

*Kearney, Nebraska
October 13, 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 October 13, 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, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. 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; Dan Lynch, Chief of Police; Shawna Erbsen, Human Resources Director; Deb Eirich, Senior Services Coordinator; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Matt Meister, Beverly Schliefert, Trenton Snow, Gary Sorensen, Tim Lowe, Camilla Roark, Jim Roark, Robert Fraser, Kae Sawyer, Steve Altmaier from KGFW, Sara Giboney and Kevin Hervert from Kearney Hub.

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

Pastor Rob Kuefner from Holy Cross Lutheran Church provided the Invocation.

PLEDGE OF ALLEGIANCE

Two Boy Scouts from Troop 139 and two Boy Scouts 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 – GOLDEN K KIWANIS CLUB

Beverly Schliefert, on behalf of the Golden K Kiwanis, made a presentation to the City Council. Their Kiwanis Club of 107 members is only one of many service organizations in the Kearney community. Their club members regularly report their volunteer hours at their weekly meetings which allows them to keep an ongoing record. This past club year between October 1, 2008 and September 30, 2009 their members reported 6,755

hours of volunteer time. By valuing their time at \$10.00 per hour, their club members have donated time at \$67,550.00 to the Kearney community. If one were to multiply that sum by 15 service clubs in the community, including those at the high school and both middle schools, the contribution of those who serve as volunteers in Kearney results in a major impact.

II. UNFINISHED BUSINESS

WOOD RIVER TRAILER COURT ANNUAL RENEWAL

Postponed until November 30, 2009 any action on the annual manufactured home court license for Wood River Trailer Court, 865 West 78th Street.

III. PUBLIC HEARINGS

REZONING AT 1617 WEST 39TH STREET

Mayor Clouse opened the public hearing on the Application submitted by Gary Sorensen dba SG Leasing (Applicant) for First Church of Christ Scientist (Owner) to rezone from District R-2, Urban Residential Mixed-Density District to District C-O, Office District for property described as Lot 11, Kent's 2nd Subdivision, a replat of Lot 1 of Block 1, Dillon's Subdivision, a replat of two tracts of land comprising of all of Lots 70 and 71, Fairacres 2nd Subdivision, all in the City of Kearney, Buffalo County, Nebraska (1617 West 39th Street). Planning Commission recommended approval.

The applicant is requesting approval to rezone a tract of land containing an existing building that has housed the First Church of Christ Scientist Church for many years. The property is located at the northeast corner of 17th Avenue and 39th Street. The intended use for this property is for offices. The current zoning is R-2, Urban Residential Mixed-Density District. The property will be rezoned from R-2 to C-0, Office District. Adjacent zoning to the east is R-3/PD, to the south is R-1, to the north is R-2, and to the west is C-1/PD. Rezoning this building for office use will provide an acceptable use for this property.

There is adequate parking for office use existing on the site. There are two access points to the property, one on 39th Street and one on 17th Street. Proposed 39th Street construction will add a right turn lane to westbound traffic lanes which will not leave enough room for any landscaping along 39th Street. A raised median for a protected left turn lane at the intersection will not allow left turns into the property for eastbound 39th Street traffic. This means that the 39th Street access will be right in, right out only.

Gary Sorensen presented this matter to the Council. The Church of Christ opted to sell and downsize. The next step was to bring it into office space because it has more than ample paved parking, good ingress and egress. The entrance from 39th Street will only be from the east. With the new work that has been done on 39th Street and 17th Avenue, it has been striped in yellow and would be an illegal turn at this time.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Gary Sorensen dba SG Leasing (Applicant) for First Church of Christ Scientist (Owner) to rezone from District R-2, Urban Residential Mixed-Density District to District C-O, Office District for property described as Lot 11, Kent's 2nd Subdivision, a replat of Lot 1 of Block 1, Dillon's Subdivision, a replat of two tracts of land comprising of all of Lots 70 and 71, Fairacres 2nd Subdivision, all in the City of Kearney, Buffalo County, Nebraska (1617 West 39th Street). Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

FINAL PLAT FOR ROARK ADDITION

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for James and Camilla Roark and Kay Tarr (Owner) for the Final Plat for Roark Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the East Half of the Southwest Quarter of Section 35, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, said tract being formerly known as part of Block 1, Frank's Second Addition to the City of Kearney, Buffalo County, Nebraska (now vacated) (east of 9th Avenue, south of 27th Street and north of 26th Street) and to consider approval of Resolution No. 2009-167. Planning Commission recommended approval.

The applicant is requesting approval to divide property that contains two houses on one lot so that each house can be associated with its own parcel for ownership. The lot was previously vacated but never replatted. The property is zoned R-3 and is located east of 9th Avenue, south of 27th Street and north of 26th Street near UNK.

The Preliminary and Final Plat consist of a two-lot subdivision to be known as Roark Addition. The Preliminary Plat was approved by the Planning Commission on September 18, 2009. The total land area is only 9,055 square feet so the lots are substandard in regards to minimum lot area. It appears that sanitary sewer service from Lot 1 may cross through Lot 2. The common property line is not straight; it jogs around an existing garage on Lot 1 and angles to the northwest along the edge of the driveway pavement for Lot 1. Up to now, the two properties shared common parking. Two paved off-street parking spaces accessed from the alley are required on Lot 2 by November 15, 2009. A Subdivision Agreement is attached addressing the sanitary sewer and off-street parking issues. There is no Public Works Plan required since the property is currently served with municipal services. The topography requirement for platting has been waived by the Development Review Team (DRT).

Camilla Roark, 824 West 27th Street, stated she and her husband are proposing to buy the garage and driveway that adjoins their garage and driveway from the property owner to the south. That property is owned by Kay Tarr of North Platte. Her understanding is that the City has two requirements, one for the Rourk's and one for Kay Tarr to be approved. Currently, their sewer line runs south behind Kay Tarr's house to the alley which is okay, unless it needs to be replaced and it would then need to be rerouted to the west to 9th Avenue. Ms. Tarr must provide an off-street parking pad (18X20 feet) that is either asphalt or cement.

