

Kearney, Nebraska
March 28, 2023
5:30 p.m.

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 5:30 p.m. on March 28, 2023, in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Peggy Eynetich, City Clerk; Council Members Randy Buschkoetter and Tami James Moore. Absent: Bruce Lear and Jonathan Nikkila. Michael Morgan, City Manager; Michael Tye, City Attorney; Brenda Jensen, Assistant City Manager; Kayla James, Director of Finance; Tony Jelinek, Director of Utilities; Andy Harter, Director of Public Works; Bryan Waugh, Chief of Police; Kevin Thompson, Police Captain and Dan Lillis, Engineering Assistant, were also present. Members of the media present included: Mike Konz, Kearney Hub. Jonathan Nikkila arrived at 5:34 p.m.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

I. ROUTINE BUSINESS

INVOCATION/MOMENT OF SILENCE

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

PLEDGE OF ALLEGIANCE

Council members led the audience in the Pledge of Allegiance.

ANNOUNCEMENT

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

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

FINAL PLAT AND SUBDIVISION AGREEMENT AND ANNEXATION FOR ARBOR VIEW SECOND

Moved by Moore seconded by Buschkoetter to remove Public Hearings 1 & 2 from the table. Roll call resulted as follows: Aye: Clouse, Moore, Buschkoetter. Nay: None. Lear and Nikkila absent. Motion carried.

Mayor Clouse opened Public Hearings 1 and 2 on the application submitted by Miller & Associates for Fox Creek Development, LLC, for the Final Plat and Subdivision Agreement and Annexation for Arbor View Second. At the request of the Applicant, Miller & Associates for Fox Creek Development, LLC, Developer, this item has been requested to be postponed to the April 11, 2023, City Council meeting.

Moved by Buschkoetter seconded by Clouse to postpone Public Hearings 1 and 2 pertaining to the Final Plat and Subdivision Agreement and Annexation for Arbor View Second. Roll call resulted as follows: Aye: Clouse, Moore, Buschkoetter. Nay: None. Lear and Nikkila absent. Motion carried.

IV. CONSENT AGENDA

Moved by Clouse seconded by Moore that Subsections 1 through 11 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Moore, Buschkoetter. Nay: None. Lear and Nikkila absent. Motion carried.

1. Approve Minutes of Regular Meeting held March 14, 2023.
2. Approve the following Claims:

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

4imprint \$1,872.36 smcs; ABC Drug \$13.14 smcs; ABPA \$100.00 smcs; Action Targets \$480.95 smcs; Acushnet \$7,966.73 smcs; ADB Safegate \$3,582.86 smcs; Adobe \$52.99 smcs; Advance Auto Parts \$66.37 smcs; Adventure Enterprises \$450.00 smcs; Airclean Systems \$645.24 smcs; Alamo Rent-A-Car \$418.55 smcs; Alfred Benesch \$32,729.71 co; All Makes Auto \$1,461.84 smcs; Ally B Designs \$550.00 smcs; Altec Industries \$661.71 smcs; Amax Contracting \$98.40 smcs; Amazon \$19,434.20 smcs,co; American \$1,142.98 smcs; American Air \$667.85 smcs; American Assn. \$275.00 smcs; American Planning \$394.00 smcs; American Red Cross \$1,428.00 smcs; Andersen Wrecking \$6.50 smcs; Apple Market \$14.99 smcs; Apple.com \$2.97 smcs; Aquatic Informatics \$1,706.00 smcs; Aramark Uniform \$472.78 smcs; Armageddon Gear \$944.74 smcs; Arrowhead Scientific \$831.19 smcs; Ask Supply \$2,395.83 smcs; Atlantic \$79.99 smcs; ATT \$1,121.12 smcs; Aurora Coop \$777.30 smcs; Aussie Hydraulics \$15.32 smcs; Authorize.net \$10.00 smcs; Auto Value \$1,130.88 smcs; Automation Direct \$60.99 smcs;

