

*Kearney, Nebraska*  
*October 28, 2008*  
*7:00 p.m.*

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on October 28, 2008 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaëlle Trembly, City Clerk; Council Members Randy Buschkoetter, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. Michael Morgan, City Manager; Wendell Wessels, Director of Finance and Administration; Michael Tye, City Attorney; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Shawna Erbsen, Human Resource Director; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Roger Jasnoch, Brad Kernick, Earl Rademacher, Tom Tye, Jacob Sertich, Jack Wilkens, Scott Hayden, Lance Lang, Jeff Schwab, Sara Giboney from Kearney Hub, Steve Altmaier from KGFW Radio.

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**

Father Charles Torpey from St. James Catholic Church provided the Invocation.

### **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 towards the back of the Council Chambers.

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### **III. PUBLIC HEARINGS**

#### **BIG 'O' TIRES REVISED DEVELOPMENT PLANS**

Moved by Kearney seconded by Lammers to remove from the table public hearing 1 pertaining to Big 'O' Tires Revised Department Plans. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Mayor Clouse opened the public hearing on the Application submitted by Big O Tires (Applicant) for LPJ Limited Partnership Association (Owner) for Revised Planned District Development Plan Approval for exterior displays on property zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 3, Skiview Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska; EXCEPT that part conveyed to the State of Nebraska Department of Roads by Deed filed July 16, 1999 as Instrument 1999-5822 (116 West 56th Street) and to consider approval of Resolution No. 2008-178. Planning Commission recommended the following modifications to the original plan: (1) All non-new tires be enclosed by September 1, 2009; (2) Landscaping be replaced to reflect the original Landscape Plan by May 1, 2009; and (3) Displays be allowed to float on six parking spots provided that the displays are taken inside every night.

The applicant is requesting approval of a revised development plan to indicate the areas on the site that may be suitable for outdoor display of tires for sale. The property is zoned C-2/PD and was originally developed in 1995. At that time the development plans indicated areas for indoor display, inventory storage for new tires and an area for indoor storage of used tires. Staff required the used tire storage area to have a roof as the original proposal was open on top. With 2nd Avenue at a higher elevation than the tire store, Planning Commission was concerned that the used tires would be visible from the street. Given this history, it is obvious that the Commission is concerned about the appearance of commercial properties and issues such as outdoor storage and display are an important part of any commercial development. The planned district requires all site elements to be approved by Planning Commission and City Council and any changes to the original plan must also be approved by these two legislative bodies. You will recall recently the storage container issue at the Kearney Wal-Mart is a somewhat similar example.

The Big O Store is under different ownership and management today than when it originally opened. Jeff Schwab and his wife have owned the Kearney store for the past five years and he was not aware of the planned district requirements. He has provided a letter outlining the areas on the site that he would like the ability to display product for sale. The product would consist primarily of tires displayed in various configurations, often times stacked four high with the top tire upright on top of the other three tires. Big O does offer other automotive services and at times these services may be highlighted with some type of outdoor display. Outdoor displays frequently use other attention-getting devices such as streamers, flags, balloons, etc.

The applicant's request for display area is tied to the fact that there are currently eight parking spaces on the site that are above and beyond the parking requirements for this sized building. The business requires 20 stalls, one of which is a handicap stall. With 28

total stalls on site, the applicant would like the ability to have up to eight “floating” stalls for display. In this manner, the 20 required stalls would always be available for parking use but the proposed product displays could move around the site. The applicant has also identified areas along the building walls that he would like to display product. The Planning Commission was concerned with differentiating between inventory storage and inventory display and the distinction between new and used inventory. They believe that the used tires should be accommodated inside the building out of sight. New tires that are on display can be stacked in six floating parking stalls and along the building wall as requested in the applicant’s letter. The key determination is that the tires on display are put inside every night and brought outside every morning.

In reviewing the original approved development plans staff noticed trees shown along the street frontages of 2nd Avenue and 56th Street that are now missing. Staff requests that the landscaping be brought back into compliance with the addition of four trees along 2nd Avenue and one additional tree along 56th Street. Minimum size for commercial tree plantings is two-inch (2”) caliper.

Jeff Schwab was present to answer any questions pertaining to this matter from the Council. He was in agreement with the conditions and would comply.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Big O Tires (Applicant) for LPJ Limited Partnership Association (Owner) for Revised Planned District Development Plan Approval for exterior displays on property zoned “District C-2/PD, Community Commercial/Planned Development Overlay District” and described as Lot 3, Skiview Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska; EXCEPT that part conveyed to the State of Nebraska Department of Roads by Deed filed July 16, 1999 as Instrument 1999-5822 (116 West 56th Street) and approve **Resolution No. 2008-178** subject to compliance with the following conditions: (1) All non-new tires shall be enclosed by September 1, 2009; (2) Landscaping shall be replaced back to the original plans by May 1, 2009 which includes the addition of four trees along 2nd Avenue and one additional tree along 56th Street and the minimum size for commercial tree plantings is two-inch (2”) caliper; and (3) Displays will be allowed to float on six parking stalls provided that the displays are taken inside every night. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2008-178**

WHEREAS, Big O Tires (Applicant) for LPJ Limited Partnership Association (Owner) have applied for Revised Planned District Development Plan Approval for exterior displays on property zoned “District C-2/PD, Community Commercial/Planned Development Overlay District” and described as Lot 3, Skiview Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska; EXCEPT that part conveyed to the State of Nebraska Department of Roads by Deed filed July 16, 1999 as Instrument 1999-5822 (116 West 56th Street).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Big O Tires (Applicant) for LPJ

Limited Partnership Association (Owner) for Revised Planned District Development Plan Approval for exterior displays on property to be zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 3, Skiview Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska; EXCEPT that part conveyed to the State of Nebraska Department of Roads by Deed filed July 16, 1999 as Instrument 1999-5822 (116 West 56th Street) subject to compliance with the following conditions:

1. All non-new tires shall be enclosed by September 1, 2009;
2. Landscaping shall be replaced back to the original plans by May 1, 2009 which includes the addition of four trees along 2nd Avenue and one additional tree along 56th Street and the minimum size for commercial tree plantings is two-inch (2") caliper;
3. Displays will be allowed to float on six parking stalls provided that the displays are taken inside every night.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**LIQUOR LICENSE APPLICATION; O BAR**

Mayor Clouse stated the public hearing on the Application for a Class C-83194 submitted by BARLEY STOP LLC, dba "O Bar" to be located at 2400 Central Avenue and the manager application for Jacob Sikes have been withdrawn by the applicant. Therefore, no action was necessary.

**IV. CONSENT AGENDA**

Mayor Clouse stated that City staff has withdrawn Consent Agenda Item 14 for the reason there is an error in the legal description. Therefore, no action was taken on that item.