Trenton Snow, 1309 Central Avenue, stated this property is one of few in Kearney that is not presently in a subdivision. It is what is called at "metes and bounds" legal description. Frank's Second was vacated and never replatted so therefore they do not have to do a vacation because it is presently unplatted. When we do this, it will clean up that area and plat it into the Roark Addition. These two requirements are in the subdivision agreement which has been signed and sent back to the City. It is a two lot subdivision with no improvement or districts created.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Trenton Snow (Applicant) for James and Camilla Roark and Kay Tarr (Owner) for the Final Plat for Roark Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the East Half of the Southwest Quarter of Section 35, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, said tract being formerly known as part of Block 1, Frank's Second Addition to the City of Kearney, Buffalo County, Nebraska (now vacated) (east of 9th Avenue, south of 27th Street and north of 26th Street) and approve **Resolution No. 2009-167**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2009-167

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Roark Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the East Half of the Southwest Quarter of Section 35, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, said tract being formerly known as part of Block 1, Frank's Second Addition to the City of Kearney, Buffalo County, Nebraska (now vacated), more particularly described as follows: beginning at the northwest corner of said Block 1 and assuming the west line of said Block 1 as bearing S00°06'05"E and all bearings contained herein are relative thereto; thence S00°06'05"E a distance of 130.0 feet to the north line of an alley (if extended westerly) running east-west through Block 49, Perkins & Harfords Addition to the City of Kearney, Buffalo County, Nebraska; thence N89°42'28"E on the north line of said alley (if extended westerly) a distance of 70.65 feet to a point on the east line of said Block 1; thence N00°50'42"W on said east line a distance of 130.0 feet to the northeast corner of said Block 1; thence west on the north line of said Block 1 a distance of 68.9 feet to the place of beginning, containing 0.21 acres, more or less (9055.44 square feet), 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 Subdivision Agreement, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved

and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

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 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

REZONING VARIOUS PROPERTIES IN THE PIONEER PARK NEIGHBORHOOD AREA

Mayor Clouse opened the public hearing on the Applications submitted by Bonnie Konen, Charles Legates, Darlene Lewis, Scott Sanders, Ulrike Gray, Jessica Hardin, Marcia Rerucha, Dan and Janice McMinn, Ruth Kishkunas, David and Cynthia Malone, Jay Isaac, Jr., Jolene Brandenburgh, Dan and Connie Wagner, Dean and Christina Beebe, Art and Julie Bralick, Lois Johnson, David and Jan Brandt, Karen Helleberg, Van Vopat, Jolissa May, Janet Bystrom, Dennis and Patty Wright, Margaret Mills, Steve and Ginger O'Brien, Troy Barger, Jeff Yendra, Bobby and Marilyn Hansen, Heath Dooley, Wallace and Zully Harwood, Marilyn Hansen, Earl and Joyce Nelson, Stanley and Dannien Jones, Amy Johnson, Mitchell and Carissa Sanny, Lori Jean Trompke, Gordon and Janice Killough, Mark and Christine Bonk, David and Marilyn Davis, Tina Hunter, April Engel, Dorothy Nutter, Kurtis Bailey, James Smith, Jr., Ray Schutte, Frances Cedillo, Sherryl Stansberry, Beth Fox, Kristen and Jacqueline Krueger, Jaime and Cecilia Gomez, David and Treva Lehn, John Manley, Kathleen Glause, Kathryn Nickel, Scott and Cynthia Murphy, Doris Brown, Judy Eilers, Daniel Scott, Shari Hofmann, Jeff and Niki Halvorsen, Dustin Seevers, Charles Workman, Connie Lungrin, Scott Poppe, Teri Sadler, Thomas Kolling (Applicants and Owners) to rezone from District R-3, Urban Residential Multi-Family (Medium Density) District and District M-1, Limited Industrial District to District R-1, Urban Residential Single-Family (Low Density) District for several tracts of property described as follows: the west 50 feet of the south 40 feet of Lot 5, the west 50 feet of Lot 6 all in Block 5; the west 80 feet of Lots 7, 8 and 9 of Block 6; the east 45 feet of Lots 1 and 2, the east 45 feet of the north 30 feet of Lot 3, the west 50 feet of the east 95 feet of Lots 1, 2 and 3, the south 20 feet of the east 45 feet of Lot 3 all in Block 7; the west 50 feet of Lot 1, the north half of the west 50 feet of Lot 2, the south 3 feet of Lot 3, Lot 4, Lot 5, Lot 7, the south half of Lot 8, Lot 10, the west half of Lots 11 and 12, all in Block 8; the south 5 feet of Lot 5, Lot 6, the west 90 feet of Lot 7, the west 90 feet of the south half of Lot 8, all in Block 9; Lot 1 except the westerly 65 feet, the east 90 feet of the south half of Lot 5, the east 90 feet of Lot 6, Lot 7, the south 6 feet of Lot 8, all in Block 10; Lots 1, 2, 10 of Block 14; Lot 2, the south 4 feet 4½ inches of the west 61 feet nine inches of Lot 3, Lot 4, the north 2 feet of Lot 7, the south 45 feet of Lot 8, the east 30 feet of the south 3 feet of the north 5 feet of Lot 8, the south 47 feet of Lot 11, the north 3 feet of Lot 11, Lot 12, all in Block 15; all in West Addition to the City of Kearney, Buffalo County, Nebraska; the west half of Lot 10, the west half of the south 11 feet of Lot 11 of Block 8; the west half of Lots 1 and 2, all of Lots 3, 4, the south 10 feet of Lot 5, the north 40 feet of Lot 5, all of Lots 6 and 8, all in Block 13; the

east 92 feet of Lot 1, the west 48 feet of Lots 1 and 2, all of Lots 3, 4, 5, 7, 8, 9, the south half of Lot 10, the north half of Lot 10 and all of Lot 11, the east 50 feet of Lots 12 and 13, the west 90 feet of Lots 12 and 13, all in Block 14; Lots 1, 2, 4, 5, 6, 7, 8, 9, 11, 13, all in Block 15; Lots 1, 3, 4, 5, part of Lot 6, all of Lots 7, 11, 12, 13, 14, 15, all in Block 16; the south half of Lot 1, the north half of Lot 1, the north half of Lot 2, all of Lot 3, the south half of Lot 4, all of Lot 5, all in Block 17, all located in Ashland Addition to the City of Kearney, Buffalo County, Nebraska (612, 614, 620 West 20th Street, 309, 421, 512, 520, 614 West 21st Street, 502, 506 West 22nd Street, 2002, 2024 3rd Avenue, 1918, 1922, 2001, 2004 4th Avenue, 1926, 1930, 1935, 2001, 2004, 2008 5th Avenue, 1909, 1910, 1914, 1919, 1923, 1924, 2002, 2003, 2004, 2010, 2012, 2013 6th Avenue, 1904, 1907, 1908, 1909, 1910, 1912, 1915, 1922, 1928, 2005, 2115 7th Avenue, 1903, 1904, 1905, 1908, 1910, 1919, 1920, 1923, 1924, 1930 8th Avenue, 1902, 1910, 1915, 1917, 1919, 1920, 1921, 1923, 1924, 1926, 1928 9th Avenue). Planning Commission recommended approval.

Two years ago a multi-property rezoning request was brought forward by the Pioneer Park Neighborhood Association. The goal of the Association was to preserve as much as possible the single-family character of the neighborhood by rezoning as many properties as possible to R-1 zoning. For the past two years members of the Association have canvassed the remaining neighborhood properties door to door asking if the owners of property currently zoned R-3, Multi-Family or M-1, Light Industrial would like to rezone to R-1, Single-Family.

In 2007, the Association members split the neighborhood roughly into two halves, north and south and concentrated on the north half first. Fifty-five rezoning applications were approved. The rezoning requests currently before the Council represent the south half of the area contained within the following boundaries; from 3rd Avenue west to 9th Avenue, and from 22nd Street south to the railroad. Six blocks between 7th Avenue and 9th Avenue and between 20th Street and 23rd Street are already zoned R-1. The remainder of the subject area contains ten and one-half blocks. There are 123 total properties, 27 of which are duplexes or apartments and 96 of which are single-family homes. The single-family component accounts for about 54 percent of the properties in the subject area. Sixty-six properties are proposed for rezoning, comprising 68 percent of the properties in the area. Absentee owners who rent their properties are included in this effort.

