

Kearney, Nebraska
September 27, 2016
5:30 p.m.

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 5:30 p.m. on September 27, 2016 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, Bob Lammers and Jonathan Nikkila. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance; Paul Briseno, Assistant City Manager; Tony Jelinek, Director of Utilities; Rod Wiederspan, Director of Public Works; Shawna Erbsen, Administrative Services Director; and Dan Lillis, Engineering Assistant were also present. Some of the citizens present in the audience included: Alex Gangwish, 10 UNK students, Steve Altmaier from KGFW Radio, Jessica Kokesh 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/MOMENT OF SILENCE

With the absence of a minister, the Council held a moment of silence.

PLEDGE OF ALLEGIANCE

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 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

DEVELOPMENT OF HILLTOP MALL SECOND LOCATED AT 4915 2ND AVENUE

Mayor Clouse stated the public hearing on the Applications submitted by Miller & Associates for MFP Mid-America Shopping Centers, LLC for (1) the vacation of Lot 1, Hilltop Mall Subdivision; and (2) the Final Plat for Hilltop Mall Second, an addition to the City of Kearney for a tract of land being Lot 1 (to be vacated), Hilltop Mall Subdivision, a subdivision to the City of Kearney in the Southwest Quarter of the Northwest Quarter of Section 25, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska will remain on the table until October 11, 2016.

DEVELOPMENT PLANS FOR PROPERTY LOCATED NORTHEAST OF 2ND AVENUE AND 48TH STREET, WEST OF HERBERGERS

Mayor Clouse stated Application submitted by Miller & Associates for MFP Mid-America Shopping Centers, LLC for Planned District Development Plan Approval for the construction of a commercial building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as a tract of land being proposed Lot 3, Hilltop Mall Second, an addition to the City of Kearney, Buffalo County, Nebraska will remain on the table until October 11, 2016.

BOARD OF EQUALIZATION

Mayor Clouse opened the public hearing for the Council to meet as the Board of Equalization for the purpose of equalizing and levying special assessments on the lots and parcels of land in connection with Paving Improvement District No. 2015-975 and consider Resolution No. 2016-158.

On June 23, 2015 the City Council adopted Ordinance No. 8004 creating Paving Improvement District No. 2015-975 for Landon Street from Central Avenue east to the east line of Lot 1, Gangwish Addition.

After completion of the project, the City hired a title company to complete property abstracts so that assessments could be levied. Attached is the schedule showing the assessments for each parcel for said paving district. The district has been completed and, in order to satisfy state law, when paving districts are completed, the City Council must act as a Board of Equalization to levy assessments on properties so benefited. Property owners will then be required to pay the first installment within 50 days (November 16) or they can pay the assessment over a 10-year period.

Roger Hoffman, 1104 East 56th Street, Unit 19 addressed the Council. He owns Lots 4, 5 and 6 of Riverside Addition asked about the paving assessment and how that is assessed. City Manager Michael Morgan stated by linear front footage. Mr. Hoffman asked is that amount all due at one time. City Clerk stated no that the City will send out notices on Wednesday setting forth the option to pay the first payment or any amount above that within 50 days and then it will be assessed over 10 years with the interest being five percent. The City will also send annual notices.

Mr. Hoffman asked if he gifts this property to a 501C3 charity, is it still taxable or how does that work. City Manager stated it is not a tax; it is a cost for paving so yes it will still be assessed. City Attorney Mike Tye stated if you gifted it to a charitable organization the assessments are still due. Whoever owns the property is still obligated to pay those. If you gifted it to a tax exempt organization if that organization qualifies with the County then they would not be obligated to pay property taxes. It does not have any affect on the paving or sewer/water assessments.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Nikkila to close the hearing for the Council to meet as the Board of Equalization and adopt **Resolution No. 2016-158** levying special assessments on the lots and parcels of land in connection with Paving Improvement District No. 2015-975. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

RESOLUTION NO. 2016-158

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

Section 1. The President and Council find and determine that the street in Paving Improvement District No. 2015-975 has been improved by paving, curbing and guttering and incidental work, that none of the properties listed, which list is marked Exhibit "A" and made a part hereof by reference, were damaged thereby and that the amounts shown in the attached schedule do not exceed the amounts which each of said lots and parcels of ground were specially benefited by said improvements and the total amount of said special assessments does not exceed the costs of said improvements exclusive of the cost of the intersections and areas formed by the crossing of streets, avenues and alleys as heretofore determined by the Mayor and City Council.

Section 2. Notice of the time and purpose of hearing on special assessments for equalizing said special assessments has been published as provided by law in the Kearney Hub, and a copy of said notice mailed by certified mail to each party known to have a direct legal interest therein.

Section 3. That there be and there is hereby levied against each lot and parcel of ground set out in Exhibit "A" the amount set opposite each lot and parcel of ground. Said assessments for Paving Improvement District No. 2015-975 shall become delinquent as follows:

- 1/10th fifty days after date of this Resolution
- 1/10th one year after date of this Resolution
- 1/10th two years after date of this Resolution
- 1/10th three years after date of this Resolution
- 1/10th four years after date of this Resolution
- 1/10th five years after date of this Resolution
- 1/10th six years after date of this Resolution
- 1/10th seven years after date of this Resolution
- 1/10th eight years after date of this Resolution
- 1/10th nine years after date of this Resolution

Each installment, except the first, shall draw interest at the rate of 5.0 per centum per annum from date of this Resolution until the same become delinquent and after they become delinquent at the rate of 14.0 per centum per annum until paid.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

IV. CONSENT AGENDA

Moved by Nikkila seconded by Lear that Subsections 1 through 27 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held September 13, 2016.

