

**Kearney, Nebraska**  
**November 25, 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 25, 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 and Bob Lammers. Absent: Bruce Lear. 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; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Jim McKenzie, Kathy McKenzie, Duane Heiliger, Betty Heiliger, Carol Cope, Rocky Steinbrink, Doug Shada, Judy Sickler, Tom Tye, Michaelen Tye, Tim Shada, Tracey Shada, Gary Roubicek, Marge Lauer, Steve Case, Janice Wiebusch, Jack McSweeney, Nancy Pflug, Rita Uldrich, Earl Rademacher, Joan Rademacher, Les Adelang, Steve Rothenberger, Rick Schusler, Jan Anderson, Margaret Clark, Dusty Rodiek, Neal Lewis, Sara Giboney from Kearney Hub, Steve Altmaier from KGFV Radio, NTV.

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**

Reverend Michelle Reed from the Faith United Methodist Church provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

One Boy Scout 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**

### **PROPOSED ACQUISITION – PORTION OF E.K. AND MARY YANNEY HERITAGE PARK**

Mayor Clouse opened the public hearing on the proposed acquisition granted to the City of Kearney by The Yanney Heritage Park Foundation of a tract of land described as Lot 1 of E.K. and Mary Yanney Heritage Park Second, an addition to the City of Kearney, Buffalo County, Nebraska for recreational purposes and expansion of City facilities and to consider approval of Resolution No. 2008-208.

The Yanney Heritage Park Foundation has been developing Yanney Heritage Park since approximately 1997. There have been substantial private contributions to the acquisition and the development of this park by the Yanney family as well as by numerous private donors. The Yanney Heritage Park Foundation now wishes to transfer what is known as Lot 1 of E.K. and Mary Yanney Heritage Park Second Addition which consists of approximately 46.20 acres of property to the City. The Foundation has reserved Lots 2 and 3 of this addition for future park development. This is a gift transfer from the Foundation to the City of Kearney.

Tom Tye, President of the Yanney Heritage Park Board of Directors, presented this matter to the Council. This is a project they have been working on for a long time. Over the last few months, they have been working on conveying a portion of Yanney Park from the Foundation to the City of Kearney. He recognized the Board members have been diligently working from the beginning, ten years ago, to make this happen. He expressed his appreciation for the countless hours they have worked.

The proposal presented to the City Council was to consider the transfer of approximately 47 acres of Yanney Park to the City of Kearney. The 80-acre park was replatted some time ago into three different lots. Lot 1 is approximately 47 acres that is being proposed to be transferred to the City. This lot encompasses, in essence, the heart of the park which is the center of the park. Lots 2 and 3 consist of about 30 acres in the northwest corner and 20 acres on the south side that the Foundation is retaining for future park development. This has been a methodical process in working with the City as they developed a portion of the park to a level where both parties are satisfied with the development in conjunction with the original proposal.

The presentation at this meeting is the culmination of more than ten years of hard work and focus collaboration by many people. Mr. Tye presented a little of the history of the park. In late 1997, there was a conversation between Director of Park and Recreation Neal Lewis and Mike Yanney about doing some enhancements to Centennial Park. Knowing those two gentlemen, few would be surprised that conversation exploded and expanded into a much grander project than what Centennial Park could manage. The

discussion led to creating a new park, preferably one in the southwest part of Kearney where the Yanney family grew up. In particular, Mike Yanney has lots of fond memories of growing up in that part of town with his siblings, doing things like fishing in that area. A site was identified at 11<sup>th</sup> Street and Kea West Road which in 1998 was an 80-acre flat cornfield.

In the spring of 1998, the first dedication of Yanney Park took place. Several Kenwood Elementary students were there, along with Mayor Pete Kotsiopoulos and the first tree was planted in the park. Over the years, they have developed many partnerships with a lot of different people in the development of Yanney Park. The NPPD trail race runs on the east side of the park and, at the time it was acquired, it needed a lot of work as far as shaping the bank line and making it a little more accessible and attractive. This also helped with the eventual link to the hike/bike trail that goes down through there. The trail was not anywhere near this location at the time. Initially, their key partner was NPPD that came in and started to work that west bank line of the trail race to shape and clean it up and make it more attractive and accessible. This development was major in laying the foundation for many things in the future.

The next item was that they always wanted a water feature at this park. Mike Yanney wanted some type of lake because he is a big fisherman and wanted a place where families could go and fish and recreate, as well as the aesthetic beauty of having a lake in the park. They concluded to have a 12-13 acre lake, in conjunction with the Nebraska Environment Trust Fund, it took about two years to build a significant lake. This lake has become a fishing habitat and has developed to a point that the Nebraska Games and Wildlife Commission has reported that it is the lake that has the most master angler Bluegills of any lake in the state.