Each property owner has filed a separate rezoning application for the property they own, so there are 66 separate rezoning applications. As you can see, some property owners did not wish to change their zoning resulting in a patchwork arrangement of R-1, R-3, and M-1 zoning if the rezoning requests are approved. In 2007, the Planning Commission raised concerns regarding "spot" zoning. City staff discussed the issue of "spot" zoning with the City Attorney and he had prepared a memo. Both staff and the attorney believe that spot zoning is not an issue for the following reasons:

- This rezoning action was not initiated by the City.
- The property owners have a choice in whether or not they wish to rezone their property.
- The property owners that wish to rezone are doing so voluntarily under no coercion or pressure to rezone against their will.

- Each property owner has submitted an individual application to rezone his/her property.
- There is no reason why R-1, R-3, and M-1 zoning categories cannot touch one another or be intermingled.

Matt Meister, 2308 5th Avenue, presented this matter on behalf of the Pioneer Neighborhood Association. They have organized a group of people who want to rezone their properties back to single family residential. This is the second part of their large project. They came before the Council two years ago with 55 applications to do this same thing. This year they have 66 more applications, some of those were in the same area as they had targeted before, but the majority are south of the area they had targeted before. This time they targeted the area south of 21st Street and north of Railroad Street that were previously zoned R-3 and M-1. Only the properties of the people making application would be rezoned.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the Applications submitted by Bonnie Konen, Charles Legates, Darlene Lewis, Scott Sanders, Ulrike Gray, Jessica Hardin, Marcia Rerucha, Dan and Janice McMinn, Ruth Kishkunas, David and Cynthia Malone, Jay Isaac, Jr., Jolene Brandenburgh, Dan and Connie Wagner, Dean and Christina Beebe, Art and Julie Bralick, Lois Johnson, David and Jan Brandt, Karen Helleberg, Van Vopat, Jolissa May, Janet Bystrom, Dennis and Patty Wright, Margaret Mills, Steve and Ginger O'Brien, Troy Barger, Jeff Yendra, Bobby and Marilyn Hansen, Heath Dooley, Wallace and Zully Harwood, Marilyn Hansen, Earl and Joyce Nelson, Stanley and Dannien Jones, Amy Johnson, Mitchell and Carissa Sanny, Lori Jean Trompke, Gordon and Janice Killough, Mark and Christine Bonk, David and Marilyn Davis, Tina Hunter, April Engel, Dorothy Nutter, Kurtis Bailey, James Smith, Jr., Ray Schutte, Frances Cedillo, Sherryl Stansberry, Beth Fox, Kristen and Jacqueline Krueger, Jaime and Cecilia Gomez, David and Treva Lehn, John Manley, Kathleen Glause, Kathryn Nickel, Scott and Cynthia Murphy, Doris Brown, Judy Eilers, Daniel Scott, Shari Hofmann, Jeff and Niki Halvorsen, Dustin Seevers, Charles Workman, Connie Lungrin, Scott Poppe, Teri Sadler, Thomas Kolling (Applicants and Owners) to rezone from District R-3, Urban Residential Multi-Family (Medium Density) District and District M-1, Limited Industrial District to District R-1, Urban Residential Single-Family (Low Density) District for several tracts of property described as follows: the west 50 feet of the south 40 feet of Lot 5, the west 50 feet of Lot 6 all in Block 5; the west 80 feet of Lots 7, 8 and 9 of Block 6; the east 45 feet of Lots 1 and 2, the east 45 feet of the north 30 feet of Lot 3, the west 50 feet of the east 95 feet of Lots 1, 2 and 3, the south 20 feet of the east 45 feet of Lot 3 all in Block 7; the west 50 feet of Lot 1, the north half of the west 50 feet of Lot 2, the south 3 feet of Lot 3, Lot 4, Lot 5, Lot 7, the south half of Lot 8, Lot 10, the west half of Lots 11 and 12, all in Block 8; the south 5 feet of Lot 5, Lot 6, the west 90 feet of Lot 7, the west 90 feet of the south half of Lot 8, all in Block 9; Lot 1 except the westerly 65 feet, the east 90 feet of the south half of Lot 5, the east 90 feet of Lot 6, Lot 7, the south 6 feet of Lot 8, all in Block 10; Lots 1, 2, 10 of Block 14; Lot 2, the south 4 feet 4½ inches of the west 61 feet nine inches of Lot 3, Lot 4, the north 2 feet of Lot 7, the south 45 feet of Lot 8, the east 30 feet of the south 3 feet of the north 5 feet of Lot 8, the south 47 feet of Lot 11, the north 3 feet of Lot 11, Lot 12, all in Block 15; all in West Addition to the City of Kearney,

Buffalo County, Nebraska; the west half of Lot 10, the west half of the south 11 feet of Lot 11 of Block 8; the west half of Lots 1 and 2, all of Lots 3, 4, the south 10 feet of Lot 5, the north 40 feet of Lot 5, all of Lots 6 and 8, all in Block 13; the east 92 feet of Lot 1, the west 48 feet of Lots 1 and 2, all of Lots 3, 4, 5, 7, 8, 9, the south half of Lot 10, the north half of Lot 10 and all of Lot 11, the east 50 feet of Lots 12 and 13, the west 90 feet of Lots 12 and 13, all in Block 14; Lots 1, 2, 4, 5, 6, 7, 8, 9, 11, 13, all in Block 15; Lots 1, 3, 4, 5, part of Lot 6, all of Lots 7, 11, 12, 13, 14, 15, all in Block 16; the south half of Lot 1, the north half of Lot 1, the north half of Lot 2, all of Lot 3, the south half of Lot 4, all of Lot 5, all in Block 17, all located in Ashland Addition to the City of Kearney, Buffalo County, Nebraska (612, 614, 620 West 20th Street, 309, 421, 512, 520, 614 West 21st Street, 502, 506 West 22nd Street, 2002, 2024 3rd Avenue, 1918, 1922, 2001, 2004 4th Avenue, 1926, 1930, 1935, 2001, 2004, 2008 5th Avenue, 1909, 1910, 1914, 1919, 1923, 1924, 2002, 2003, 2004, 2010, 2012, 2013 6th Avenue, 1904, 1907, 1908, 1909, 1910, 1912, 1915, 1922, 1928, 2005, 2115 7th Avenue, 1903, 1904, 1905, 1908, 1910, 1919, 1920, 1923, 1924, 1930 8th Avenue, 1902, 1910, 1915, 1917, 1919, 1920, 1921, 1923, 1924, 1926, 1928 9th Avenue). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

IV. CONSENT AGENDA

Mayor Clouse wanted to clarify Subsection 7 pertaining to the 2nd Avenue Pedestrian Bridge. This pedestrian bridge will be crossing Turkey Creek and not 2nd Avenue as has been reported. The pedestrian will parallel 2nd Avenue.

