

**Kearney, Nebraska**  
**February 24, 2009**  
**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 February 24, 2009 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, and Bob Lammers. Absent: Don Kearney. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Dan Lynch, Chief of Police; and Luke Olson, Management Assistant were also present. Some of the 70+ citizens present in the audience included: Ruth Sajevic, Jane Musel, Gerry O'Rourke, Carroll Sheldon, Tom Karre, Pete Sage, David Cantrell, Robert Fitzgerald, Barb Beechner, David Feese, Betty Warren, Jim Howitt, DeMaris Grant, Don Pearson, Todd Herges, Mark Herges, Don Sluti, Tim Peterson, Jeremiah Quintin, Sara Giboney from Kearney Hub, Steve Altmaier from KGFW Radio, NTV, KHAS TV.

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 Shannon Montgomery, Pastor-Student from UNK, provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

Two Boy Scouts from Troop 158 led the Council members and audience in the Pledge of Allegiance.

### **ANNOUNCEMENT**

Mayor Clouse announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and is posted towards the back of the Council Chambers.

### **ORAL COMMUNICATIONS – POLICE DEPARTMENT VOLUNTEER PROGRAM**

Ruth Sajevik stated the senior volunteer program began at the Police Department 15 years ago. There are 35 volunteers that have volunteered several thousands of hours which total \$180,000 over this 15-year period. Robert Fitzgerald also stated they have six chaplains that volunteer time to support the officers.

## **II. UNFINISHED BUSINESS**

REMAIN ON TABLE UNTIL STUDY COMPLETED – Request to place 3 or 4-way stop sign located at 35th Street and Avenue A and parking concerns adjacent to the Kearney Catholic High School.

## **III. PUBLIC HEARINGS**

Mayor Clouse stated that at this time, the Council conducted the final Listening Session for citizens to comment on the City possibly purchasing of the FirstTier Event Center to ensure long-term stability and viability of the facility as an event center and the adoption of a one percent food and beverage occupation tax. Also, the agenda has been amended to include Item 3 on the Regular Agenda for the Council to discuss the acquisition of the Event Center.

David Feese, 114 East 27th Street, stated he has attended some of the other listening sessions. He thanked the Council for having these listening sessions which are almost unprecedented. When he attended the first meeting at the Harmon Park Activity Center, he understood that the arena was the City's to have for \$2 million if the offer was made (no more and no less). He recently read in the Kearney Hub that the City is prepared to offer between \$2 million and \$3 million. Mayor Clouse stated that they started with the \$2 million as a point in the community to know the types of dollars they are looking at. If an offer is made, they believed that it would have to be in that range. There has been no offer made. They do not know what that final number will be. The owner has not agreed to anything and the City is uncertain if it will even be a successful offer in that range.

Mr. Feese noted that at that meeting the members of the Council who were present were fairly confident that the one percent increase in the restaurant tax would cover the purchase and ongoing costs of the arena. He recently read that \$600,000 a year (maybe more like \$400,000) will need to be covered and wanted to know where those funds will be coming from. City Manager Michael Morgan stated City staff feels very comfortable there will be a minimum of \$500,000 (maybe more) from the restaurant occupation tax which is the number they have used from the beginning. The additional funding that could be used, if the decision is made to move forward, is \$240,000 from the ½ cent capital improvement fund for either reserve capital improvement or debt service. There is a possibility of \$740,000 a year available. They clearly do not believe that this amount will fall short of what is needed.

Mayor Clouse stated they believe based on the numbers that the one percent restaurant tax would cover debt service and operation. If nothing happens in 2-3 years which requires a major capital expenditure, it would allow the City some time to build a capital reserve. They need to have a cushion in place in case something would happen. The ½ cent additional sales tax Capital Improvement Plan for which they have projects targeted and reserve funds targeted would not be used unless it was for something significant. If they needed funds, they would take a look at projects on the Capital Improvement Plan that could be pushed back. When staff looks at the numbers and

puts them together, they were ultra conservative. When they ran the numbers, they were looking at a low number for what the sales tax could generate which is good in this economy because they do not want to have optimistic numbers that may not be achievable. Staff did an excellent job on looking at the numbers and being very conservative about what the City would be looking at for a business plan on a cash flow basis. It is possible the Event Center could make money so that the City may not have to use all of that one percent tax.

Council member Buschkoetter stated they are not trying to sugar coat the facts or make a sales pitch for the purchase. In the past there were Councils that had numbers for various projects that were a bit too rosy. This Council is desperately trying to make sure they do not make those same kinds of mistakes. He believes the projected numbers are almost somewhat pessimistic. This is the approach that the Council has taken in how they approach financing things.

Mayor Clouse stated that the best way of looking at it is projecting the worst case scenario. If they estimate the smallest amount of money that will come from the one percent lodging tax and estimate the lowest number of anticipated events and attendees that puts together the worst case scenario to assess the City's risk.

Mr. Feese stated his questions had been answered, but he felt the purchase of the Event Center would be the wrong investment at the wrong time. It is somewhat reckless to be thinking about it with the current jail bond and a possible school bond issue at the same time.