One of the other things they wanted at the park as the focal point was the Observation Tower. They had seen many observation towers through the country and Nebraska but they did not want just "any old one". They wanted an observation tower that was unique and distinct to Yanney Park. One of the unique aspects of the tower is the elevator which was the inspiration and charge to them by Mitzi Steinbrink. She wanted to make certain that everyone has accessibility to the tower. The John and Carmen Gottchalk Tower which now sits as a focal point, not only in the park but in our community. The view at the top is quite spectacular as the park has developed around that.

One of the next components was to have an outdoor amphitheater for concerts, programs, etc. They believed that the lake and other amenities would be a beautiful setting for something like the Ron and Carol Cope Amphitheater. The groundbreaking was a special occasion for Carol Cope to attend and to attend this Council meeting which is a historic event in transferring the amphitheater to the City.

They also wanted to have a 4-season pavilion for family events, classroom reunions, weddings, receptions so a fabulous pavilion was designed and built. Mitzi Steinbrink's grandchildren did the groundbreaking for Mitzi's Pavilion. This was particularly significant and somewhat emotional for everyone because Mitzi Steinbrink was one of the visionaries and key players in the development of Yanney Park and unfortunately did not stay with us long enough to see the pavilion completed or what is being done today. It is important that her grandchildren are part of the project.

Another key component of the park is the McKinney Bridge. This is another well known and respected Kearney family who stepped up to be part of this project.

The Splashground/Playground is an area where they got creative. No one had designed and put together these two components on either side of it so this is also unique. This was a project that was made possible by Chuck Durham and the Durham Foundation in Omaha. This is a popular item at the park on a hot summer day.

In the last couple years, the Elizabeth Hilliard Labyrinth which is an interesting concept because you can get a view from the tower and actually enter the labyrinth.

There is also the Gale and Mike Yanney Gardens which is a donation from good friends, Sue and Walter Scott. This came as a complete surprise to the Yanneys one day. After several months of discussion, the Scotts donated the grand entrance into the park and the roundabout area and made it much grander than originally envisioned. They wanted to make the entrance into the park very special and did it as a thank you gift to their friends. Mike and Gale Yanney were surprised with this very nice contribution from the Scotts. This is an asset as well to the City of Kearney and when these trees develop over the next few years, this will be spectacular. This component with the entrance and the roundabout will service the Peterson Senior Activity Center which will soon be under construction and projected to be ready in a little over a year.

He continued to thank people in addition to those already recognized. He recognized the significant donors to this project. This project attracted donors from Coral Gables, Florida to Seattle, Washington and New York to Los Angeles, California. They have had tremendous donations from people in Kearney who understand the heritage of what this brings to the community. They have also had generous donations from Omaha and others throughout Nebraska. He also expressed his appreciation to the City of Kearney Administration and staff. This is a tribute to all of them to help see this evolution of the public/private partnership come to where it is today. Ten years ago they were not familiar with what public/private partnerships could do, particularly in this context. This has been a journey for everyone. He thanked the current and prior City Councils for their support and involvement and encouraged them along the way to develop this into one of Kearney's finest parks and to be willing partners all along the way. He thanked Neal Lewis, Scott Hayden, Dusty Rodiek, Chad Boersma, Robyn Bowman and all the park staff for their participation.

The final group of people Mr. Tye recognized is the Yanney family. There were six of E.K. and Mary Yanney's children were still with us and involved when this project was started ten years ago. Without reservation, the Yanney families are the finest people you could ever meet. They are truly what Kearney heritage, history and leadership by example of values are all about. Mr. Tye stated it has been an honor to work on this project as a tribute to the parents. Unfortunately, during the course of the project they lost E.K., Mitzi and Margaret, but their children and grandchildren have carried on the heritage of the park. Mary Yanney had a favorite saying that he has in his office and is prominently displayed in Mike Yanney's office in Omaha which sums up what has been accomplished: "If you are going to do something, do something that makes a difference, and do it with excellence". This is true in the way which everyone has

approached this project.

Mayor Clouse thanked the Yanney Foundation Board for all they have done. The park is a work in progress and has been from the very beginning. The survivor fund raising event was the first big event out there and now we have the Heritage Days, 4<sup>th</sup> of July celebration and an abundance of events during the year at the park. Participants love the park and the trails in the area. Year after year he has been able to talk about new additions to the park at these events. There are a lot of acres out there and more things to come which he is very excited about. There are also other amenities such as, Kalloway Gardens, donated by Louise Kalloway to recreate a backyard garden, the Rotary picnic shelters, Sue Bush Memorial and the ERC building. He views Yanney Park as one of the things that really defines the community and is pleased and privileged to be here for this important step.