AVFuel \$56,140.01 smcs; Axe Holes \$40.00 smcs; B&H Photo \$782.72 co; B2B Prime \$179.00 smcs; Baker & Taylor \$4,170.57 smcs; Bamford \$475.00 smcs; Barco Municipal \$6,758.44 smcs; Beacon Athletics \$1,239.00 smcs; Big Apple \$50.00 smcs; Big Red Auto Glass \$244.40 smcs; Bike Shed \$100.00 smcs; Blackstone Library \$1,921.72 smcs; Blick Art \$71.66 smcs; Blinds.com \$411.51 co; BlueCross BlueShield \$305,040.17 smcs; Boomgaars \$234.75 smcs; Booton, L \$107.00 smcs; Border States \$154.06 smcs; Bosselman \$31,870.41 smcs; Broadfoot's \$900.45 smcs; Browns Shoe \$140.25 smcs; BSN Sports \$339.42 smcs; Buffalo Co. Court \$268.76 ps; Buffalo Co. Goodfellows \$107.00 smcs; Buffalo Co. Sheriff \$106.50 smcs; Buffalo Co. Treasurer \$72.79 smcs,co; Buffalo Outdoor Power \$3,984.81 smcs; Buffalo Wild Wings \$91.87 smcs; Builders \$4,808.87 smcs,co; Business Solutions \$193.82 smcs; Cab Store \$59.99 smcs; Cal/Amp \$781.55 smcs; Camera Doctor \$39.14 smcs; Canonical Group \$75.00 co; Canva \$119.99 smcs; Carahsoft Technology \$1,300.51 smcs; Casey's \$45.36 smcs; Cash Wa \$389.15 smcs; CCI Solutions \$846.29 smcs; Cenex \$410.31 smcs; Center Point Publishing \$79.86 smcs; Central Comm. College \$839.00 smcs; Central NE Rehab \$150.00 ps; Central Nebraska \$552.89 smcs; Certified Power \$3,594.58 smcs; Chalk Designs by Dee \$123.28 smcs; Chemsearch \$347.00 smcs; Chesterman \$1,200.50 smcs; Christian Book \$18.16 smcs; Cintas \$575.04 smcs; Ciox \$20.00 smcs; City of KY \$11,409.74 smcs,ps; City Plumbing \$539.38 smcs; Clevenger Petroleum \$319.80 smcs; CNA Surety \$40.00 smcs; Comfort Inn \$250.00 smcs; Comm. Action \$1,873.00 smcs; Constant Contact \$250.00 smcs; Construction Rental \$578.09 smcs,co; Control Yours \$220.00 smcs; Copycat Printing \$400.00 smcs; Cornhusker Cleaning \$90.24 smcs; Country Partners \$26,029.97 smcs; Country Sampler \$40.00 smcs; Court Reserve \$145.98 smcs; Creative Home \$117.83 smcs; Critical Hire \$150.00 smcs; Crochet! \$25.00 smcs; Culligan \$367.15 smcs; Cummins \$1,570.71 smcs; Cup, the \$10.00 smcs; Cutter & Buck \$392.92 smcs; Cutting Edge Cleaning \$350.00 smcs; Cymax \$245.02 co; Dana Safety Supply \$603.43 smcs; Danburg, K \$50.00 smcs; Dan's Plumbing \$614.19 smcs; Dashlane \$316.63 smcs; Davis, J \$90.00 smcs; Dawson Public Power \$21,222.95 smcs; Daylight Donuts \$34.24 smcs; Dell \$3,593.44 smcs,co; Demco \$1,037.54 smcs; Deterdings \$407.98 smcs; Digicert \$714.00 smcs; Dish \$140.10 smcs; DL Company \$937.08 smcs; DLT Solutions \$5,790.22 smcs; Dmilaco \$250.60 smcs; Dolan Consulting \$190.00 smcs; Dollar General \$13.95 smcs; Double J Plumbing \$562.66 smcs; Dowhy Towing \$125.00 smcs; Duncan Theis \$69,184.90 co; Dunkin \$43.46 smcs; Dutton Lainson \$1,326.46 smcs,co; Eakes \$2,363.68 smcs; Ebay \$28.04 smcs; Echo Electric \$444.44 smcs; Ecolab \$126.21 smcs; EH Wachs \$4,161.76 smcs; Eileen's Cookies \$36.00 smcs; Elder, E \$105.37 smcs; Emblem Authority \$1,188.26 smcs; Entenmann-Rovin \$392.50 smcs; Enterprise \$729.72 smcs; Epic Sports \$43.43 smcs; Equipment Mgmt. \$390.00 smcs; Etsy.com \$4.00 smcs; Expedia \$304.80 smcs; Expression Wear \$810.00 smcs; Eyemed \$1,860.25 smcs; Facebook \$313.53 smcs; Fairfield Inn \$219.18 smcs; Family Practice \$921.35 smcs,co; Fastenal \$664.72 smcs; Faz, A \$122.00 smcs; FBI National Academy \$590.00 smcs; Fedex \$81.44 smcs; Feld Fire \$1,421.18 smcs; Fiddelke Heating \$22,897.07 smcs,co; Firespring Print \$331.85 smcs; Flood Comm. \$300.00 smcs; Forestry Suppliers \$86.10 smcs; Fort KY Outdoor \$1,000.00 smcs; Friesen Chevrolet \$276.25 smcs; Friesen Ford \$57.76 smcs; Frontier \$4,783.78 smcs; Fun Express \$122.45 smcs; Gale \$1,209.29 smcs; Galeton \$174.38 smcs; Galls \$1,561.58 ps; Garrett Tires \$3,380.75 smcs; GD OTS Simunition \$1,015.00 smcs; Glass Doctor \$46.22 smcs; Graczyk Lawn \$1,365.60 smcs; Graham Tire \$607.30 smcs; Grainger \$3,044.73 smcs; Great Plains Safety \$754.93 smcs; Greeley, A \$90.00 smcs; Grey House Publishing \$2,085.00 smcs; Grove, J \$825.00 smcs; Growtix.com \$392.50 smcs; Harbor Freight \$313.20 smcs; HD Arms