Jim Howitt, 4823 Avenue E, stated he had not attended any of the previous listening sessions. His concern was after reading that the present owner of the Event Center is not willing to open his financial records for the public to see if that operation is really a profitable operation or not. He has not seen any public statement from the Council that says the Event Center is a profitable operation. Mr. Howitt thought that the present owner of the Event Center needs to realize that he is not dealing with a private investor, but a public entity. A public entity has the right to know what the financial condition of the Event Center is and the profitability. His concern was this has not been an item that the Council has chosen to divulge with the public.

City Manager Michael Morgan stated as a private business owner there is only so much information that will be provided which is fair. City staff believes, based on the valuation and the significant hours that they have spent looking at the numbers that were provided by the initial investors that ran the facility, as well as other numbers, those numbers were compared with information provided by the United States Hockey League about leases, advertising revenues and other issues, it was determined that this building does not make a profit and has not made profit probably since the day it opened. When it was referenced that the building was in the black that information was from the building owners, not from the City.

City Manager further stated that staff has looked at the total evaluation and the estimate depending on how much debt service would be involved and what type of repairs would have to be done. They have looked at attendance factors and every line item and compared the Event Center to other public facilities. After looking at these things, their

belief is that on an annual basis, the Event Center is going to lose from zero to \$250,000-\$350,000 a year which is what they reported to Council. This could be a little overly pessimistic. In addition, staff has strongly suggested that the capital reserve funding of the \$240,000 a year be secured to ensure if there is a major item that needs to be fixed in the first few years, it could be funded. They have also indicated that if money is borrowed in excess of \$1 million in addition to the purchase price they should borrow to repair the roof and make other repairs. City staff has been very conservative regarding those issues.

Mr. Howitt asked since using debt service and capital funds were talked about being used if the restaurant tax is implemented, what if the anticipated \$400,000-\$600,000 is not collected because the economy does go down. He wanted to know where debt service and capital funds come from. City Manager stated they have projected much less than what they believe the actual receipts will be from the restaurant tax. Even if the economy and the restaurant economy had a significant downturn, the projected receipts are still above what would occur during that downturn. There is an additional \$240,000 that is set aside for capital reserve and debt service from the ½ cent sales tax that will exist in the fund for the next 20 years that could be used to cover. Mr. Howitt asked if the Council was basically committing that there will never be property tax used to finance and run the Event Center. City Manager stated that is the commitment and what the Council has requested the numbers to reflect. He added that general sales tax would not be used for funding either.

Mr. Howitt wanted to know what happens to the full time employees at the Event Center. In addition, he asked if those current Event Center employees would become employees of the City of Kearney and fall under the City of Kearney's salary schedule structure with all benefits. He wanted to know if the CEO, who manages the Event Center now, would come in on a level such as the City Planner, Street or Parks and Rec directors, etc. City Manager stated it is not known initially if all the employees who currently work there would continue or that the current employee structure is what the City would recommend to operate the facility if that is the decision the Council moves toward. The answer is that initially there would be a significant evaluation (during the first 12 months). There are several public sector arenas around the country that they could look at for comparable salaries. They have also included a reserve fund in the projections to cover the increased cost in association with benefits for these employees if they come under City employment. Mayor Clouse stated they would probably come on as contract employees for the first year while making an evaluation of what is needed.

DeMaris Grant, 3505 Avenue H, stated she had not heard or read about property taxes on the Event Center in the newspaper. She stated according to the Buffalo County Treasurer's website, the Event Center had an assessed value of \$3.5 million in 2008 and the taxes on this property were \$65,000. She stated if the City purchases the Event Center and it is owned by a government entity then it is exempt from property taxes. That means that \$65,000 will be taken off the tax rolls and she wondered if the County will be able to cut \$65,000 from its budget or might have to implement or raise another tax to come up with this shortfall. City Manager stated that is correct that the City would be tax exempt on the property. The County does not receive all of that property tax because it is divided by several entities such as the schools. If this facility closes, there

is a potential to lose \$190,000 in sales taxes which also would have a financial impact on all those entities. When looking at the numbers, compare the loss of property taxes to the loss of sales taxes that is not paid on multiplier effects, but just on concessions and tickets which was \$189,081 last year. He believed that the school gets significant funding from sales taxes from the state including the state's portion, as well as the other entities including the City.

Ms. Grant stated that the property tax is a guarantee, but the sales taxes fluctuate according to demand and consumers. City Manager stated this is just the sales taxes on the building itself and the activities. If the concessions are 65 percent or so of what they were in the first year, for the first three years of sales on concessions that number would be almost \$300,000 plus. Sales taxes have to be continued to be paid even under a public ownership for concessions and tickets, but not on office supplies, etc. purchased by the government entity. The sales taxes collected from the public would have to be paid regardless.

Another issue Ms. Grant voiced was regarding the statement that kids need some place to go and something to do to keep them off the streets. The last time she checked kids have a tremendous number of opportunities for participation in Kearney. They are not lacking activities. According to the Kearney Visitor's Bureau website and the United Way's which support some of them, there are already girl scouts, boy scouts, 4-H, church youth groups, baseball, softball, Little League, the Children's Museum, Kidz Zone, Kearney Park & Rec, YMCA, tennis courts, a track club, the Public Library, MONA, golf courses, basketball courts, volleyball courts, youth wrestling, the Archway, Trails and Rails Museum, Kids Club with UNK Athletics, BMX tracks, football fields, soccer fields, swimming pools, outdoor skills and youth facility for shooting sports and archery, The Big Apple Fun Center, movie theaters, martial arts studios, dance studios and every school has after school programs. She suggested the kids should take in interest in taking up lessons and learning a musical instrument or be creative with painting and arts. There is nothing wrong with kids staying home and spending time with their families. She did not believe that the argument that "kids need something to do in Kearney" is a valid argument for a purchase of this size.

