

*Kearney, Nebraska  
July 9, 2013  
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 July 9, 2013, in the Council Chambers at City Hall. Present were: Randy Buschkoetter, Vice-President of the Council; Michaelle Trembly, City Clerk; Council Members Bruce Lear and Jonathan Nikkila. Absent: Stanley Clouse and Bob Lammers. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance; 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: Jim Bunger, Steve Altmaier from KGFW Radio, Adam Konruff 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**

### **MOMENT OF SILENCE**

The Council held a moment of silence.

### **PLEDGE OF ALLEGIANCE**

The Council members led the audience in the Pledge of Allegiance.

### **ANNOUNCEMENT**

Vice-President Buschkoetter 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 on the wall of the Council Chambers.

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

## **III. PUBLIC HEARINGS**

There were no Public Hearings.

## IV. CONSENT AGENDA

Moved by Nikkila seconded by Lear that Subsections 1 through 14 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Buschkoetter, Nikkila, Lear. Nay: None. Clouse and Lammers absent. Motion carried.

1. Approve Minutes of Regular Meeting held June 25, 2013.

2. Approve the following Claims:

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

3C Fencing \$5,880.00 co; Ace Irr \$140.00 co; Adams,J \$41.32 smcs; Agri Service Center \$2,540.73 smcs; Alamar Uniforms \$50.85 smcs; All Makes Office \$6,780.00 co; Amer Fence \$1,285.00 smcs; American Library Assoc. \$45.00 smcs; Anderson Ford Lincoln \$32,760.00 co; Ask Supply \$785.69 smcs; Aurora Coop \$54.40 smcs; Awards Unlimited \$48.00 smcs; Baker & Taylor \$4,156.78 smcs; Bamford \$1,402.66 smcs; Blessing \$371,356.65 co; Bluecross Blueshield \$35,117.12 smcs; Bosselman \$3,880.43 smcs; Brabac,J \$32.91 smcs; Broadfoot's \$280.00 smcs; Brochart,B \$21.05 smcs; Brophy,K \$32.91 smcs; Bruha,S \$200.00 smcs; Brungardt Engineering \$1,500.00 co; Buckle \$54.00 smcs; Buffalo Co Board of Sup \$9,486.34 co; Buffalo Co Reg Deeds \$290.00 smcs; Buffalo Co Treasurer \$50.00 co; Builders Warehouse \$280.62 smcs,co; Burns,N \$28.73 smcs; Cash-Wa \$1,154.85 smcs; Center Point Large Print \$284.74 smcs; Central Valley Irr \$752.65 smcs; Champ,L \$23.58 smcs; Charter \$181.61 smcs; Chesterman \$3,334.50 smcs; Christensen,H \$52.02 smcs; City of Ky \$43,092.08 smcs,co; City of Ky \$299,693.90 ps; Clevenger Petroleum \$97.50 smcs; CNA Surety \$40.00 smcs; Community Action Partner \$494.69 smcs,co; Consec Life Ins \$19.00 ps; Consolidated Management \$213.50 smcs; Construction Rental \$260.00 co; Cornhusker State Ind \$525.00 co; Czaplewski,M \$68.00 smcs; Dave Waggoner Plbg \$788.51 smcs; Depository Trust Co \$1,442,217.33 ds; Dept of the Treasury \$628.00 smcs; Deterdings \$21,614.03 smcs; Dingle,J \$27.36 smcs; Dowhy Towing \$200.00 smcs; DPC Ind \$5,533.35 smcs; Dutton-Lainson \$90.76 smcs; Eakes \$12,837.69 smcs,co; Eirich,T \$50.00 smcs; Elliott Equipment \$4,341.78 smcs; Ellis,D \$28.81 smcs; Evans,M \$94.00 smcs; Fink,E \$25.96 smcs; Fireguard \$1,054.87 smcs; First Presbyterian Church \$6.95 smcs; Fort Bend Services \$5,653.44 smcs; Frontier \$55.93 smcs; Garrett Tires \$567.84 smcs; GD Concrete \$26,380.00 co; Get Tanked \$260.00 smcs; Gray,C \$269.25 smcs; Great Plains Safety \$300.00 smcs; H&H Distributing \$2,398.36 smcs; Harshbarger,K \$19.84 smcs; Hasty,D \$75.00 smcs; HD Supply \$160.50 smcs; Heartland Refrigeration \$394.53 smcs; Hilgenkamp,M \$150.00 smcs; Hometown Leasing \$710.83 smcs,co; Horizon Middle School \$40.00 smcs; ICMA RC \$7,696.40 ps; Ingram,J \$150.00 smcs; IRS \$277,281.20 ps; Investment Property \$1,500.00 co; James,D \$180.00 smcs; JCB Enterprises \$52.50 smcs; John Deere Financial \$63.75 smcs; Johnson Service \$15,225.00 smcs; Johnston,D \$100.00 smcs; Jones Automotive \$198.82 co; Ky Crete & Block \$49.22 smcs; Ky Humane Society \$6,825.00 smcs; Ky United Way \$610.04 ps; Keiser,L \$6.95 smcs; Kirkham Michael \$30,871.22