\$73.51 smcs; HD Supply \$2,508.83 smcs; Heartland Motor \$51.54 smcs; Hilton Chicago \$813.59 smcs; Hilton Disney World \$1,528.10 smcs; Hobby Lobby \$263.83 smcs; Holiday Inn Express \$372.80 smcs; Holmes Plumbing \$460.55 smcs,co; Home Depot \$439.75 smcs; Horticultural Products \$146.43 smcs; HRsimple.com \$170.00 smcs; Humanities Nebraska \$50.00 smcs; Hy-Vee \$577.19 smcs; IAEI \$508.02 smcs; Indelco Plastics \$156.45 smcs; Integrated Security \$1,486.00 smcs; Interlight \$195.91 smcs; Int'l Code Council \$150.00 smcs; Invoicehome.com \$5.00 smcs; IR Industrial \$547.72 smcs; IRS \$187,476.26 ps; J & P Park Acquisitions \$55.75 smcs; J&A Traffic \$660.00 smcs; Jack Lederman \$727.50 smcs; Jackson Services \$358.16 smcs; JD Industrial \$250.88 smcs; JJS Technical \$195.00 smcs; Johnson Hardware \$368.00 smcs; Johnstone Supply \$1,126.18 smcs; Jugs Sports \$2,465.38 smcs; Karsten Mfg. \$6,127.03 smcs; KY Ace \$1,215.69 smcs; KY Chamber Comm. \$250.00 smcs; KY Crete & Block \$2,505.53 smcs; KY Equipment \$4.22 smcs; KY Powersports \$299.40 smcs; KY Quality Sew \$5.98 smcs; KY Storytelling \$350.00 smcs; KY Towing \$250.00 smcs; KY Winlectric \$5,566.74 smcs,co; Kelly Supply \$837.67 smcs; Kings III Emergency \$776.67 smcs; Konica Minolta \$590.90 smcs; KSO CPAs \$31,710.00 smcs; La Nouvelle Bliss \$20.00 smcs; Landmark Implement \$4,189.84 smcs; Larue Tactical \$208.70 smcs; Lawson Products \$688.22 smcs; LCL Truck Equipment \$2,207.56 smcs,co; LEE NE Media \$1,038.34 smcs; Lentfer, S \$31.00 smcs; Lincoln Nat'l Life \$1,320.65 smcs; Lips Printing \$73.01 smcs; LLRMI \$425.00 smcs; Lockmobile \$194.48 smcs; Longleaf Services \$103.62 smcs; Luke, D \$150.00 smcs; Lulzbot \$324.63 smcs; Macqueen Equipment \$16,124.43 smcs; Magnolia Journal \$37.45 smcs; Mallory Safety \$232.96 smcs; Marlatt Precision \$1,058.90 smcs; Marriott \$758.20 smcs; Marvel Industrial \$1,720.00 smcs; Masek Golf \$296.45 smcs; Mason, M \$800.00 smcs; Masters True Value \$1,179.44 smcs,co; Matheson Trigas \$108.05 smcs; Matt Friend Truck \$962.68 smcs; McCartney, Erin Chpt. 13 \$157.00 ps; McCormack Distributing \$56.68 smcs; Menards \$17,496.47 smcs,co; Michaels \$239.21 smcs; Mid-American Signal \$993.00 co; Midland Scientific \$276.16 smcs; Mid-NE Garage Doors \$3,250.00 smcs; Mid-Plains Equipment \$202.50 smcs; Mid-State Engineering \$292.00 co; Midwest Connect \$417.65 smcs; Midwest Restaurant \$770.51 smcs; Midwest Turf \$3,320.78 smcs; Milco Environmental \$3,094.60 smcs; Miller & Associates \$30,550.00 smcs; Miller Signs \$114.00 smcs; Minick, J \$350.00 smcs; Miracle Recreation \$1,920.17 co; Mirror Image \$89.91 smcs; Mission Square \$7,705.84 ps; Moonlight Embroidery \$3,928.40 smcs; Motorola \$356.07 smcs; Municipal Emergency \$794.63 smcs,ps; Municipal Supply \$6,795.72 smcs; Murphy Tractor \$2,755.69 smcs; My Business \$17.46 smcs; My Fonts \$20.06 smcs; NAP Industrial \$110.69 co; National Assn. \$40.00 smcs; NCH Software \$36.42 smcs; NE Arborists \$75.00 smcs; NE Child Support \$1,986.51 ps; NE Dept. Revenue \$33,522.90 smcs; NE Generator Service \$7,646.83 smcs; NE Golf \$253.00 smcs; NE IAI \$75.00 smcs; NE Machinery \$1,561.60 smcs; NE Municipalities League \$309.00 smcs; NE Planning Conference \$1,110.00 smcs; NE Public Health \$105.00 smcs; NE Rural Water Assn. \$1,145.00 smcs; NE Safety & Fire Equip \$225.00 smcs; NE Truck Center \$4,271.37 smcs; NELTC \$20.00 smcs; Nest Space \$40.60 smcs; Network Solutions \$128.92 smcs; Newage Products \$1,091.92 smcs; NI SFM Boiler \$36.00 smcs; NI State Payport \$368.96 smcs; Northern Safety \$106.56 smcs; Northwestern \$45,286.04 smcs; Northwestern University \$4,500.00 smcs; NRG Media \$422.00 smcs; OCLC \$816.57 smcs; Office Depot \$21.89 smcs; Office Max \$2,563.52 smcs,co; Omnify \$437.50 smcs; One Call Concepts \$12.80 smcs; Optics Planet \$691.50 smcs; O'Reilly Auto \$3,126.36 smcs; Orkin \$161.43 smcs; OTC Brands \$314.79 smcs; Panera Bread \$48.78 smcs; Paper Roll Products \$211.80 smcs; Papermart \$139.84 smcs; Partstree.com \$20.93 smcs; PB Leasing \$65.97 smcs;