Moved by Buschkoetter seconded by Clouse that Subsections 1 through 12 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held September 22, 2009.

2. Approve the following Claims:

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

AT&T \$138.47 smcs; AC Electric \$945.00 smcs; Ace Hardware \$519.47 smcs; Advance Auto Parts \$8.18 smcs; Aflac \$2,721.66 ps; Agri Coop \$1,487.40 smcs; Alamar Uniforms \$50.90 smcs; All Makes Office Equipment \$945.00 smcs; Alltel \$1,234.80 smcs; Almquist,R \$80.00 smcs; Amer Electric \$318.46 smcs; Amer First Aid \$162.28 smcs; Amsan \$2,051.03 smcs; Andersen Wrecking \$19.95 smcs; Anderson,D \$34.03 smcs; Apple Market \$37.19 smcs; APWA \$70.00 smcs; Ardent Lighting Group \$4,325.50 co; Arner,T \$156.00 smcs; Ask Supply \$724.17 smcs; Aurora Coop \$18.40 smcs; Baker & Taylor Books \$5,824.00 smcs; Barney Abstract \$330.00 smcs; Barney Ins \$4,766.00 smcs; BBC Audiobooks \$215.94 smcs; Berke,N \$65.00 smcs; Bike Shed \$12.98 smcs; Blessing \$86,212.00 co; BlueCross BlueShield \$30,324.60 smcs; Bosselman \$2,405.08 smcs; Brownells \$21.42 smcs; Buffalo Co Dist Court \$464.34 ps; Buffalo Co Sheriff \$122,850.00 smcs; Buffalo Co Treasurer \$24.00 smcs; Buffalo

Outdoor Power \$585.60 smcs; Buggy Bath \$500.00 smcs; Builders Warehouse \$957.67 smcs; Carnell Sales \$40.47 smcs; Carquest \$1,755.68 smcs; Cash Wa \$439.50 smcs; Cellphoneshop.net \$60.85 smcs; Central Fire \$6,545.05 smcs; Central Hydraulic Systems \$2,899.66 smcs; CH Diagnostic & Consulting \$445.00 smcs; Chad \$8.00 ps; Charter \$679.93 smcs; Charter Media \$988.00 smcs; CheckoutSoftware.com \$3,479.52 co; Chesterman \$2,454.06 smcs; Chief Supply \$46.97 smcs; Chili's Grill \$29.00 smcs; Christian,S \$43.65 smcs; City Glass \$135.00 smcs; City of Ky \$264,772.20 smcs,co,ps; Civic Plus \$5,665.92 smcs; Clevenger Oil \$671.66 smcs; Cold Spring Granite \$668.70 smcs; College Savings Plan of NE \$200.00 ps; Conseco Life Ins \$24.00 ps; Construction Rental \$626.14 smcs; Copycat Printing \$1,286.86 smcs; COSUGI \$100.00 smcs; Country Inn & Suites \$208.28 smcs; CPS 5507 \$1,368.42 smcs; Dan Roeder Concrete \$124,252.20 co; Dandee Construction \$3,988.00 smcs; Danielson,S \$210.40 smcs; Danko Emergency \$58.63 smcs; Data Technologies \$3,685.70 smcs; Depository Trust \$132,434.80 ds; Dept of Health & Human \$591.00 smcs; Diamond Vogel Paint \$166.54 smcs; Dish Network \$53.52 smcs; Dollar-General \$7.49 smcs; Doogpoopbags.com \$323.71 smcs; Doornbos,J \$12.99 smcs; DPC Industries \$4,670.24 smcs; Dugan Business Forms \$3,359.16 smcs; Dultmeier Sales \$1,824.32 smcs; Dutton-Lainson \$703.38 smcs; Eakes \$2,442.72 smcs; Ecolab \$31.00 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$107.68 smcs; EMC Ins \$468,260.00 smcs; Essam's Decorating \$4,797.60 co; ExcelSystems Software \$72.50 co; Express Police Supply \$2,309.45 co; Fairbanks Int'l \$458.57 smcs; Farmers Union \$28.50 smcs; Fastenal \$1,936.81 smcs; Faz,A \$9.90 smcs; Fiddelke Heating \$49.00 smcs; Fire Engineering \$59.90 smcs; Fireguard \$118.82 smcs; Flag Guys \$36.75 smcs; Fluidtech \$60.49 smcs; Footjoy \$101.38 smcs; Fort Bend Services \$10,296.00 smcs; Frederick,M \$50.00 smcs; Frontier \$8,049.15 smcs; Frontierair \$569.20 smcs; Gale \$5,974.09 smcs; Galeton Gloves \$451.96 smcs; Galls \$58.48 co; Garon Marketing \$1,244.76 co; Garrett Tires \$4,300.57 smcs; Gatehouse \$120.44 smcs; Gaylord Brothers \$340.00 smcs; GE Money Bank \$1,713.07 smcs; Gibbon Transmissions \$2,165.72 smcs; Girl Scouts \$157.00 smcs; Golf Solution \$578.00 smcs; Gooch Brake \$585.62 smcs; Graham Tire \$4,170.10 smcs; Grainger \$482.16 smcs; Great Plains One Call \$379.80 smcs; Griss,J \$35.10 smcs; H&H Distributing \$524.00 smcs; Hach Co \$600.23 smcs; Hali-Brite \$304.50 smcs; Harley Davidson \$77.96 smcs; Harrison,R \$192.50 smcs; Harry Ferris Co \$450.00 smcs; Hastings \$12.71 smcs; Hausmann Construction \$116,155.80 co; HD Supply \$17,161.36 smcs; HDR \$920.00 smcs; Hinrichs Photography \$45.00 smcs; Historical Society Museum \$22.95 smcs; Hobby-Lobby \$27.93 smcs; Holiday \$80.01 smcs; Holiday Inn Express \$156.80 smcs; Hollman \$340.00 smcs; Holmes Plbg \$882.87 smcs; Hometown Leasing \$207.71 smcs; Hornungs Pro Golf \$85.41 smcs; Hydrologic \$90.69 smcs; Hydronic Energy \$83.35 smcs; ICMA Internet \$150.00 smcs; ICMA RC \$10,378.36 ps; IEDC Online \$345.00 smcs; Infinisource \$2,161.32 smcs; Inland Truck Parts Co \$306.72 smcs; Innovative Controls \$185.04 smcs; IRS \$207,242.21 ps; Int'l Assn \$665.00 smcs; Ironside Gym \$55.28 smcs; J&L Industrial Supply \$396.98 smcs; Jack Lederman \$4.64 smcs; Jack's Uniforms \$91.84 smcs; Johnson Controls \$790.58 smcs; Johnson Hardware \$147.00 smcs; K&K Parts \$85.00 smcs; Kalkowski,L \$54.12 smcs; Ky Chamber Comm \$5.00 smcs; Ky Children's Museum \$5,000.00 co; Ky Crete & Block \$1,105.00 co; Ky Glass \$57.60 smcs; Ky Hub \$2,951.46 smcs; Ky Humane Society \$6,500.00 smcs; Ky Implement \$1,153.15 smcs; Ky Noon Rotary \$105.00 smcs; Ky Towing \$150.00 smcs; Ky United Way \$571.00 ps; Ky Warehouse \$1,174.71 smcs; Ky Winlectric \$2,031.86 smcs; Kirkham Michael \$11,826.40 co; Klaus,M \$91.00 co; Konica Minolta \$752.63 smcs; Kowalek,G \$17.23

smcs; Kreycik,J \$51.60 smcs; Kucera Painting \$2,560.00 co; Lawn Builders \$63.06 smcs; Lawson Products \$1,153.59 smcs; League of NE Municipalities \$32,456.59 smcs; Lighthouse Uniform \$119.90 ps; Linweld \$166.55 smcs; Little Caesars \$293.00 smcs; Magic Cleaning \$1,010.00 smcs; Mail Express \$236.05 smcs; Mark Fong Construction \$1,500.00 smcs; Marlatt Machine Shop \$197.70 smcs; Masters Magnets \$435.89 smcs; Maxwell Asphalt \$13,344.40 co; McCarty,D \$66.04 smcs; Menards \$2,474.23 smcs; Metlife \$6,204.09 ps; Microsoft Tech Support \$259.00 smcs; Middleton Electric \$1,665.00 smcs; Midlands Contracting \$53,722.01 co; Mid-Nebraska Garage \$200.00 smcs; Midwest Striping \$12,990.00 smcs; Midwest Turf \$1,120.24 smcs; Midwest Underground \$27.85 smcs; Mieth,T \$19.00 smcs; Milco Environmental \$3,215.85 smcs; Miller & Associates \$4,704.25 co; Miracle Recreation \$545.00 smcs; Misko Sports \$111.90 smcs; Moonlight Embroidery \$5,161.00 smcs; Morgan,M \$36.80 smcs; Morris Press \$446.55 smcs; MSI System Integrators \$11,497.10 smcs; Municipal Automation \$279.95 smcs; Municipal Supply \$1,228.69 smcs,co; Napa All Makes Auto \$2,456.98 smcs; Natl Fire Protection \$78.18 smcs; Nauenburg,K \$27.15 smcs; NCOA \$250.00 smcs; NE Child Support \$5,380.10 ps; NE Dept of Environmental \$15,449.10 smcs; NE Dept of Roads \$4,196.90 co; NE Dept of Revenue \$30,600.93 ps; NE Law Enforcement \$350.00 smcs; NE Press Advertising \$1,180.00 smcs; NE Public Health \$6,139.00 smcs; NE Salt & Grain \$39,482.77 smcs; NE Softball \$80.00 smcs; NE Statewide Arboretum \$130.00 smcs; NE Truck & Equipment \$479.60 smcs; NE Truck Center \$1,817.86 smcs; NEland Distributors \$540.00 smcs; Neopost \$7,000.00 smcs; New Directions \$9,844.38 smcs; Newegg.com \$34.98 smcs; Newman Signs \$1,406.86 smcs; NLU Products \$43.85 smcs; NMC \$1,098.04 smcs; Norm's Plbg \$249.44 smcs; Northwestern Energy \$2,494.32 smcs; NOVA Fitness Equipment \$354.50 ps; Office Depot \$255.25 smcs; Office Max \$656.15 smcs; Officenet \$1,402.55 smcs,co; O'Keefe Elevator \$436.00 smcs; O'Reilly Auto \$507.20 smcs; Oriental Trading \$106.96 smcs; Orscheln \$445.18 smcs; Outdoor Recreation \$83.00 smcs; Overhead Door \$686.80 smcs; Oxford University Press \$56.38 smcs; Padgett,R \$20.37 smcs; Palmer,T \$11.79 smcs; Paramount Linen \$102.38 smcs; Paramount Software \$1,091.70 co; Pat's Plumbing \$320.00 smcs; Payflex Systems \$501.50 smcs,ps; Paypal \$551.67 smcs,co; Payton,D \$523.60 smcs; Philips US Store \$107.97 smcs; Platte River Radio \$735.00 smcs; Platte Valley Comm \$464.79 smcs,co; Poggioli,J \$100.00 smcs; Presto-X \$137.00 smcs; Pretzelmaker \$18.00 ps; Protex Central \$94.00 smcs; Provantage \$1,707.07 smcs,co; Public Risk Management \$350.00 smcs; Pulliam,R \$40.00 smcs; Quill \$893.70 smcs; RW Sorensen Construction \$389.32 smcs; Radioshack \$25.98 smcs; Random House \$368.00 smcs; Rasmussen,V \$22.23 smcs; Reams \$1,515.98 smcs; Recognition Unltd \$157.61 smcs; Recorded Books \$569.27 smcs; Renosys Corp \$13,650.00 co; Rickard,A \$93.38 smcs; Rivera,B \$30.81 smcs; SA Foster Lumber \$54.56 smcs; SAFE Center \$4,560.00 smcs; Sahling Kenworth \$205.20 smcs; Sanitation Products \$138.94 smcs; Sapp Brothers \$20,742.40 smcs; Sara Lee Bakery \$6.25 smcs; Schaeffer Mfg \$990.73 smcs; Schwan's \$1,237.93 smcs; Scorr Marketing \$300.00 smcs; Senior Hospitality Center \$1,584.25 smcs; Sesna,D \$2,106.16 smcs; S-F Analytical Lab \$283.00 smcs; Sheldon,C \$51.33 smcs; Sherwin Williams \$693.64 smcs; Shop EZ \$20.79 smcs; Sirsi Dynix \$16,685.02 smcs; Snap On Tools \$17,950.00 smcs,co; Snow,T \$50.00 smcs; Soc for Human Resource \$160.00 smcs; Southland Electrical \$857.51 smcs; Springer Roofing \$22,880.00 co; State of NE/AS Central \$4,356.57 smcs,co; State Troopers Assn \$75.00 smcs; Steinbrink Landscaping \$29,867.29 smcs,co; Subway \$45.00 ps; Suchsland,T \$35.10 smcs; Sun Life Financial \$29,074.25 smcs; Sunmart \$203.90 smcs; Superior Signals \$621.50 smcs; Sutphen

\$922.90 smcs; Sydow,J \$40.00 smcs; Taillon,R \$12.50 smcs; Target \$10.98 smcs; Technical Maintenance \$5,860.00 smcs; Theis,J \$90.00 smcs; Thompson,J \$16.95 smcs; Tilley Sprinkler \$20,825.00 co; Titleist \$1,297.69 smcs; Tractor-Supply \$1,351.98 smcs; Trans Iowa Equipment \$323.01 smcs; Tri City Outdoor Power \$447.57 smcs; TruGreen ChemLawn \$159.60 smcs; Turfco Direct \$19.64 smcs; Turner Body Shop \$4,039.83 smcs; Tye & Rademacher \$12,054.03 smcs; Underground Construction \$983.00 smcs,co; University of North Florida \$900.00 smcs; Upbeat \$565.51 smcs; UPS \$135.57 smcs; US Tennis Assn \$35.00 smcs; USPS \$276.43 smcs; Van Diest Supply \$205.26 smcs; Village Uniform \$296.71 smcs; Voss Lighting \$465.32 smcs; W.T. Cox Subscriptions \$126.40 smcs; Wal-Mart \$754.16 smcs; Ward Labs \$580.70 smcs; Warrington,D \$8.39 smcs; Wells Fargo \$45,904.42 smcs,ds; Westside Wholesale \$26.85 smcs; Wheeler,J \$100.00 smcs; Wicks Sterling Trucks \$158.64 smcs; Wiegand Security \$75.00 smcs; Wilke Donovans \$111.47 smcs; Wilkins Hinrichs Stober \$58,795.03 co; Williams,M \$23.10 smcs; Yanda's \$204.00 smcs; Yant Equipment \$12,540.00 co; Zimmerman Printers \$1,229.10 smcs; Zlomke,P \$6.03 smcs; Payroll Ending 9-26-2009 -- \$329,127.33. 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. Approve setting October 27, 2009 at 7:00 p.m. as time and date for the Board of Equalization to assess costs for Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street; Paving Improvement District No. 2007-920 for the alley lying between 24th Street to 25th Street from 1st Avenue to 2nd Avenue; Paving Improvement District No. 2007-921 for the alley lying between 1st Avenue and 2nd Avenue from 23rd Street to 24th Street; Paving Improvement District No. 2007-922 for the alley lying between 25th Street and 26th Street from Central Avenue to Avenue A; Paving Improvement District No. 2007-923 for the alley lying between Central Avenue and Avenue A from 23rd Street to 24th Street; Paving Improvement District No. 2007-924 for the alley lying between Central Avenue and 1st Avenue from 23rd Street to 24th Street.

4. Approve T-Hangar A-5 Lease Agreement between the City of Kearney and Saadat Hosseini for storage at the Kearney Regional Airport and approve **Resolution No. 2009-168.**

RESOLUTION NO. 2009-168

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the T-Hangar A-5 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Saadat Hosseini, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

5. Accept the public improvements constructed under, and in accordance with, the terms of the Developer Constructed Infrastructure Agreements for Stoneridge Third Addition to the City of Kearney, Buffalo County, Nebraska and approve **Resolution No. 2009-169.**

RESOLUTION NO. 2009-169

WHEREAS, on the 25th day of May, 2004 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2004-89 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and NP Land Development, Inc. for the installation of paving, water and sewer improvements for Stoneridge Third Addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, the Developers have constructed the public improvements in accordance with the requirements and standards set forth in Article 13 "Developer Constructed Infrastructure" of Chapter 9 "Public Works" of the Code of the City of Kearney; and

WHEREAS, in accordance with Section 9-1318 "Acceptance of Article 13 "Developer Constructed Infrastructure" of Chapter 9 "Public Works" of the Code of the City of Kearney the Developer has, by and through its attorney, certified to the City that there are no liens or other encumbrances against the construction work; and

WHEREAS, the City's Engineers have determined that the work is in compliance with the design and is complete.

NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the public improvements constructed under, and in accordance with, Article 13 "Developer Constructed Infrastructure" of Chapter 9 "Public Works" of the Code of the City of Kearney for Stoneridge Third Addition to the City of Kearney, Buffalo County, Nebraska and that the said public improvements be and are hereby accepted.

PASSED AND APPROVED THIS 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

6. Approve Change Order No. 1 showing a decrease in the amount of \$547.00, Application and Certificate for Payment No. 2-Final in the amount of \$266,821.45, and accept the Certificate of Substantial Completion submitted by Dan Roeder, Concrete and approved by Miller & Associates for the 2008 Part 11 Improvements – Bid B consisting of Paving Improvement District No. 2008-928 for 4th Avenue from the north line of 4th Street to the south line of 8th Street; Paving Improvement District No. 2008-929 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition and approve **Resolution No. 2009-170.**

RESOLUTION NO. 2009-170

WHEREAS, Dan Roeder Concrete Inc. has performed services in connection with the 2008 Part 11 Improvements – Part B consisting of Paving Improvement District

No. 2008-928 for 4th Avenue from the north line of 4th Street to the south line of 8th Street; Paving Improvement District No. 2008-929 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing a decrease to the contract sum in the amount of \$547.00, as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, Dan Roeder Concrete Inc. and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 2-Final in the amount of \$266,821.45 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

| | |
|--|---------------------|
| Original Contract Sum | \$370,787.00 |
| Change Order No. 1 (10-13-2009) | - 547.00 |
| Contract Sum to Date | <u>\$370,240.00</u> |
| Gross Amount Due | 370,240.00 |
| Retainage | .00 |
| Amount Due to Date | 370,240.00 |
| Less Previous Certificates for Payment | <u>103,418.55</u> |
| Current Payment Due | \$266,821.45 |

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of July 30, 2009, as shown by Exhibit "C" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 1, as shown on Exhibit "A", Application and Certificate for Payment No. 2-Final, as shown on Exhibit "B", and the Certificate of Substantial Completion as shown on Exhibit "C" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

7. Approve the Plans and Specifications for the 2009 Part 9 Improvements – 2nd Avenue Pedestrian Bridge and set the bid opening date for November 3, 2009 at 2:00 p.m.

8. Approve **Resolution No. 2009-171** authorizing the Mayor to execute a project Program Agreement between the City of Kearney and the Nebraska Department of Roads regarding Project No. URB-5922(3) for the 39th Street from Pony Express Road to Avenue M Roadway Reconstruction Project.

RESOLUTION NO. 2009-171

WHEREAS, City of Kearney, Nebraska is proposing a transportation project for which it would like to obtain Federal funds; and

WHEREAS, City of Kearney, Nebraska understands that it must strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project; and

WHEREAS, City of Kearney, Nebraska and Nebraska Department of Roads (NDOR) wish to enter into a Project Program Agreement setting out the various duties and funding responsibilities for the Federal-aid project.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that Stanley A. Clouse, Mayor of the City of Kearney, Nebraska is hereby authorized to sign the attached Project Program Agreement between City of Kearney, Nebraska and the NDOR for Project No. URB-5922(3) for the 39th Street from Pony Express Road to Avenue M Roadway Project.

PASSED AND APPROVED THIS 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

9. Approve **Resolution No. 2009-172** designating City Engineer Bruce Grupe as the primary Responsible Charge and Director of Public Works Rodney Wiederspan as the secondary Responsible Charge with regard to Project No. URB-5922(3) for the 39th Street from Pony Express Road to Avenue M Roadway Reconstruction Project.

RESOLUTION NO. 2009-172

WHEREAS, the City of Kearney, Nebraska has a full-time public employee on staff, or has obtained the services of a full-time public employee (an interlocal cooperation agreement, if applicable, is attached) who is fully qualified and has the time and interest in serving as a "Responsible Charge" (RC) for this project. The designated RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities, with the express purpose of doing all things necessary for the project to remain eligible for federal-aid transportation project funding; and

WHEREAS, the RC will ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project, from planning through construction activities, including all environmental commitments, remain eligible for federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion. For purposes of this resolution, the following definitions will apply:

Fully qualified means a person who has satisfactorily completed all applicable Nebraska Department of Roads (NDOR) training courses and who has met the other requirements necessary to be included on the NDOR list of qualified Local Public Agency (LPA) RCs.