Tom Karre, 4114 1st Avenue, stated he got some numbers from the Event Center on attendance at non-hockey events. In the year 2008, a total of 94,915 people attended the Harlam Globtrotters, the Game & Parks event, musical events and the Disney on Ice alone had 13,000 attendees. These kinds of events bring people to Kearney to shop, buy gas, food and lodging. The UNK Wrestling Classic brought in 4,800, the Cash-Wa show brought in 5,000 and attendance at the USHL Hockey for 2007-2008 was 84,000 people (average attendance 2,800 per game). During 2008, youth hockey had 140 players (times 20 ice times per week for 27 weeks) which totaled 75,600 players per year. The open skate attendance was 4,300 skaters annually. The United Way jersey auction was held at the Event Center earlier this month and brought in \$16,000 on the sale of the players jerseys.

He continued to state that after the hockey games at night, the area is open to UNK students who can play broom hockey until 3:00-4:00 a.m. He noted there are a lot of UNK students who use that facility. The Game and Parks outdoor expo attracted nearly 10,000 people in 2008. There were 7,000 who participated on April 19th, 1,300 on the

17th and 1,300 on the 18th. Mr. Karre stated he would be lost without the Event Center and goes out to all the events held during the year.

Mayor Clouse asked Mr. Karre if he believed the Event Center was at risk of closing down. Mr. Karre stated that he believes there is a risk. Mr. Weins owned a motel by the Lincoln Airport which has totally collapsed and Mr. Weins has been taken to court several times trying to get him to clean that up. He simply locked the door on it and walked away. He was afraid the same thing might happen to the arena. It would become an eyesore and rust away.

Carroll Sheldon, 610 East 46th Street, stated that he operates a dirt track that is nothing but dirt and a hunk of concrete that he leases from the City because the City was not using it. He has managed that track for 25 years and he has made money at it. He was certain that this Event Center can make money. Outside of Lincoln and Omaha, it sits on the Interstate in the middle of the state. Kearney can draw things to come here that nobody else can do so he did not believe that it cannot be a money maker.

Mr. Sheldon stated he was a Council member for thirteen years and he believed that the present Council has made up their mind too soon. The members of the Council giving their opinions, they have taken away the City's advantage to deal with Mr. Weins. He now knows the City's position. The Event Center is a "white elephant" and a worthless piece of property which Mr. Weins knows. Mr. Sheldon's advice was not to back off at negotiation time with Mr. Weins. He suggested to appoint a committee to research events such as Cruise Nite which has just began to achieve its potential. Cruise Nite could be expanded to three more nights and utilize the Event Center and it would bring in thousands of people. It would require a "crackerjack" manager; a sharp manager who can look at all the possibilities of how that building can be used.

He inspected the building (129,000 square feet) and the amount of money they are proposing to do the repair is way too much. He found it to be a very good quality metal building that will last for 25 years with no maintenance. Whoever got the insurance money for the roof on that building, and if the City purchases the building, it should be giving that money to the City. He believed the County Fair Board should own the Event Center. They could advertise all their events with a big sign on top of the building and thousands of vehicles would see every event that happens out there. Advertising space could be sold to the motels in the area which is another potential for income. A committee needs to be formed that could determine what the cost of running the facility per year is, if City staff has not done that already.

He encouraged the City to continue discussions with the County Fair Board in working together on the purchase. The Event Center is worth a lot to the City because it could capture events that can always be counted on, its proximity to the Interstate, the fact that it is right in the middle of the state and the prestige it would bring. In his opinion, it can make money and will eventually make money for everybody in the City.

Council member Lammers stated the Event Center does hopefully make some money doing this, but they have tried very hard not to paint this deal to the community that it is definitely going to make money. The Council is trying to be as conservative as possible and does not want to promise something that they cannot deliver. That is the main

reason they have not made that statement. Mayor Clouse added that they have also talked with the County and there is also some interest there. Council member Buschkoetter stated they have discussed many of the things that Mr. Sheldon brought up.

Don Sluti, 4010 Bel Air Drive, stated he has lived in a lot of different places and believed that the City of Kearney provides very good services such as: the Police Department, Street Department, snow removal, water and sewer systems, and trash removal. These are all things that Kearney does not have much controversy about and can all agree this is what the City should be doing. He believed that purchasing the Event Center is quite controversial and he did not believe that everyone is going to come to a consensus. What he has been hearing is that Kearney needs to decide immediately and there is not time to exercise a vote of the people. He wanted to hear what the citizens have to say, not in a listening session but with a vote. This is a big step for the City to take on something very different which may or may not work out. He did say that he really hopes that it does work out. He believes what it takes is the support of the people through a vote. He could not think of any reason why it cannot wait for a vote of the people.

Don Pearson, 5819 4th Avenue, stated he has not lived in Kearney for too long, but he also believes that it should come to a vote.