Moved by Lear seconded by Buschkoetter that Subsections 1 through 13 and 15 through 20 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held October 14, 2008.
2. Approve the following Claims:

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

AccessData \$655.00 smcs; Ace Hardware \$505.90 smcs,co; Ace Irrigation \$575.00 smcs; Advanced Compressor \$196.54 smcs; Agri Co-op \$2,745.28 smcs; Agro

\$4,351.50 smcs; Alamar Uniforms \$164.19 smcs; Alltel \$1,279.35 smcs; Alpha Memory \$60.50 co; Amax Contracting \$262.32 co; Amazon \$179.90 smcs; Amer Electric \$216.17 smcs; Amer First Aid \$163.61 smcs; Amer Library Assn \$525.00 smcs; Amer Power Conversion \$809.19 smcs; APWA \$1,039.50 smcs; AWWA \$1,615.00 smcs; Amsan \$973.08 smcs; Andersen Wrecking \$111.28 smcs; Arrow Seed \$1,312.50 smcs; Ask Supply \$119.52 smcs; Atkinson,D \$52.00 smcs; Aurora \$21.60 smcs; Auto Glass Center \$197.00 smcs; B&H Photo-Video \$110.35 co; Baby Changing Stations \$197.54 smcs; Baird Holm \$5,796.89 smcs; Baker & Taylor Books \$3,628.16 smcs; Barcodes \$151.40 smcs; Barney Insurance \$4,761.50 smcs; BBC Audiobooks \$120.26 smcs; Beacon Athletics \$97.08 smcs; BG Peterson Co \$52.00 smcs; Blessing \$163,075.95 co; Bluecross Blueshield \$97,070.66 smcs; Bogard,M \$46.80 smcs; Bosselman \$885.00 smcs; Broadfoot's \$107.00 smcs; Brown Traffic Products \$2,775.50 smcs; Buffalo Co Court \$359.63 ps; Buffalo Co Reg Deeds \$30.50 smcs; Buggy Bath Car Wash \$127.50 smcs; Builders Warehouse \$2,751.41 smcs,co; Bullex Digital Safety \$735.51 smcs; Cabela's \$73.84 smcs; Carquest \$1,076.71 smcs; Casey's \$85.03 smcs; Cash Wa \$198.50 smcs; CDW Gov't \$89.49 co; Central Fire & Safety \$248.75 smcs; Central Hydraulic \$2,749.37 smcs; Central NE Bobcat \$14.82 smcs; Charter \$119.98 smcs; City of Bellevue \$100.00 smcs; City of Ky \$16,001.29 smcs,ps; City Plumbing \$229.19 smcs; College Savings Plan of NE \$100.00 ps; Comfort Inns \$1,072.05 smcs; Commontime \$162.50 smcs; Computer Warehouse #4 \$34.17 co; Conseco Life Ins \$24.00 ps; Construction Rental \$2,220.91 smcs,co; Continental \$331.50 smcs; Cook,T \$98.70 smcs; Copycat Printing \$417.82 smcs; Cordova,T \$46.80 smcs; Creative Teacher \$10.00 smcs; Crossroads Ford \$52.02 smcs; D&M Security \$60.00 co; Dawson Co PPD \$35,481.60 smcs; Days Inn \$132.00 smcs; Dell \$2,975.28 smcs,co; Demco \$1,884.42 smcs; Diamond Vogel \$570.54 smcs; Dorothy & Associates \$89.00 smcs; Doubletree Hotel \$2,109.15 smcs; Dultmeier Sales \$1,293.41 smcs; Dutton-Lainson \$936.78 smcs,co; Eagle Dental \$55.00 smcs; Eakes \$1,139.14 smcs,co; Ecolab \$32.50 smcs; Eggen,M \$50.41 smcs; EMC Ins \$128,026.18 smcs; Express Distributing \$75.00 smcs; Exxonmobile \$78.90 smcs; Fairbanks Int'l \$1,590.64 smcs; Farm Plan \$232.77 smcs; Fast Mart \$73.01 smcs; Fastenal \$2,019.17 smcs; Faz,A \$22.50 smcs; Fedex \$55.29 smcs; Films Media Group \$192.43 smcs; Finish Line Aluminum \$937.29 co; Fireguard \$434.76 smcs; Flag Co \$861.00 smcs; Fleetpride \$803.94 smcs; Flying J \$55.00 smcs; Fridgedoor \$73.95 smcs; Frontier \$8,046.19 smcs; Galls \$49.38 smcs; Garrett Tires & Treads \$526.68 smcs; Gas Stop \$68.83 smcs; Good Samaritan Hospital \$255.00 smcs; Graham Tire \$3,906.80 smcs; Grainger \$1,120.40 smcs; Great Plains One Call \$405.70 smcs; Great Plains Safety \$1,260.00 smcs; Guideposts \$17.24 smcs; Hach Co \$463.30 smcs; Hall Signs \$15,528.54 smcs; Hamilton Caster \$384.76 smcs; HD Supply \$182.22 smcs; Hobby-Lobby \$205.79 smcs; Hogan's Sporting Goods \$128.00 smcs; Holmes Plumbing \$515.71 smcs; Hotsy Equipment \$837.72 smcs; HP Home Store \$174.40 smcs; Huddleston,A \$51.00 smcs; Hydrologic \$4,327.75 smcs; IAEI \$90.00 smcs; ICMA RC \$4,063.71 ps; Institute of Police Tech \$1,650.00 smcs; IRS \$103,684.74 ps; IIMC \$150.00 smcs; Jack Lederman \$239.97 smcs; Jacobi's Carpet One \$37.97 smcs; Jacobsen, Orr, Nelson \$65.00 smcs; James,D \$137.24 smcs; Judd Brothers Construction \$81,808.25 co; K&K Parts \$310.17 smcs; K&T Saw Shop \$57.46 smcs; Ky Clinic \$864.00 ps; Ky Glass \$3,805.00 smcs; Ky Hub \$250.00 smcs; Ky Implement \$814.52 smcs; Ky Warehouse \$547.46 smcs; Ky Winlectric \$206.36 smcs; Ky Winnelson \$11.74 smcs; Ky Yamaha \$46.95 smcs; Kirkham Michael \$61,189.00 co; Klaus,M \$61.99 co; Kmart \$10.69 smcs; KOLN \$2,756.80 smcs; Konica Minolta \$117.34 smcs; Kully Pipe & Steel \$89.41 smcs; Lang,L

