lammers that Open Account Claim in the amount of \$47,601.93 payable to Platte Valley State Bank be allowed. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter. Nay: None. Lear abstained. Kearney absent. Motion carried.

VII. REPORTS

VOUCHER PROGRAM

Mayor Clouse stated he and the City Manager had some meeting with some of the major employers in the community. They talked about some of the layoffs and things that have been happening recently. The City would like to help the people who have been laid off by putting together a voucher program to help with water and sewer bills for those individuals who have been laid off. City staff will present at a future meeting.

CHERRY AVENUE UPDATE

City Manager Michael Morgan stated the Cherry Avenue project may be delayed. They have done the preliminary environmental document which was submitted. Many of the comments have been addressed in the past. They deal with all kinds of things that the federal agencies would review and comment on. Throughout the process over the past four years, they have been aware of many of the concerns and they have been addressed and solutions have been offered. As the agencies, in particular the Federal Highway Administration, looks at this they still have determined there is too much significant impact. At that point, a full blown environmental assessment would have to be done. He did not think that they would need more than what has been done over the past four years. The environmental assessment was in the works and near completion when he came to Kearney. This review has cost \$500,000-600,000 at this point and it is still not done.

What is disheartening about it in the most recent discussions were comments about should it be relocated. At this stage of the process, there are those who question it. At the federal level, there are different people who see the project for the first time and comment. This is the challenge that city governments across this state have been struggling with. They are not closer today than three or four years ago. The money and the project are pretty much ready to go and the right-of-way is being acquired, but these agencies have the bottom line in making the decision to go ahead. This is not a State of Nebraska Department of Roads issue, they have been supportive. They have involved Senator Nelson, Adrian Smith and both offices have been supportive. The costs are not City of Kearney costs, but are costs nonetheless. They have made their comments aggressively and consistently known to these agencies. They have tried other approaches by working closely with Kirkham Michael. They will continue to pursue this diplomatically to work with the Department of Roads and be hopeful for good results.

HARMON PARK FOUNTAIN

City Manager Michael Morgan stated the Harmon Park Fountain project has been awarded with a completion date of July 3rd. The bid came in significantly under budget and the funds for landscaping will be available. The bid included the fountain and all the add ons. Everyone was very pleased about this.

MAJOR GRASS FIRE

City Manager Michael Morgan stated it was quite an experience sitting at the control center of the firefighters during the major grass fire on Monday. He was amazed at how they kept track of all the efforts, the manpower and the amount of work that went on while fighting that fire. He observed contractors calling, people giving, businesses donating water, help from the Salvation Army, the County Departments, the Police and Sheriff Departments and numerous fire departments from around the area. Resources were easily accessible for everything that they needed. This is the unique thing about Central Nebraskans. He observed farmers were out in the middle of this helping when they should not have, but was very beneficial in the fire breaks. He extended a big thank you to everyone. In that type of emergency, everyone worked together and it was

the least bureaucratic thing that he had ever seen. He was very proud of everyone that participated. It was a lot worse than people realized. He did not realize it until he went out and talked to people about what really happened. This was a significant fire and to his knowledge there were no injuries. It was an exhibit of compromise and cooperation.

VIII. ADJOURN

Moved by Buschkoetter seconded by Clouse that Council adjourn at 7:59 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

ATTEST:

**MICHAELLE E. TREMBLY
CITY CLERK**

**STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR**