

*Kearney, Nebraska
November 11, 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 November 11, 2008 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Lance Lang, City Planner; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Brian Hisey, Shaila Hisey, Wayne Olson, Greg Erickson, Brad Kernick, Roger Jasnoch, Juan Lazo, Gilbert Adeon, Mike Kalb, Jennifer Murrish, Bridget Mosbarger, Mike Konz from Kearney Hub, Steve Altmaier from KGF 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

A moment of silent prayer was held.

PRESENTATION OF THE COLORS AND PLEDGE OF ALLEGIANCE

Veterans from the American Legion Post 52 presented the colors with Boy Scouts from Troop 158 leading 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

RECONSIDERATION OF CONDITIONAL USE PERMIT NO. 2000-11

Mayor Clouse opened the public hearing on the reconsideration of Conditional Use Permit No. 2000-11 which was transferred to Shaila Hisey for a daycare center on property zoned "District R-1, Urban Residential Single-Family District (Low Density)" and described as Lot 4 of Block 3, Sunny Acres Second Subdivision to the City of Kearney, Buffalo County, Nebraska (1411 East 33rd Drive). Staff recommended that the permit be renewed for a 12-month period allowing the Owners time to seek a more suitable location. Planning Commission modified that recommendation to approve renewal of the CUP annually, and that the permit shall expire 24 months after the time it is approved by the City Council.

The City received a complaint regarding Little Monsters Daycare located at 1411 East 33rd Drive which is regulated by the City with a Conditional Use Permit (CUP). This is an annual renewable permit that is generally renewed each year on the Consent Agenda by the City Council. However, if the City receives any complaints concerning the use of the property, the City will investigate said complaints and the permit may not be automatically renewed. The basis of the complaint is that no one is living in the house at the day care location even though the business is being operated from the location.

City staff investigated the history of the daycare and the CUP and also met twice with the owners of the daycare, Shaila and Brian Hisey. The Hiseys' confirmed that no one lives in the residence and it is considered a "child care center" by the State of Nebraska Department of Health and Human services (HHS) and licensed by HHS for 45 children and nine employees, 24 hours a day, year-round. HHS requires 35 square feet of uninterrupted floor space per child. The Hisey's have provided a cover letter and a packet of information for your consideration, including copies of required State licenses.

The Hisey's took ownership of the existing daycare operation about one year ago. Daycare services have been provided from this site for over 30 years. The original CUP from the City was issued in 2000 to Roberta Kirk, Shaila's mother. The CUP process was initiated due to a complaint from the neighborhood. At that time, HHS licensing was for the same numbers - 45 kids and 9 employees, 24 hours as day, seven days a week. However, the primary difference is that Ms. Kirk was living at the residence at the time. During the intervening six years the permit was renewed on an annual basis without incident. It is unclear when the owner moved out of the house and it became no longer a home based business. Given the number of children and employees that are allowed under the State license it is obvious that the owners and operators of the day care have done an exceptional job of operating a large daycare in a residential neighborhood mostly without complaints from the neighbors. City staff is not questioning the quality of care that the daycare provides nor the need for quality daycare services in the community. However, in investigating the complaint that the City recently received, it

seems that the volume of activity exceeds what would typically be considered a neighborhood or home based daycare.

HHS issues different types of daycare licenses based on the number of children. Child Care 1 and Child Care 2 licenses are for 10 or less children and 12 or less children respectively and are tied to home based environment. Over 12 children require a "daycare center" license which implies that the numbers of children are large enough to require a "center" as opposed to a single-family residence to properly accommodate the larger operation.

From a local perspective, zoning deals with various types of land uses and seeks to regulate those uses by location and development standards. In the City Code, "Daycare Limited" and "Daycare General" are the two types of daycares listed. Both are considered civic uses. Limited provides daycare services to not more than six persons while general applies to more than six persons. Daycare limited is permitted by right in every zoning district. Daycare general is permitted by right in zones AG, R-4, RM, UC, C-0, C-1, C-2, CBD, C-3, BP, M-1, and M-2. Daycare general is permitted as a conditional use in zones RR-1, RR-2, R-1, R-2, and R-3. Therefore, the intent of the City Code is to provide much stricter regulation of general daycares in low density residential settings (neighborhoods) as opposed to commercial and industrial settings. Since Little Monsters Daycare is licensed for 45 children it is classified as "Daycare General" in the City Code and a CUP is required. At some point, it would seem that the number of children and employees will impact a neighborhood negatively due to traffic, parking, drop-off and pick-up, noise, etc. At what point is that threshold met when it may be more appropriate to locate such a facility by right in a commercial district? With no one living at the residence can it still be considered a legitimate home based business? In terms of neighborhood impacts, the City Code addresses "Home Based Businesses" in Chapter 46, Supplemental Uses Regulations.

46-112 SUPPLEMENTAL USE REGULATIONS: ACCESSORY USES

A. Home-Based Businesses/Home Occupations

Home-based businesses and home occupations are permitted as an accessory use in residential units subject to the following conditions:

1. *External Effects:*

(a) There shall be no change in the exterior appearance of the building or premises housing the home occupation other than signage permitted within this section.

(b) No noise, odors, bright lights, electronic interference, storage or other external effects attributable to the home occupation shall be noticeable from any adjacent property or public right-of-way.

(c) The home occupation shall be carried on entirely within the principal residential structure.

(d) Mechanical or electrical equipment supporting the home occupation shall be limited to that which is self-contained within the structure and normally used for office, domestic or household purposes.

(e) No outdoor storage of materials or equipment used in the home occupation shall be permitted, other than motor vehicles used by the owner to conduct

the occupation. Parking or storage of heavy commercial vehicles to conduct the home occupation is prohibited.

(f) No home occupation shall discharge into any sewer, drainageway, or the ground any material which is radioactive, poisonous, detrimental to normal sewer plant operation, or corrosive to sewer pipes and installations.

2. *Employees*: The home occupation shall employ no more than one (1) full time or part time employee on site other than the residents of the dwelling unit, provided that one (1) off-street parking space is made available and used by that non-resident employee.

3. *Extent of Use*: For all residential and agricultural zoning districts, the lesser of twenty-five percent (25%) of the floor area of the dwelling or four hundred (400) square feet may be devoted to the home occupation, inclusive of any detached accessory buildings used for the home occupation.

4. *Signage*: Each home-based business shall be permitted to have one (1) non-illuminated wall sign not to exceed four (4) square feet in area.

5. *Traffic Generation and Parking*

(a) Home-based businesses may generate no more than ten (10) vehicle trips per day, corresponding to amount of traffic normally generated by a dwelling unit.

(b) Deliveries or service by commercial vehicles or trucks rated at ten (10) tons gross empty weight is prohibited for any home-based business located on a local street.

(c) Parking needs generated by a home-based business shall be satisfied with off-street parking. No more than one (1) vehicle used in connection with any home occupation shall be parked on the property. Such parking shall not be located in a required front yard. No more than two (2) on-street parking spaces shall be used by the home occupation at any one time.

6. *Prohibited Home-Based Businesses/Home Occupations*: The following activities are prohibited as home-based businesses, even if they meet the other requirements set forth in this section:

- (a) Animal hospitals.
- (b) Beauty and Barber Shops.
- (c) General retail sales.
- (d) Mortuaries.
- (e) Repair shops or service establishments including major electrical appliance repair, motorized vehicle repair, and related uses.
- (f) Stables or kennels.
- (g) Welding, vehicle body repair, or rebuilding or dismantling of vehicles.

B. Permitted Accessory Uses: Residential Uses

Residential uses may include the following accessory uses, activities, and structures on the same lot.

- 1. Private garages and parking for the residency use.
- 2. Recreational activities and uses by residents.

3. Home occupations, subject to Section 46-112.A.
4. Non-commercial convenience services for the primary use of residents of multi-family uses or mobile home parks, including laundromats, clubhouses, and post offices.
5. Garage sales, provided that the frequency of such sales at any one (1) location shall not exceed one (1) during a continuous, two (2) month period or four (4) sales during any twelve (12) month period.

Under paragraph B above, Permitted Accessory Uses in Residential Use Districts, home base businesses are listed as an allowable use; however they must comply with the requirements of Section 46-112 A. As these requirements are reviewed, several discrepancies between the requirements and the daycare in question are raised as follows:

- No noise, odors, bright lights, electronic interference, storage or other external effects attributable to the home occupation shall be noticeable from any adjacent property or public right-of-way. (*Noise from 45 children when outside.*)
- The home occupation shall be carried on entirely within the principal residential structure. (*Children outside during favorable weather*)
- The home occupation shall employ no more than one (1) full time or part time employee on site other than the residents of the dwelling unit, provided that one (1) off-street parking space is made available and used by that non-resident employee. (*Nine employees*)
- For all residential and agricultural zoning districts, the lesser of twenty-five percent (25%) of the floor area of the dwelling or four hundred (400) square feet may be devoted to the home occupation, inclusive of any detached accessory buildings used for the home occupation. (*entire floor area devoted to HBB, no one lives there. 45 kids x 35 s.f. per child = 1,575 square feet minimum*)
- Home-based businesses may generate no more than ten (10) vehicle trips per day, corresponding to amount of traffic normally generated by a dwelling unit. (*number of children vastly exceeds 10 vehicle trips per day*)
- Parking needs generated by a home-based business shall be satisfied with off-street parking. No more than one (1) vehicle used in connection with any home occupation shall be parked on the property. Such parking shall not be located in a required front yard. No more than two (2) on-street parking spaces shall be used by the home occupation at any one time. (*Nine employees. On street parking is for public use and should not be reserved for daycare employees regardless of agreements with neighbors.*)

Perhaps a person could argue that the CUP takes precedence over the regulators under Section 46-112 with the logic being that the conditions of the CUP are unique and “customized” to each circumstance and each owner. The question of size and impact to the neighborhood still remains. What conditions should be placed on the permit to make the use fit the setting? The rules and regulations of HHS have changed since the CUP was originally issued in 2000. In the attached packet of information there are copies of the law in 2000 and the current law which took effect in 2007. In 2000, HHS stipulated that “rules, regulations, or ordinances adopted by a city, village, or county shall be identical to the department’s (HHS) rules and regulations...” In 2007 the rules

were revised and now state “*rules, regulations, or ordinances adopted by a city, village, or county shall be as stringent as or more stringent than the department’s (HHS) rules and regulations...*” Therefore, whereas the Commission and Council may have felt that they could not place conditions on the CUP in 2000, clearly conditions can be added under the new revised rules.

A range of alternative actions is available to the Planning Commission and City Council from renewal of the permit as is, to the other extreme of revoking the permit in its entirety, and other options between the two extremes. The number of children and employees could be reduced or the owners could look for a more suitable location in a commercial district to relocate the operation. The owners have indicated that with this being only the second year that they have owned and operated the daycare, they cannot afford to reduce the number of children and cannot immediately relocate.

During the Planning Commission hearing, staff suggested one possible solution is to allow them to continue to operate for an additional 12 months under the conditions of the existing CUP with the condition that states that they will actively seek a commercially viable location for relocation over the 12-month period and report back to the Planning Commission and City Council as to the progress made in one year’s time. Planning Commission believed that perhaps one year would not be enough time to find a suitable location to relocate the business and suggested 24 months. A husband and wife that own a house on a lot that abuts the back yard of the daycare voiced opposition to the 24-month time frame as they are going to put their home up for sale in about 12 months and would like the daycare to be gone at that time. Planning Commission made a motion to approve renewal of the CUP annually, and that the permit shall expire 24 months after the time it is approved by the City Council. In this manner the daycare owners know that they have a 24-month window to relocate and the neighboring property owner can advise potential purchasers of his home that the daycare will be moving as mandated by the City.

As an aside, staff is also thinking that the City Code definitions for “Daycare Limited” and “Daycare General” should be revised in the near future to be in closer alignment with the State HHS numbers (threshold of 12 children or less and more than 12 as opposed to the current breakpoint at six children).

Brian and Shaila Hisey, 912 East 13th Street, presented this matter to the Council. The daycare was previously owned by Shaila’s mother who got into some financial difficulty which resulted in them purchasing the house and opened their own daycare in order to continue working in the same setting. They did not really know what they were getting into because it was all new to them. They have no interest in fighting with the neighborhood or the City regarding having a daycare in a residential area. The City has some concerns about the size of their daycare being a little too big for a residential setting. The Planning Commission recommended allowing the Hiseys 24 months for them to relocate because they have just bought this house which has strapped their finances for now. This would allow them time to find a new and more suitable location for the daycare. Their request is to be allowed that 24 months to relocate.

Mayor Clouse stated he received a lot of support from people for the facility that they

operate. Council member Buschkoetter stated in the past some of these same issues had been discussed and one of the things that he remembered about that is the unique services that they offer to some of the cliental that are not duplicated at very many daycare facilities. Mr. Hisey stated they will take a lot of the kids that other daycare will not. They have done foster care for the last 7-8 years. They know how to deal with children who have those behavioral issues. They will work with the children and the parents that have behaviors that other daycares will not put up with. They believe that this is a valuable service that they provide by getting these kids under control with their experience with foster children.

Council member Buschkoetter stated one of the concerns from the Planning Commission was the upkeep of the backyard. He believed that is an area that the Hiseys could address. Mrs. Hisey stated they have actually taken down the tarps and poles for the winter. They will be installing a privacy fence up in the spring at the suggestion of the neighbor to ease tensions between them.

Council member Lammers stated there has been a daycare operating there for about 30 years and have not had very many complaints at all over that time. Mr. Hisey stated the only complaint that was filed this time is that they do not live in the building. They did not understand they were in violation of any codes. They have not had any complaints about the daycare itself.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the reconsideration of Conditional Use Permit No. 2000-11 which was transferred to Shaila Hisey for a daycare center on property zoned "District R-1, Urban Residential Single-Family District (Low Density)" and described as Lot 4 of Block 3, Sunny Acres Second Subdivision to the City of Kearney, Buffalo County, Nebraska (1411 East 33rd Drive) subject to said Permit shall expire on November 11, 2010 and that said Permit shall be reviewed in one year. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

IV. CONSENT AGENDA

Moved by Lammers seconded by Lear that Subsections 1 through 7 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

1. Approve Minutes of Special Meeting held October 21, 2008 and the Minutes of the Regular Meeting held October 28, 2008.
2. Approve the following Claims:

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

DS Debt Service

Aflac \$2,604.74 Ps; Agri Co-op \$25,915.00 Smcs; Alamar Uniforms \$820.72 smcs,ps; Alltel \$61.19 Smcs; AWWA \$165.00 Smcs; Anderson Brothers \$370.89 Smcs; Ask Supply \$38.22 Smcs; Baker & Taylor Books \$3,149.08 Smcs; Barney Abstract \$30.00 Smcs; Barney Insurance \$95.00 Smcs; BBC Audiobooks \$323.76 Smcs; Beckenhauer,T \$70.93 Smcs; Bennett,T \$483.75 Smcs; Blessing \$251,376.30 Co; Blevins,D \$132.00 Smcs; Bluecross Blueshield \$49,558.27 Smcs; Bonner,K \$23.54 Smcs; Book Page \$132.00 Smcs; Bosselman \$28,112.25 Smcs; Bowman,R \$180.17 Smcs; Brodart Co \$54.52 Smcs; Brodine,S \$216.58 Smcs; Buffalo Co Court \$236.66 Ps; Buffalo Co Reg of Deeds \$103.50 Smcs; Builders Warehouse \$493.50 smcs,co; Callahan,R \$22.79 Smcs; Casarion Christman Shalk \$345.50 Smcs; Central District Health Dept \$3,780.00 Smcs; Central Fire \$80.00 Smcs; Charter \$615.59 Smcs; City Glass \$19.99 Smcs; City of Ky \$3,647.21 smcs,ps; Clark,D \$60.00 Smcs; College Savings Plan of NE \$100.00 Ps; Commontime \$3,778.00 Smcs; Compass \$1,643.00 Smcs; Computerized Fleet Analysis \$13,820.75 Co; Concrete Workers \$139,599.67 Co; Copycat Printing \$219.11 Smcs; Crocker & Co \$585.00 Smcs; Crushers \$27,058.98 Co; C-Tech Restoration \$301.96 Smcs; Culligan \$17.00 Smcs; Cunningham,J \$60.00 Smcs; D&M Security \$60.00 Smcs; Daily,J \$53.50 Smcs; Dan Roeder Concrete \$214,253.28 Co; Dandee Concrete \$224.70 Co; DANKO Emergency \$136.53 Co; Deeter Foundry \$1,008.30 Smcs; Degn,N \$6.32 Smcs; Demco \$425.38 Smcs; Dewey,T \$2.28 Smcs; Douglas Co Sheriff \$300.00 Smcs; Dugan Business Forms \$848.77 Smcs; Dutton-Lainson \$51.03 Smcs; Eakes \$7,049.34 smcs,co; Ebinger,P \$11.72 Smcs; Eirich,T \$50.00 Smcs; Excel Systems Software \$250.00 Smcs; Farwell,D \$52.00 Smcs; Faz,A \$476.00 Smcs; Fearnley,M \$69.55 Smcs; Fireguard \$262.87 Smcs; Fort Ky Shooting \$50,000.00 Co; Frontier \$167.48 Smcs; Gale \$485.06 Smcs; Gangwish Turf \$243.15 smcs,co; Garrett Tires \$3,013.90 Smcs; Gaylord Brothers \$246.58 Smcs; GE Money Bank \$1,543.54 Smcs; Gear For Sports \$3,214.90 Smcs; George,M \$38.03 Smcs; Great Plains Safety \$585.00 Smcs; Grint,K \$226.20 Smcs; H&H Distributing \$164.84 Smcs; Harris,R \$17.50 Smcs; HD Supply \$2,878.27 Smcs; Heggemeyer,L \$12.30 Smcs; Highsmith \$408.54 Smcs; Hisey,T \$15.19 Smcs; Holiday \$70.24 Smcs; Hometown Leasing \$207.71 Smcs; Hotsy Equipment \$837.72 Smcs; Howard,D \$34.80 Smcs; Hydrite Chemical \$1,800.70 Smcs; Hydrologic \$4,855.20 Co; ICMA RC \$4,031.47 Ps; IRS \$102,743.98 Ps; Jack Lederman \$331.50 Smcs; Johnson,S \$50.00 Smcs; Ky Children's Museum \$75,000.00 Co; Ky Clinic \$70.00 Smcs; Ky Glass \$18,890.00 Co; Ky Hub \$546.32 Smcs; Ky Humane Society \$4,000.00 Smcs; Ky United Way \$809.85 Ps; Kirkham Michael \$22,607.94 Co; Knispel,C \$25.95 Smcs; KOLN \$1,611.20 Smcs; Konica Minolta \$433.01 Smcs; Lanoha Nurseries \$1,440.00 Co; Linda's Upholstery \$1,626.82 Smcs; Location Technologies \$4,640.50 Smcs; Logan Contractors Supply \$1,989.28 Co; Magic Cleaning \$250.00 Smcs; Mail Express \$189.94 Smcs; Mattley Design \$315.00 smcs,co; Metlife \$8,800.32 Ps; Mid-Plains Power \$1,012.50 Co; Midlands Contracting \$10,130.09 Co; Miller & Associates \$304.18 Co; Miller Signs \$25.00 Smcs; Minitex \$2,790.00 Smcs; Moonlight Embroidery \$1,660.00 Smcs; Municipal Emergency \$385.23 Smcs; Nathan's Curb Grinding \$85.00 Co; NE Child Support \$2,659.58 Ps; NE Dept of Revenue \$45,278.71 Ps; NE DOL/Boiler Inspection \$36.00 Smcs; NE Environmental Products \$2,036.59 Smcs; NE Health & Human Services \$707.12 Co; NE Law Enforcement \$50.00 Smcs; NE State Board of Landscape \$170.00 Smcs; NEland Distributors \$170.00 Smcs; NeFSMA

\$20.00 Smcs; Neopost \$624.89 Smcs; NMC Exchange \$1,645.00 Co; Northwest Electric \$222.97 Smcs; Northwestern Energy \$3,184.90 Smcs; Novus \$75.00 Smcs; Office Depot \$201.72 Smcs; Officenet \$39.85 Smcs; O'Keefe Elevator \$37.50 Smcs; Olson,K \$50.96 Smcs; Overhead Door \$130.00 Smcs; Paramount Linen \$21.00 Smcs; Patterson,B \$269.50 Smcs; Paulsen \$159,172.20 Co; Payflex Systems \$484.50 smcs,ps; Platte Valley Comm \$745.95 Smcs; Playtime \$2,101.06 Co; Police Officer's Assn NE \$540.00 Smcs; Polk City Directories \$322.00 Smcs; Powerplan \$8,683.23 Smcs; Presto-X \$78.00 Smcs; Quill \$152.09 Smcs; Random House \$754.40 Smcs; Recorded Books \$799.52 Smcs; Rick's Sod Farm \$1,385.83 Smcs; Rodiek,D \$59.07 Smcs; Royal Chemical \$1,508.63 Smcs; Safety-Kleen \$297.00 Smcs; Salter,J \$436.00 Smcs; Sirchie Finger Print Lab \$187.39 Smcs; Smallcomb,P \$3.56 Smcs; Smith Signs \$6,000.00 Co; Snap-On Tools \$1,510.00 Smcs; Solid Waste Agency \$52,570.14 Smcs; Starostka Group \$35,509.55 Co; St of NE HHS Lab \$14.00 Smcs; St of NE/AS Central \$5,588.91 Smcs; St of NE/Das Comm \$18.52 Smcs; Stenehjem,P \$16.16 Smcs; Stevens,C \$17.99 Smcs; Sun Life Financial \$24,520.14 Smcs; Sutphen \$432.72 Smcs; Sydow,J \$40.00 Smcs; Terri's Shrub Design \$590.00 Smcs; Theis,J \$30.00 Smcs; Thome,B \$8.69 Smcs; TM Books \$580.00 Smcs; Tool Doctor \$24.50 Smcs; Trade Well Pallet \$1,870.00 Smcs; Tri City Sign Co \$35,862.50 smcs,co; Tye & Rademacher \$10,446.10 Smcs; Village Uniform \$454.61 Smcs; Walters Electric \$3,204.52 Co; Ward Labs \$304.80 Smcs; Wellman,P \$13.37 Smcs; West Payment Center \$336.00 Smcs; West Villa Animal Hospital \$65.00 Co; Westbrooks,B \$31.34 Smcs; Wilke Contracting \$134,303.82 Co; Wolf,J \$2.34 Smcs; Wolford Farms \$10,000.00 Co; Yahoo! Custodian Records \$29.50 Smcs; Zimmerman Printers \$813.81 Smcs; Payroll Ending 11-8-2008 – \$301,919.40. 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. Accept the public improvements constructed under, and in accordance with, the terms of the Developer Constructed Infrastructure Agreement for Aspen Meadows Addition, Brandt's Hillside Estates Addition; Lots 2 through 9 of Block 1, Kearney Plaza Sixth; Eastbrooke Ninth Addition; and Eastbrooke Eighth Addition, all in the City of Kearney, Buffalo County, Nebraska and approve **Resolution No. 2008-204**.

RESOLUTION NO. 2008-204

WHEREAS, on the 26th day of September, 2006 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2006-179 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and Camron, Inc. for the construction of a sanitary sewer main to serve Eastbrooke Eighth Addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, on the 14th day of November, 2006 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2006-207 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and Twin Falls LLC for the construction of water, sanitary sewer, storm sewer, and paving to serve Lots 1 through 14 inclusive, of Block 1 and Lots 5 through 10, inclusive, of Block 2, Aspen Meadows to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, on the 9th day of January, 2007 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2007-9 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and James Gregory Brandt, Sr. and Tamara S. Brandt for the construction of water, sanitary sewer, storm sewer, and paving to serve Brandt's Hillside Estates to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, on the 9th day of January, 2007 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2007-11 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and Camron, Inc. for the construction of water, sanitary sewer, storm sewer, and paving to serve Eastbrooke Ninth Addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, on the 24th day of July, 2007 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2007-144 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and 21st Investment Co., L.L.C. for the construction of a sanitary sewer main to serve Lots 2, 3, 4, 5, and 9 of Block 1, Kearney Plaza Sixth Subdivision to the City of Kearney, Buffalo County, Nebraska; and

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

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

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

NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the public improvements constructed under, and in accordance with, Article 13 "Developer Constructed Infrastructure" of Chapter 9 "Public Works" of the Code of the City of Kearney for Aspen Meadows Addition, Brandt's Hillside Estates Addition, Lots 2 through 9 of Block 1, Kearney Plaza Sixth, Eastbrooke Ninth Addition, and Eastbrooke Eighth Addition all in the City of Kearney, Buffalo County, Nebraska and that the said public improvements be and are hereby accepted.