\$32.40 smcs; Lawn Builders \$7.97 smcs; League of NE Municipalities \$568.00 smcs; Lind Electronics \$71.80 co; Lindner,S \$6.00 smcs; Linweld \$49.14 smcs; Little Caesars \$62.00 smcs; Lockmobile \$10.50 smcs; Loper Athletic Club \$75,000.00 co; LT Navigo Wireless \$1,282.50 co; Lund,V \$42.50 smcs; Magic Cleaning \$660.00 smcs; Malcolite \$180.06 smcs; Marathon Oil \$67.42 smcs; Marketing Displays \$104.85 smcs; Marlatt Machine Shop \$501.00 smcs; McMaster-Carr \$1,147.18 smcs; Meadowlark Dental Assn \$378.86 smcs; Menards \$4,508.46 smcs,co; Metalmasters \$941.28 smcs; Metlife \$2.76 ps; Microsoft Supply \$10.68 co; Mid Amer Signal \$902.00 smcs; Mid-America Pump \$5,681.42 smcs; Mid-State Units \$120.00 smcs; Midwest Turf \$1,103.01 smcs; Miller & Associates \$93,411.77 smcs,co; Miller Signs \$1,755.00 smcs; Mini Generations \$5.00 smcs; Misko Sports \$11.00 smcs; Mollring,A \$352.51 smcs; Motorola \$350.20 co; Municipal Supply \$800.58 smcs; Murphy \$56.36 smcs; Napa All Makes Auto \$2,417.49 smcs; Nat'l Diamond \$443.10 co; NCS Equipment \$289.19 smcs; NE All Battery \$85.74 smcs,co; NE Child Support \$2,659.58 ps; NE Dept of Revenue \$73,724.96 smcs; NE Machine \$17.52 smcs; NE Truck Center \$386.79 smcs; Newegg \$922.31 smcs,co; Newman Signs \$480.79 smcs; Nivel Parts \$186.64 smcs; Northwest Electric \$1,759.53 smcs; Northwestern Energy \$900.72 smcs; NRPA Housing \$187.28 smcs; Numeridex \$954.44 smcs; NWEA \$280.00 smcs; Office Depot \$611.17 smcs; Office Max \$1,162.47 smcs; Officenet \$345.45 smcs; Ohri,R \$167.00 smcs; O'Keefe Elevator \$784.33 smcs; OPS Systems \$473.00 smcs; O'Reilly Auto \$1,537.77 smcs; Orscheln \$815.11 smcs; Overhead Door \$65.00 smcs; Paraben Corp \$3,313.00 smcs; Paramount Linen \$247.27 smcs; Party America \$9.65 smcs; Paypal \$732.53 smcs; Peister,C \$7,500.00 co; Pep Co \$51.10 smcs; Pfeiffer,D \$30.00 smcs; Ping \$67.11 smcs; Pizza Hut \$170.27 smcs; Platte Valley Comm \$34.10 smcs; Portraits & Pages \$21.10 smcs; Presto-X \$58.00 smcs; Provantage \$981.24 co; Pump & Pantry \$12.51 smcs; Quicken \$85.59 smcs; Random House \$683.60 smcs; Reams \$3,963.35 smcs; Recognition Unlimited \$227.59 smcs; Recorded Books \$1,440.12 smcs; Rheome Tree Service \$2,200.00 smcs; Riverside Mfg \$216.93 ps; RK Digital \$145.22 smcs; RKI Instruments \$271.55 smcs; Roper's Radiator Service \$65.00 smcs; Sahling Kenworth \$1,082.29 smcs; Sears \$139.07 smcs; See Clear Cleaning \$4,600.00 smcs; Seneca Tank \$341.90 smcs; Service Plus \$1,122.82 smcs; Sherman,B \$175.00 smcs; Sherwin Williams \$159.09 smcs,co; Siel Construction \$183,121.46 co; Sign Center \$466.36 smcs; Smith Signs \$430.00 smcs; Snap-On Tools \$376.90 smcs; Softchoice Corp \$691.98 smcs,co; Sports Village \$228.03 smcs; Stagecoach \$314.00 smcs; Staples Direct \$199.99 co; Steinbrink's Landscaping \$634.84 smcs; Sunmart \$129.60 smcs; Sutphen Corp \$674.64 smcs; Target \$165.32 smcs; Teledyne \$490.00 smcs; Theis,J \$30.00 smcs; Tielke Enterprise \$400.28 smcs; Tractor-Supply \$922.68 smcs; Trans Iowa Equipment \$619.35 smcs; Travelocity \$22.95 smcs; Tri City Outdoor \$649.89 smcs; Tri-State Pump \$426.45 smcs; TruGreen ChemLawn \$152.00 smcs; Turner Body Shop \$6,532.30 smcs; Type One Incident \$193.69 smcs; UAP \$265.00 smcs; Unique Management \$232.70 smcs; United Suppliers \$745.00 smcs; UPS \$28.57 smcs; US Bank \$25,845.00 ds; US Tennis Assn \$35.00 smcs; USPS \$1,686.29 smcs; Van Diest Supply \$1,990.00 smcs; Vanderbilts \$204.98 smcs; Voss Lighting \$293.00 smcs; Waldenbooks \$10.00 smcs; Walgreens \$71.45 smcs; Wal-Mart \$584.13 smcs; Walsh,C \$161.37 smcs; Weller,B \$117.00 smcs; Wells Fargo Bank \$1,300.00 smcs; West Payment Center \$1,423.44 smcs; West Villa Animal Hospital \$65.00 co; Westin Hotels Crown \$240.84 smcs; Wilke Donovan's \$194.26 smcs,co; Williams,M \$248.62 smcs; Wittek Golf Supply \$490.94 smcs; WP-Acclaim Software \$45.00 smcs; WPCI \$539.00 ps; Yanda's Music \$508.80 smcs; Young,J \$46.80 smcs; Youth's Safety \$334.60 smcs; Payroll Ending 10-

25-2008 -- \$300,540.50. 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 November 11, 2008 at 7:00 p.m. as date and time for hearing on those applications where applicable.

4. Approve Change Order No. 3 showing an increase in the amount of \$3,241.00, Change Order No. 4 showing an increase in the amount of \$4,380.00, Change Order No. 5 showing an increase in the amount of \$12,517.30, Application and Certificate for Payment No. 4 in the amount of \$251,376.30 submitted by Blessing, LLC and approved by Brungardt Engineering for the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and approve **Resolution No. 2008-188**.

**RESOLUTION NO. 2008-188**

WHEREAS, Blessing, LLC has performed services in connection with the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and the City's engineer, Brungardt Engineering, have filed with the City Clerk Change Order No. 3 showing an increase in the amount of \$3,241.00 as shown on Exhibit "A", Change Order No. 4 showing an increase in the amount of \$4,380.00 as shown on Exhibit "B", and Change Order No. 5 showing an increase in the amount of \$12,517.30 as shown on Exhibit "C", attached hereto and made a part hereof by reference; and

WHEREAS, Blessing, LLC and the City's engineer, Brungardt Engineering, have filed with the City Clerk Application and Certificate for Payment No. 4 in the amount of \$251,376.30 as shown on Exhibit "D" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$1,004,396.00
Change Order No. 1 (4-8-2008)	- 136,500.00
Change Order No. 2 (10-14-2008)	+ 9,872.50
Change Order No. 3 (10-28-2008)	+ 3,241.00
Change Order No. 4 (10-28-2008)	+ 4,380.00
Change Order No. 5 (10-28-2008)	<u>+ 12,517.30</u>
Contract Sum to Date	897,906.80
Total Completed and Stored to Date	768,040.50
Retainage	76,804.05
Amount Due to Date	691,236.45
Less Previous Certificates for Payment	<u>439,860.15</u>
Current Payment Due	\$ 251,376.30

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order Nos. 3, 4, and 5, as shown on Exhibits "A", "B", and "C", and Application and Certificate for Payment No. 4 as shown on Exhibit "D" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

- 5. Accept the report from the City Clerk on the insufficiency of objection/protest filed in connection with Ordinance No. 7462 creating Water District No. 2008-553 in 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition.
- 6. Approve the City of Kearney Identity Theft Prevention Program and approve **Resolution No. 2008-189.**

**RESOLUTION NO. 2008-189**

WHEREAS, Public Law 108-159 went into effect on December 4, 2003 and amends the Fair Credit Reporting Act; and

WHEREAS, such amendment, known as the FACT Act, requires creditors, including utilities, to comply with the Act no later than November 1, 2008; and

WHEREAS, the City of Kearney is, as defined under 15 U.S.C. Section 1681a(r)(5), a creditor that maintains and offers accounts for which there is a reasonably foreseeable risk of identity theft; and

WHEREAS, compliance with the Act requires a creditor to create and implement a written Identity Theft Prevention Program; and

WHEREAS, that said Identity Theft Prevention Program is appropriate to the size and complexity of the City of Kearney and the scope of its activities, that the Program is reasonably calculated to identify and detect relevant Red Flags indicating a potential risk of identity theft, and that the Program includes appropriate responses to such Red Flags that will mitigate and prevent identity theft.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Kearney, Nebraska, that the City of Kearney Identity Theft Prevention Program, marked as Exhibit "A", attached hereto and made a part hereof by reference, be and is hereby approved and adopted.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

- 7. Approve the bid received for the 2008 Part 9 Improvements – Manhole Rehabilitation Project and approve **Resolution No. 2008-190** awarding the bid to Midlands Contracting in the amount of \$164,820.00.