Mr. Tye gave a background on the ERC Building which was made possible by the Omaha World Herald and the Kearney Hub. The ERC Building was a crucial development in the park because at the time, they were dealing with porta-potties and poor restroom and maintenance facilities and needed a larger meeting area and concession and restroom areas. This was an instrumental component in getting that ERC Building to come to fruition. This was designed by some ingenious design work by the City park staff and some of the contractors to make it happen with the budget.

Council member Kearney stated that Kearney is fortunate that there are people like Mr. Tye and all the people present at this meeting who participated in the development of Yanney Park. He has received compliments from many people passing through Kearney who have stopped at the Park. He believed that word of mouth will also bring more popularity to Yanney Park. He was proud to be part of this historic event.

Council member Lammers stated that he was very thankful for the generous gifts of all the people who have been involved with the development of the Yanney Heritage Park. It is tremendous how people have worked together to make this park so special and a gift to the City of Kearney. It is a tremendous honor for him to be a member of the Council knowing these are the kind of people in the Kearney community that have created such a wonderful facility.

Council member Buschkoetter stated that he and his family capitalize on the blessings that the Park has to offer. He thanked them as citizen on behalf of his family and also as a City Council member.

Marge Lauer, prior Foundation Director, could not let this opportunity go by without giving a huge "thank you" to Tom Tye for all of his efforts in this project who was with it for the whole time.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the proposed acquisition granted to the City of Kearney by The Yanney Heritage Park Foundation of a tract of land described as Lot 1 of E.K. and Mary Yanney Heritage Park Second, an addition to the City of Kearney, Buffalo County, Nebraska for recreational

purposes and expansion of City facilities and approve **Resolution No. 2008-208**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

**RESOLUTION NO. 2008-208**

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 recreational and expansion of City facilities and voted in favor to proceed with the acquisition; and

WHEREAS, the The Yanney Heritage Park Foundation has granted to the City of Kearney, Nebraska a Warranty Deed for a tract of land described as Lot 1 of E.K. and Mary Yanney Heritage Park Second, an addition to the City of Kearney, Buffalo County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Warranty Deed granted by The Yanney Heritage Park Foundation to the City of Kearney, Nebraska, be and is hereby accepted and approved.

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

Mayor Clouse and Council members presented a Proclamation recognizing E.K. and Mary Yanney.

**IV. CONSENT AGENDA**

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

1. Approve Minutes of Regular Meeting held November 11, 2008.

2. Approve the following Claims:

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

A&D Technical Supply \$990.00 smcs; Air Power of NE \$35,068.00 co; Alltel \$61.19 smcs; Amax Contracting \$21.60 co; Amara-Chem \$41.95 smcs; American Red Cross \$4,147.71 smcs; Andersen,B \$131.98 co; Anderson,S \$40.00 smcs; Antelope Newspaper \$72.00 smcs; Ask Supply \$296.97 smcs; Aurora Co-op \$90.64 smcs; B&B Auto Glass \$145.06 smcs; Baird Holm \$425.00 smcs; Baker & Taylor \$4,784.42 smcs;