Full-time public employee means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing public entity. A person is not a full-time public employee if that person provides outside private consulting

services, or is employed by any private entity, unless that person can prove to NDOR in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which federal aid is sought.

Public employee means a person who is employed solely by a county, a municipality, a political subdivision; a Native American tribe; a school district; another entity that is either designated by statute as public or quasi-public; or an entity included on the list of entities determined by the NDOR, and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

Responsible charge means the public employee who is fully empowered by the LPA and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the federal-aid project from planning through construction project activities, including all environmental commitments. The RC is the day-to-day project manager, and the LPA's point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that the RC may delegate or contract certain technical tasks associated with the project so long as the RC actively manages and represents the owner's interests in the delegated technical tasks.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that: Bruce Grupe, City Engineer, is hereby designated as the primary Responsible Charge (RC) and in the event of the absence of Bruce Grupe, Rodney Wiederspan, Director of Public Works, is hereby designated as the secondary Responsible Charge (RC) for pre-construction and construction phases, in accordance with the Project Program Agreement previously executed, the NDOR LPA Guidelines Manual for Federal-aid Projects, and all Federal, State and local laws, rules, regulations, policies and guidelines for the following Federal-aid transportation project:

- NDOR Project Number URB-5922(3),
- NDOR Control Number 42633,
- 39th Street from Pony Express Road to Avenue M Roadway Reconstruction.

City of Kearney, Nebraska assures and agrees that:

1) It has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject federal-aid project; this does not mean merely supervising, overseeing or delegating the various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision-making.

2) The RC is a full-time public employee.

3) The RC is fully qualified and has successfully completed required training to serve as a RC.

4) It will allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for federal-aid highway project funding.

5) It will not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this agreement.

6) It will provide necessary office space, materials and administrative support for the RC.

7) It will fully cooperate with, support and not unreasonably interfere with the day-to-day control of the RC concerning the acts necessary for making the project eligible for federal funding.

8) It will take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all federal and state requirements and policies applicable to federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.

9) It will take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the Nebraska Department of Roads must meet under 23 CFR 635.105.

10) It will comply with the conflict-of-interest requirements of 23 CFR 1.33.

11) It will notify NDOR immediately in the event the designated RC(s) will no longer be assigned to the project. A supplemental agreement designating a replacement RC may be required by NDOR.

12) It is ultimately responsible for complying with all federal and state requirements and policies applicable to federal-aid highway projects. This includes meeting all post-construction environmental commitments. The LPA understands that failure to meet any eligibility requirements for federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the LPA or its agents or representatives result in a finding that a project is ineligible for Federal funding, the LPA will be required to repay NDOR some or all previously paid Federal funds and any costs or expenses NDOR has incurred for the project, including but not limited to, those costs for the RC.

City of Kearney, Nebraska understands that the following are the duties of the RC:

a) Serve as the LPA's contact for issues or inquiries for Federal-aid projects assigned by the LPA;

b) Ensure that all applicable Federal, State and local laws, rules, regulations, policies and guidelines are followed during the development and construction of the project;

c) Know and follow the NDOR LPA Guidelines Manual for Federal-aid Projects;

d) Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision-making;

e) Ensure that the project plans and specifications are sealed, signed and dated by a professional engineer licensed in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under the direct supervision of a professional engineer licensed in the State of Nebraska (reference Neb. Rev. Stat. § 81-3445);

f) Competently manage and coordinate the project day-to-day operations, including all project-related decisions, on behalf of the LPA, which includes the LPA's governing body, staff and any extended staff dedicated to the project such as consulting engineers;

g) Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to NDOR and/or FHWA;

h) Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates;

i) Properly serve as the owner’s representative, and to visit the project site during construction on a frequency commensurate with the magnitude and complexity of the project;

j) Ensure that proper construction management processes have been developed and implemented for the project;

k) Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for;

l) Attend all required training including the annual workshop; and

m) Fulfill continuing education requirements as specified in the NDOR LPA Guidelines Manual for Federal-aid Projects.

PASSED AND APPROVED THIS 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

10. Approve the application for a Special Designated Permit submitted by COMSTOCK TRINITY PROPERTY MANAGEMENT, dba Riviera in connection with their Class C-44667 to dispense beer, wine and distilled spirits in the Museum of Nebraska Art, 2401 Central Avenue, on October 28, 2009 from 9:00 p.m. until 11:00 p.m. for a reception.

11. Approve the request submitted by the Kearney Family YMCA to conduct the Turkey Trot on November 26, 2009 beginning at 9:00 a.m. The route for the 2-Mile Run/Walk is to begin/finish at the YMCA, south on 6th Avenue, west on 35th Street, south on 7th Avenue, southeast through Harmon Park to the intersection of 29th Street and 5th Avenue, north on 5th Avenue, west to 33rd Street, north on 6th Avenue to YMCA. The route for the 5-Mile Run is to begin/end at YMCA, south on 6th Avenue, east on 33rd Street, south on 5th Avenue, west on 26th Street through Campus, north on 15th Avenue, west on hike/bike trail, north on Country Club Lane, east on 35th Street, north on 11th Avenue, east on 39th Street, north on 6th Avenue to YMCA.

12. Approve the application for a Special Designated License submitted by the World Theatre Foundation to dispense beer, wine and distilled spirits in the World Theatre building located at 2318 Central Avenue, on November 5, 2009 from 5:00 p.m. until 12:00 a.m. for a fund raiser.

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7552 – REZONING AT 1617 WEST 39TH STREET (PERTAINS TO

PUBLIC HEARING 1)

Council Member Clouse introduced Ordinance No. 7552, being Subsection 1 of Agenda Item VI to rezone from District R-2, Urban Residential Mixed-Density District to District C-O, Office District for property described as Lot 11, Kent's 2nd Subdivision, a replat of Lot 1 of Block 1, Dillon's Subdivision, a replat of two tracts of land comprising of all of Lots 70 and 71, Fairacres 2nd Subdivision, all in the City of Kearney, Buffalo County, Nebraska (1617 West 39th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7552 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7552 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7552 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7553 – REZONING VARIOUS PROPERTIES IN PIONEER PARK AREA (PERTAINS TO PUBLIC HEARING 3)