**RESOLUTION NO. 2008-190**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on October 16, 2008 at 2:00 p.m. for the 2008 Part 9 Improvements – Manhole Rehabilitation Project; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$165,360.00; and

WHEREAS, the said engineers have recommended the bid offered by Midlands Contracting, Inc. of Kearney, Nebraska in the sum of \$164,820.00 be accepted as the lowest responsible bid for the 2008 Part 9 Improvements – Manhole Rehabilitation Project.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Midlands Contracting, Inc. of Kearney, Nebraska be and is the lowest responsible bidder for the 2008 Part 9 Improvements – Manhole Rehabilitation Project to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Midlands Contracting, Inc. of Kearney, Nebraska in the sum of \$164,820.00 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$165,360.00 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 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**8.** Approve **Resolution No. 2008-179A** correcting the number listed for the distance in the legal description for the proposed acquisition for an Avigation and Hazard Easement on property located south of the Union Pacific Railroad right-of-way and south of the main runway at the Kearney Regional Airport.

#### **RESOLUTION NO. 2008-179A**

WHEREAS, Section 18-1755, R.R.S., authorizes a city acquiring an interest in real property by purchase or eminent domain to do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing; and

WHEREAS, the City Council has held a public hearing upon the proposed acquisition for an Avigation and Hazard Easement and voted in favor to proceed with the acquisition; and

WHEREAS, Wolford Farms, Incorporated, a Nebraska Corporation, has granted to the City of Kearney, Nebraska an Avigation and Hazard Easement on a tract of land located in the Northeast Quarter of Section 33, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, being more particularly described as follows: commencing at the East Quarter corner of said Section 33, thence N00°53'13"W on the east line of said Section 33 a distance of 1,624.89 feet to a point on the south Union Pacific Railroad right-of-way line; thence S72°48'07"W on said south Union Pacific Railroad right-of-way line a distance of 266.84 feet to the point of beginning; thence S01°46'56"E a distance of 499.54 feet; thence N83°15'06"W a distance of 1,186.46 feet to a point on said south Union Pacific Railroad right-of-way line; thence N72°48'07"E on said south Union Pacific Railroad right-of-way line a distance of 1,217.12 feet to the point of beginning, containing 6.73 acres, more or less, all in Buffalo County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Avigation and Hazard Easement granted by Wolford Farms, Incorporated, a Nebraska Corporation, to the City of Kearney be and is hereby approved and accepted.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

9. Approve Application and Certificate for Payment No. 2 in the amount of \$134,303.82 submitted by Wilke Contracting Corp. and approved by Miller & Associates for the 2007 Part V Improvements consisting of the bridge work on 4th Street between 2nd Avenue and 3rd Avenue and approve **Resolution No. 2008-191**.

**RESOLUTION NO. 2008-191**

WHEREAS, Wilke Contracting Corporation has performed services in connection with the 2007 Part V Improvements consisting of the bridge work on 4th Street between 2nd Avenue and 3rd Avenue, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$134,303.82 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$310,147.48
Contract Sum to Date	\$310,147.48
Gross Amount Due	284,896.34
Retainage	28,489.63
Amount Due to Date	256,406.71
Less Previous Certificates for Payment	<u>122,102.89</u>
Current Payment Due	\$134,303.82

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 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

10. Approve Change Order No. 1 showing an increase in the amount of \$27,624.92, Application and Certificate for Payment No. 2 in the amount of \$139,599.67 submitted by Concrete Workers, Inc. and approved by Miller & Associates for the 2008 Part 2 Improvements consisting of Paving Improvement District No. 2007-920 for the alley lying between 24th Street to 25th Street from 1st Avenue to 2nd Avenue; Paving Improvement District No. 2007-921 for the alley lying between 1st Avenue and 2nd Avenue from 23rd Street to 24th Street; Paving Improvement District No. 2007-922 for

the alley lying between 25th Street and 26th Street from Central Avenue to Avenue A; Paving Improvement District No. 2007-923 for the alley lying between Central Avenue and Avenue A from 23rd Street to 24th Street; Paving Improvement District No. 2007-924 for the alley lying between Central Avenue and 1st Avenue from 23rd Street to 24th Street and approve **Resolution No. 2008-192**.

**RESOLUTION NO. 2008-192**

WHEREAS, Concrete Workers, Inc. of Kearney, Nebraska has performed services in connection with the 2008 Part 2 Improvements consisting of Paving Improvement District No. 2007-920 for the alley lying between 24th Street to 25th Street from 1st Avenue to 2nd Avenue; Paving Improvement District No. 2007-921 for the alley lying between 1st Avenue and 2nd Avenue from 23rd Street to 24th Street; Paving Improvement District No. 2007-922 for the alley lying between 25th Street and 26th Street from Central Avenue to Avenue A; Paving Improvement District No. 2007-923 for the alley lying between Central Avenue and Avenue A from 23rd Street to 24th Street; Paving Improvement District No. 2007-924 for the alley lying between Central Avenue and 1st Avenue from 23rd Street to 24th Street, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing an increase in the amount of \$27,624.92 as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, Concrete Workers, Inc. and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$139,599.67, as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$210,225.00
Change Order No. 1 (10-28-2008)	<u>+ 27,624.92</u>
Contract Sum To Date	237,849.92
Gross Amount Due	159,044.92
Retainage	7,952.25
Amount Due to Date	151,092.67
Less Previous Certificates for Payment	<u>11,493.00</u>
Current Payment Due	\$139,599.67

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

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

11. Approve Change Order No. 1 showing a decrease in the amount of \$4,217.60, Application and Certificate for Payment No. 2-Final in the amount of \$10,130.09, and Certificate of Substantial Completion submitted by Midlands Contracting, Inc. and approved by Miller & Associates for the 2008 Part 8 Improvements – Bid A consisting of

Water District No. 2008-551 for 62nd Street, Avenue S Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4, 5, 6, and 7 of Block 2; Lots 1 and 2 of Block 3; Lots 1, 2, 3 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth; and Sanitary Sewer District No. 2008-493 for 62nd Street, Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4 of Block 2; Lots 1 and 2 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth and approve **Resolution No. 2008-193**.

**RESOLUTION NO. 2008-193**

WHEREAS, Midlands Contracting of Kearney, Nebraska has performed services in connection with the 2008 Part 8 Improvements – Bid A consisting of Water District No. 2008-551 for 62nd Street, Avenue S Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4, 5, 6, and 7 of Block 2; Lots 1 and 2 of Block 3; Lots 1, 2, 3 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth; and Sanitary Sewer District No. 2008-493 for 62nd Street, Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4 of Block 2; Lots 1 and 2 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing an decrease in the amount of \$4,217.60 as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, Midlands Contracting, Inc. and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 2-Final in the amount of \$10,130.09 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$153,572.00
Change Order No. 1 (10-28-2008)	- 4,217.60
Contract Sum to Date	149,354.40
Total Completed and Stored to Date	149,354.40
Retainage	.00
Amount Due to Date	146,551.90
Less Previous Certificates for Payment	<u>139,224.31</u>
Current Payment Due	\$ 10,130.09

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of September 19, 2008, as shown by Exhibit "C" attached hereto and made a part hereof by reference.

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

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**12.** Approve Change Order No. 1 showing an increase in the amount of \$4,900.00, Application and Certificate for Payment No. 2 in the amount of \$214,253.28 submitted by Dan Roeder Concrete and approved by Miller & Associates for the 2008 Part 8

Improvements – Bid B consisting of Paving Improvement District No. 2008-927 for 62nd Street, Avenue S, Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4, 5, 6, and 7 of Block 2; Lots 1 and 2 of Block 3; Lots 1, 2, 3 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth and approve **Resolution No. 2008-194**.