PASSED AND APPROVED THIS 11TH DAY OF NOVEMBER, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

4. Approve the request submitted by the Kearney Family YMCA to conduct the Turkey Trot on November 27, 2008 beginning at 9:00 a.m. The route for the 2-Mile Run/Walk is to begin/finish at the YMCA, south on 6th Avenue, west on 35th Street, south on 7th Avenue, southeast through Harmon Park to the intersection of 29th Street and 5th Avenue, north on 5th Avenue, west to 33rd Street, north on 6th Avenue to YMCA. The route for the 5-Mile Run is to begin/end at YMCA, south on 6th Avenue,

east on 33rd Street, south on 5th Avenue, west on 26th Street through Campus, north on 15th Avenue, west on hike/bike trail, north on Country Club Lane, east on 35th Street, north on 11th Avenue, east on 39th Street, north on 6th Avenue to YMCA.

5. Grant a Right-of-Way Easement to Frontier Communications Corporation, a Citizens Telecommunications Company of Nebraska, for a 20 foot by 20 foot tract of land being part of the Southwest Quarter of the Southwest Quarter of Section 19, Township 9 North, Range 16 West of the 6th PM., Buffalo County, Nebraska for the location of a communications cabinet and approve **Resolution No. 2008-205**.

RESOLUTION NO. 2008-205

WHEREAS, the City of Kearney Utilities Department has been working with Frontier Communications Corporation, a Citizens Telecommunications Company of Nebraska to locate a communications cabinet in order that Frontier Communications can improve service to the area northwest of Kearney; and

WHEREAS, the City of Kearney Utilities Department and Frontier Communications have agreed that a location at the southwest corner of the Kearney Area Solid Waste Agency Landfill is an appropriate location for Frontier's communications cabinet; and

WHEREAS, the cabinet will be located in an easement granted by the City located to the north of the road right-of-way and just east of a driveway to the City's new water conditioning building that has been constructed as part of the Northwest Well Field Project.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City of Kearney hereby grants an easement to Frontier Communications Corporation, a Citizens Telecommunications Company of Nebraska for the construction and maintenance of a communications cabinet located to the north of the road right-of-way and just east of a driveway to the City's new water conditioning building that has been constructed as part of the Northwest Well Field Project. A copy of the Right-of-Way Easement, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 11TH DAY OF NOVEMBER, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

6. Approve the recommendation from the Utilities Department for the purchase of a Front Load Refuse Compactor Truck to be used by the Sanitation Division from Elliott Equipment of Lincoln, Nebraska in the amount of \$180,265.00.

7. Approve the recommendation from the Utilities Department for the purchase of a Side Load Refuse Compactor Truck to be used by the Sanitation Division from Elliott Equipment of Lincoln, Nebraska in the amount of \$224,100.00.

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7476 – AMEND CONDITIONAL USE PERMIT NO. 2000-11 (PERTAINS TO PUBLIC HEARING 1)

Council Member Lear introduced Ordinance No. 7476, being Subsection 1 of Agenda Item VI to amend Conditional Use Permit No. 2000-11 transferred to Shaila Hisey allowing a daycare center on property zoned “District R-1, Urban Residential Single-Family District (Low Density)” and described as Lot 4 of Block 3, Sunny Acres Second Subdivision to the City of Kearney, Buffalo County, Nebraska (1411 East 33rd Drive) subject to said Permit shall expire on November 11, 2010 and that said Permit shall be reviewed in one year, 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. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7476 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7476 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7476 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7477 – VACATE EASEMENT; 412 WEST 48TH STREET

The applicant is requesting approval to vacate a ten-foot wide utility easement that was platted along the south boundary of Lot 2 of Block 3, Windsor Estates Seventh Addition in 1994. The vacation of the easement will allow the owners to perform a minor subdivision on the property to add land from a lot that is currently used for stormwater detention to increase the size of a developable lot, basically a lot line shift. There are no existing or proposed utilities located within the easement and all utility company representatives have signed a “Consent to Vacate” form. There are existing 10-foot wide utility easements along the east and west boundaries of this lot that will remain.

Chris Wissing was present to answer any questions from the Council.

Council Member Clouse introduced Ordinance No. 7477, being Subsection 2 of Agenda Item VI to vacate the ten-foot wide utility easement as platted on property described as Lot 2, Block 3, Windsor Estates Seventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska (412 West 48th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7477 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7477 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7477 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.

SPECIAL DESIGNATED LICENSE FOR EL TROPICO; DECEMBER 6, 2008

Mayor Clouse opened for discussion the application for a Special Designated License submitted by JUAN LAZO, dba "El Tropic" in connection with their Class IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on December 6, 2008 from 6:00 p.m. until 1:00 a.m. for a Mexican dance.

This request is similar to those submitted by Mr. Lazo in the past. Mr. Lazo holds these Mexican dances on a fairly frequent basis. These large dances are well attended and over the most recent events, have not created problems. However, on October 4, 2008, Mr. Lazo held an event at the Fairgrounds and people were found with open containers after the hours of the Special Designated License. The Police Department has submitted a report of this violation to the Nebraska Liquor Control Commission, and in turn to the State Attorney General's Office for consideration. According to Chief Lynch, he contacted the Attorney General's Office and they indicated a citation would be issued in the matter.

City Attorney Michael Tye stated that Mr. Lazo, the applicant, has been granted special

designated licenses in the past for events that have been held at the Buffalo County Exhibition Center. Mr. Lazo has had a number of events without incident, except for the situation that occurred recently which raised some concern with the Chief of Police. Law enforcement was at the event after hours (approximately 2:40 a.m.) and discovered there were individuals that were consuming alcohol after hours which were in violation of the law. That incident has been reported to the Nebraska Liquor Control Commission. The Liquor Commission has referred it to the Attorney General's Office. As this matter is pending, there has been no resolution to that situation. The Chief's concern is that there needs to be an understanding that when you have a SDL that you are in the control of the area and the dispensing of alcohol in that area.