2. Approve the following Claims:

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

3597 Enterprise \$1,201.80 smcs; 4Imprint \$2,612.41 smcs; Ace Tools \$221.62 smcs; Adamson,T \$8.00 smcs; Adobe \$32.09 smcs; Advance Auto Parts \$8.78 smcs; Adventure Enterprise \$125.00 smcs; Agri Coop \$2,221.31 smcs; Alafaghani,A \$18.82 smcs; Alamar \$9,124.50 smcs; Alert All \$1,625.00 smcs; Alertshirt \$2,513.37 smcs; All Amer Sewer \$150.00 smcs; All Makes Auto \$307.15 smcs; Allgent Travel \$11,115.52 smcs; Amazon \$6,674.26 smcs,co; Amer First Aid \$954.21 smcs; Amer Library \$187.00 smcs; Amer Vending \$3,178.50 co; Anderson Bros \$306.62 smcs; Apple Market \$23.76 smcs; Apple Online \$362.73 smcs; Arc Network \$175.00 smcs; Artisans \$285.00 smcs; Ask Supply \$1,266.45 smcs; Associated Bag \$375.95 smcs; Attic \$2,400.00 smcs; Aussie Hydraulic \$140.41 smcs; Baker & Taylor \$18,027.30 smcs; Baltic Networks \$55.60 co; Bellamy,M \$393.46 smcs; Bells Construction \$750.00 co; Best Buy \$112.58 smcs; Blackburn Mfg \$169.44 smcs; Blackstone Audio Books \$45.00 smcs; Blick Art Material \$215.71 smcs; BlueCross/BlueShield \$107,832.39 smcs; Boardtronics \$733.44 smcs; Book Page \$720.00 smcs; Bosselman Energy \$7,023.03 smcs; Bowman,R \$18.75 smcs; Brand,M \$18.71 smcs; Brilliance Publishing \$359.77 smcs; Broadfoot's \$4,372.00 smcs,co; Brodart Supplies \$53.58 smcs; Brozek,E \$126.31 smcs; Bruha,S \$520.00 smcs; Buffalo Co Treasurer \$20.50 smcs; Buffalo Outdoor Power \$11,201.57 smcs,co; Builders \$6,508.45 smcs,co; Cadex Electronics \$165.00 smcs; Caelin,L \$16.29 smcs; Calamus Outfitters \$325.00 co; Capital Business \$223.15 smcs; Carls Place \$194.95 smcs; Carquest \$5,778.44 smcs; Casey's \$73.97 smcs; Cash Wa \$1,892.08 smcs; CCI Solutions \$314.67 smcs; Cengage Learning \$61.49 smcs; Center Point Publishing \$74.01 smcs; Central Fire \$8,260.50 smcs; Central Hydraulic \$1,015.96 smcs; Central NE Bobcat \$415.33 smcs; Central NE Publishing \$4,800.00 co; Central States Wire \$6,936.80 smcs; Charter \$726.25 smcs; Chesterman \$4,754.12

smcs; Chicken Coop \$70.00 smcs; Chief Supply \$445.29 smcs; Cintas \$340.51 smcs; City of Ky \$910.71 co; City of Ky \$14,634.57 smcs,ps; City Plbg \$65.00 smcs; Clark Enersen \$5,472.35 co; Clint Smith Graphics \$300.00 ps; CMH Interiors \$4,895.00 co; CNA Ins \$40.00 smcs; Coldspring \$239.40 smcs; Comm Act Part Mid NE \$414.00 smcs; Compass Navigation \$2,500.00 smcs; Compass Tools \$325.00 smcs; Compasscom \$4,054.00 co; Conseco Life \$19.00 ps; Construction Rental \$2,130.73 smcs,co; Control Yours \$1,543.00 smcs; Cook Construction \$262.50 smcs; Copycat \$848.70 smcs; Country Inn & Suites \$178.00 smcs; Crouch Recreation \$9,200.00 co; Crown Awards \$23.49 smcs; Culligan \$142.00 smcs; Cummins \$4,120.94 smcs; Dan Roeder Construction \$567,029.24 co; Dandee Construction \$850.00 co; Danko Emergency \$15,862.00 smcs,co; Davis Equipment \$4,409.42 smcs; Dawson PPD \$43,047.39 smcs; Daylight Donuts \$211.01 smcs; Delight Donuts \$31.00 smcs; Dell \$11,190.63 smcs,co; Demco \$1,153.18 smcs; Deterdings \$3,055.80 smcs; Dish \$201.06 smcs; Dmilaco \$285.00 smcs,ps; Dollar-General \$10.17 smcs; Dowhy Towing \$100.00 smcs; DPC Industries \$12,683.17 smcs; Dreamstime.com \$39.00 smcs; Dutton Lainson \$279.40 smcs,co; Eakes \$5,177.30 smcs,co; Earl May \$102.94 smcs; Easy Picker Golf \$191.18 smcs; Easycanvasprints.com \$69.96 smcs; EBSCO Publishing \$1,575.00 smcs; E-Conolight \$178.48 smcs; Ed Roehr Safety Products \$6,308.42 co; Eickhoff,J \$65.00 smcs; Eirich,T \$93.50 smcs; EJS Outdoor Sports \$660.00 smcs; Electro Numerics \$128.00 smcs; Elliott Equipment \$5,379.99 smcs; EMC Ins \$2,617.54 smcs; Engineered Controls \$180.00 smcs; Enterprise Electric \$3,850.00 smcs; Envirotech \$11,615.16 smcs; ERC Wiping Products \$143.40 smcs; Eustis Body Shop \$200.00 smcs; Expression Wear \$192.00 ps; Facebook \$71.40 smcs; Fairbanks \$270.00 co; Family Fresh \$9.70 smcs; Farmers Union \$28.00 smcs; Fastenal \$424.91 smcs; Fiddelke \$4,972.50 smcs; Fireguard \$13,350.14 smcs; Foster,D \$150.00 smcs; Freshwater Efilter \$366.44 smcs; Frontier \$9,548.83 smcs; Gannon Travel \$70.00 smcs; Garrett Tires \$14,869.88 smcs; Gopher Sport \$66.70 smcs; GFOA \$50.00 smcs; Graham Tire \$1,275.00 smcs; Grainger \$552.76 smcs; Gregor,T \$95.50 smcs; Gurney & Associates \$6,956.10 smcs; GW Brown \$125.00 smcs; Hampton Inn \$122.89 smcs; Hanes Gear for Sports \$288.39 smcs; Hanson,R \$14.87 smcs; Hawke,S \$245.00 smcs; Hayden,S \$56.10 smcs; HD Supply \$30,384.80 smcs,co; HOA Solutions \$8,321.00 smcs; Hobby Lobby \$558.83 smcs; Holmes Plbg \$603.90 smcs; Home Depot \$268.74 smcs; Hometown Leasing \$265.92 smcs; Huebner,J \$45.00 smcs; Hy Vee \$132.78 smcs; ICMA \$4,787.26 ps; Indelco Plastics \$391.22 smcs; Int'l Code Council \$138.80 smcs; IRS \$142,566.70 ps; Jack Lederman \$575.45 smcs; James,D \$240.00 smcs; JCB Enterprises \$62.00 smcs; JEO Consulting \$17,696.39 smcs; Johnstone Supply \$288.97 smcs; Joy Controls \$554.76 smcs; Karg,V \$57.94 smcs; Kart-Man \$1,996.84 smcs; Ky Ace & Garden \$284.83 smcs; Ky Concrete \$14,363.90 smcs,co; Ky Crete & Block \$1,466.58 smcs,co; Ky Goodwill \$4.01 smcs; Ky Hub \$5,940.35 smcs; Ky Humane Soc \$7,166.25 smcs; Ky Liquor \$66.13 smcs; Ky Powersports \$29.95 smcs; Ky Public Schools \$2,686.45 smcs; Ky Towing & Repair \$197.50 smcs; Ky Visitors Bureau \$68,597.39 smcs; KVFD \$1,000.00 ps; Ky Warehouse \$905.91 smcs; Ky Winlectric \$276.46 smcs; Ky Winnelson \$10.70 smcs; Kelley,K \$635.13 co; Kelly Supply \$955.56 smcs; Kimball Midwest \$442.85 smcs; Konica Minolta \$1,007.86 smcs; Kowalek,G \$22.19 smcs; KSNB \$460.00 smcs; LA Police Gear \$4,483.10 smcs; Landmark Implement \$12,745.21 co,smcs; Language Line \$436.75 smcs; Larue Distributing \$189.95 smcs; Lawson Products \$1,354.61 smcs; Leatherworks \$240.00 smcs; Ledtronics \$88.41 smcs; Lemmer,R \$139.00 smcs; Lockmobile \$129.70 smcs; L-Tron \$262.28 smcs; Mac Tools \$334.98 smcs; Magneticmic.com \$634.80 smcs; Marlatt