**RESOLUTION NO. 2008-194**

WHEREAS, Dan Roeder Concrete has performed services in connection with the 2008 Part 8 Improvements – Bid B consisting of Paving Improvement District No. 2008-927 for 62nd Street, Avenue S, Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4, 5, 6, and 7 of Block 2; Lots 1 and 2 of Block 3; Lots 1, 2, 3 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing an increase in the amount of \$4,900.00 as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, Dan Roeder Concrete and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$214,253.28 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$304,210.00
Change Order No. 1 (10-28-2008)	<u>+ 4,900.00</u>
Contract Sum to Date	\$309,110.00
Gross Amount Due	273,458.00
Retainage	27,345.80
Amount Due to Date	246,112.20
Less Previous Certificates for Payment	<u>31,858.92</u>
Current Payment Due	\$214,253.28

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

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**13.** Approve Application and Certificate for Payment No. 9 in the amount of \$35,509.55 submitted by Starostka Group and approved by Miller & Associates for the Northwest Well Field Improvements; Phase II - Water Transmission Main and approve **Resolution No. 2008-195**.

**RESOLUTION NO. 2008-195**

WHEREAS, Starostka Group Unlimited of Grand Island, Nebraska has performed services in connection with the Northwest Well Field Improvements; Phase II – Water Transmission Main, and the City's engineer, Miller & Associates, have filed with

the City Clerk Application and Certificate for Payment No. 9 in the amount of \$35,509.55 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$4,098,297.20
Change Order – None	<u>.00</u>
Contract Sum to Date	4,098,297.20
Total Completed and Stored to Date	4,014,604.17
Retainage	401,460.42
Amount Due to Date	3,603,910.00
Less Previous Certificates for Payment	- 3,613,143.75
Less Bacteria Testing/Flushing/Chlorination	- 195,563.20
Pressure Testing	- 22,472.00
Less Late Completion (October 2007 – September 2008)	<u>- 264,000.00</u>
Current Payment Due	\$ 35,509.55

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. 9, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**14. WITHDRAWN.** Accept the public improvements constructed under, and in accordance with, the terms of the Developer Constructed Infrastructure Agreement for Lot 1 of Block 7, Lighthouse Point Addition; Lots 1, 2, 3, 4, Village Plaza Addition; Lots 7 and 8 of Block 4, Kearney Plaza Second; Lots 11 through 19 of Block 2 and Lots 1 through 9 of Block 4, Kearney Plaza Third; Eastbrooke Seventh Addition; and Talmadge Center Addition, all in the City of Kearney, Buffalo County, Nebraska and approve **Resolution No. 2008-196.**

**15.** Approve the bids received for the 2008 Part 11 Improvements consisting of Paving Improvement District No. 2008-928 for 4th Avenue from the north line of 4th Street to the south line of 8th Street; Paving Improvement District No. 2008-929 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition; Water District No. 2008-552 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition and approve **Resolution No. 2008-197** awarding the bid to Midlands Contracting, Inc. in the amount of \$158,222.00 for Bid A and to Dan Roeder Concrete in the amount of \$370,787.00 for Bid B.

**RESOLUTION NO. 2008-197**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on October 21, 2008 at 2:00 p.m. for the 2008 Part 11 Improvements consisting of Paving Improvement District No. 2008-928 for 4th Avenue from the north line of 4th Street to the south line of 8th Street; Paving Improvement

District No. 2008-929 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition; Water District No. 2008-552 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$110,570.00 for Bid A (Water) and \$527,419.00 for Bid B (Paving); and

WHEREAS, the said engineers have recommended the bid offered by Midlands Contracting, Inc. of Kearney, Nebraska in the sum of \$158,220.00 for Bid A (Water), and Dan Roeder Concrete Inc. of Kearney, Nebraska in the sum of \$370,787.00 for Bid B (Paving) be accepted as the lowest responsible bids.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Midlands Contracting, Inc. of Kearney, Nebraska be and is the lowest responsible bidder for the 2008 Part 11 Improvements consisting of Water District No. 2008-552 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Midlands Contracting, Inc. of Kearney, Nebraska in the sum of \$158,220.00 be and is hereby accepted for Bid A (Water).

BE IT FURTHER RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Dan Roeder Concrete Inc. of Kearney, Nebraska be and is the lowest responsible bidder for the 2008 Part 11 Improvements consisting of Paving Improvement District No. 2008-928 for 4th Avenue from the north line of 4th Street to the south line of 8th Street; Paving Improvement District No. 2008-929 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Dan Roeder Concrete Inc. of Kearney, Nebraska in the sum of \$370,787.00 be and is hereby accepted for Bid B (Paving).

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost for 2008 Part 11 Improvements for Bid A (Water) in the amount of \$110,570.00 and for Bid B (Paving) in the amount of \$527,419.00 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 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**16.** Approve Application and Certificate for Payment No. 4 in the amount of \$159,172.20 submitted by Paulsen, Inc. and approved by Kirkham Michael for the construction of the Airport Road Relocation Project and approve **Resolution No. 2008-198.**

### **RESOLUTION NO. 2008-198**

WHEREAS, Paulsen, Inc. of Cozad, Nebraska has performed services in connection with the construction of the Airport Road Relocation Project, and the City's

engineer, Kirkham Michael, have filed with the City Clerk Application and Certificate for Payment No. 4 in the amount of \$159,172.20 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$1,501,718.55</u>
Contract Sum to Date	1,501,718.55
Total Completed and Stored to Date	904,411.60
Retainage	90,441.16
Amount Due to Date	813,970.44
Less Previous Certificates for Payment	<u>654,798.24</u>
Current Payment Due	\$ 159,172.20

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. 4, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

17. Approve the Technical and Professional Services Contract between the City of Kearney and Miller & Associates for Community Development Block Grant No. 08-CR-004 for grant administration services relating to the Community Revitalization Program and approve **Resolution No. 2008-199**.

**RESOLUTION NO. 2008-199**

WHEREAS, the City of Kearney was awarded Community Development Block Grant Funds from the Nebraska Department of Economic Development for the Community Revitalization program which will provide a combination of improvements to sidewalks, streets, and accessible sidewalk ramps at intersections in a targeted area in southeast Kearney; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for project administration services relating to this project; and

WHEREAS, City staff reviewed the proposal and recommends pursuing a contract with Miller & Associates of Kearney to provide project administration services.

NOW, THEREFORE, 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, on behalf of the City of Kearney, the Technical and Professional Services Contract between the City of Kearney and Miller & Associates for Community Development Block Grant No. 08-CR-004 for project administration services in the amount of \$12,000 as set forth in the Contract. A copy of the said Contract, marked Exhibit "A", is attached hereto and made a part hereof by reference

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**18.** Approve the application for deferral of special assessments submitted by Vernon and Bob Brooke in connection with Water District No. 2008-553 in 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition.

**19.** Approve **Resolution No. 2008-200** acknowledging Buffalo County vacating part of Airport Road running north to south from Highway 30 to 39th Street as it was previously laid out prior to its current relocation.

### **RESOLUTION NO. 2008-200**

WHEREAS, Buffalo County has received a petition requesting to vacate a part of Airport Road running north to south from Highway 30 to 39th Street; and

WHEREAS, Airport Road as it was previously laid out has been relocated; and

WHEREAS, Section 39-1725 of the Nebraska Revised Statutes requires approval of the governing body of a city of the first class when a public road is to be vacated and is within the area of the zoning jurisdiction of such city.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City of Kearney, Nebraska hereby grants permission to Buffalo County to vacate the following property as it was previously laid out and known as Airport Road: a tract of land being a part of the North Half of Section 33, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, being a part of Avenue "A" (aka Airport Road) as shown on Midway Industrial District plat, but never dedicated, with said tract being more particularly described as follows: Referring to the Northwest Corner of the North Half of said Section 33; thence easterly on the North line of said North Half a distance of 2725.45 feet to the ACTUAL PLACE OF BEGINNING, said point being on the west line of Avenue "A" and the northeast corner of Tract B in said Midway Industrial District; thence southwesterly on the west line of Avenue "A" and the east line of said Tract B to a point on the north right-of-way line of US Highway No. 30; thence northeasterly on and along said right-of-way line a distance of 238.5 feet; thence northwesterly a distance of 645.0 feet to a point 66.0 feet southeasterly of, as measured at right angles to, the aforesaid west line of Avenue "A"; thence northeasterly parallel with and 66.0 feet southeasterly of the aforesaid west line to a point on the North line of the North Half of said Section 33; thence westerly on the aforesaid North line to the place of beginning, all in Buffalo County, Nebraska.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**20.** Approve the application submitted by Delmar Nelson on behalf of the American Legion Post 52 to conduct the Veterans Day Parade on November 11, 2008 beginning at 4:00 p.m. with the parade starting at Railroad Street, north on Central Avenue and ending at the parking lot located north of the Museum of Nebraska Art which includes reserving two parking spaces in front of Redman Shoes, 2116 Central Avenue.

## **V. CONSENT AGENDA ORDINANCES**

None.

## **VI. REGULAR AGENDA**

### **AMERICANS WITH DISABILITIES ACT – SELF EVALUATION**

Regular Agenda Items 1 and 2 were discussed together but voted on separately.

Mayor Clouse opened for discussion the Self-Evaluation required by the American with Disabilities Act for the City of Kearney and to consider approval of Resolution No. 2008-201.

ADA Coordinator Luke Olson presented this matter to the Council. The Americans with Disabilities Act (ADA) was enacted on July 26, 1990. This landmark legislation provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications. Simply, the ADA prohibits all state and local government and some private businesses from discrimination on the basis of disability.

Specifically, Subtitle A of Title II of the Americans with Disabilities Act extends the prohibition of discrimination established by the Rehabilitation Act of 1973 (Section 504) to all local government services, programs, or other activities. Also, discrimination is prohibited by local government instrumentalities, agencies, or contractors. The ADA establishes minimum requirements that must be met to ensure compliance with the spirit and intent of the law including the following actions:

- Designate an ADA Coordinator

Completed. Title II of the Act requires that all public entities with more than 50 employees designate at least one employee to coordinate compliance with ADA.

- Provide Public Notice

Completed – Ongoing. All local governments must advise all applicants, participants, beneficiaries, and other interested persons that information is available on how government programs are complying with ADA. Staff believes that every effort should be given to allow interested parties an opportunity to submit comments regarding the City's compliance with the ADA. Disabled individuals and disability groups will have the opportunity to review our efforts and staff will continue to solicit their comments.

- Self-Evaluation Process

Completed – Ongoing. All public entities subject to Title II of the ADA must complete a self-evaluation and the self-evaluation must be retained for a period of three years. A self-evaluation is a public entity's assessment of its current practices and policies. The purpose of the self-evaluation is to also serve as a checklist, or a "to do" list, of actions that the City needs to take to ensure compliance with the provisions of Title II requirements of the ADA.

The City of Kearney has analyzed and will continue to analyze all City policies and practices to ensure that individuals with disabilities are provided an opportunity for full participation in City programs and services. This analysis has included review of numerous City programs and activities, including possible physical barriers, as well as

administrative barriers, that prevent the disabled from the full benefit and enjoyment of City goods and services.

- Development of Transition Plan

Completed – Ongoing. The Transition Plan is the document that specifies modifications that are to be made to public facilities, the standards to be used, and the time-frame for modifications. Interested parties must be given an opportunity to submit comments and a copy of the plan must be made available for public inspection.

- Develop a Grievance Procedure

Completed. A grievance procedure to resolve grievances quickly and fairly is required and this procedure must be formally adopted and published.

Completion of the above requirements represents just a few of the many actions necessary to achieve accessibility for all citizens who utilize our public facilities, participate in City activities, and seek public employment. Staff believes that to be truly successful with regards to ADA, our efforts should reflect an ongoing everyday commitment to eliminate discrimination of the disabled rather than only producing mandated federal reports.

As public comment is received, revisions of our planned efforts, including priorities and scheduling, may be necessary. Ensuring that persons with disabilities have equal opportunity to access, use, and enjoy the goods, services, and privileges that the City offers is a large task and well worth the effort.

City Manager Michael Morgan stated this went into effect several years ago. With the passage of these two items will bring Kearney into compliance.

Moved by Buschkoetter seconded by Clouse to approve the Self-Evaluation required by the American with Disabilities Act for the City of Kearney and approve **Resolution No. 2008-201**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2008-201**

WHEREAS, the Americans with Disabilities Act “ADA” was enacted on July 26, 1990, providing comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications; and

WHEREAS, Subtitle A of Title II of the Americans with Disabilities Act extends the prohibition of discrimination established by the Rehabilitation Act of 1973 (Section 504) to all local government services, programs, or other activities. Discrimination is also prohibited by local government instrumentalities, agencies or contractors; and

WHEREAS, all public entities subject to Title II of the ADA are required to complete a self-evaluation by January 26, 1993; and

WHEREAS, the self-evaluation must be retained for a period of three (3) years.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska:

Section 1. That the self-evaluation for the City of Kearney, Nebraska is hereby accepted and shall be filed with the City Clerk and maintained for a period of three (3) years.

Section 2. That this Resolution shall be in full force and effect from and after its adoption.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**AMERICANS WITH DISABILITIES ACT – GRIEVANCE PROCEDURE**

Regular Agenda Items 1 and 2 were discussed together but voted on separately.

Mayor Clouse opened for discussion the establishment of a Grievance Procedure in accordance with the Americans with Disabilities Act and to consider approval of Resolution No. 2008-202.

Moved by Clouse seconded by Kearney to approve establishing a Grievance Procedure in accordance with the Americans with Disabilities Act and approve **Resolution No. 2008-202**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Kearney, Lear, Lammers. Nay: None. Motion carried.

**RESOLUTION NO. 2008-202**

WHEREAS, the Americans with Disabilities Act (ADA) Title II, requires local governments that employ fifty (50) or more employees to adopt and publish certain grievance procedures; and

WHEREAS, these grievance procedures must provide for prompt and equitable resolution of complaints alleging any action prohibited under the rules governing non-discrimination on the basis of disability in the provision of local government services.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska:

Section 1. The following is the American with Disabilities Act (ADA) Grievance Procedure:

1. All complaints regarding access or alleged discrimination shall be submitted in writing to the City’s ADA Coordinator for resolution. A record of the complaint and action taken will be maintained. A decision by the ADA Coordinator will be rendered within fifteen (15) days of receipt of the complaint.
2. If the complaint cannot be resolved to the satisfaction of the complainant by the ADA Coordinator, it will be forwarded to the City Manager.
3. The City Manager is charged with establishing ground rules or procedures for hearing complaints, requests or suggestions from disabled persons regarding access to and participation in the public facilities, services, activities and functions in the community. The City Manager shall issue a written recommendation within thirty (30) days of notification.
4. If the complaint cannot be resolved to the complainant’s satisfaction by the City Manager, the complaint will be heard by the City Council. A determination shall be made within thirty (30) days of the hearing held by the City Council. The decision of the City Council is final.