Pegasus Auto Racing \$125.86 smcs; Pensxpress \$114.50 smcs; Penworthy \$1,052.89 smcs; Pep Co. \$144.21 smcs; Perkins \$234.33 smcs; Petsmart \$55.26 smcs; Phillips 66 \$33.33 smcs; Pilot \$15.07 smcs; Pitney Bowes \$517.50 smcs; Plastic Fulfillment \$1,000.78 smcs; Platinum Awards \$161.32 smcs,co; Platte Valley Comm. \$1,952.43 smcs; Police Chiefs Assn. \$200.00 smcs; Powertech \$1,799.00 smcs; Presto-X \$250.16 smcs; Primeflight Aviation \$291.01 smcs; Project Energy \$945.00 smcs; Pump & Pantry \$45.54 smcs; Quill \$1,197.26 smcs; Rasmussen Mechanical \$2,314.74 smcs; Redbox \$1.87 smcs; Reinke's Heating \$323.08 smcs; Rentokil \$694.38 smcs; Reverse Osmosis \$117.69 smcs; RMV Construction \$624,272.35 co; Rootmaker Products \$241.90 smcs; Russell's Appliance \$1,368.00 co; RW Sorensen \$14,199.60 co; Rylind Manufacturing \$272.00 smcs; Safety Products \$216.29 smcs; Sahling Kenworth \$7,834.61 smcs; Samsclub.com \$390.26 smcs; Sapp Brothers \$1,826.50 smcs; Saylor Screenprinting \$25.25 smcs; Secretary of State \$30.00 smcs; Select Sprayers \$1,227.78 smcs; Senior Excursions \$355.00 smcs; Sensit Technologies \$167.03 smcs; Shell Oil \$71.21 smcs; Sherwin Williams \$3,881.55 smcs,co; Shore Power \$129.77 smcs; Shredding Solutions \$178.49 smcs; Sign Center \$1,079.24 smcs; Sign Solutions \$429.29 smcs; Signit \$102.00 smcs; Sirchie \$579.16 smcs; Siteone Landscape \$1,307.21 smcs; SLA Corp. \$191.94 smcs; Small Hinge \$30.59 smcs; Snap-On Tools \$51.00 smcs; Southwest \$289.95 smcs; Spectrum \$775.44 smcs; Steinbrink \$650.00 smcs; Stitch 3 \$18.00 smcs; Stitch Upholstery \$150.00 smcs; Stutsman \$549.00 smcs; Superion-Central Square \$159,149.68 smcs; Superior Signals \$659.00 smcs; Supplyhouse.com \$34.09 smcs; Sybrant Machine \$35.00 smcs; Tactical Gear \$901.10 smcs; Tennant Sales \$26,089.19 smcs,co; Timevalue Software \$149.00 smcs; Tire & Chain Sales \$1,233.09 smcs; Tonic Studio \$47.91 smcs; Tractor-Supply \$464.66 smcs; Transunion \$113.20 smcs; Travel Guard Group \$84.58 smcs; Twin City Hardware \$546.79 smcs; Union Bank & Trust \$101,228.25 ps; Unique Mgmt. \$233.00 smcs; United \$2,040.80 smcs; United States \$345.00 smcs; University of NE Events \$330.00 smcs; University of NE Omaha \$246.60 smcs; UNK E-Market \$470.00 smcs; Uprinting \$262.32 smcs; UPS \$190.92 smcs; USA Blue Book \$558.19 smcs; USDA \$800.00 smcs; USPS \$304.54 smcs; Valley Vending \$149.63 smcs; Van Diest Supply \$1,552.00 smcs; Van Wall Equipment \$2,297.93 smcs; Vasquez, J \$150.00 smcs; Verizon \$13,136.69 smcs; Village Services \$258.00 smcs; Waggoner Plumbing \$2,861.25 smcs; Waka Waka Ice Cream \$25.00 smcs; Wal-Mart \$1,578.72 smcs,co; Warren-T Plumbing \$623.00 smcs; Weathertech \$142.25 co; Whinnery Construction \$57,000.00 co; Wilson Sporting Goods \$149.75 smcs; Winter Equipment \$709.60 smcs; Wolfe Comm. \$3,188.64 smcs; World Theatre \$150.00 smcs; WPCI \$791.00 ps; WS Darley \$1,886.85 smcs; Yeti \$4,218.00 smcs; Young, J \$150.00 smcs; Young, M \$245.00 smcs; Youtube TV \$432.44 smcs; Zoro Tools \$117.60 smcs; Payroll Ending 03/11/2023 -- \$586,265.36. 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. Approve the application submitted by Terrance Wilhelms for Werner Construction, Inc. and Kappas Enterprises to extend Conditional Use Permit No. 2018-02 to operate a sand and gravel pumping operation and temporary batch plant located east of the Kearney Expressway and north of Interstate 80 for a period of two (2) years.