Bamford \$942.36 smcs; Barney Abstract \$210.00 smcs; BBC Audiobooks \$112.26 smcs; Bluecross Blueshield \$96,381.98 smcs; Bosselman \$21,608.60 smcs; Broadfoot's \$815.00 smcs; Buffalo Air Services \$10,399.68 smcs; Buffalo Co Court \$380.19 ps; Buffalo Co Treasurer \$14.00 co; Buggy Bath \$1,000.00 smcs; Cash-Wa \$1,714.44 smcs; Central Fire \$203.40 smcs; Ch Diagnostic \$1,300.00 smcs; Charter \$236.61 smcs; Chesterman \$101.20 smcs; Chief Construction \$115,414.26 co; City of Ky \$8,851.50 ps; City of Ky \$6,479.57 smcs,co; College Savings Plan of NE \$100.00 ps; Comcate \$5,072.00 smcs; Complete Music \$310.00 smcs; Control Masters \$400.95 smcs; Copycat Printing \$375.16 smcs; Crossroads Ford \$65.75 smcs; Cummins Central Power \$319.15 smcs; Curbit \$587.00 smcs; Danko Emergency \$1,131.61 smcs,co; Data Technologies \$3,444.58 smcs; Dawson Co PPD \$1,058.43 smcs; Deeter Foundry \$828.00 smcs; Degroff,J \$250.00 smcs; Depository Trust \$56,830.00 ds; Diamond Vogel \$4,880.00 smcs; Don Quinn Plumbing \$157.30 smcs; DPC Industries \$16,662.98 smcs; Dutton-Lainson \$201.50 smcs; Eakes \$127.72 smcs; Ecolab \$31.50 smcs; Eggen,M \$130.41 smcs; Elliott Equipment \$43.63 smcs; EMC Insurance \$3,391.25 smcs; Enterprise \$35.00 smcs; Expression Wear \$276.00 smcs; Factual Data \$50.97 smcs; Fedex \$108.81 smcs; Fireguard \$505.89 smcs; Footjoy \$74.86 smcs; Fort Bend Services \$10,766.25 smcs; Frontier \$7,926.72 smcs; Fyr-Tek \$446.22 co; Gale \$1,545.50 smcs; GE Money Bank \$1,543.54 smcs; General Traffic Controls \$212.68 smcs; Goodner,D \$31.00 smcs; Great Plains One Call \$341.53 smcs; Gross' Belgians \$600.00 smcs; Hach \$5,796.40 co; HD Supply \$5,252.23 smcs; Heiman Fire Equipment \$153.81 co; Herk's Welding \$2,550.16 co; Highsmith \$16.11 smcs; Hotsy Equipment \$6,540.00 smcs,co; ICMA RC \$4,149.18 ps; Info USA Marketing \$2,075.00 smcs; IRS \$103,229.21 ps; Jack Lederman \$805.45 smcs; Ky Chamber Comm \$1,700.00 smcs; Ky Clinic \$3,872.00 ps; Ky Comm Foundation \$5,000.00 smcs; Ky Crete \$499.60 co; Ky Hub \$2,938.03 smcs; Ky Implement \$126.44 smcs; Ky Towing \$375.00 smcs; Ky Visitors Bureau \$35,736.21 smcs; Konuf,K \$60.00 smcs; Linweld \$41.26 smcs; Magic Cleaning \$660.00 smcs; Manary,M \$970.80 smcs; Marlatt Machine Shop \$354.30 smcs; McCarty,D \$658.20 smcs; Meteorlogix \$615.00 smcs; Metlife \$8.10 ps; Mid-State Engineering \$3,071.00 co; Miller & Associates \$47,940.90 co; Moonlight Embroidery \$1,096.50 smcs; Morris Press \$80.00 smcs; Municipal Emergency \$232.61 smcs,co; Municipal Supply \$63.24 smcs; Nathan's Curb Grinding \$175.00 co; NE Child Support \$2,659.58 ps; NE Dept of Environmental \$450.00 smcs; NE Dept of Revenue \$40,635.40 smcs; NE Dept of Roads \$13,864.64 co; NE Health & Human Services \$540.00 co; NE Machinery \$1,355.00 co; Northwestern Energy \$3,155.92 smcs; Obermiller Seamless \$2,786.00 smcs; Ohri,R \$24.89 smcs; O'Keefe Elevator \$39.52 smcs; Olsson Associates \$3,000.00 co; O'Neill Wood Resources \$9,635.00 smcs; Overhead Door \$366.54 smcs; Paramount Linen \$301.70 smcs; Peerless Pumps \$1,636.77 smcs; Pepsi-Cola \$550.70 smcs; Pheasants Forever \$462.00 smcs; Platte Valley Comm \$5,519.99 smcs; Presto-X \$210.00 smcs; Prystupa,Y \$11.48 ps; Random House \$394.40 smcs; Raynor Garage Doors \$278.00 smcs; Reams \$4,287.63 smcs; Recorded Books \$471.31 smcs; Resource Management \$1,551.96 smcs; Rice,C \$94.00 smcs; Ritscher,R \$71.75 smcs; Riverside Mfg \$80.51 ps; Roper's Radiator Service \$220.00 smcs; RTI \$234.95 smcs; S&B Heating \$79.02 smcs; Schindler Elevator \$771.33 smcs; See Clear Cleaning \$4,600.00 smcs; S-F Analytical Lab \$212.00 smcs; Sherman,B \$175.00 smcs; Smith Signs \$3,400.00 co; St of NE/Dept Aeronautics \$1,004.59 smcs,ds; Stott,D \$608.20 smcs; Summit Heating & Air \$257.00 smcs; Thompson,J \$31.00 smcs; Tokay Software \$650.00 smcs; Tri-Cities Group \$266.97 smcs; Turner Body Shop \$777.30 smcs; Underground Construction \$16,559.40

co; Unique Management \$456.45 smcs; Van Diest \$3,354.00 smcs; West Payment Center \$1,294.44 smcs; Wiegand Security Service \$75.00 smcs; Wilkins Hinrichs Stober \$23,216.48 co; Williams,M \$44.78 smcs; Winlectric \$2,111.02 smcs; WPCI \$160.50 ps; Payroll Ending - -2008 -- \$\_\_\_\_\_. 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 December 9, 2008 at 7:00 p.m. as date and time for hearing on those applications where applicable.
4. Approve the Plans and Specifications for the 2008 Part 7 Improvements consisting of Water District No. 2008-553 for 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; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition and set the bid opening date for December 16, 2008 at 2:00 p.m.
5. Approve canceling special assessments levied against certain lots and lands and to remove the said records and assessment schedules from the active files of the City of Kearney and approve **Resolution No. 2008-209**.