5. A record of action taken on each request or complaint must be maintained as a part of the records or minutes at each level of the grievance process.

6. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies nor does it restrict an individual from filing a complaint with other appropriate agencies.

7. ADA City employee-related matters are covered under a separate grievance procedure.

Section 2. The City Manager is responsible for implementation of these procedures and may make such reasonable interpretations and minor modifications as are necessary for efficient administration consistent with the intent of this resolution and the ADA.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

PASSED AND APPROVED THIS 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**AWARD BID FOR PETERSON SENIOR ACTIVITY CENTER AT YANNEY PARK**

Mayor Clouse opened for discussion the bids received for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and to consider approval of Resolution No. 2008-203 awarding the bid to Hausmann Construction in the amount of \$2,879,000.00.

Recreation Superintendent Scott Hayden presented this matter to the Council. On September 23, 2008 the City Council approved the plans and specifications for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park at west 11th Street and Kea West Avenue. The Activity Center will consist of new construction of approximately 15,000 square feet, two stories in height, including a kitchen, dining area, conference/classroom, offices and fitness area.

The City received bids on October 23, 2008 at 2:00 p.m. The following are the bid results:

<b>Bidder</b>	<b>Base Bid</b>	<b>Alternate 1</b>	<b>Alternate 2</b>	<b>Total Bid</b>
Hausmann Construction	\$2,879,000.00	\$18,700.00	\$4,900.00	\$2,902,000.00
Central Contracting	\$2,923,739.00	\$17,600.00	\$4,600.00	\$2,945,939.00
Paulsen, Inc.	\$3,210,000.00	\$17,600.00	\$4,600.00	\$3,232,200.00
Sampson Construction	\$3,245,000.00	\$17,900.00	\$3,900.00	\$3,266,800.00

Alternate 1 provides additional food service equipment.

Alternate 2 provides motorized roller shades on windows in the Multi-Purpose/Dining Room.

The Engineer's Opinion of Probable Construction Cost was \$2,749,017.00. The low bid from Hausmann Construction is 6% above the Engineer's Opinion of Probable Construction Cost. The contractor is estimating 370 days to complete the project. Because the low bid is above the Engineer's Opinion of Probable Construction Cost, the staff will negotiate with the contractor to determine what areas of the project can be decreased. Any adjustments to the contract price will be submitted to the Council as a change order.

Moved by Kearney seconded by Lammers to approve the bids received for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2008-203** awarding the bid to Hausmann Construction in the amount of \$2,879,000.00. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2008-203**

WHEREAS, Wilkins Hinrichs Stober Architects and the City of Kearney have reviewed the sealed bids which were opened on October 23, 2008 at 2:00 p.m. for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$2,749,017.00 for said project; and

WHEREAS, the said engineers have recommended the bid offered by Hausmann Construction of Lincoln, Nebraska in the sum of \$2,879,000.00 be accepted as the lowest responsible bid.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Hausmann Construction of Lincoln, Nebraska be and is the lowest responsible bidder for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Hausmann Construction of Lincoln, Nebraska in the sum of \$2,879,000.00 be and is hereby accepted subject to the City negotiating the contract cost to an amount in keeping with the budget.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost for construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park 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 28TH DAY OF OCTOBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **PROPOSED RESTAURANT OCCUPATION TAX**

Mayor Clouse opened for discussion among Council members the proposed one

percent Restaurant Occupation Tax. The Council needed to give the Visitors Bureau a response to their presentation at the last Council meeting. This would be the opportunity for the Council to discuss and provide some direction to the Visitors Bureau.

Council member Kearney stated that in today's economy, he believed that everyone should be careful with additional taxes of any sort. It is becoming more apparent that it will affect Kearney's economy future which it already has.

Council member Buschkoetter stated one of the things that he has heard a lot about is that any proposal that would increase those taxes should be put to a vote by the public. The City has been able to do a lot of things with the sales tax revenues, such as the Peterson Senior Activity Center. The Council has a great amount of trust from the tax payers and voters in the community, as witnessed by three members of this Council being up for election and no one has raised opposition to them. He believed that if the Council approved to add a considerable sales tax to the existing tax and not give the public a voice in that decision; they would lose a lot of that trust and good will that the community has in them to make decisions.

Mayor Clouse asked for discussion pertaining to the proposal as it was presented. There were a couple of things involved such as, should it be voted on and is the timing right.

Council member Kearney stated that the elected body ought to have control of the funds. He thought turning those funds over to another entity would lose the respect of the citizens. He stated regarding the hotel/motel lodging tax, he did not believe that involved local people. He felt differently about the estimate of fifty percent being paid by citizens of this community.

Council member Lear stated he was in agreement with Council Member Kearney. He believed the control issue is as important in this situation as much as any. The City would be collecting (if enacted) a tax not only on "foreigners", but also a high percentage from our citizens who would be paying it. Clear lines of accountability are appropriate in that event. They have a mechanism in place to view what is going on with those dollars collected from the lodging tax and Council Member Buschkoetter has done a great job of that. Those are clearly dollars that are being generated by the hotel industry which are being turned around and used to support the hospitality industry. The great thing is it also provides tremendous benefit to the rest of the community.

Council member Lear continued to state that what is hard about this proposed project is where you go after crossing those two lines. He would support direct City control of those funds in some appropriate format. The difficult thing would be to determine what projects should be done. From the beginning, the difficult thing for him about this proposal is that tourism is so important to this community (the Visitors Bureau have identified some potential ways to fund them) and it is not often they get a proposal so neatly packed. However, none of these projects are classified as "need projects". They are a need from the standpoint of helping to drive our tourism industry, but not "need projects" from the standpoint of food, water and shelter projects. The beauty of these projects is certainly in the eye of the beholder. Hypothetically, one person might like the Firefighter Museum and another person a water park. The City wants to do something

to support tourism and do agree on some of the concepts. Given the nature of the economy, a public ballot is appropriate. He stated the feedback he has gotten has been split from the people he has talked to. He did not think that a proposal should be taken to the public without spelling out exactly how the dollars are going to be used over the next 10-15 years.

Council member Lammers believed that the Council has been very supportive of the marketing aspect with increasing funds and releasing funds to the Visitors Bureau to enhance what they have to market that were going to the City for occupational taxes. He would not be opposed to increasing funds for the marketing aspect of it. He would oppose a one percent tax on all food service that affects Kearney citizens plus the communities surrounding Kearney for a three years period with no "sunset clause" on the proposal. Most of the proposed projects are targeting those along Archway Parkway (which he does not necessarily have a problem with); however, other portions of the City need to be enhanced because we also have restaurants that are in the northern portion of town. He has received a lot of negative feedback from those on the north. He has also had calls from people in the hotel/motel industry on the southern end of town who are in favor of it. He was in agreement to put it to the voters from all areas of the community.

Council member Buschkoetter stated that overseeing those funds could be done by an entity like the Park Advisory Board made up of various members of the restaurant, hotel/motel community and citizens at large. He reminded them that to a certain extent they did not really spell out exactly what the half cent sales tax proposal were going to be used for. He believed that they could have some sessions and get input similar to what they did prior to the sales tax vote. The projects could be done with the idea of bringing people to town, as well as something the citizens could use, a water park, a softball complex or youth sports complex, for example. These could be placed in different parts of the City.

Council member Lammers stated the difference between the half cent sales tax and this proposal is that they got ideas for different parts of the community and it served all of the community. He believed that the perception of the community (at this point) of this one percent tax is that it would be used for one portion of the community and not for all.