Machine \$904.23 smcs; Mascoelectr \$129.10 smcs; Mason RV \$1,900.00 co; Matheson \$1,497.35 smcs,co; McCarty,D \$340.93 smcs; Menards \$3,040.12 smcs; Metlife \$16.14 ps; Mid-America Structures \$6,740.00 co; Mid-NE Garage Doors \$3,000.00 smcs; Midway Chevrolet \$104.60 smcs; Midwest Concrete \$3,400.00 smcs; Midwest Connect \$2,198.73 smcs; Midwest Striping \$12,993.00 smcs; Midwest Turf \$1,184.62 smcs; Miller & Associates \$1,853.75 smcs,co; Miller,A \$29.76 smcs; Mirror Image \$200.00 smcs; Mobotrex \$23,763.00 smcs; Monoprice \$165.79 co; Moonlight Embroidery \$6,650.75 smcs; Morris Press \$677.50 smcs; Morse,L \$47.49 smcs; Most Depend. Fountains \$7,860.00 smcs; Mueller,D \$29.75 smcs; Municipal Emergency \$1,107.59 smcs; Municipal Supply \$679.15 smcs; Musfelt,J \$150.00 smcs; Nat'l Appraisal Guides \$75.00 smcs; Nat'l Engravers \$135.00 smcs; Nat'l Tool Warehouse \$136.61 smcs; Navigator Motorcoaches \$350.00 smcs; NCL Wisconsin \$962.80 smcs; NE Child Support Center \$2,328.97 ps; NE Golf & Turf \$151.78 smcs; NE Library Assn \$130.00 smcs; NE Machinery \$8,372.28 smcs,co; NE Peterbilt \$783.29 smcs; NE Public Health \$1,029.00 smcs; NE Safety & Fire \$174.00 smcs; NE Statewide \$130.00 smcs; NE Truck Center \$128,392.89 smcs,co; Nelson,W \$225.00 smcs; Network Fleet \$94.75 smcs; NFPA Nat'l Fire \$186.35 smcs; NMVCA \$100.00 smcs; Northern Safety \$592.49 smcs; Northwest Electric \$129.93 smcs; Northwestern Energy \$1,419.84 smcs; NOVA Health \$1,989.00 ps; NOVA Tech Int'l \$89.16 smcs; O'Keefe Elevator \$25.00 smcs; OCLC \$654.79 smcs; Office Depot \$410.63 smcs; Officemax \$898.46 smcs,co; Officenet \$243.00 smcs; Omaha Symphony \$647.50 smcs; Omaha World Herald \$139.96 smcs; Omaha Zoo \$18.95 smcs; O'Neill Wood Resources \$11,480.00 smcs; O'Reilly Auto \$37.56 smcs; Orscheln \$1,083.90 smcs; Outdoor Recreation \$377.00 co; Paramount \$635.05 smcs; Party America \$99.32 smcs; Paypal*Electrozone \$244.29 co; Paypal*Glendalepaw \$161.95 co; Paypal*Hydrobotani \$72.00 smcs; Paypal*Justlowvolt \$16.00 smcs; Paypal*Resourcerec \$35.80 smcs; Paypal*RonPichler \$128.88 smcs; Penguin Random House \$108.75 smcs; Pennwell \$167.64 smcs; Pep Co \$86.34 smcs; Physio Control \$250.02 smcs; Pitney Bowes \$66.28 smcs; Pizza Palace \$169.04 smcs; Platinum Awards \$14.35 smcs; Platte Valley Auto Mart \$1,489.00 smcs; Platte Valley Comm \$8,934.50 smcs; Platte Valley Labs \$62.50 smcs; Pot O' Gold \$155.00 smcs; Powderhorn \$752.44 smcs; Prestige Group \$239.00 smcs; Presto-X \$651.70 smcs; Prime Communications \$956.32 smcs; Proactive Sports \$2,065.86 smcs; Provantage \$978.76 smcs; Pulliam,R \$443.50 smcs; Quill \$764.64 smcs; Radiant Heating \$3,020.00 smcs; Ramos \$28,246.48 co; Randolph,J \$240.00 smcs; Ready Mixed Concrete \$30,538.37 co; Reams \$2,743.88 smcs; Recorded Books \$969.78 smcs; Recreonics \$87.97 smcs; Redbox \$1.61 smcs; Resource Management \$2,085.12 smcs; Robert Brooke & Assoc \$132.43 smcs; Robertson,D \$31.00 smcs; Rouse,H \$100.00 smcs; Rowe,J \$62.00 smcs; Sahling Kenworth \$711.87 smcs; Salina Blueprint \$110.36 smcs; Sams Internet \$50.85 smcs; Sanitation Products \$443.22 smcs; Sapp Bros \$31,506.71 smcs; Sasek,M \$41.83 smcs; Schawns \$1,345.60 smcs; Schumacher Bros \$11,397.50 co; Sequel Book \$25.00 smcs; Sheldon,S \$53.66 smcs; Sherwin Williams \$616.14 smcs; Shotoski Services \$300.00 smcs; SHRM \$380.00 smcs; Siddons-Martin \$3,670.00 smcs; Sign Center \$110.00 smcs; Siteone Landscape \$1,332.62 smcs; Snap On Tools \$277.00 smcs; Spaghetti Works \$457.44 smcs; Sports Supply \$959.99 smcs; Springhill Suites \$99.68 smcs; Sprinkler Warehouse \$296.94 smcs; Steinbrinks \$7,400.70 smcs; Stone,J \$109.40 smcs; Strategic Materials \$388.52 smcs; Sungard Public Sector \$45,160.00 smcs,co; Super Shine Auto \$38.50 smcs; Superior Signals \$1,101.50 smcs; Supplyworks \$2,019.26 smcs; Sustainable Supply \$225.60 smcs; Sutphen \$117.17 smcs; Target \$81.99 smcs; Taser Int'l \$2,115.14 smcs; Theis,J