#### **RESOLUTION NO. 2008-209**

WHEREAS, special assessments have been levied against various properties owned by the City of Kearney; and

WHEREAS, the special assessment liens should be extinguished and no longer constitute liens upon the subject real estate.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Clerk of the City of Kearney be and is hereby authorized and directed to denote on the records of the Office that the special assessments levied against the below-listed lots are cancelled, and to remove the said records and assessment schedules from the active files of the Office.

District	Description	Assessment Amount
Paving Improvement District No. 2001-865	West 250 feet of Lot 2, E.K. & Mary Yanney Heritage Park, an addition to the City of Kearney, Buffalo County, Nebraska	\$212,877.25
Paving Improvement District No. 2001-866	North 250 feet of Lot 2, E.K. & Mary Yanney Heritage Park, an addition to the City of Kearney, Buffalo County, Nebraska	\$110,865.85
Paving Improvement District No. 2003-873	That part of the south 250 feet of the Southwest Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska	\$14,728.96

	lying east of Stoneridge Addition to the City of Kearney, and lying west of Lot 2, Camron Second Addition to the City of Kearney	
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PASSED AND APPROVED THIS 25TH 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 Four-Wheel Loader to be used by the Kearney Area Solid Waste Agency Landfill from Titan Machinery of Omaha, Nebraska in the amount of \$130,800.18.

7. Approve the recommendation from the Utilities Department for the purchase of a Four-Wheel Loader to be used by the Water Distribution Division from Titan Machinery of Omaha, Nebraska in the amount of \$110,791.00.

8. Approve the recommendation from the Public Works Department for the purchase of a dump truck, snow plow and snow plow hitch to be used by the Transportation Division from Nebraska Truck Center in the amount of \$123,001.00.

9. Approve Application and Certificate for Payment No. 3 in the amount of \$117,108.00 submitted by Blessing, LLC and approved by Miller & Associates for the 2008 Part III Improvements consisting of Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street and approve **Resolution No. 2008-210**.

### RESOLUTION NO. 2008-210

WHEREAS, Blessing, LLC of Kearney, Nebraska has performed services in connection with the 2008 Part III Improvements consisting of Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 3 in the amount of \$117,108.00 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$336,216.00</u>
Contract Sum to Date	336,216.00
Total Completed and Stored to Date	139,840.00
Retainage	13,984.00
Amount Due to Date	125,856.00
Less Previous Certificates for Payment	<u>8,748.00</u>
Current Payment Due	\$117,108.00

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

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**10.** Approve Change Order No. 2 showing an increase in the amount of \$2,936.25, Change Order No. 3 showing a decrease in the amount of \$29,128.88, Application and Certificate for Payment No. 3-Final in the amount of \$60,564.62, and the Certificate of Substantial Completion 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. 2008-211**.

### RESOLUTION NO. 2008-211

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. 2 showing an increase in the amount of \$2,936.25 as shown on Exhibit "A", and Change Order No. 3 showing a decrease in the amount of \$29,128.88 as shown on Exhibit "B", 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. 3-Final in the amount of \$60,564.62, as shown on Exhibit "C" 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)	+ 27,624.92
Change Order No. 2 (11-25-2008)	+ 2,936.25
Change Order No. 3 (11-25-2008)	- <u>29,128.88</u>

Contract Sum To Date	211,657.29
Gross Amount Due	211,657.29
Retainage	.00
Amount Due to Date	211,657.29
Less Previous Certificates for Payment	<u>151,092.67</u>
Current Payment Due	\$ 60,564.62

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of October 17, 2008, as shown by Exhibit "D" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 2, as shown on Exhibit "A", Change Order No. 3, as shown on Exhibit "B", Application and Certificate for Payment No. 3-Final, as shown on Exhibit "C", and the Certificate of Substantial Completion as shown on Exhibit "D" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

11. Approve Application and Certificate for Payment No. 5 in the amount of \$151,824.72 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. 2008-212**.