Council member Buschkoetter stated that the public needs to realize that it is for the benefit of bringing significant numbers of people to our community with sponsoring tournaments, as well as providing opportunities for Kearney citizens.

Council member Kearney stated that he believed that they need to be careful to keep all of the citizens in mind because the Council represents everyone in the community.

Mayor Clouse stated there have been some projects identified in the proposal. The purpose of this discussion is to find out if this is a concept that the Council can support. If it is, then he asked what response they wanted to take to the Visitors Bureau that they all would be comfortable with. From the discussion, Mayor Clouse asked if what he heard them saying was an overwhelming sentiment that it needs to be taken to the ballot.

Council member Kearney responded he did not think so until the economy turns around. Council member Buschkoetter stated that he believed that the concept of the people is that the economy is bad and therefore it would not pass anyway, so he concluded the timing is wrong. Council member Lammers and Buschkoetter agreed that the reality and perception is that the economy is poor.

Council member Lammers stated there has been a huge drop in corn prices (those that have already sold will do well) but the fact that the agricultural sector is a huge part of this community will certainly affect the economy next year. The trend typically goes from east coast to west coast and although we might be slower in reflecting that trend, it will affect them.

Council member Buschkoetter stated the Visitors Bureau is an entity that advertises. After his experience working at the radio and TV station in the past, he found that a sales person will say when business is down that is when you need to advertise the most. He believed that was also true in economic times. He thought that another way of saving the Visitors Bureau some money is to be able to allow them to try to bring in more conventions, attractions and more events to Kearney in this highly competitive market. The most needed aspect of the proposal by the Visitors Bureau is to bring more events and people to Kearney. Council member Kearney suggested they use the surplus money that they showed on their budget for that purpose.

Council member Lear stated it is important for people to understand that a weaker economy means lower sales tax revenues. Lower sales tax revenues mean higher property taxes. They will work very hard to cut expenses and control costs when faced with that situation. There is a significant portion of this sales tax that has functioned as direct offsets to property taxes and so when that pool starts suffering there will have to be cuts to services and probably impacts to property taxes. Things that can be done to positively support Kearney's sales taxes are going to be very important, as they manage themselves fiscally. If this indeed becomes a strain to the economy, Kearney is fortunate that it is a far more diversified economy than many communities of its size or others across the nation. Kearney is not solely a manufacturing community, but it has a strong manufacturing component. Kearney is not a solely agriculturally dependent community, but it has a strong agriculture component. Kearney has a great health care and educational system.

Council member Lear further stated there was one other issue that has bothered him. There has been a lot of discussion that has come up with this proposal involving the Archway. He thought that there are some misconceptions in the community about what this Archway really represents. Our community has gotten a free \$65 million gift. The City has not plugged any community money into that organization to speak of. It is a fact that the Archway has not even come close to accomplishing its projections and did not always go about it in the right way. At the same time, Kearney has something today that it would not have had if a group of people had not worked very hard to get it. Kearney has an attraction that has brought a million people to Kearney since it opened that it would not otherwise have. It has a campus surrounding it with land that many view as an Archway development project. They have the free land and want to enhance and grow that area because of the potential that it holds. He wishes that the negative connotation of the Archway could be dispelled. This is something very nice that Kearney

received for free. The community needs to do something to support that project and help it be successful. It does not have to be in direct dollars, but things that can help them continue to grow which in the end will help the community. He hoped that as they move forward, the Archway can be recognized for what it is; a great opportunity.

Mayor Clouse stated the Archway is a campus setting and they will have Cherry Avenue interchange in a couple of years to hook up with it. He did not want to see the Council scrap the proposed idea. He had the opportunity last week to go out to the Nebraska Tourism Conference that was held in Kearney which was attended by 200-300 people who heard the same things about how to develop ways to take business away from Kearney. Many of them have more funds; others have more creativity because they have more resources than Kearney. He did not believe that they could just do nothing. Kearney has always been seen as very progressive and on the leading edge. This would certainly be leading edge in our area, although a couple of communities are looking at doing this, they have very different purposes. Their funds are very specifically targeted to what their community needs are. This includes Omaha with the new baseball stadium and Grand Island with the State Fair. What was presented by the Visitors Bureau was a little outside the box thinking. It is something that needs to be followed up so in the future we do not regret not doing it by losing more events and struggling revenue wise in the economy.

Council member Lear thanked the Visitors Bureau for putting this on their "radar". He believed that if we continue doing things in the same way, our results are probably going to get worse because there is too much competition from all four corners of the state to take it away from us. This hospitality industry has been very successful, not just for themselves, but also for this entire community. That success translates into sales tax dollars which save the City dollars. Mayor Clouse agreed it is a critical part of our economy.

Mayor Clouse noted the key points that were discussed were timing, vote of the people, identifying what it is to be used for and how to manage the funds.

City Manager Michael Morgan stated that they do have models for having discussions in this community. Since it has been brought forward, different prospective are being presented. There was a possibility of following up on the proposal. They have been educated about what the Visitors Bureau is facing. Kearney has many factors that contribute to our property taxes being low, but largely due to sales tax. The types of things that we can bring to our community that will have a positive impact on our sales tax growth definitely will help keep our property taxes low. This is an opportunity to revisit a process that we might use to come up with some solution over time and put it on the ballot. A vote would be appropriate but need to hold those discussions and allow everyone to weigh in and be part of those conversations. They have discussed the impact on the Visitors Bureau with the additional funds that they need. The City is still withholding \$50,000 of the lodging tax and possibly could allow them additional funds since they have managed that fund very well. City Manager asked for guidance for staff. If Council wished to do that, they could find a solution for that on a short term basis.

**OPEN ACCOUNT CLAIMS: NPPD - \$387.55, PLATTE VALLEY STATE BANK -**

**\$47,624.02**

Moved by Buschkoetter seconded by Clouse that Open Account Claim in the amount of \$47,624.02 payable to Platte Valley State Bank be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear abstained. Motion carried.

Moved by Lear seconded by Buschkoetter that Open Account Claim in the amount of \$387.55 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Lear, Lammers, Kearney, Buschkoetter. Nay: None. Clouse abstained. Motion carried.

**VII. REPORTS**

Council member Lear stated he had the opportunity to sit in on the Economic Development Council meetings in Kearney. One thing that is becoming pretty evident is that we lack a vital component as a community competing for new projects. That component is "ready to go sites". One of the things we need to move up our priority list is how we can go about doing that. Rail sensitivity is one thing that we cannot do and cannot address. We have a rail line that is going through the community that just does not need a lot more traffic on it. Kearney has so much potential and he did not think that they have a good mechanism for doing it.

Mayor Clouse stated he agreed that they need to have a mechanism to have that infrastructure in place and target those areas. Council member Buschkoetter stated the timing is right because it is not going to be too long before Kearney has better access to the Interstate. He believed it would be an asset for the industrial area to get on at Cherry Avenue. Council member Lammers stated that as a City Council, they need to put together a project plan and look at Kearney's long range goals to decide where they want to go with its economic development. So when Cherry Bypass becomes a reality, Kearney can maximize its efforts. Council member Kearney believed that Kearney should be proactive.

City Manager added that Kearney has a tremendous resource in the community which is the Airport with a large amount of land. There are areas of that land that have never been zoned and staff is looking into preparing these sites. The key is that Kearney needs more than a few sites. It needs different areas of the community to be developed and available. John Krebs from the Economic Development Council works tirelessly to try to accomplish these goals, but in fairness he needs help.

**VIII. ADJOURN**

Moved by Kearney seconded by Lammers that Council adjourn at 8:09 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

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**ATTEST:**

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

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**MICHAELLE E. TREMBLY  
CITY CLERK**