\$80.00 smcs; Thompson,J \$443.50 smcs; Ticket Omaha \$855.00 smcs; Tielke's Sandwiches \$228.64 smcs; Titan Machinery \$13,051.67 smcs; Titleist \$389.98 smcs; Tractor Supply \$1,177.23 smcs; Trade Well Pallet \$1,500.00 smcs; Trambly,O \$31.28 smcs; Trans Iowa Equipment \$2,030.36 smcs; Travelers Haven \$11.52 smcs; Tri-City BMX \$1,080.39 smcs; TSI Store \$1,592.00 smcs; Tsukiyama,G \$1,000.00 smcs; Turfwerks \$9,534.00 smcs; Turner Body Shop \$960.00 smcs; UL \$9,037.00 smcs; Uline \$818.88 smcs; Union Bank & Trust \$69,808.97 ps; Unique Management \$268.50 smcs; United Seeds \$940.00 smcs; UNK \$25.00 smcs; UNL Marketplace \$170.00 smcs; US Cellular \$300.00 smcs; USA Blue Book \$87.39 smcs; USA Communications \$155.95 smcs; USDA-Aphi Animal \$85.00 smcs; USPS \$527.60 smcs; USTA Membership \$35.00 smcs; Valley Forklift \$45.75 smcs; Van Diest \$266.96 smcs; Verizon \$60.05 smcs; Vessco \$4,756.98 smcs; Video Kingdom \$214.96 smcs; Wagner's Irrigation \$632.00 smcs; Wal-mart \$1,535.72 smcs; Walters Electric \$319.00 smcs; Walters,J \$29.76 smcs; Warminister Fiberglass \$30,600.00 co; Warren-T \$1,125.75 smcs; Watchguard Video \$669.00 co; Weller,B \$15.30 smcs; Wesco \$81.32 smcs; Whalen,J \$93.50 smcs; Whentowork \$200.00 smcs; Wick's Sterling \$1,988.20 smcs; Wilke's True Value \$609.17 smcs; World Theatre \$25.00 smcs; Yant Equipment \$314.30 smcs; Zoro Tools \$364.56 smcs; Payroll Ending 9-17-2016 -- \$415,968.96. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Receive recommendations of Planning Commission and set October 11, 2016 at 5:30 p.m. as date and time for hearing on those applications where applicable.
4. Authorize the Mayor to send a letter of no recommendation to the Nebraska Liquor Control Commission on the manager application for Christine Johnson submitted by Silent City, Inc., dba 56th Street Sinclair Plaza located at 5605 2nd Avenue in connection with their Class B-043121 liquor license.
5. Authorize the Mayor to send a letter of no recommendation to the Nebraska Liquor Control Commission on the catering application submitted by Kearney Lodging LLC, dba Ramada Kearney/Al Fresco located at 301 2nd Avenue in connection with their Class C-96499 liquor license.
6. Adopt Resolution No. 2016-159 approving the Agreement and Permit for Aeronautical Services at the Kearney Regional Airport between the City of Kearney and Buffalo Air Service.

RESOLUTION NO. 2016-159

BE IT RESOLVED by the President and Council of the City of Kearney, that the President be and is hereby authorized and directed to execute the Agreement and Permit for Aeronautical Services on behalf of the City of Kearney, Nebraska, with Aurora Coop Elevator Company, dba Buffalo Air Service, a copy of the Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

7. Adopt Resolution No. 2016-160 approving the Training Center Lease Agreement located at the Kearney Regional Airport between the City of Kearney and the Kearney Volunteer Fire Department.

RESOLUTION NO. 2016-160

BE IT RESOLVED by the President and Council of the City of Kearney, that the President be and is hereby authorized and directed to execute the Training Center Lease Agreement on behalf of the City of Kearney, Nebraska, with the Kearney Volunteer Fire Department, a copy of the Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

8. Adopt Resolution No. 2016-161 approving the Use and Operations Agreement for Annex B in Hangar T-926 located at the Kearney Regional Airport between the City of Kearney and Li'l Red Aero, Inc.

RESOLUTION NO. 2016-161

BE IT RESOLVED by the President and Council of the City of Kearney, that the President be and is hereby authorized and directed to execute the Use and Operations Agreement on behalf of the City of Kearney, Nebraska, with Li'l Red Aero, Inc. for Annex B in Hangar T-926 located at the Kearney Regional Airport, a copy of the Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

9. Adopt Resolution No. 2016-162 approving the Use and Operations Agreement for Annex A in Hangar T-926 located at the Kearney Regional Airport between the City of Kearney and Rodgers Helicopter Services.

RESOLUTION NO. 2016-162

BE IT RESOLVED by the President and Council of the City of Kearney, that the President be and is hereby authorized and directed to execute the Use and Operations Agreement on behalf of the City of Kearney, Nebraska, with Rodgers Helicopter Services for Annex A in Hangar T-926 located at the Kearney Regional Airport, a copy

of the Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

10. Adopt Resolution No. 2016-163 approving the Non-Owned Corporate Hangar Lease Agreement for Hangar T-929 located at the Kearney Regional Airport between the City of Kearney and Home Safety Systems, Inc.

RESOLUTION NO. 2016-163

BE IT RESOLVED by the President and Council of the City of Kearney, that the President be and is hereby authorized and directed to execute the Non-Owned Corporate Hangar Lease Agreement on behalf of the City of Kearney, Nebraska, with Home Safety Systems, Inc. for Building T-929 located at the Kearney Regional Airport, a copy of the Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

11. Adopt Resolution No. 2016-164 approving the Trail Agreement between the City of Kearney and the Nebraska Department of Roads pertaining to a hike/bike trail to be located on the State's right-of-way of which a portion under crosses the bridge north of the East Kearney Bypass on Nebraska Highway 10 (N-10).

RESOLUTION NO. 2016-164

WHEREAS, Phase I on the Kearney Hike Bike trail consists of constructing approximately 3,150 feet of trail connecting The Archway on the west to Cherry Street on the east. The trail under crosses N-10, Kearney East Bypass, approximately 750 feet north of the Interstate 80 / N-10 interchange. The eight foot wide trail will be constructed of 6-inch thick concrete with a 4-inch thick crushed rock shoulder; and

WHEREAS, the City of Kearney has submitted an application for a permit to perform work on State's right-of-way and to occupy State's right-of-way for said trail to the Nebraska Department of Roads.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be and is hereby authorized and directed to execute Trail Agreement between the City of Kearney and the Nebraska Department of Roads pertaining to a hike/bike trail to be located on the State's right-of-way of which a portion under crosses the bridge north of the East Kearney Bypass on Nebraska Highway 10 (N-10). The Agreement, marked as Exhibit "1" is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

12. Adopt Resolution No. 2016-165 approving Application and Certificate for Payment No. 5 in the amount of \$776,332.91 submitted by Blessing, LLC and approved by Miller & Associates for the 2015 Part 5 Improvements consisting of Paving Improvement District No. 2015-981 for Central Avenue from 12th Street to 18th Street.