smcs,co; Konica Minolta \$1,187.59 smcs; Kowalek,G \$4,168.14 smcs; Krewson,J \$13.46 smcs; Krull Ins \$1,950.00 smcs; Lattice Communications \$9,925.00 smcs; Laue,D \$75.00 smcs; League of NE Municipalities \$274.00 smcs; Mac Tools \$34.99 smcs; Magic Cleaning \$4,060.00 smcs; Mail Express \$4,575.54 smcs; Maldonado,C \$26.73 smcs; Matzek,M \$32.07 smcs; McNeil Fencing \$3,247.20 smcs; Mellen & Associates \$3,072.00 co; Menards \$87.96 smcs,co; Merryman Center \$270.00 smcs; Metals Doors \$401.26 smcs; Metlife \$7,773.53 ps; Mid-NE Lubricants \$146.00 smcs; Milco Environmental \$772.00 smcs ;Miller & Associates \$9,881.50 co; Miller Signs \$300.00 co; Mimick,Y \$150.00 smcs; Municipal Emergency \$830.00 smcs; Navigator Motorcoaches \$460.00 smcs; NE Child Support \$4,569.32 ps; NE Crime Commission \$37.50 smcs; NE Dept of Revenue \$89,277.15 smcs,ps; NE Humanities Council \$75.00 smcs; NE Machinery \$1,762.74 smcs; NE Peterbilt \$215,000.00 co; NE State Fair \$555.00 smcs; NE Wastewater Operators \$20.00 smcs; NEland Distributors \$3,262.59 smcs; Northeast Wisconsin \$350.00 smcs; Northwestern Energy \$8,179.54 smcs; NP Realty \$376.00 co; One Call Concepts \$480.58 smcs; Osborn,T \$4.67 smcs; Overhead Door \$131.85 smcs; Owens,R \$7.88 smcs; Pape,E \$50.00 smcs; Paramount \$160.84 smcs; Park & Recreation \$4.14 smcs; Parker,D \$75.00 smcs; Payflex \$544.00 smcs,ps; Pitney Bowes \$65.48 smcs; Platte Valley Comm. \$858.14 smcs; Platte Valley Laboratories \$637.50 smcs; Presto-X \$197.55 smcs; Recorded Books \$2,057.39 smcs; RNDC-Eagle Division \$460.15 smcs; RNDC-Falcon Division \$597.59 smcs; Robinson,J \$8.73 smcs; Ruth,E \$1.44 smcs; S&B Heating \$678.55 smcs; Sapp Bros \$28,323.30 smcs; Schaad,C \$10.77 smcs; Schindler Elevator \$359.40 smcs; School District #7 \$64,362.35 smcs; Sherwin Williams \$368.32 smcs; Sign Center \$269.00 smcs,ps; SOS Portable \$305.00 smcs; Spease,K \$27.34 smcs; St Fire Marshal \$800.00 smcs; St of NE/AS Central \$3,878.86 smcs; Steinbrink Landscaping \$750.00 smcs; Sterling Distributing \$860.40 smcs; Sun Life Financial \$62,641.14 smcs; Tacha,J \$50.00 smcs; Talmon,K \$28.41 smcs; Team Effort \$96.33 smcs; Thompson,K \$35.18 smcs; Tielke's Sandwiches \$134.67 smcs; Titleist \$153.89 smcs; Trade Well Pallet \$6,920.00 smcs; Tri-County Glass \$13,222.17 smcs,co; Turner Body Shop \$233.00 smcs; Tye & Rademacher \$11,148.55 smcs; Union Bank \$112,275.61 ps; Van Diest Supply \$175.00 smcs; Vasquez,C \$40.00 smcs; Verizon \$1,040.28 smcs; Village Uniform \$668.05 smcs; Wells Fargo \$53,598.20 ds; West Villa Animal \$195.78 smcs; Young,M \$68.00 smcs; Younger,D \$95.00 smcs; Zimmerman Printers \$906.90 smcs; Payroll Ending 6-29-2013 - \$412,805.53. 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.** Adopt **Resolution No. 2013-123** approving the Employment Agreement between the City of Kearney and Michael Morgan.