Mark Herges, 4424 Loveland Drive, stated he thought this would be a great opportunity to buy the Event Center because he and a lot of his friends who play hockey would really enjoy playing hockey there.

Gerry O'Rourke, 1212 4th Avenue, stated he heard two things at the last listening session, some realistic objections and feelings and a lot of feelings that were emotional feelings. He has lived in Kearney 46 years, lived in Grand Island for a couple of years, and before that in Des Moines, Iowa where he was a very active, competitive roller skater. It was very difficult to keep his Roller Ranch open (45 years) as long as they did and keep it a profitable venture. He also managed a rink previous to coming to Kearney that had to close and at the time he could not understand that. As time went on he learned that reality versus emotion is a factor that must be paramount in any decision.

Mr. O'Rourke stated he went to the County Treasurer's office and drew the tax statements on the Event Center. At the inception of the Event Center, the taxes were approximately \$3,500 and after it opened the taxes were \$138,000, then \$127,000 and now down to \$65,000. He compared it to the asking price of a house which does not decrease the amount of the tax on the property. He believed that is a factor and the City should not get involved because the City is a governmental entity. He did not believe the City should be competing with private enterprise. He agreed with Mr. Sluti to have a vote of the people, if indeed there is an affirmative feeling and reaction to what has been said at this meeting.

Mr. O'Rourke asked how this got started. Council member Lammers stated the City was approached about possibly purchasing the Event Center. The initial contact was two years ago when Mr. Weins contacted the City. It was looked into at that time, but declined. They recently were re-approached to make an offer. Mayor Clouse stated it

was not something the City went out looking for. It presented itself and they officially declined. It then went to the County and UNK and came back that it was very clear that Mr. Weins was going to sell it and in the Council's opinion, he was going to close the doors on it.

Mr. O'Rourke stated he met with Mr. Weins today and found that he is a hardcore individual who is extremely successful. Mr. Weins mentioned that he is working on other things. Mr. O'Rourke again stated he hopes that the Event Center ends up in the hands of private enterprise.

#### **IV. CONSENT AGENDA**

Mayor Clouse stated that the Agenda has been amended to include Item 14 to approve the Grant Agreement for the rehabilitation of Runway 18/36 and Taxiways A & C (Phase 1 – Part A).

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

1. Approve Minutes of Regular Meeting held February 10, 2009 and Special Meeting held February 17, 2009.

2. Approve the following Claims:

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

AT&T \$133.41 smcs; Alamar Uniforms \$205.55 smcs; Amax Contracting \$12.60 co; Amer First Aid \$159.99 smcs; Amer Institute of Small \$161.90 smcs; Anderson Brothers \$202.81 co; Anderson Ford Lincoln \$33,278.00 smcs; Ask Supply \$327.61 smcs; Aurora Coop \$688.97 smcs; Aviva \$1,220.00 ps; Baker & Taylor Books \$3,322.47 smcs; Bamford \$255.00 smcs; Bluecross Blueshield \$124,086.26 smcs; Bosselman \$3,974.60 smcs; Brandt,G \$1,770.00 smcs; Buffalo Co Dist Court \$231.80 ps; Buffalo Co Treasurer \$30.00 co; Central Comm College \$125.00 smcs; Central Fire \$34.50 smcs; Central Piping \$312.00 smcs; Central States Wire \$4,804.25 smcs; CH Diagnostic \$460.00 smcs; Charter \$116.63 smcs; Chief Construction \$4,450.27 co; City of Ky \$14,124.86 smcs,ps; College Savings Plan of NE \$100.00 ps; Cummins Central Power \$294.93 smcs; Danko Emergency \$910.52 smcs,co; Dawson Co PPD \$12,131.04 smcs; Defense Technology \$200.00 smcs; Demco \$301.31 smcs; Dmilaco \$193.00 smcs; Eakes \$632.04 smcs; Ecolab \$30.00 smcs; Elliott Equipment \$13,430.33 smcs; EMC Ins \$762.28 smcs; Enterprise \$35.00 smcs; Eustis Body Shop \$1,090.00 smcs; Farmers Union Coop \$756.00 smcs; Fireguard \$13,158.72 smcs; Frontier \$7,623.78 smcs; Garrett Tires \$352.40 smcs; Great Plains One Call \$94.15 smcs; H&H Distributing \$431.70 smcs; Heiman Fire Equipment \$136.40 co; Highsmith \$1,112.44 smcs; Horst,R \$32.98 smcs; ICMA RC \$4,768.44 ps; Intellicom \$2,000.00 co; IRS \$104,155.30 ps; Investment Property \$1,500.00 smcs; Ky Arts Council \$1,000.00 smcs;