RESOLUTION NO. 2016-165

WHEREAS, Blessing Construction of Kearney, Nebraska has performed services in connection with the 2015 Part 5 Improvements consisting of Paving Improvement District No. 2015-981 for Central Avenue from 12th Street to 18th Street, and the City’s engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 5 in the amount of \$776,332.91 as shown on Exhibit “A” attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$3,018,299.85
Change Order No. 1 (3-22-2016)	+ 20,741.68
Change Order No. 2 (5-24-2016)	<u>+ 12,341.33</u>
Contract Sum To Date	3,051,382.86
Gross Amount Due	1,883,235.29
Retainage (5%)	94,161.76
Amount Due to Date	1,789,073.53
Less Previous Certificates for Payment	<u>1,012,740.62</u>
Current Payment Due	\$ 776,332.91

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 5, as shown on Exhibit “A”, be and is hereby accepted and approved.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

13. Approve the Street/Sidewalk/Parking Lot Closure, Traffic Control and or Parking Restrictions Permit Application for the following events:

- (a) Zombies Attack: A Run for Your Life for the temporary closing of the north lane of East 1st Street from the private road west of the Nebraska Firefighters Museum to the private road east of The Archway on October 29.
- (b) YMCA Turkey Trot for the temporary closing of portions of 4th Avenue, 6th Avenue, 10th Avenue, 11th Avenue, 39th Street, 42nd Street, 46th Street, 48th Street, and Country Club Lane on November 24.

14. Adopt Resolution No. 2016-166 approving Application and Certificate for Payment No. 2 in the amount of \$41,866.38 submitted by IES Commercial Inc. and

approved by Olsson Associates for the 2016 Part 1 Improvements; Traffic Signal at 30th Avenue and 39th Street.

RESOLUTION NO. 2016-166

WHEREAS, IES Commercial of Holdrege, Nebraska has performed services in connection with the 2016 Part 1 Improvements; 39th Street and 30th Avenue Traffic Signals, and the City's engineer, Olsson Associates, have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$41,866.38 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$89,583.00</u>
Contract Sum To Date	89,583.00
Gross Amount Due	75,328.19
Retainage (10%)	7,532.82
Amount Due to Date	67,795.37
Less Previous Certificates for Payment	<u>25,928.99</u>
Current Payment Due	<u>\$41,866.38</u>

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 2, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

15. Adopt Resolution No. 2016-167 approving Change Order No. 2 for a decrease in the amount of \$31,677.75, Application and Certificate for Payment No. 3-Final in the amount of \$188,919.85 and accept the Certificate of Substantial Completion submitted by Blessing, LLC and approved by Olsson Associates for the 2015 Part 4 Improvements consisting of Paving Improvement District No. 2015-972 for 29th Street from 6th Avenue to 8th Avenue.

RESOLUTION NO. 2016-167

WHEREAS, Blessing Construction of Kearney, Nebraska has performed services in connection with the 2015 Part 4 Improvements consisting of Paving Improvement District No. 2015-972 for 29th Street from 6th Avenue to 8th Avenue, and the City's engineer, Olsson Associates, have filed with the City Clerk Change Order No. 2 showing an decrease to the contract sum in the amount of \$31,677.75 as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, the City's engineer, Olsson Associates, have filed with the City Clerk Application and Certificate for Payment No. 3-Final in the amount of \$188,919.85 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$554,294.65
Change Order No. 1 (8-23-2016)	+ 2,746.33

Change Order No. 2 (9-27-2016)	- <u>31,677.75</u>
Contract Sum To Date	525,363.23
Gross Amount Due	525,363.23
Retainage (0%)	.00
Amount Due to Date	525,363.23
Less Previous Certificates for Payment	<u>336,443.38</u>
Current Payment Due	\$188,919.85

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of August 15, 2016, 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. 2, as shown on Exhibit "A", Application and Certificate for Payment No. 3-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 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

16. Accept the bids received for the construction of the Archway Trail; Phase III from Sweetwater Avenue to Fort Kearny Trailhead and adopt Resolution No. 2016-168 awarding the bid to Prairie Land Construction in the amount of \$289,923.78.

RESOLUTION NO. 2016-168

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on September 20, 2016 at 2:00 p.m. for the Archway Trail; Phase III from Sweetwater Avenue to Fort Kearny Trailhead; and

WHEREAS, the Engineer's Estimate for the Archway Trail; Phase III from Sweetwater Avenue to Fort Kearny Trailhead was \$396,185.00; and

WHEREAS, the said engineers have recommended the bid offered by Prairie Land Construction of Loomis, Nebraska in the amount of \$289,923.78 be accepted as the lowest responsible bid for the Archway Trail; Phase III.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the City Engineer's recommendation is hereby accepted and approved, that Prairie Land Construction be and is the lowest responsible bidder for the Archway Trail; Phase III to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Prairie Land Construction in the amount of \$289,923.78 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Estimate for the Archway Trail; Phase III was \$396,185.00 be and is hereby accepted.

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

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

17. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Exchange Bank located at 3110 2nd Avenue, on Thursday, October 27, 2016 from 3:00 p.m. until 10:00 p.m. for a Chamber event.

18. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on Saturday, November 5, 2016 from 3:00 p.m. until 1:00 a.m. for a reception.

19. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Exposition Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on Saturday, November 5, 2016 from 3:00 p.m. until 1:00 a.m. for a birthday party.

20. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on Saturday, November 26, 2016 from 3:00 p.m. until 1:00 a.m. for a reception.

21. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on Saturday, December 3, 2016 from 3:00 p.m. until 1:00 a.m. for a reception.

22. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Exposition Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on Friday, December 16, 2016 and Saturday, December 17, 2016 from 3:00 p.m. until 1:00 a.m. each day for a reception.

23. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 catering liquor license to dispense beer, wine and distilled spirits inside the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on Friday, December 16, 2016 and Saturday, December 17, 2016 from 3:00 p.m. until 1:00 a.m. each day for a reception.

24. Adopt Resolution No. 2016-169 approving T-Hangar C-07 Lease Agreement between the City of Kearney and Mike Skyler for aircraft storage at the Kearney Regional Airport.

RESOLUTION NO. 2016-169

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska that the President be and is hereby authorized and directed to execute T-Hangar C-07 Lease Agreement on behalf of the City of Kearney with Mike Skyler, the Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

25. Adopt Resolution No. 2016-170 approving T-Hangar B-02 Lease Agreement between the City of Kearney and Ray Family Enterprises, LLC for aircraft storage at the Kearney Regional Airport

RESOLUTION NO. 2016-170

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 B-02 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Ray Family Enterprises, LLC. The Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

26. Adopt Resolution No. 2016-171 approving the Hangar T-385 Lease Agreement between the City of Kearney and Justin Dix for aircraft storage at the Kearney Regional Airport.