### **RESOLUTION NO. 2013-123**

WHEREAS, the City Council of the City of Kearney, Nebraska, do hereby fix, prescribe and limit salary and wages to be paid by this City to the City Manager, pursuant to the authority granted in Section 1-301 of the Code of the City of Kearney, Nebraska, and Section 19-620 of the Nebraska Revised Statutes.

NOW, THEREFORE, BE IT RESOLVED by the Vice-President and Council of the City of Kearney, Nebraska, that the City Manager continue to be paid an annual salary of One Hundred Sixty-eight Thousand Seven Hundred Twenty-four Dollars

(\$168,724.00) effective July 1, 2013; said salary to be paid bi-weekly from any City funds in such proportionate amounts as the City Manager may determine.

BE IT FURTHER RESOLVED that the Vice-President of the Council be and is hereby authorized and directed to execute the Employment Agreement.

PASSED AND APPROVED THIS 9TH DAY OF JULY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

4. Adopt **Resolution No. 2013-124** establishing a retirement health savings plan for City management.

**RESOLUTION NO. 2013-124**

RESOLUTION FOR ADOPTION OF THE VANTAGECARE  
RETIREMENT HEALTH SAVINGS (RHS) PLAN

PLAN NUMBER: \_\_\_\_\_

NAME OF EMPLOYER: CITY OF KEARNEY, NEBRASKA

WHEREAS, the City of Kearney has employees rendering valuable services; and  
WHEREAS, the establishment of a retiree health savings plan for such employees serves the interests of the City of Kearney by enabling it to provide reasonable security regarding such employees' health needs during retirement, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the City of Kearney has determined that the establishment of the retiree health savings plan (the "Plan") serves the above objectives.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, to adopt the Plan in the form of the ICMA Retirement Corporation's VantageCare Retirement Health Savings program.

BE IT FURTHER RESOLVED that the assets of the Plan shall be held in trust with the City of Kearney, Nebraska serving as trustee for the exclusive benefit of Plan participants and their survivors, and the assets of the Plan shall not be diverted to any other purpose prior to the satisfaction of all liabilities of the Plan. The City of Kearney has executed the Declaration of Trust of the City of Kearney Integral Part Trust in the form of the model trust made available by the ICMA Retirement Corporation.

BE IT FURTHER RESOLVED that the Director of Finance shall be the coordinator and contact for the Plan and shall receive necessary reports, notices, etc.

PASSED AND APPROVED THIS 9TH DAY OF JULY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

5. Adopt **Resolution No. 2013-125** amending the City of Kearney, Nebraska Police Officers Pension Plan by adopting certain changes enacted under the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and

the Worker, Retiree, and Employer Recovery Act of 2008.

### **RESOLUTION NO. 2013-125**

BE IT RESOLVED BY THE VICE-PRESIDENT AND THE CITY COUNCIL OF KEARNEY, NEBRASKA:

Adoption of Amendment and Restatement of the City of Kearney, Nebraska Police Officers' Pension Plan:

NOW, BE IT RESOLVED that the City shall amend and restate and it hereby does adopt, the amended and restated Kearney, Nebraska Police Officers' Pension Plan (the "Pension Plan") in the form of the Plan document attached hereto and by this reference fully incorporated herein. The purpose of said Amendment is to adopt certain changes enacted under the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree, and Employer Recovery Act of 2008, and to adopt such other changes required by applicable law or as otherwise determined to be necessary and appropriate by the City.

Authorizations:

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor and other appropriate elected officials and officers of the City of Kearney shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolutions, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the Pension Plan, including such actions as may be necessary or appropriate to achieve and maintain qualification of the Pension Plan under Section 401(a) of the Internal Revenue Code of 1986, as amended, as said sections apply to government plans.

PASSED AND APPROVED THIS 9TH DAY OF JULY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

**6.** Adopt **Resolution No. 2013-126** amending the City of Kearney, Nebraska Firefighters' Pension Plan by adopting certain changes enacted under the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree, and Employer Recovery Act of 2008.