Ky Chamber Comm \$6,093.18 smcs; Ky Clinic \$542.00 smcs,ps; Ky Comm Foundation \$2,000.00 smcs; Ky Hub \$703.08 smcs; KGFW-AM \$48.00 smcs; KHAS-TV \$65.00 smcs; KHGI/KWNB \$1,495.00 smcs; Law Enforcement Training \$120.00 smcs; Liberty Ventures \$3,472.80 co; Library Store \$104.62 smcs; Linweld \$39.93 smcs; Mac Tools \$39.99 smcs; Magic Cleaning \$5,510.00 smcs; Mail Express \$138.70 smcs; Metlife \$8.10 ps; Microfilm Imaging \$780.00 smcs; Miller & Associates \$1,804.00 co; Miller Signs \$750.00 smcs,co; Morgan,M \$23.10 smcs; Municipal Supply \$934.85 smcs; Napa Auto Parts \$51.15 co; NCS Equipment \$94.63 smcs; NE Aviation Trades Assn \$240.00 smcs; NE Cemetery Assn \$40.00 smcs; NE Child Support \$2,797.89 ps; NE Dept of Aeronautics \$995.00 ds; NE Dept of Roads \$4,666.16 co; NE Distributors \$442.00 smcs; Netmotion Wireless \$14,750.00 co; Northwestern Energy \$17,770.95 smcs; Northwestern University \$9,755.00 smcs; Nova Fitness Equipment \$7,526.00 ps; Office Depot \$106.95 smcs; Olson,L \$51.29 smcs; Overhead Door \$533.00 smcs; Paramount \$48.95 smcs; Pat's Plumbing \$85.00 smcs; Platte Valley Comm \$424.33 smcs; Presto-X \$59.00 smcs; Random House \$190.00 smcs; Resource Management \$1,140.14 smcs; Rheome Tree Service \$200.00 smcs; Sherman,B \$175.00 smcs; Sherwin Williams \$700.00 smcs; Soundy,M \$32.72 smcs; Super Shine Auto Care \$8.00 smcs; Transit Works \$123.68 smcs; Travis Anderson Const \$850.00 smcs; Turner Body Shop \$1,918.91 smcs; Unique Management \$322.20 smcs; UNL \$170.00 smcs; Walsh,C \$9.74 smcs; Watchguard Video \$142.50 co; West Payment Center \$1,294.44 smcs; Wiegand Security \$75.00 smcs; Williams,M \$71.77 smcs; WPCI \$53.50 ps; Zimmerman Printers \$632.34 smcs; Payroll Ending 2-14-2009 -- \$294,869.48. 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 March 10, 2009 at 7:00 p.m. as date and time for hearing on those applications where applicable.
4. Approve the Plans and Specifications for the 2009 Part I Improvements – 5th Avenue Asphalt Overlay Project and set the bid opening date for March 17, 2009 at 2:00 p.m.
5. Approve the bid received for the AIP Project No. 3-31-0045-20 which consists of the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport and approve **Resolution No. 2009-18** awarding the bid to Maxwell Asphalt of Salt Lake City, Utah in the amount of \$673,722.50 subject to approval by F.A.A. and the Nebraska Department of Aeronautics.

### **RESOLUTION NO. 2009-18**

WHEREAS, Kirkham Michael Consulting Engineers and the City of Kearney have reviewed the sealed bid which was opened on February 4, 2009, at 11:00 a.m. for AIP Project No. 3-31-0045-20 which consists of the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost, including administrative fees and engineering fees was \$772,742.44; and

WHEREAS, the said engineers have recommended the bid offered by Maxwell Asphalt from Salt Lake City, Utah in the sum of \$673,722.50 be accepted as the lowest

responsible bid subject to approval by the F.A.A. and the Nebraska Department of Aeronautics.

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 Maxwell Asphalt from Salt Lake City, Utah be and is the lowest responsible bidder for AIP Project No. 3-31-0045-20 which consists of the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Maxwell Asphalt in the sum of \$673,722.50 be and is hereby accepted subject to approval by the F.A.A. and the Nebraska Department of Aeronautics.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost, including administrative fees and engineering fees for the AIP Project No. 3-31-0045-20 which consists of the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport in the amount of \$772,742.44 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 24TH DAY OF FEBRUARY, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

6. Approve the application for a Special Designated License submitted by Veterans FW #759 in connection with their Class C-09025 liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N on March 13, 14, 2009 from 10:00 a.m. until 9:00 p.m. and on March 15, 2009 from 12:00 a.m. until 4:00 p.m. for a bike show/swap meet.

7. Approve Change Order No. 5 showing a decrease in the amount of \$1,959.00 and Application and Certificate for Payment No. 2 in the amount of \$208,818.00 submitted by Hausmann Construction and approved by Wilkins Hinrichs Stober for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2009-19**.

### RESOLUTION NO. 2009-19

WHEREAS, Hausmann Construction of Lincoln, Nebraska has performed services in connection with the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Change Order No. 5 showing a decrease in the amount of \$1,959.00, as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Hausmann Construction and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$208,818.00

as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$2,879,000.00
Change Order No. 1 (11-25-2008)	- 21,081.00
Change Order No. 2 (11-25-2008)	- 40,000.00
Change Order No. 3 (11-25-2008)	- 25,000.00
Change Order No. 4 (11-25-2008)	+ 4,900.00
Change Order No. 5 (2-24-2009)	- <u>1,959.00</u>
Contract Sum to Date	2,795,860.00
Total Completed and Stored to Date	407,740.00
Retainage	40,774.00
Amount Due to Date	366,966.00
Less Previous Certificates for Payment	<u>158,148.00</u>
Current Payment Due	\$ 208,818.00

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. 5 as shown on Exhibit "A" and Application and Certificate for Payment No. 2, as shown on Exhibit "B", be and are hereby accepted and approved.

PASSED AND APPROVED THIS 24TH DAY OF FEBRUARY, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**8.** Approve the application for deferral of special assessments submitted by Arlene Wiederspan in connection with 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.