RESOLUTION NO. 2016-171

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 Hangar T-385 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Justin Dix. The Agreement, marked as Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

27. Adopt Resolution No. 2016-172 approving the Agreement for Acquisition of Sidewalk Easement between the City of Kearney and the Kearney Regional Medical Center for the acquisition of a sidewalk easement on their property as it runs along 11th Street from Yanney Avenue to 24th Avenue.

RESOLUTION NO. 2016-172

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska that the Mayor be and is hereby authorized and directed to execute the Agreement for Acquisition of Sidewalk Easement between the City of Kearney and the Kearney Regional Medical Center for the acquisition of a sidewalk easement on their property as it runs along 11th Street from Yanney Avenue to 24th Avenue. The Agreement, marked Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

V. CONSENT AGENDA ORDINANCES

Mayor Clouse stated the Agenda was amended on Monday, September 26 by adding Ordinance No. 8107.

ORDINANCE NO. 8107 AMENDING SECTION 8-807 OF THE CITY CODE

Many requests have been made to evaluate the intersection at 56th Street and Avenue N. As a result staff is requesting that a School Crossing with Yellow Flashing Lights be established under Section 8-807 of the City Code for the following roadway sections:

56th Street – At Avenue N
Avenue N – At 56th Street

The posted speed limit will be reduced to 25 mph when lights are flashing from the hours of 7:30-8:30 a.m. and 3:00-4:00 p.m.

Council Member Lear introduced Ordinance No. 8107 amending Section 8-807 "School Crossings with Yellow Flashing Lights" of Article 8 "Speed Limitations" of Chapter 8 "Police" of the City Code to include 56th Street at Avenue N and Avenue N at 56th 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 Buschkoetter seconded the motion to suspend the rules for Ordinance No. 8107. 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, Nikkila, Lammers. 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. 8107 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, Nikkila, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 8107 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 8107 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.

VI. REGULAR AGENDA

EPA ADMINISTRATIVE ORDER FOR STORM WATER SYSTEM MANAGEMENT

Mayor Clouse opened for discussion the Administrative Order for Compliance on Consent with EPA with regard to the City of Kearney storm water system management and to consider Resolution No. 2016-173.

City Attorney Mike Tye presented this matter to the Council. This matter comes before the Council on a Consent Order that City staff has been discussing with the Environmental Protection Agency (EPA). The City has been working on storm water issues for a number of years dating back to when they obtained a MS4 Permit from the Nebraska Department of Environmental Quality (NDEQ) that was in September 2005. The City submits bi-annual reports of the storm water system to NDEQ and have never had any issues or concerns raised by the State.

In March of 2014, EPA came to Kearney and undertook an audit of the City's storm water system. EPA and NDEQ have concurrent jurisdiction on these sorts of matters under the Clean Water Act and so they audited the City's storm water system. Just recently staff had some discussions about coming up with a consent order, the vast majority of what they have in place with the storm water system was just fine. They are wanting Kearney to now focus on post construction issues. The City deals with detention and retention of storm water. They now want to move that to evaluating the water quality in those systems.

What is in front of City Council is an order for compliance on consent which essentially gives the City a year (September of 2017) to do some public education and implement an ordinance to deal with the issues that they have raised. They wanted a shorter time line but the City was able to convince them that a year was an appropriate timeline to make those additional modifications to the City's storm water system.

Mayor Clouse asked what types of things. City Attorney stated what will happen is there will be an educational element to first educate professionals who deal in the area of development and how they will need to design storm water systems so that they do treatment as well as just dealing with detention of water. There will be an ordinance that incorporates the requirements into all new development, they do not anticipate

applying anything to existing development or making this retroactive in any way; it will all be prospective. It will add engineering costs to development because they will then demonstrate that they can evaluate the water quality. It will also involve City staff monitoring how successful that ordinance is so there will be testing requirements.

Mayor Clouse asked if this is done in other areas. City Attorney stated it is currently done in Lincoln and Omaha. He is not aware of any other first class cities that have been subjected to an EPA audit so we are the lucky ones.

Council Member Lear asked how long do they have to monitor the water quality post construction. City Attorney stated they would have an ongoing obligation to monitor the water quality. Part of the program would be that they would go around and test in those storm water cells on a regular basis and report that. So that will be the City's responsibility to do.

Council Member Lammers asked if it is the City's responsibility to fix it if that goes on. City Attorney stated they would go to the developer, it will be a requirement of City Code and so they will go back to the developer or however the responsible party might be that maintains that cell and to be honest that may be tricky at times depending on how long that has been there and the type of development. That will be part of the process of evaluating an ordinance as well once that comes forward.

Council Member Lammers asked if one year is long enough for the City to implement this. City Attorney stated staff believes they can get this done within the year time period. That is the latest that EPA would allow the City to go. They have been in the negotiating period with EPA; staff wanted more time but EPA did not want to give the City that time. Essentially, it is either they set a deadline and impose it on the City or the City does it within the year. They do have the ability to just say they want us to comply by this date if they wish to do that.

Council Member Lear asked what do you mean by complying now. Does that mean to put an ordinance in place and begin enforcing it right away versus having one year to work through and have implementation approximately a year from now. City Attorney affirmed.

City Manager stated the big challenge is that many of the individuals involved in the development have no experience with this requirement. So it is going to impose some restrictive requirements on development, it will increase development costs. When you hear waters of the U.S. this is getting into that type of category, this is a dramatic shift. They have already spent considerable dollars the past 5-6 years coming into this issue. They have gone from erosion control fences to now quality of water in the storm water collection system. There will be design standards that require water to go through swales and bioswales and those types of things to improve the quality. This is a major mandate and it is an unfunded mandate.

City Attorney stated the burden to implement this plan is imposed upon the City of Kearney. That is the way the law is structured and so they would come back to the City of Kearney and seek compliance from the City. The City can impose design standards on the developers. That will be part of what the ordinance intent is and hopefully that will

lead to the structures being built and engineered appropriately at least initially and will reduce that exposure. Ultimately they will look to the City to enforce compliance.

Mayor Clouse asked if there will be a clearly defined owner of the detention cell from day one to whenever. City Manager stated there is now but in reality there is not. At some point if you look at some of the cells throughout the community today, ownership is unclear, maintenance is always unclear and it is very difficult to enforce. Homeowners Associations really are not prevalent, do not work and they do not go into many years down the road. There will be additional staff associated, they do not have staff currently that has time to go out and check the water quality.

Mayor Clouse stated that is his point in going forward the developer may not be able to hand that off to someone they may own that detention cell and all that comes with it. City Attorney stated that issue of what happens with these cells has really not necessarily changed by this. That has always been there; it is now they are looking at water quality or whether they were just looking at having a place for it to be retained.