### **RESOLUTION NO. 2013-126**

BE IT RESOLVED BY THE VICE-PRESIDENT AND THE CITY COUNCIL OF KEARNEY, NEBRASKA:

Adoption of Amendment and Restatement of the City of Kearney, Nebraska Firefighters' Pension Plan:

NOW, BE IT RESOLVED that the City shall amend and restate and it hereby does adopt, the amended and restated Kearney, Nebraska Firefighters' Pension Plan (the "Pension Plan") in the form of the Plan document attached hereto and by this reference fully incorporated herein. The purpose of said Amendment is to adopt certain changes enacted under the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree, and Employer Recovery Act of 2008,

and to adopt such other changes required by applicable law or as otherwise determined to be necessary and appropriate by the City.

Authorizations:

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor and other appropriate elected officials and officers of the City of Kearney shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolutions, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the Pension Plan, including such actions as may be necessary or appropriate to achieve and maintain qualification of the Pension Plan under Section 401(a) of the Internal Revenue Code of 1986, as amended, as said sections apply to government plans.

PASSED AND APPROVED THIS 9TH DAY OF JULY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

7. Adopt **Resolution No. 2013-127** approving the Developer Constructed Infrastructure Agreement for Remington Heights Addition for the construction of water, sanitary sewer, paving and storm sewer improvements.

**RESOLUTION NO. 2013-127**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA that the agreement entitled "Developer Constructed Infrastructure Agreement for Remington Heights Addition" between the City of Kearney and TWL LLC, a Nebraska Limited Liability Company, to construct water, sanitary sewer, paving and storm sewer improvements to serve Remington Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska be and is hereby accepted and approved. The Agreement, marked as Exhibit 1 is attached hereto, negotiated with David Terveen to construct said water, sanitary sewer, paving and storm sewer as stated above.

BE IT FURTHER RESOLVED that the Vice-President of the Council be and is hereby authorized and directed to execute the same agreement on behalf of the City of Kearney.

PASSED AND APPROVED THIS 9TH DAY OF JULY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

8. Approve the Plans and Specifications for the 2013 Part 1 Improvements consisting of Paving Improvement District No. 2012-962, Water District No. 2013-570, Sanitary Sewer District No. 2013-508 for 50th Street from 11th Avenue to 17th Avenue, 51st Street Place from 15th Avenue Place to 16th Avenue Place, all of 14th Avenue Place, all of 15th Avenue Place, all of 16th Avenue Place, all of Loveland Drive all in Fountain Hills Fifth Addition, 11th Avenue from 48th Street north to the north lot line of Lot 10 of Block 3, Fountain Hills Third Addition; Sanitary Sewer Connection District No. 2013-1 beginning at the intersection of the centerlines of 16th Avenue Place and 51st

Street Place as platted in Fountain Hills Fifth Addition west to the west line of 17th Avenue, thence north to the northeast corner of Lot 1, Smith Addition; and Sanitary Sewer Connection District No. 2013-2 in a sanitary sewer easement located in part of Outlot A, Fountain Hills Sixth Addition; and part of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; and 11th Avenue as platted in Fountain Hills Second Addition and set the bid opening date for August 7, 2013 at 2:00 p.m.

9. Approve the Plans and Specifications for the 2013 Part 4 Improvements consisting of Paving Improvement District No. 2013-963, Sanitary Sewer District No. 2013-509 for Talmadge Street from the west line of 6th Avenue west a distance of 532.09 feet and for 6th Avenue from the north line of Talmadge Street north a distance of 366.09 feet, Water District No. 2013-572 in Talmadge Street from the west line of 6th Avenue west a distance of 532.09 feet and set the bid opening date for August 6, 2013 at 2:00 p.m.

10. Approve the Plans and Specifications for the 2013 Part 7 Improvements; Downtown Lighting and set the bid opening date for August 7, 2013 at 2:00 p.m.

11. Approve the recommendation from the Downtown Improvement Board to temporarily close ten parking spaces located on the southwest corner of Central Avenue and 24th Street, directly north of the World Theater building, on Wednesday, July 17, 2013 from 7:00 a.m. until Thursday, July 18, 2013 at 12:00 a.m.

12. Approve the temporary closing of 1st Avenue from 25th Street to Railroad Street and Railroad Street from 5th Avenue to Avenue E in conjunction with Cruise Nite parade on July 20, 2013 beginning at 5:00 p.m. Parking on these streets will be prohibited on July 20, 2013 beginning at 2:00 a.m.

13. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits inside the Museum of Nebraska Art, 2401 Central Avenue, on August 2, 2013 from 5:00 p.m. until 11:00 p.m. for a reunion.

14. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on August 10, 2013 from 4:00 p.m. until 12:00 a.m. for a reception.