#### RESOLUTION NO. 2008-212

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 Application and Certificate for Payment No. 5 in the amount of \$151,824.72 as shown on Exhibit "A" 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	860,266.50
Retainage	17,205.33
Amount Due to Date	843,061.17
Less Previous Certificates for Payment	<u>691,236.45</u>
Current Payment Due	\$ 151,824.72

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

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

12. Approve T-Hangar Lease B-9 Lease Agreement between the City of Kearney and Phil Jossi/Premier Aviation Training & Management for storage at the Kearney Regional Airport and approve **Resolution No. 2008-213.**

**RESOLUTION NO. 2008-213**

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the T-Hangar B-9 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Phil Jossi/Premier Aviation Training & Management, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

13. Approve the request submitted by the Downtown Improvement Board as follows: (1) place Santa's house in front of Nelson's Furniture, 2109 Central Avenue from November 26, 2008 until December 31, 2008; (2) Agreement to block off three parking stalls in front of KGFW Radio, 2223 Central Avenue for Santa's reindeer and sleigh on December 4, 2008 from 8:00 a.m. until 9:00 p.m.; (3) Agreement to block off three parking stalls in front of Time for Baby, 2123 Central Avenue to sell popcorn on December 4, 2008 from 8:00 a.m. until 9:00 p.m.; (4) Agreement to block off three parking stalls in front of Hogan's Sporting Goods, 2410 Central Avenue to sell popcorn on December 4, 2008 from 8:00 a.m. until 9:00 p.m. and (5) Agreement to block off six parking stalls in front of the Kearney Hub, 13 East 22nd Street on December 4, 2008 from 8:00 a.m. until 9:00 p.m. for hayrack rides through downtown Kearney.

14. Approve Application and Certificate for Payment No. 5 in the amount of \$121,682.70 submitted by Paulsen, Inc. and approved by Kirkham Michael for the construction of the Airport Road Relocation Project and approve **Resolution No. 2008-214.**

**RESOLUTION NO. 2008-214**

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. 5 in the amount of \$121,682.70 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	1,039,614.60
Retainage	103,961.46
Amount Due to Date	935,653.14
Less Previous Certificates for Payment	<u>813,970.44</u>
Current Payment Due	\$ 121,682.70

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

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

## **V. CONSENT AGENDA ORDINANCES**

### **ORDINANCE NO. 7475A – AMEND ORDINANCE NO. 7475; VACATE PORTION OF AVENUE P**

On October 14, 2008 the Council approved the vacation of Avenue P as requested by Peavey Grain Company. The Register of Deeds filed and recorded the ordinance when it became effective. When a copy of the ordinance was submitted to Peavey, it was determined the legal description had an error and needed to be amended. Therefore, the ordinance simply corrects the legal description that was previously submitted to the City. This is a simple house keeping issue that needs to be corrected.

Council Member Buschkoetter introduced Ordinance No. 7475A, being Subsection 1 of Agenda Item V to amend Ordinance No. 7475 by correcting the legal description on vacating all of Avenue P located north of 27th Street, west of Lot 2, Con Agra Addition, an addition to the City of Kearney, Buffalo County, Nebraska, east of Lots 1 and 8 of Block 45, East Lawn Addition to the City of Kearney, Buffalo County, Nebraska (west of Grand Avenue, north of 27th Street, south of vacated 28th 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7475A by number. Roll call of those in favor of the passage of said ordinance on the

first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7475A be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7475A 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. 7478 – AMEND ARTICLE 7 OF CHAPTER 9 OF THE CITY CODE**

The Nebraska State Electrical Board adopted the 2005 National Electrical Code in April of 2005 with several amendments to the Code. In accordance with State regulations, the City of Kearney also adopted the 2005 Code with the same amendments. Following considerable discussion and public input at the State level, the State Electrical Board has removed the amendments. The Governor approved the changes with an effective date of November 5, 2008. The City must also remove the same amendments that are referenced in Chapter 9 of the Code of the City of Kearney. Although the State Electrical Board is requiring compliance with the changes as of November 5, 2008, the City is suggesting compliance beginning December 1, 2008, to give local contractors an opportunity to become aware of the State's requirements. The electrical breakers now required with the change in the State Electrical Code will cause a minor increase in the cost of wiring new residential structures.

Council Member Buschkoetter introduced Ordinance No. 7478, being Subsection 2 of Agenda Item V to amend Article 7 "Electricity" of Chapter 9 "Public Works" of the Code of the City of Kearney, Nebraska to delete in its entirety the following sections: Section 9-750 "Section 210.12 Amendment; Arc-Fault Circuit-Interrupter Protection"; Section 9-751 "Section 334.10 Amendment; Uses Permitted for Non-Metallic Sheathed Cable"; and Section 9-752 "Section 334.12 Amended; Uses Not Permitted for Non-Metallic Sheathed Cable", 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7478 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7478 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers,

Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7478 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. 7479 – CREATE PAVING DISTRICT NO. 2008-930**

Items 3 through 11 of the Consent Agenda Ordinances pertain to a Subdivision Agreement that was approved by the City Council and the developer on September 9, 2008. In accordance with the Agreement, the public improvements were to be created through improvement districts.