Juan Lazo stated after that dance was over at 1:00 a.m., they cleaned up everything. The Police stopped at about 2:30 a.m. and the people that work on the stage and set up the speakers, etc. had their own beer and were drinking it. He was there at that time because the fairgrounds manager called him to come back because he needed to move the trailers for the Budweiser and all the stuff that they used for the event. The officer told Mr. Lazo when they stopped that there were people drinking and asked him if he had sold them the alcohol. He responded that he had not sold them the alcohol, they had their own beer. Mr. Lazo had given the keys to the guys that were working there at about 1:30 a.m. The next day there was going to be a car show at this building so they needed to move the equipment. Mr. Lazo asked the officer to ask the people where they got their beer, he said it did not matter where they got it; the problem is that they are drinking here. Mr. Lazo stated he was done at 1:30 a.m. and these guys do not work for him. The officer told him he was still responsible. The people that were drinking were working for the fairgrounds, not for Mr. Lazo.

City Attorney stated that the concern of law enforcement is that there were people in the building after hours and even if they are clean up crew or somebody that is associated with the event, they should not be consuming alcohol after the event is over and the licensee is still ultimately responsible even though they had shut down the beer sales earlier. Mayor Clouse stated the licensee is still responsible for that building and the consumption of alcohol in that building until it was closed.

Mr. Lazo asked the stage guy to come to the City Council meeting to explain what happened that day because he did not want a problem. Gilbert Adeon, 15525 100th Road, Kearney, stated he is the owner and operator of Tomahawk Records in Kearney and he directly subcontracts with the band. They had set up a massive sound system and he was there that evening and was working with the band in question. Primarily, what happened is the night laborers that he had hired to tear down the stage and clean up around the stage area were still working. These two individuals were the ones that had brought in the beer in from outside. Mr. Lazo had not sold it to them and although he does not work with Mr. Lazo directly, he does directly subcontract or contract with the groups that are coming through. They were still in there tearing down when Mr. Lazo came back. As a rule, they do not get done with the teardown and loading until about 4:30-5:00 a.m. but had to be done sooner because of the car show the next day.

Chief of Police Dan Lynch wanted to clarify and Mr. Lazo needs to understand is that he hired the band although the band hired Gilbert, Mr. Lazo is responsible for that facility

until it is locked up. It does not matter if he sold the beer, he gave them the beer or they brought the beer in themselves, it goes against the liquor license. This is a problem because the police cannot control that all the time. Mr. Lazo needs to step up as the licensee and make certain those things are taken care of.

Mayor Clouse asked if this situation has happened before. Chief Lynch responded not with Mr. Lazo but it has happened with other licensees and similar action has been taken with them. Until that citation is cleared through the Liquor Commission and the Attorney General's office, the recommendation is that they do not get issued another SDL until that time. The Commission issues a citation because this is an administrative rule that has been violated which is forwarded to the Attorney General's office which decides if they are going to file and prosecute it. Chief Lynch has talked to a member of the AG's office and they do intend to file a citation. It could be taken through an administrative hearing, they could be sanctioned or fined, depending on what the rest of his record looks like, and Mr. Lazo could possibly lose his license which will be determined by the Liquor Commission.

Council member Lammers stated this is a difficult decision because Mr. Lazo has not had any problems before. It was a subcontracting group that he was ultimately responsible for and yet was not directly there supervising that subcontracting group which posed a little problem in his mind. It is difficult to be responsible for every single person that touches that situation.

Council member Buschkoetter thought the fact that they do not usually finish cleaning up until 4:30 a.m. should be considered. He could not deny that Mr. Lazo is ultimately responsible; but found it to be a paradoxical situation.

Mayor Clouse asked the City Attorney if they had the ability to approve this SDL for December 6th with this citation pending. City Attorney stated the Council does have the ability to approve it and impress upon the applicant they have some significant concerns about the consumption of alcohol or the control of the facility. The Liquor Control Commission and the Attorney General will resolve the complaint. They could also vote to deny this SDL application. If it is denied, it would mean because of the timing it would put the event that Mr. Lazo has scheduled in jeopardy. Council member Lear asked Mr. Lazo what he would do differently in the future for an event to prevent this from happening.

Mr. Lazo stated that he has security all of the time and from now he will lock the doors at 1:30 a.m. He will make sure that security is more vigilant over the clean up crew.

Moved by Buschkoetter seconded by Clouse to approve the application for a Special Designated License submitted by JUAN LAZO, dba "El Tropic" in connection with their Class IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on December 6, 2008 from 6:00 p.m. until 1:00 a.m. for a Mexican dance. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: Kearney. Motion carried.

GRANT APPLICATION FOR CRIME VICTIM ASSISTANCE PROGRAM

Mayor Clouse opened for discussion submitting a Grant Application to the Nebraska Crime Commission for Victim/Witness Division for the Crime Victim Assistance Program and to consider approval of Resolution No. 2008-206.

Police Chief Dan Lynch provided some background of the unit and requested the grant be approved to allow them to get some State funding from the Crime Commission. The Victim Witness unit was initiated about 1984 and has consistently been part of the Police Department since that time. They have always used victim assistant grants to fund this program with a minimal match from the City. Normally, they submit a grant application and generally on average of \$50,000.00 to help support the unit. This unit provides victims and witnesses to crimes with initial comprehensive personal service throughout Buffalo County and the City of Kearney. They go through notification of people for hearings and trials. They provide support during the hearings and transportation if necessary. They help them complete property forms for reparations and protection orders. They currently deal with all level of crimes, but focus on felony crimes. The director is a full time position. There is a full time case manager and a part-time advocate. All of these people interact personally with the people on a regular basis.

During a conversation in 2007 with City Manager Michael Morgan, they discussed providing more stability and support for this group. They brought them in as employees of the City of Kearney instead of solely being under that grant. They do crisis counseling, court advocacy and notifications; coordinate with other agencies in Kearney and the surrounding area. They make referrals for both medical and physiological services. They provide services to help victims to obtain restitutions or need a protection order. They do follow-up care with these people. The budget for this unit stayed consistent for 2005, 2006 and 2007. In most of 2007, the only person working was the director.

In the 2008 budget, salaries and wages are \$110,139.00. They also budget \$8,000.00 within the department and had anticipated \$50,000.00 from the victim assistance grant, but have only been offered \$35,225.00. The total budget for the unit is \$158,139.00 that leaves a shortfall of \$14,775.00. They will make that shortfall up from the existing dollars in their budget. They basically limit their services to Kearney and Buffalo County; there was a time when they serviced an 8-county area inclusive of Buffalo County. They are looking for additional funding and will be meeting with the Buffalo County Attorney and the County Sheriff on November 18th to discuss this particular issue. Maintaining the unit as it functions today is very incumbent on finding additional funding. They will not be able to do that without this help. They want to work with the County on funding with an inter-local agreement for that purpose.