## **V. CONSENT AGENDA ORDINANCES**

None.

## **VI. REGULAR AGENDA**

**REVOKE COTTONMILL MOBILE HOME PARK**

Vice-President Buschkoetter stated Regular Agenda Item is to consider revoking the manufactured home court license of Cottonmill Mobile Home Park located at 3635 Cottonmill Avenue. The City has been notified by Mr. Brungardt and Mr. Parker on the efforts to bring the mobile home court into compliance. Mr. Parker has the financing as well as a contract for the new system in place. NDEQ needs to approve the new septic system plan prior to installation and that should happen after July 15.

Moved by Lear seconded by Buschkoetter to grant an extension until August 1, 2013 to allow Cottonmill Mobile Home Park located at 3635 Cottonmill Avenue additional time in which to receive approval from NDEQ on installing a new septic/leach field system. Roll call resulted as follows: Aye: Buschkoetter, Lear, Nikkila. Nay: None. Clouse and Lammers absent. Motion carried.

### **BIG BOY REDEVELOPMENT PROJECT; NORTH OF 20TH STREET AND WEST OF AVENUE N**

Vice-President Buschkoetter stated Regular Agenda Item 2 is the redevelopment project submitted by Big Boy LLC for Redevelopment Area #3 for an area located north of 20th Street and west of Avenue N. The City received notification from the applicant that this matter is being permanently withdrawn. Therefore, no action is required.

### **AUDIT TELECOMMUNICATION COMPANIES; OCCUPATION TAXES**

Vice-President Buschkoetter opened for discussion the Contingent Fee Professional Services Agreement between the City of Kearney and Allixa Consulting, Inc. for the review of telecommunication companies records and determine whether or not the correct amount of occupation tax has been paid and consider Resolution No. 2013-129.

City Attorney Michael Tye presented this matter to the Council. As a part of City Code and franchise agreements the City has with telecommunication companies, they are obligated to pay an occupation tax for gross receipts for customers that are within the City of Kearney and this professional services agreement would hire that firm for the purposes of reviewing the records, auditing their records to determine if there is any additional tax that may be owed. This same firm has been hired by Lincoln, for example to do this and have a found a significant amount of taxes that had not been paid by companies in the Lincoln area and there are a number of communities that have looked at this and are also looking at hiring this same firm because of their expertise in the telecommunications field. Bellevue has hired them and Lexington is looking at it as well as several other communities. It is a contingent fee agreement so what they get paid will be based on what they might find in the audit.

Vice-President Buschkoetter asked so if they find nothing, the City is out nothing. Mr. Tye confirmed their fee is based entirely on whatever they might find and actually the Code language is very straight forward; it is simply based on gross receipts.

Vice-President Buschkoetter asked that in the future, every "X" number of years or so will the City go through the same process. City Manager Michael Morgan stated several communities wanted to work together to come up with a standard agreement that all the

communities could put forth. He did not believe Kearney would do it on a frequent basis especially with the way our language is written but wanted to go ahead and have an audit done to see if there is something there.

City Attorney stated if they are not calculating it at an appropriate fashion that the audit might discover that and maybe correct how they do it in the future. City Manager stated it is an interesting system; there is no true check and balance the way it is done today. Council Member Nikkila stated it sounds like the audit is the only check and City Manager agreed.

Council Member Nikkila asked about any kind of penalty when a company does not pay their taxes as they should have. City Attorney stated in this situation it is basically an obligation to pay those back taxes. There is not any penalty built into the Code at this point. It is something to be looked at in the future. Essentially, it is a self-reporting process but it is not anything in great detail. It is a reporting of gross number and then what is getting paid. Our franchise agreement does allow us to do periodic audits so this process is something that the franchise contemplates that ability to go and look at their records and gain access to their records so that we know they are paying it correctly.

Council Member Nikkila asked if these companies owe taxes to the State too for these types of services. City Attorney stated there may be but was not for sure.

Mr. Tye stated Lincoln's effort resulted in approximately \$1 million in past due taxes that had not been paid. Obviously, that is a larger city and a larger number of uses but they discovered some discrepancies.

Vice-President Buschkoetter asked if there was a limit on how far they go back. City Attorney stated he believed it was five years. This agreement states that they will go back five years. City Manager stated if it is determined there is a significant amount, the City would probably set a precedent for the future for auditing.