Chapter 16 of the Nebraska Revised Statutes sets out the rules by which water, sewer and paving districts may be created by public entities. The Council has the authority to create districts and make improvements and assess the costs to the property that is benefited by the improvements. The Mayor and Council, by ordinance, shall create districts according to Sections 16-619 and 16-667 of the Nebraska Revised Statutes. At that time, the City must publish notice of the creation of the district one time each week for not less than 20 days in a daily or weekly newspaper of general circulation in the City. After publication, if the owners of record title representing more than 50% of the front footage of the property abutting or adjoining any continuous or extending improvements objects in writing within 20 days (30 days for water and sewer) from the first publication of said notice the work will not be done. If objections are not filed against the district in a timely manner that meets the law, the Mayor and Council shall proceed to construct such improvements. Section 57-102 of the Kearney City Code requires the developer to deposit fifty percent of the total estimated costs of the districts. The remaining unpaid costs of the improvements shall be assessed against the property in said districts on a basis of special benefit to the property, if any, as provided by law.

Council Member Buschkoetter introduced Ordinance No. 7479, being Subsection 3 of Agenda Item V to create Paving Improvement District No. 2008-930 for 48th Street from the east right-of-way line of 11th Avenue to the east line of Lot 1, Block Four, Windsor Estates Seventh Addition, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7479 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7479 be passed, approved

and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7479 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. 7480 – CREATE PAVING DISTRICT NO. 2008-931**

Council Member Buschkoetter introduced Ordinance No. 7480, being Subsection 4 of Agenda Item V to create Paving Improvement District No. 2008-931 for 10th Avenue Place from 48th Street to end of cul-de-sac, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7480 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7480 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7480 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. 7481 – CREATE PAVING DISTRICT NO. 2008-932**

Council Member Buschkoetter introduced Ordinance No. 7481, being Subsection 5 of Agenda Item V to create Paving Improvement District No. 2008-932 for 11th Avenue from the north line of 48th Street south to the north lot line of Lot 1 of Block 6, Fountain Hills First Addition, 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 Clouse 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, Lammers, Kearney. Nay: None.

Lear absent. 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. 7481 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7481 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. 7481 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. 7482 – CREATE PAVING DISTRICT NO. 2008-933**

Council Member Buschkoetter introduced Ordinance No. 7482, being Subsection 6 of Agenda Item V to create Paving Improvement District No. 2008-933 for 10th Avenue from the north line of 48th Street north to the north a distance of 293.98 feet to the northeast corner of Lot 24 of Block 3, Fountain Hills Third Addition, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7482 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7482 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7482 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. 7483 – CREATE WATER DISTRICT NO. 2008-554**

Council Member Buschkoetter introduced Ordinance No. 7483, being Subsection 7 of Agenda Item V to create Water District No. 2008-554 in 48th Street from the east lot line of Lot 10, Block 4 to the west lot line of Lot 10 of Block 4, Fountain Hills Third Addition,

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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7483 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7483 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7483 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. 7484 – CREATE WATER DISTRICT NO. 2008-555**

Council Member Buschkoetter introduced Ordinance No. 7484, being Subsection 8 of Agenda Item V to create Water District No. 2008-555 in 10th Avenue Place from 48th Street to its terminus in a cul-de-sac, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7484 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7484 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7484 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. 7485 – CREATE WATER DISTRICT NO. 2008-556**

Council Member Buschkoetter introduced Ordinance No. 7485, being Subsection 9 of Agenda Item V to create Water District No. 2008-556 in a 25-foot wide utility easement from the north line of 48th Street northeasterly to the north lot line of Lot 42 of Block 2, Fountain Hills Third Addition, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7485 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7485 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7485 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. 7486 – CREATE SANITARY SEWER DISTRICT NO. 2008-495**

Council Member Buschkoetter introduced Ordinance No. 7486, being Subsection 10 of Agenda Item V to create Sanitary Sewer District No. 2008-495 in 48th Street from the west line of 11th Avenue to the east lot line of Lot 1 of Block 4, Fountain Hills Third Addition; AND in 10th Avenue Place from the south line of 48th Street to its terminus in a cul-de-sac, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7486 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay:

None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7486 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7486 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. 7487 – CREATE SANITARY SEWER DISTRICT NO. 2008-496**

Council Member Buschkoetter introduced Ordinance No. 7487, being Subsection 11 of Agenda Item V to create Sanitary Sewer District No. 2008-496 in a 25-foot wide utility easement from the north line of 48th Street northeasterly to the north lot line of Lot 42 of Block 2, Fountain Hills Third Addition, 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 Clouse 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, Lammers, Kearney. Nay: None. Lear absent. 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. 7487 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7487 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7487 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

## **VI. REGULAR AGENDA**

### **PETERSON SENIOR ACTIVITY CENTER**

Mayor Clouse opened for discussion the Change Order No. 1 showing a decrease in the amount of \$21,081.00, Change Order No. 2 showing a decrease in the amount of \$40,000.00, Change Order No. 3 showing a decrease in the amount of \$25,000.00, and Change Order No. 4 showing an increase in the amount of \$4,900.00 submitted by Hausmann Construction, Inc. and approved by Wilkins Hinrichs Stober Architects in

connection with 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. 2008-215.