**9.** Approve the request submitted by the UNK Loper Programming and Activities Council to conduct the 7th Annual Fun 5K Run/Walk on April 25, 2009 beginning at 9:00 a.m. The route will begin at UNK Foster Field, east in the right lane of eastbound traffic on University Drive, south on the sidewalk parallel with 9th Avenue, west on the sidewalk parallel with 25th Street, north and east in the right lane of the eastbound traffic on University Drive (near softball fields) and following University Drive to 9th Avenue, south on the sidewalk parallel with 9th Avenue to 27th Street, west on 27th Street and ending at UNK Foster Field.

**10.** Approve the bids received for the purchase of a front-wheel assist tractor with cab along with mounted loader and grapple to be used by the Water Production Division and award the bid to Fairbanks International in the amount of \$36,900.00.

**11.** Approve Application and Certificate for Payment No. 10 in the amount of \$302,094.11 submitted by Starostka Group and approved by Miller & Associates for the Northwest Well Field Improvements; Phase II - Water Transmission Main and approve **Resolution No. 2009-20.**



Retainage	4,869.65
Amount Due to Date	92,523.35
Less Previous Certificates for Payment	<u>.00</u>
Current Payment Due	\$ 92,523.35

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

PASSED AND APPROVED THIS 24TH DAY OF FEBRUARY, 2009.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**13.** Approve the Hold Harmless Agreement and License for Limited Use between the City of Kearney and Farmers and Merchants Bank for the purpose of training police officers on vacant property owned by the Bank and approve **Resolution No. 2009-22.**

**RESOLUTION NO. 2009-22**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Hold Harmless Agreement and License for Limited Use between the City of Kearney and Farmers and Merchants Bank for the purpose of training police officers on vacant property owned by the Bank be and is hereby approved. A copy of the Agreement, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 24TH DAY OF FEBRUARY, 2009.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**14.** Approve the Grant Agreement between the City of Kearney and the Federal Aviation Administration in conjunction with AIP Project 3-31-0045-20 (Phase 1 – Part A) for the rehabilitation of Runway 18/36 and Taxiways A & C at the Kearney Regional Airport and approve **Resolution No. 2009-23.**

**RESOLUTION NO. 2009-23**

A RESOLUTION ADOPTING AND APPROVING THE EXECUTION OF A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION FOR PROJECT NO. 3-31-0045-20 FOR THE REHABILITATION OF RUNWAY 18/36 AND TAXIWAYS A & C AT THE KEARNEY REGIONAL AIRPORT

WHEREAS, the City of Kearney, Nebraska has submitted a project application to the Federal Aviation Administration for Project No. 3-31-0045-20 for the rehabilitation of Runway 18/36 and Taxiways A & C at the Kearney Regional Airport (Phase 1 – Part A); and

WHEREAS, the Federal Aviation Administration has approved the project for the Kearney Regional Airport.

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

1. The City of Kearney shall enter into a Grant Agreement with the Federal Aviation Administration for Project No. 3-31-0045-20 for the purpose of obtaining federal assistance for the rehabilitation of Runway 18/36 and Taxiways A & C at the Kearney Regional Airport (Phase 1 – Part A). A copy of the said Grant Agreement, marked as Exhibit “A”, is attached hereto and made a part hereof by reference.

2. The Mayor of the City of Kearney is hereby authorized and directed to execute said Grant Agreement on behalf of the City of Kearney and the City Clerk is hereby authorized to attest said execution.

PASSED AND APPROVED THIS 24TH DAY OF FEBRUARY, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**V. CONSENT AGENDA ORDINANCES**

None.

**VI. REGULAR AGENDA**

**ORDINANCE NO. 7503 – ANNEXATION ALONG EAST HIGHWAY 30**

Most generally, the City Council always suspends the rules requiring the reading on three different days and moves for final passage. However, in accordance with Section 16-404 of the Nebraska Revised Statutes, “...such requirement shall not be suspended for any ordinance for the annexation of territory.” The first reading was held on February 10, the second reading on February 17 and the third and final reading is tonight.

Council Member Lear moved that Ordinance No. 7503, being Subsection 1 of Agenda Item VI to annex the following tracts of land: a tract of land being part of Government Lots 1, 4 and 5 and part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the Southwest Quarter, all located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; AND a tract of land being part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; AND Lot 1, Vantage Industrial Park 2nd Addition, an addition being part of the Southeast Quarter of the Northwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and also Lots 1 and 2, Vantage Industrial Park Addition, an addition being part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; AND the South 330 feet of the North Half of the South Half of the Northeast Quarter and the South Half of the South Half of the Northeast Quarter; AND that part of the Northwest Quarter of the Southeast Quarter all

being located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; AND a tract of land being part of Lot 1, Vantage Industrial Park Addition, an addition being part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (located north of East Highway 30 between Antelope Avenue and Cherry Avenue) be placed on third and final reading. Council Member Buschkoetter seconded the motion to place on third and final reading. 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. Nay: None. Kearney absent. Motion carried. City Clerk read Ordinance No. 7503 on third and final reading.