Moved by Buschkoetter seconded by Nikkila to adopt **Resolution No. 2013-129** approving the Contingent Fee Professional Services Agreement between the City of Kearney and Allixa Consulting, Inc. for the review of telecommunication companies records and determine whether or not the correct amount of occupation tax has been paid. Roll call resulted as follows: Aye: Buschkoetter, Lear, Nikkila. Nay: None. Clouse and Lammers absent. Motion carried.

### **RESOLUTION NO. 2013-129**

WHEREAS, all companies providing telecommunications services within the City of Kearney are required to pay a telecommunication occupation tax as set forth in the City's Comprehensive Fee Schedule on all gross receipts; and

WHEREAS, companies are required to pay this occupation tax on a quarterly basis and are subject to audit of their records by the City of Kearney; and

WHEREAS, the City of Kearney wants to hire an auditing firm to review telecommunication companies records and determine whether or not the correct amount of occupation tax has been paid.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the City Manager is authorized and directed to execute the Contingent Fee Professional Services Agreement between the City of Kearney and Allixa Consulting, Inc. to review telecommunication companies records and determine whether or not the correct amount of occupation tax has been paid. The Contingent Fee Professional Services Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 9TH DAY OF JULY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

**ORDINANCE NO. 7814 CREATING PAVING DISTRICT NO. 2013-963**

Vice-President Buschkoetter stated that Ordinance Nos. 7814, 7815 and 7816 can be voted on together. These ordinances creating paving, water and sewer districts for Talmadge Street and 6th Avenue. With the absence of Mayor Clouse and Council member Lammers, the ordinances cannot be suspended and will be placed on first reading.

Moved by Nikkila seconded by Lear that Ordinance No. 7814 creating Paving Improvement District No. 2013-963 for Talmadge Street from the west line of 6th Avenue west a distance of 532.09 feet and for 6th Avenue from the north line of Talmadge Street north a distance of 366.09 feet be placed on first reading by title only. Roll call resulted as follows: Aye: Buschkoetter, Lear, Nikkila. Nay: None. Clouse and Lammers absent. Motion carried.

City Clerk read Ordinance No. 7814 by title.

**ORDINANCE NO. 7815 CREATING WATER DISTRICT NO. 2013-572**

Vice-President Buschkoetter stated that Ordinance Nos. 7814, 7815 and 7816 can be voted on together. These ordinances creating paving, water and sewer districts for Talmadge Street and 6th Avenue. With the absence of Mayor Clouse and Council member Lammers, the ordinances cannot be suspended and will be placed on first reading.

Moved by Nikkila seconded by Lear that Ordinance No. 7815 creating Water District No. 2013-572 in Talmadge Street from the west line of 6th Avenue west a distance of 532.09 feet be placed on first reading by title only. Roll call resulted as follows: Aye: Buschkoetter, Lear, Nikkila. Nay: None. Clouse and Lammers absent. Motion carried.

City Clerk read Ordinance No. 7815 by title.

**ORDINANCE NO. 7816 CREATING SANITARY SEWER DISTRICT NO. 2013-509**

Vice-President Buschkoetter stated that Ordinance Nos. 7814, 7815 and 7816 can be voted on together. These ordinances creating paving, water and sewer districts for

Talmadge Street and 6th Avenue. With the absence of Mayor Clouse and Council member Lammers, the ordinances cannot be suspended and will be placed on first reading.

Moved by Nikkila seconded by Lear that Ordinance No. 7816 creating Sanitary Sewer District No. 2013-509 for Talmadge Street from the west line of 6th Avenue west a distance of 532.09 feet and for 6th Avenue from the north line of Talmadge Street north a distance of 366.09 feet be placed on first reading by title only. Roll call resulted as follows: Aye: Buschkoetter, Lear, Nikkila. Nay: None. Clouse and Lammers absent. Motion carried.

City Clerk read Ordinance No. 7816 by title.

**OPEN ACCOUNT CLAIMS**

There were no Open Account Claims.

**VII. REPORTS**

Council member Nikkila commended the Park & Recreation Department on the sponsorship of the Community Olympics. It was another successful year.

**VIII. ADJOURN**

Moved by Lear seconded by Buschkoetter that Council adjourn at 7:14 p.m. Roll call resulted as follows: Aye: Buschkoetter, Nikkila, Lear. Nay: None. Clouse and Lammers absent. Motion carried.

ATTEST:

\_\_\_\_\_  
**RANDY BUSCHKOETTER**  
**VICE-PRESIDENT OF THE COUNCIL**

\_\_\_\_\_  
**MICHAELLE E. TREMBLY**  
**CITY CLERK**