The issue of who owns that cell and what is going to happen to it long term is always going to be there. This does not change that. They have gone through and attempted to deal with that with development agreements so that they hope there is a responsible party that is either a Homeowners Association or the developer themselves and he thinks they have done the best they can with that situation.

Council Member Nikkila asked what happens with current existing detention cells; if they have to be brought into compliance with the new rules or not. City Attorney stated they are looking at this although he tried to incorporate that. EPA would not allow him to incorporate something that clearly indicated it is prospective but he indicated that is what they would be doing so they are aware of it.

Old cells that are out there are not going to be subject to this ordinance. His view on that is they would be imposing a new rule on somebody that has already constructed a system based on old rules so the City's ordinance will apply to only new development once it is put in place.

City Manager cautioned Council to not expect at some point in the future that will change and those old cells will eventually be the City's responsibility. They are looking at the overall system that the City of Kearney is ultimately responsible for all of the water within the community so that is their interpretation. How they get there legally he does not know.

Council Member Nikkila stated if a developer does not follow the law correctly they fine the City not the developer so it is the City's responsibility to issue a fine or penalties but EPA is holding the City accountable not the developer.

City Attorney stated as a City it is the one that runs the storm water system. It is called a small community storm water system so it is the City's system for handling that storm water so eventually it does impact the City system so that is part of what we are responsible for. We have a legal obligation to manage it and make sure it complies with the Clean Water Act and that is how this would apply to the City ultimately because it does flow into its system.

City Attorney stated the City of Kearney has been a leader in this area. The City of Kearney got together with a group of nine other communities from Nebraska, known as Nebraska H2O, for the purpose of getting after this issue and educating people in developing sample ordinances all of that has been going on in anticipation that EPA may be looking at this issue and wanting to push it forward. There has been a lot of work done. Everything else about the system was perfectly acceptable to EPA. It is this one area of post construction where they think we need to make a little more progress.

City Manager stated if you think of measuring the quality of storm water at some point that data is going to be used for something. He expects there will be additional rules related to the data that is collected.

City Attorney stated EPA began their audit March of 2014. Council Member Lear asked when they concluded that audit. City Attorney stated a couple years and the City has been having conversations now in 2016 with them. Council Member Lear commented they want the City to implement solutions faster than what they even identified problems. City Manager stated many of the solutions they have implemented.

Council Member Lear asked in the course of the audit did they find any immediate concerns to health or human safety as a part of the City's storm water management system. City Attorney stated not that he is aware of. He did invite EPA to be here tonight and they chose not to be here. He is the messenger.

Council Member Lear asked what the consequences are if the City does not adopt this resolution. City Attorney stated the consequences of not adopting the resolution would be that EPA could impose their own deadline. EPA does have the ability to fine the City of Kearney financially if they believe there are violations. As a part of this, their discussion that was taken off of the table so there is no fining or financial obligation to pay to EPA but that is something they have the authority to do.

Basically, they would have the ability to impose a quicker timeline and also to have some financial penalty if they try to impose that now. Obviously, the City of Kearney would not have to accept that; we could reject that or litigate that issue if you chose to do that. It is something that would be litigated in federal court and would obviously cost money to do that.

Council Member Lear commented that essentially there are no identified problems for which the City has to implement solutions. The City has less time to implement those solutions than the EPA took to identify what they saw as weaknesses to do that. The City is being held hostage by this potential fine that they could issue at any time. Is that fine of a determinable amount.

City Attorney stated there has been no discussion of any amount. In terms of there not being anything to remedy they would indicate that in order for the City to be in compliance with the Clean Water Act. The City needs to implement these requirements and because the City has not is the non-compliance on the City's part with federal law.

Mayor Clouse asked where the EPA's measuring point is. City Manager stated they do not know but the problem is what they perceive at EPA with respect to Waters of the

U.S. and the Clean Water Act that is the identifiable problem from their point of view.

Council Member Lear assumes the fact that EPA does have full authority to levy all of these things against the City. City Attorney stated in fact they do. Council Member Lear asked if the City ends up in federal court at least in initial phase what kind of costs would you associate that in terms of legal fees. City Attorney stated he would be guessing in excess of \$100,000.

Council Member Lear asked if they do find there is a problem that needs to be remediated in some way and that is going to be at the cost of a developer and/or owner of the project assuming that such an ownership can be identified and located. City Attorney confirmed.

Council Member Lear presented a scenario: if it is something like a Homeowners in Lighthouse Point and it is determined there is a problem. That problem is maybe even partially caused by geese that land on that body of water occasionally and these remediation costs are determined to whatever it takes to fix it but could be significant ongoing costs to the extent where it bankrupts the Lighthouse Point Homeowners Association. As he understands it then, the City has to assure that the corrections are done at the City's expense but would not necessarily know what the deadline is for completing that remediation.

City Attorney stated essentially the way it would work is the City would develop an ordinance; we would have an educational element to this so moving forward developers would design these to meet the standards of the ordinance. Presuming they would function appropriately and to that standard when they were built. That would narrow the exposure to both the City and whoever would maintain that structure moving forward.

There will be an obligation to monitor them and if the City did discover there was some issue there would be a conversation with the Homeowners Association or whoever the responsibility party would be and look for ways to remediate that. He believes part of the goal of having an ongoing monitoring program would be to catch any issues early so that there is less exposure financially and it is anticipated that an element of this will be to look at a funding source to have resources available to make those repairs if necessary on the City's side of things.

Hopefully that will be something that would maintain them as they move forward and would not get to a situation where it would bankrupt the Homeowners Association or something of that nature. That would be the plan to try to design them appropriately on the front end and then monitor them so hopefully they are doing what they are supposed to do.

Council Member Lear asked if the testing is limited to new facilities. City Manager stated that is the City's intent. Council Member Lear stated but the EPA will not agree to that in writing so if they posed it to them that we put this in writing and they say that is unacceptable than we have to assume the inverse of that.

City Attorney stated basically what his concern was if they were to impose an obligation on structures that were already in existence that they might in effect be exposing

themselves legally because those developers have built the existing structures based on existing code and if they were going to somehow impose this on them, they may have claims against the City of Kearney. He has indicated that they will be making this prospective, meaning they will evaluate the ones that are being built after the ordinance is put in place. EPA has not indicated anything in writing on how they would interpret that. The City very clearly indicated that any ordinance that would be passed would only apply to new construction. EPA also indicated that the City would implement that ordinance by September of 2017.

City Manager stated that is all they have indicated what they will do and they have agreed to what they will do in a contract. City Attorney stated all that is before City Council is a compliance order where they indicate that that is what they will do. No matter what we do moving forward we would be subject to auditing either by EPA or the Nebraska Department of Environmental Quality. That is always going to be there no matter what they do. Because the City is required to have the MS4 permit in place and both of those agencies have the ability to monitor the permit.