### ORDINANCE NO. 7503

An Ordinance of the City of Kearney, Nebraska, to extend the boundaries and include within the corporate limits of, and to annex to the City of Kearney, Nebraska a tract of land being part of Government Lots 1, 4 and 5 and part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the SOUTHWEST Quarter, all located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; and a tract of land being part of the Southeast Quarter of the Northwest Quarter and part of the NORTHEAST Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; and Lot 1, Vantage Industrial Park 2nd Addition, an Addition being part of the Southeast Quarter of the Northwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and also Lots 1 and 2, Vantage Industrial Park Addition, an Addition being part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; and a tract of land being part of Lot 1, Vantage Industrial Park Addition, an Addition being part of the Southeast Quarter of the Northwest Quarter and part of the Northeast Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; and a tract of land being the south 330 feet of the North Half of the South Half of the Northeast Quarter and the South Half of the South Half of the Northeast Quarter; and that part of the Northwest Quarter of the Southeast Quarter all being located in Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, all tracts more particularly described herein; to provide service benefits thereto; to confirm zoning classifications; to repeal all ordinances and resolutions or parts thereof in conflict herewith; and to provide for publication in pamphlet form by authority of the City Council and effective date of this ordinance.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7503 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7503 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.

**OPEN ACCOUNT CLAIMS: STAN CLOUSE - \$20.34, NPPD - \$61,418.46, PLATTE VALLEY STATE BANK - \$48,218.02, SCHOOL DISTRICT #7 - \$1,458.85**

There are four Open Account Claims that will need to be approved by two separate motions. With the absence of Council member Kearney and the abstention of Council members Buschkoetter and Lammers, the Open Account Claim for School District #7 will be placed on the March 10, 2009 Council Agenda for consideration.

Moved by Lammers seconded by Lear that Open Account Claims in the amount of \$20.34 payable to Stan Clouse and in the amount of \$61,418.46 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Lear, Lammers, Buschkoetter. Nay: None. Clouse abstained. Kearney absent. Motion carried.

Moved by Clouse seconded by Lammers that the Open Account Claim in the amount of \$48,218.02 payable to Platte Valley State Bank be allowed. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter. Nay: None. Lear abstained. Kearney absent. Motion carried.

**PURCHASE OF FIRSTIER EVENT CENTER**

Mayor Clouse stated that the Agenda was amended on February 23, 2009 to include this item. This is for the discussion among Council members only.

Council member Buschkoetter stated it is not a great time to have this thrust upon them, but it is the time they must deal with it. There are some real long term issues that they must look at. The economy might be poor for up to three years, but Kearney will have the arena for 40 years after the economy improves. He was not overlooking the fact that people say that they should just wait. If they wait, there is always a risk, if they do nothing the Event Center could end up as has been illustrated with other properties that Mr. Weins has owned which have fallen into disrepair and deteriorated. If the City does something now there is also a risk involved. He is confident that the City has given it a fair amount of thought over the last couple of years. While it has been in the public eye and part of the public discussion recently, it has been something that has been discussed for quite some time. The listening sessions have been very good in terms of articulating the pros and cons about purchasing the arena. In his mind, if they do nothing and the Council does not act in one way or another to at least make the attempt, not only do they run the risk as a City of not becoming all that we can be, but also run the risk of not being the City that we are right now. Not everyone will go to everything at the Event Center, but there has got to be something out there that has an appeal to somebody because it is more than just hockey. He believed that if Kearney loses this facility, it becomes one step closer to becoming that small town that he moved away from. They would be making this community less than it is today, if they do not take a reasonable path to try to preserve what we already have.

Council member Lammers wanted everyone to know that he has heard their side of the story. He heard people say that the Council made up their mind before they ever

brought this to a public airing. He stated that is definitely not the truth. He has taken the comments very seriously about no more taxes, wanting it to be a private not a public entity, not wanting to lose money (\$65,000 in real estate taxes will be lost), repairs need to be made to the building. He has seriously been considering this issue for the last several weeks and knows that it is not an easy time to do something like this. He also knows that 115,000 people attend events every year and 46 percent of those people are from outside of Kearney. Those are people who eat at our restaurants, buy gas, shop and spend money in Kearney. If those 46 percent of the people spend \$6 each that is over \$300,000 a year that is lost plus the sales tax that would be collected. That would be a significant amount of money that does not come to our City. He also address the statement that private entities should take care of the arena and not public. The reality is if you look across the USHL, 12 of the 13 facilities are publicly owned either by cities or counties. Their research found that across the United States that most arenas are owned by cities or counties because it is a break even proposition. They do not make a lot of money on the arenas, but it is good for the community because it brings in a lot of people who will spend their money at the hotels, restaurants, etc. That money spent does not go directly to the city or the county or whoever owns those properties.

Council member Lammers further stated that considering the cost of this arena, he would hate to get down the road 8-10 years and after passing up this one at \$2 million or \$3 million and find that people want to build an arena when the economy is better that would cost \$20 million to build new. He would hate to pass on the effort to at least keep us where we are at for something that is about half to two-thirds of what the assessed value is. This facility is a significant amount of money under the assessed value. Most of us would jump at the chance to purchase a home or other property for such a low price if given the opportunity to buy. If someone built an arena for \$15 million and offered to sell it for \$2 million, we would most likely do it. He is fully aware of what the expenses are and what the taxes are. He has tried not to raise property taxes. He has worked very hard to keep from doing that and he does not want to put any tax on. He also had to take into consideration what this facility means to the City of Kearney and the number of dollars it brings to the community. He has weighed those thoughts over and over again. He wanted to make sure that people know this decision is not something the City of Kearney is taking lightly.