Mayor Clouse stated he was concerned about the reduction in the funding from State and asked if this is another of their attempt at a cost shift. Victim assistance and victim crime granting are part of what is general called "burn funds" which come from the federal government to the state. The State redistributes those funds and the federal funds were cut dramatically this year which affected almost every grant in the state affecting drug task forces, victim assistance, etc. North Platte is receiving nothing this

year and Omaha's YMCA is getting nothing. This whole package is late coming from the State at this point.

City Manager Michael Morgan stated they have evaluated this program over the last few years. The first issue they dealt with a few years ago, that these individuals have been employees of the City of Kearney for sometime, but not treated the same as other City employees. This created some bureaucratic issues, administrative problems and brought up some fairness and equity issues. They have since resolved those. The challenge is that unfortunately the State of Nebraska, unlike most states, does not fund victim witness through court costs. Not every city has a victim services program, like Kearney. Kearney has been called upon to service other jurisdictions because the unit has been very effective. They presented this to the Council to bring awareness of the funding challenges and the history of the unit. State law does stipulate that the County Attorney is responsible for notifications for victim issues. As Chief Lynch indicated, he will be following up with the County Attorney. Notification is just one part of what this unit does. State law states only that victims shall get notification and shall be done by the County Attorney. The Chief has worked through his budget for 2008 and can still meet the needs for this year. This is a unit that provides a phenomenal amount of services and without it the community would suffer greatly. It is expected that these "burn funds" are to be cut even more next year by the federal government.

Mayor Clouse asked for a breakdown of the number of cases that are City related and how many are County related.

Bridget Mosbarger, Director of Victim Witness Unit, stated that the majority of their cases would be Kearney Police Department cases just because of the amount of people and activity in Kearney. They do work with the Sheriff's department and follow up on their cases. They go through the offense reports on a daily basis. They are a little different from other organizations because they do outreach themselves where they contact the victim and let them know the process within 24 hours to 3 days.

Moved by Clouse seconded by Kearney to approve submitting a Grant Application to the Nebraska Crime Commission for Victim/Witness Division for the Crime Victim Assistance Program and approve **Resolution No. 2008-206**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2008-206

WHEREAS, the Kearney Police Department initiated the Victim/Witness Unit in 1984 and has provided support with in-kind match and with Victim Assistance grants; and

WHEREAS, the Victim/Witness Unit provides support and assistance to victims and witnesses in criminal cases within Buffalo County, Nebraska; and

WHEREAS, the City of Kearney is submitting a Grant Application to the Nebraska Crime Commission for the Crime Victim Assistance Program.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City of Kearney be and is hereby authorized and

directed to submit a Grant Application to the Nebraska Crime Commission for the Crime Victim Assistance Program for the purpose of obtaining funds for the Victim/Witness Unit to continue to support and provide assistance to victims and witnesses in criminal cases within Buffalo County, Nebraska.

BE IT RESOLVED that the Mayor and Director of Finance and Administration of the City of Kearney are hereby authorized and directed to execute said Grant Application on behalf of the City of Kearney.

PASSED AND APPROVED THIS 11TH DAY OF NOVEMBER, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

AGREEMENT WITH KEARNEY VISITORS BUREAU

Mayor Clouse opened for discussion amending the Agreement with the Kearney Visitors Bureau pertaining to the allocation of lodging tax revenues and to consider approval of Resolution No. 2008-207.

City Manager Michael Morgan stated that this agreement was created a few years ago to outline the services that have always been provided. The funding 4-5 years ago that the City kept from the lodging revenues was \$150,000.00 which has increased over the past 2-3 years. The entire amount provided by the lodging tax would be returned to the Visitors Bureau. This would mean a reduction in funding to the City of \$50,000.00. As has been discussed, the Visitors Bureau is in need of additional funds and City staff believed this is appropriate given the status of the KENO funds and the performance of the golf course over the past 2-3 years. Meadowlark Hills Golf Course is to be paid off in 2012. The funds of the prior agreement were to go toward the Cherry Avenue By-Pass; however, he believed with the KENO funds and other sources; this would be appropriate to do at this time. The actual agreement would not change except for the language about the funding that the lodging tax would go entirely to the Visitors Bureau.

Moved by Kearney seconded by Lammers to approve amending the Agreement with the Kearney Visitors Bureau pertaining to the allocation of lodging tax revenues and approve **Resolution No. 2008-207**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2008-207

WHEREAS, the City of Kearney, Nebraska and the Kearney Visitors Bureau desire to enter into an agreement for the purpose of promoting economic development in the City of Kearney, Nebraska and its immediate business, industrial and manufacturing environments.

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 the Agreement for Services on behalf of the City of Kearney. A copy of said Agreement is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 11TH DAY OF NOVEMBER, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

NEBRASKA FIREFIGHTERS MUSEUM

Mayor Clouse opened for discussion the recommendation from City Administration on providing \$250,000 to go toward the Nebraska Firefighters Museum.

City Manager Michael Morgan stated the Nebraska Firefighters Foundation is constructing a 10,000 square foot building on Archway Parkway. The estimated cost of the project is \$1,500,000. To date, over \$1,000,000 in donations has been received to construct the facility. Donors have included local citizens, the Smeal family and several Nebraska Fire Departments.

Recently, the Foundation requested funding assistance from the City of Kearney to ensure that sufficient funds would be available to start construction this year. It should be noted that funding should be subject to the Nebraska Firefighters Museum being constructed at the Archway Parkway site. The City created a fund entitled "Special Sales Tax – Capital Improvements/Equipment Fund" to place the proceeds of the ½¢ sales tax. Because the Nebraska Firefighters Museum is a valuable asset to the community, City staff is suggesting \$250,000 go towards the construction of the new Nebraska Firefighters Museum. The funding would be \$50,000 for five (5) years.

Greg Erickson, representative of Nebraska Firefighters Museum, stated the Nebraska Firefighters Museum and Education Center will be owned and operated by the Nebraska Firefighters Foundation which is a 501C-3 non-profit corporation. The purpose is to create a destination to honor Nebraska Firefighters, and to provide education to children and adults regarding fire prevention and fire safety. It is to foster public understanding of the impact and benefit of firefighting to saving lives and property. This will also preserve the history and heritage of Nebraska firefighting. The location is to be west of the Archway on the Archway campus.