City Manager stated the challenge is that NDEQ has worked with the City closely and is aware of the consortium that exists and the people that are participating. He does not believe they had any issues with the State agents.

City Attorney stated other communities have taken on these responsibilities and do monitor their cells. In other states EPA has imposed similar requirements and communities such as one in Kansas are in compliance with these sorts of requests and that is part of the reason why Nebraska H2O was formed so that they would be in a better position to be able to respond.

Council Member Nikkila asked if they agree to the order for compliance does that limit the City's abilities later on to decide this is not working out and we do not like how they are implementing it. City Attorney stated the City would always have the ability if they would come in and audit and raise other issues we would always independently have the ability to challenge what in terms of the City not complying or that we need to do other things. He believes the main thing is that they want to get that ordinance in place and see that the City is making an effort to monitor water quality. It is all about getting to the point of evaluating water quality. That is the next step in the storm water management process.

Council Member Lear quoting from a section of the Order that states: "EPA reserves the right to take any enforcement action pursuant to the Clean Water Act or any available legal authority including without limitation the right to seek conjunctive relieve monetary penalties and/or legal remedies by law." With respect to matters addressed in this is the City guaranteed they will not be taking any enforcement action.

City Attorney stated for what this contemplates is that the City will take all reasonable efforts to implement an ordinance within the 1-year time period. As long as the City does those things and get an ordinance in place within that timeline, yes they are waiving the right to fine the City or seek conjunctive relief or impose some other standard.

To that point, all of those things are waived but what the paragraph indicates is if for some reason the City did not appropriately implement the ordinance or it does not waive the right for them to audit this in the future. Say after the ordinance is in place they come in and evaluate the program and the City is not really complying with the ordinance or ignoring the requirements.

City Attorney stated if they get to that point and they evaluate the system, they still reserve the right to impose fines at that later date for other noncompliance. They are not going to forever waive as much as he would love that.

Council Member Lear questioned why there has to be an agreement; why not just tell the City they have to have it done in a year. City Attorney stated it requires a legal agreement in terms of what they are saying is based on the audit that they have completed that there are some things that they are not going to do. Basically, the City went into this negotiating period which is allowed by law and there were several things that are not in here that the City provided information and clarified. Some of them were what terms do we use that are different from theirs. A lot of those things were clarified and disappeared. They were taken care of without this document.

The intent of this document is to say, EPA will not take any other enforcement actions so long as the City is progressing towards implementing the ordinance within the time period. As long as the City does that, they will not take any other enforcement action. If an ordinance is in place that deals with these issues which is what he anticipates doing then there would not be any enforcement.

Council Member Lear stated his point is they can chose to do that administratively. City Attorney stated what EPA has requested it so that they have an agreement with us that that will happen. Part of that is to make sure that there is a deadline there that indicates the City has agreed that it will work towards putting that ordinance into place and comply with that deadline.

City Manager stated their belief is these should have already been completed, done and in place and if the City does not agree to this, they will fine us. Council Member Nikkila stated they think we have been out of compliance for six years so that is one thing they are agreeing on is not to fine us for the last 5-6 years. They are agreeing to pass, forgo some action that they could take.

City Manager stated the frustration is Department of Environmental Quality in Nebraska is responsible for that on a daily basis and has agreed with these other cities because they are all in the same position that Kearney is in and now the federal EPA has intervened and chosen the City of Kearney to require this.

Council Member Lear stated in theory all Kearney is getting out of this agreement is they will not fine the City now but will fine us later if it does not do what they tell us to do. City Attorney stated confirmed and stated if Kearney passes an ordinance and put that in place, then the ability to fine us for any past transgressions goes away.

Council Member Lear asked any ordinance or does EPA have to specifically approve the ordinance. City Attorney stated the ordinance is ultimately up to the Council but

there are things EPA will want to see in an ordinance and to see that it actually does look at water quality. Staff has developed some possible ordinances and has worked with NDEQ on matters and has looked at other communities. If it addresses these matters that they are dealing with; ultimately that is what they are after.

Council Member Lear asked if Kearney adopts an ordinance for whatever reason the EPA says is not adequate, have we maintained our ability not to be fined for history or is that all opened back up again. Either it is open where we are open if we do not adopt an ordinance that meets their standards then they either open to fine us for the last six years or this agreement prevents them from fining us for the last six years.

City Attorney stated he believes Kearney has to make a reasonable effort to pass an ordinance. If we just pass an ordinance and did not effectively deal with the issue or bad faith, then he believes there is an argument that Kearney is noncompliant.

Every community is going to deal with that a little differently. There may be some things that the City of Kearney does differently. For example, in our ordinance on ownership of the cells and trying to maintain them with the private property owner that is more of an interest for the City of Kearney than frankly EPA. Kearney has flexibility in terms of what that will look like but it cannot be an ordinance that does not deal with water quality or deal with designing the structures.

The City would have the ability to litigate it at that point if it would need to be based on reasonable efforts on the City's part. Council Member Lear stated if it comes down to it, we could adopt an ordinance where we thought we were in good faith attempting to do the right thing for the community and to follow the best of our abilities the Clean Water Act; then they could determine that was not reasonable and we did not make a reasonable best effort and still initiate legal actions against the City for whatever period of time they chose.

City Attorney stated they could make an effort to do that. If Kearney acts in a reasonable fashion and come up with an ordinance that focuses on the issues that they have raised, he believes it is a very difficult argument for them to make. Not saying they will not make that argument but if we go through the process and have an ordinance that addresses the issues that they have raised at that point, we have indicated that we have done what we are supposed to do as part of this process.

Moved by Clouse seconded by Lammers to adopt **Resolution No. 2016-173** authorizing the Mayor to enter into the Administrative Order for Compliance on Consent with EPA with regard to the City of Kearney storm water system management. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2016-173

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska that the Mayor be and is hereby authorized and directed to enter into the Administrative Order for Compliance on Consent with EPA with regard to the City of Kearney storm

water system management. A copy of the Administrative Order, marked Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 27TH DAY OF SEPTEMBER, 2016.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

OPEN ACCOUNT CLAIM

Moved by Buschkoetter seconded by Lammers that the Open Account Claim in the amount of \$115,393.13 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Clouse abstained. Motion carried.

VII. REPORTS

Council member Lammers commended City staff on the work they have done with 56th Street and Avenue N on trying to come up with an agreement that would satisfy the neighborhood with the lights. We have worked very hard to do that and he is very appreciative of the efforts to be responsive to that.

VIII. ADJOURN

Moved by Clouse seconded by Lear that Council adjourn at 6:15 p.m. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

ATTEST:

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

MICHAELLE E. TREMBLY
CITY CLERK