Council member Lear stated he thought this facility is a great community asset. It provides a great venue for any number of things that are beneficial to the community. On the flip side, he did not think that it is a great asset at any price. There are some significant realities that they have to deal with to be fiscally conservative on behalf of this community. He hoped that one of the things that people understood is the reason they came up with publicly talking about this in an open forum discussion. It was so, as Council members, they could understand what the relevance of the Event Center is, what the value is on behalf of the community. This has been a great part of this process. If the Council did not care what the community thinks, they would not have scheduled five listening sessions to receive input.

He further stated he has taken this seriously as have the other members of the Council. Part of the reason they talked about the \$2 million number from the outset was because they knew that is the number which is in range (if using a food and beverage tax) and is probably about the maximum they can go regardless of what the facility is. He cited an

example of a homeowner in California offering him their \$10 million house for free, he said he better not take it because he would not be able to afford it. These kinds of concepts remain prevalent in his mind. It is a great facility, but there are limits they can withstand paying for it to keep a fiscally safe position in behalf of the community.

Mayor Clouse stated that he keeps coming back to what they believe and what he personally believes. He believes that the present owner wants to and will sell this facility. If he does not sell to the City then he will sell it to someone else. If it is sold to someone else there are absolutely no guarantees that it will be operated as a facility as we know it, as an Event Center, a tremendous asset to the community. It possibly could be better, but it could be worse. He also believes Mr. Weins wants to sell the hockey team. It could certainly increase the odds of being successful with the sale of the hockey team if the City had ownership of that facility. He believes the Event Center is a major asset to the community and a major contributor to the quality of life in Kearney. When they have talked to people coming to this community, they hear about all the different things that Kearney has to offer.

Mayor Clouse continued that when they talked about economic development, they discussed what it would cost to recruit new business, to build infrastructure, to build spec buildings and what it would take to get new business into the community. One of the things that has not been talked about is the retention piece of it. Here is an opportunity to make a significant investment in retention of a business that currently has jobs and currently helps keep property taxes low. He did not believe they would be responsible if they turned their backs on that opportunity. Now that all of that has been said, he believed that it is very important that if they decide to make an offer that it is a fair and reasonable offer that does not jeopardize the health of this community. He heard that loud and clear from a number of citizens. The Council certainly does not want to go out there and get caught up in the negotiation and make an offer that we really cannot afford later. They need to be prudent and make a fair and reasonable offer and not get too crazy with it.

One of the things they also heard in the forums was not to compete with private enterprise and asked what does this arena compete with? It competes with other public facilities in the state, Ice Box, Heartland Event Center, etc. which are publicly funded and supported venues that are trying to take what Kearney has. Kearney needs to stand up and fight for what it has; however, there is a limit to what we are willing to fight for.

Council member Buschkoetter stated that he would agree there is that competition. There are billboards in downtown Kearney that are asking people to come to Grand Island and use their publicly funded facility, the Heartland Event Center.

Mayor Clouse stated that City staff did due diligence in looking at anything and everything. They did an outstanding job at looking at the numbers, calling around the country to find out information about how arenas are managed and what a realistic look at a facility like this is if the City owns it. He appreciated the realistic look, but presented in a conservative manner so that they are not overextending themselves. City staff has put a lot of work into finding this information. He believed that those numbers are accurate and he thinks that staff has used due diligence in presenting them.

Moved by Lear seconded by Buschkoetter that Council adjourn into closed session at 8:22 p.m. for the protection of the public interest to discuss the purchase and conditions of the Event Center. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to discuss the purchase and conditions of the Event Center. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Moved by Clouse seconded by Buschkoetter that Council reconvene in regular session at 9:41 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

Moved by Lear seconded by Buschkoetter to authorize Administration to prepare a Purchase Agreement for the Event Center with the following conditions: (1) the current USHL hockey franchise being sold to an individual or group that is unrelated to the current owner and that the City has entered into a long term lease with that entity for the use of the Event Center on terms acceptable to the City; (2) the City being allowed the opportunity to inspect the building including, but not limited to, an inspection of all mechanical systems; (3) the City being allowed the opportunity to inspect all aspects of the building and its current condition and if the condition of the building is not acceptable to the City of Kearney, the offer to purchase may be withdrawn; (4) the purchase will include all of the personal property in the Event Center that is currently used in it operation; the City will be given access to all records relating to the repair and maintenance of these items; and the purchase agreement will be contingent on this listing of personal property being acceptable to the City; (5) the property will be deeded to the City by Warranty Deed and free and clear of any and all encumbrances other than easements of record; (6) the agreement to purchase will be contingent on the owner disclosing any and all leases, agreements, contracts, or other obligations of any kind with reference to the Event Center property to the City and these agreements will either be terminated by the owner prior to finalizing the purchase or renegotiated with terms that are acceptable to the City. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

## **VII. REPORTS**

None.

## **VIII. ADJOURN**

Moved by Buschkoetter seconded by Clouse that Council adjourn at 9:43 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

**ATTEST:**

---

**STANLEY A. CLOUSE**

**PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR**

---

**MICHAELLE E. TREMBLY  
CITY CLERK**