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 11<sup>th</sup> Street and Kea West Avenue.

On October 23, 2008 the City received bids from four prospective contractors. However, the lowest responsible bid submitted by Hausmann Construction was 6 percent above the Engineer's Opinion of Probable Construction Cost.

On October 28, 2008 the City Council awarded the bid to Hausmann Construction in the amount of \$2,879,000.00 subject to the City Manager negotiating the contract to an amount in keeping with the projected budget. City staff and Wilkins Hinrichs Stober Architects worked with Hausmann Construction and came to the following reduced contract amount:

<p><b><u>Change Order No. 1 – Reduction of \$21,081.00</u></b> Delete roll formed Lumishades; revise reflected ceiling plan; use PVC in lieu of cast iron pipe where allowed by code and authorities</p>
<p><b><u>Change Order No. 2 – Reduction of \$40,000.00</u></b> Modify the floor plan for lower and main levels</p>
<p><b><u>Change Order No. 3 – Reduction of \$25,000.00</u></b> Reduction in General Requirements to Contract</p>
<p><b><u>Change Order No. 4 – Addition of \$4,900.00</u></b> Include Alternate #2 providing for motorized roller shades on windows in the Multi-Purpose/Dining Room</p>

Moved by Kearney seconded by Lammers to approve Change Order No. 1 showing a decrease in the amount of \$21,081.00, Change Order No. 2 showing a decrease in the amount of \$40,000.00, Change Order No. 3 showing a decrease in the amount of \$25,000.00, and Change Order No. 4 showing an increase in the amount of \$4,900.00 submitted by Hausmann Construction, Inc. and approved by Wilkins Hinrichs Stober Architects in connection with the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2008-215**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

### **RESOLUTION NO. 2008-215**

WHEREAS, on October 23, 2008, at 2:00 p.m. the City received bids for the connection with 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 for the project was \$2,749,017.00 and the base bid received from Hausmann Construction of Lincoln,

Nebraska was in the amount of \$2,879,000.00 which exceeded the Engineer's Opinion of Probable Construction Cost and the projected budget; and

WHEREAS, on October 28, 2008 the Kearney City Council passed and approved Resolution No. 2008-203 authorizing the City Manager to negotiate a contract for services, material or labor to construct the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park at a cost commensurate with the Engineer's Estimate and the projected budget; and

WHEREAS, City staff and the City's architects, Wilkins Hinrichs Stober Architects, have worked with Hausmann Construction and recommend accepting the base bid submitted by Hausmann Construction of Lincoln, Nebraska subject to the following items being reduced and/or omitted from the contract for a decrease as well as one addition in the amount of \$81,181.00, as follows:

<u>Change Order No. 1 – Reduction</u> Delete roll formed Lumishades; revise reflected ceiling plan; use PVC in lieu of cast iron pipe where allowed by code and authorities	- \$21,081.00
<u>Change Order No. 2 – Reduction</u> Modify the floor plan for lower and main levels	- \$40,000.00
<u>Change Order No. 3 – Reduction</u> Reduction in General Requirements to Contract	- \$25,000.00
<u>Change Order No. 4 – Addition</u> Include Alternate #2 providing for motorized roller shades on windows in the Multi-Purpose/Dining Room	+ \$ 4,900.00

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 base bid of Hausmann Construction of Lincoln, Nebraska in the negotiated sum of \$2,797,819.00 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 25TH DAY OF NOVEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**OPEN ACCOUNT CLAIMS: STAN CLOUSE - \$102.84, NPPD - \$58,820.05, PLATTE VALLEY STATE BANK - \$45,828.65**

Moved by Lammers seconded by Buschkoetter that Open Account Claims in the amount of \$102.84 payable to Stan Clouse, \$45,828.65 payable to Platte Valley State Bank, and in the amount of \$58,820.05 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Kearney, Buschkoetter, Lammers. Nay: None. Clouse abstained and Lear absent. Motion carried.

## **VII. REPORTS**

### **CLOSED SESSION**

Moved by Buschkoetter seconded by Clouse that Council adjourn into closed session at 7:48 p.m. on November 25, 2008 for the protection of the public interest to discuss real estate matters. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to discuss real estate matters.

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

## **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. Nay: None. Lear absent. Motion carried.

**ATTEST:**

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

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