Initially, they will build a 10,000 square foot facility. The land is to be leased from the Archway for \$1.00 per year for 49 years. There are adequate water and sewer services available. The estimated construction cost is \$1.4 million. They hope to start construction in the next 30 days. The facility will have displays of firefighting equipment and memorabilia from Kearney and other fire departments across the state. They will have a rotating exhibit so departments from the across the state can display their equipment without permanently donating it to the museum. This will draw people from other areas where those departments are located. The building is designed to resemble a turn of the century fire station. They have raised over \$500,000.00 privately through pledges, donations, grants and memorials. Numerous Kearney citizens and businesses have donated funds and over 50 fire departments from the state have donated funds. They will continue fund raising into the future as well. Additional phases will be constructed and the intent is to add 15,000-20,000 additional square feet. The building is being designed to easily make additions. They will have a memorial garden as an

integral part of the project, but they do not have funding for it at this time but will be the focus of future fund raising.

City Manager stated that the City worked with the Kearney Volunteer Fire Department and looked at some funding that have been allocated annually to go toward fire department improvements of \$50,000.00. It was believed that funding was not always necessary and when those cases came about, they could look to the general operating budget to do those small improvements at the Firefighter facility. They talked about allocating this over a 5-year period which is a little different than what they have done due to the current balance of the sales tax and the amount they project over the next five years. They clearly could use additional funds but this seems to be a fair and reasonable amount. Once the first phase is completed, it will help significant fund raising to be accomplished. This will be unique to have that many fire departments across the state contribute to such a project.

Mayor Clouse wanted to clarify that although this \$50,000.00 is in the half cent sales tax, they are funds that had been targeted for fire department improvements. These are not extra funds that are being used. The Kearney Volunteer Fire Department has agreed to use some of those funds for this project and move some of their projects out further.

City Manager stated after reviewing the expansion of Fire Station II (\$480,000.00 scheduled for this year) and the future Fire Station III project, it was agreed the additional location would take away the need for the expansion of Fire Station II. Fire Station III remains in the 5-year plan of the half cent sales tax. There was a large piece of apparatus that would have had to be purchased to go into Fire Station II expansion which will also be delayed to be purchased when Fire Station III gets constructed. The KVFD and their leadership have worked very closely with administration with what the future would mean regarding cost to the City. They are very concerned that these very large pieces of fire apparatus are very expensive and are very excited about Fire Station III and the timing for that project. During the budget planning, their board expressed their excitement about the new location and the museum project, as well.

Council member Lear questioned any expectations of any negative ramification either in the City's ability to service fire needs or in the ratings that are associated to homeowners insurance. City Manager stated the ISO rating that the City has already achieved is based on current apparatus. This would actually be an enhancement and the City would not get a better rating than two, but this change in plan would not make a negative affect. The Fire Station III project timeline was moved up a year (2013 with 2012 sales tax dollars) which will be located in northeast Kearney and will be a major improvement. This will be an operating item for the City to staff that facility in the future.

Mayor Clouse commended the Kearney Volunteer Fire Department for stepping up to help fund this Nebraska Firefighters Museum; in addition to the dollars they save the City by their volunteerism.

City Manager stated the location of the Nebraska Firefighters Museum on the Archway campus comes with the street and utilities (estimated value of \$5 million) that the City

was able to gain as part of the Archway project that was paid for with private funds. To be able to do this project on this land with full utilities is a bonus.

Mike Kalb, BD Construction, 209 West 6th Street, stated that the initial soil samples they have taken in the proposed location, appears that everything underneath the top sand is waste sand. Originally, that site was pumped for sand and gravel. When they pumped that lake behind it, they pumped the waste sand back in there, but it was not compacted. They are in the process of investigating the site to the west of the proposed location. They have taken one sample and the engineers determined the area to be promising for that site to be a lot less expensive to building on. If they build on the proposed site, that ground would have to be surcharged for 90-120 days with 10-12 feet of dirt and let it naturally compact over winter. This would also delay the project, as well, as be very costly to the Nebraska Firefighters Museum. They hope to have those answers in the next week and determine if the ground to the west is more suitable.

Moved by Lear seconded by Buschkoetter to approve the recommendation from City Administration on providing \$250,000 to go toward the construction of the Nebraska Firefighters Museum conditioned upon the issuance of a building permit for the Archway Parkway site. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

OPEN ACCOUNT CLAIMS: PLATTE VALLEY STATE BANK - \$45,594.38, SCHOOL DISTRICT #7 - \$10,744.92

Moved by Buschkoetter seconded by Clouse that Open Account Claims in the amount of \$45,594.38 payable to Platte Valley State Bank be allowed. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear abstained. Motion carried.

Moved by Clouse seconded by Kearney that Open Account Claims in the amount of \$10,744.92 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Lear. Nay: None. Buschkoetter and Lammers abstained. Motion carried.

VII. REPORTS

UNK AVIATION PROGRAM

City Manager Michael Morgan stated he wanted to make the Council aware that after the discussion a few months ago about the UNK Aviation Program, there has been a lot of good conversation with UNK officials, City staff, Otis Air Services (new FBO) and they have reached a tentative agreement on those services being provided to the Aviation Program. He expressed his appreciation to UNK and Otis Air. Students are up flying and there is on-going discussions about additional aircraft.

PETERSON SENIOR ACTIVITY CENTER

City Manager Michael Morgan stated that the Council authorized the staff to negotiate

with the low bid. In accordance with the Nebraska law, he negotiated with Hausmann Construction because their bid was over the architect's estimate. He stated Hausmann Construction was very professional and appropriate to work with.

ENPLANEMENTS AT KEARNEY REGIONAL AIRPORT

City Manager Michael Morgan stated Kearney hit 10,000 enplanements in late October. This is the second highest number of passengers to leave Kearney's Airport and is a major accomplishment. They estimate the number to be 11,500 to 12,000 enplanements by the end of the year. This will mean an addition \$1 million in federal grant funding for the Kearney Regional Airport which solidified its position in Central Nebraska. Very few airports in the State of Nebraska have hit that milestone. The services that are being provided by the new FBO are going well and people need to inquire about what services are being offered.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 8:14 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

ATTEST:

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

**MICHAELLE E. TREMBLY
CITY CLERK**