Council Member Lammers introduced Ordinance No. 7553, being Subsection 2 of Agenda Item VI to rezone from District R-3, Urban Residential Multi-Family (Medium Density) District and District M-1, Limited Industrial District to District R-1, Urban Residential Single-Family (Low Density) District for several tracts of property described as follows: the west 50 feet of the south 40 feet of Lot 5, the west 50 feet of Lot 6 all in Block 5; the west 80 feet of Lots 7, 8 and 9 of Block 6; the east 45 feet of Lots 1 and 2, the east 45 feet of the north 30 feet of Lot 3, the west 50 feet of the east 95 feet of Lots 1, 2 and 3, the south 20 feet of the east 45 feet of Lot 3 all in Block 7; the west 50 feet of Lot 1, the north half of the west 50 feet of Lot 2, the south 3 feet of Lot 3, Lot 4, Lot 5, Lot 7, the south half of Lot 8, Lot 10, the west half of Lots 11 and 12, all in Block 8; the south 5 feet of Lot 5, Lot 6, the west 90 feet of Lot 7, the west 90 feet of the south half of Lot 8, all in Block 9; Lot 1 except the westerly 65 feet, the east 90 feet of the south half of Lot 5, the east 90 feet of Lot 6, Lot 7, the south 6 feet of Lot 8, all in Block 10; Lots 1, 2, 10 of Block 14; Lot 2, the south 4 feet 4½ inches of the west 61 feet nine inches of Lot 3, Lot 4, the north 2 feet of Lot 7, the south 45 feet of Lot 8, the east 30

feet of the south 3 feet of the north 5 feet of Lot 8, the south 47 feet of Lot 11, the north 3 feet of Lot 11, Lot 12, all in Block 15; all in West Addition to the City of Kearney, Buffalo County, Nebraska; the west half of Lot 10, the west half of the south 11 feet of Lot 11 of Block 8; the west half of Lots 1 and 2, all of Lots 3, 4, the south 10 feet of Lot 5, the north 40 feet of Lot 5, all of Lots 6 and 8, all in Block 13; the east 92 feet of Lot 1, the west 48 feet of Lots 1 and 2, all of Lots 3, 4, 5, 7, 8, 9, the south half of Lot 10, the north half of Lot 10 and all of Lot 11, the east 50 feet of Lots 12 and 13, the west 90 feet of Lots 12 and 13, all in Block 14; Lots 1, 2, 4, 5, 6, 7, 8, 9, 11, 13, all in Block 15; Lots 1, 3, 4, 5, part of Lot 6, all of Lots 7, 11, 12, 13, 14, 15, all in Block 16; the south half of Lot 1, the north half of Lot 1, the north half of Lot 2, all of Lot 3, the south half of Lot 4, all of Lot 5, all in Block 17, all located in Ashland Addition to the City of Kearney, Buffalo County, Nebraska (612, 614, 620 West 20th Street, 309, 421, 512, 520, 614 West 21st Street, 502, 506 West 22nd Street, 2002, 2024 3rd Avenue, 1918, 1922, 2001, 2004 4th Avenue, 1926, 1930, 1935, 2001, 2004, 2008 5th Avenue, 1909, 1910, 1914, 1919, 1923, 1924, 2002, 2003, 2004, 2010, 2012, 2013 6th Avenue, 1904, 1907, 1908, 1909, 1910, 1912, 1915, 1922, 1928, 2005, 2115 7th Avenue, 1903, 1904, 1905, 1908, 1910, 1919, 1920, 1923, 1924, 1930 8th Avenue, 1902, 1910, 1915, 1917, 1919, 1920, 1921, 1923, 1924, 1926, 1928 9th Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7553 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7553 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7553 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

MANAGER APPLICATION FOR OLD CHICAGO

Mayor Clouse opened for discussion the Manager Application for Robert Fraser submitted by Hi-Brand Kearney, LLC, dba Old Chicago in connection with their Class IK-66969 catering liquor license located at 115 South 2nd Avenue.

Robert Fraser, presented this matter to the Council. Old Chicago has not had any violations during the sting operations. This will be a temporary situation until they hire a

general manager who will then apply as the new manager.

Moved by Buschkoetter seconded by Clouse to approve the Manager Application for Robert Fraser submitted by Hi-Brand Kearney, LLC, dba Old Chicago in connection with their Class IK-66969 catering liquor license located at 115 South 2nd Avenue. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

SENIOR SERVICES ADVISORY BOARD APPOINTMENTS

Mayor Clouse opened for discussion the appointment of the following to serve as members on the Senior Services Advisory Board: Jackie Purdy, Bob Kennedy, Doris Maurer, Sue Wright and Carol Reed and to consider approval of Resolution No. 2009-173. The Peterson Senior Activity Center is nearing completion with an expected public opening date of January 4, 2010. On September 22, 2009 the Council passed and approved Ordinance No. 7551 creating the Senior Services Advisory Board to begin development of services and programs for the senior citizens and to promote and stimulate public interest. The Board will consist of five members and must be age 50 or older. The City advertised the opening in the Kearney Hub, as well as sending out a Press Release. Expression of Interest forms were due October 1, 2009.

He has recommended the following appointments:

- Bob Kennedy appointed to July 31, 2012
- Doris Maurer appointed to July 31, 2011
- Jackie Purdy appointed to July 31, 2012
- Carol Reed appointed to July 31, 2012
- Sue Wright appointed to July 31, 2011

Moved by Clouse seconded by Kearney to approve the appointment of the following to serve as members on the Senior Services Advisory Board: Jackie Purdy, Bob Kennedy, Doris Maurer, Sue Wright and Carol Reed and approve **Resolution No. 2009-173**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2009-173

WHEREAS, Resolution No. 2005-96 calls for Citizen Board/Commission member appointments to be made by resolution submitted by the Mayor to the City Council for final approval; and

WHEREAS, on September 22, 2009 the Council passed and approved Ordinance No. 7551 creating the Senior Services Advisory Board; and

WHEREAS, the City advertised and accepted Expression of Interest forms for persons interested in serving on said Board.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the following be and are hereby appointed to serve on the Senior Services Advisory Board:

- Bob Kennedy appointed to July 31, 2012

- Doris Maurer appointed to July 31, 2011
- Jackie Purdy appointed to July 31, 2012
- Carol Reed appointed to July 31, 2012
- Sue Wright appointed to July 31, 2011

BE IT FURTHER RESOLVED that this resolution shall be in full force and effect from and after its adoption.

PASSED AND APPROVED THIS 13TH DAY OF OCTOBER, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

OPEN ACCOUNT CLAIMS: NPPD - \$333.47, PLATTE VALLEY STATE BANK - \$96,713.89, SCHOOL DISTRICT #7 - \$4,192.80

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$96,713.89 payable to Platte Valley State Bank, and in the amount of \$333.47 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Lammers, Kearney, Buschkoetter. Nay: None. Clouse and Lear abstained. Motion carried.

Moved by Lear seconded by Clouse that Open Account Claims in the amount of \$4,192.80 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Lear. Nay: None. Buschkoetter and Lammers abstained. Motion carried.

VII. REPORTS

KEARNEY CATHOLICE GOLF TEAM

Council member Buschkoetter congratulated the Kearney Catholic girls golf team that finished second in the state today.

KEARNEY HIGH STUDENT BODY RECOGNIZING CANCER AWARENESS

Council member Buschkoetter commended that there were a phenomenal number of kids who participated in the cancer fund raiser. They raised \$15,000.00. This was a student led event which shows kids can get things done.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 7:26 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

ATTEST:

STANLEY A. CLOUSE

**PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR**

**MICHAELLE E. TREMBLY
CITY CLERK**