4. Approve Resolution No. 2023-40A repealing and rescinding Resolution No. 2023-40 releasing a Permanent Right-of-Way and Utility Easement granted by Fox Creek Development, LLC, a Nebraska Limited Liability Company for a tract of land being part of

the South Half of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska.

RESOLUTION NO. 2023-40A

WHEREAS, the City of Kearney, Nebraska was granted a Permanent Right-of-Way and Utility Easement, dedicated for the installation of infrastructure prior to the platting of Arbor View Second, from Timothy J. Norwood, Sr., Member of Fox Creek Development, LLC, a Nebraska Limited Liability Company, on the 11th day of October, 2022, and recorded at Document 2022-05962, in the office of the Register of Deeds of Buffalo County, Nebraska, on October 17, 2022 for property described as: a tract of land 60.00 feet wide being part of the South Half of the Northwest of Section 19, Township 9 North, Range 15 West of the 6th P. M., Buffalo County, Nebraska; and

WHEREAS, at the March 14, 2023 City Council meeting, members of the City Council approved Resolution No. 2023-40 releasing the Permanent Right-of-Way and Utility Easement as it pertained to the development of Arbor View Second; and

WHEREAS, at the March 14, 2023 City Council meeting, members of the City Council voted to table the Final Plat, Subdivision Agreement and Annexation of Arbor View Second; and

WHEREAS, on March 21, 2023, the City received a request from Miller & Associates (Applicant) on behalf of Fox Creek Development, LLC (Owner) to rescind Resolution No. 2023-40.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that Resolution No. 2023-40 releasing the Permanent Right-of-Way and Utility Easement recorded on October 17, 2022 at Document 2022-05962 be and is hereby rescinded and repealed.

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

5. Approve Resolution No. 2023-41A repealing and rescinding Resolution No. 2023-41 releasing a Storm Water Detention Cell Easement granted by Fox Creek Development, LLC, a Nebraska Limited Liability Company for a tract of land being part of the South Half of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska.

RESOLUTION NO. 2023-41A

WHEREAS, the City of Kearney, Nebraska was granted a Storm Water Detention Cell Easement, by Timothy J. Norwood, Sr., Member of Fox Creek Development, LLC, a Nebraska Limited Liability Company, on the 11th day of October, 2022, and recorded at Document 2022-05963, in the office of the Register of Deeds of Buffalo County, Nebraska, on October 17, 2022 for property legally described as: a tract of land being part of the South Half of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P. M., Buffalo County, Nebraska; and

WHEREAS, at the March 14, 2023 City Council meeting, members of the City Council approved Resolution No. 2023-40 releasing the Storm Water Detention Cell Easement

as it pertained to the development of Arbor View Second; and

WHEREAS, at the March 14, 2023 City Council meeting, members of the City Council voted to table the Final Plat, Subdivision Agreement and Annexation of Arbor View Second; and

WHEREAS, on March 21, 2023, the City received a request from Miller & Associates (Applicant) on behalf of Fox Creek Development, LLC (Owner) to rescind Resolution No. 2023-41.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that Resolution No. 2023-41 releasing the Storm Water Detention Cell Easement recorded on October 17, 2022 at Document 2022-05963 be and is hereby rescinded and repealed.

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

6. Approve the purchase of a Caterpillar 938M Series Wheel Loader in the amount of \$284,080.00 submitted by Caterpillar, Inc. through the Sourcewell Cooperative Purchasing Contract for the Public Works Department.

7. Approve the Plans and Specifications for 2023 Part 2 Improvements, Mill & Asphalt Overlay and set the Bid opening date for April 18, 2023 at 2:00 p.m.

8. Adopt Resolution No. 2023-50 approving Application and Certificate for Payment No. 7 in the amount of \$1,373,903.03 submitted by John T. Jones Construction Co. and approved by Miller & Associates for the WWTP Phase II Improvements; Water Resource Recovery Facility.

RESOLUTION NO. 2023-50

WHEREAS, John T. Jones Construction Co. has performed services in connection with WWTP Phase II Improvements; Water Resource Recovery Facility, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 7 in the amount of \$1,373,903.03 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$ 35,218,367.00</u>
Contract Sum To Date	35,218,367.00
Gross Amount Due	10,350,163.19
Retainage	<u>- 1,029,222.42</u>
Amount Due to Date	9,320,940.77
Less Previous Certificates for Payment	<u>7,947,037.74</u>
Current Payment Due	\$ 1,373,903.03
Balance to finish, including retainage	\$ 25,897,426.23

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. 7, as shown on Exhibit "A" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 2023.

ATTEST:
 PEGGY EYNETICH
 CITY CLERK

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

9. Adopt Resolution No. 2023-51 approving Change Order No. 2 showing a decrease in the amount of \$501.00, Application and Certificate for Payment No. 4 in the amount of \$43,952.40, Application and Certificate for Payment No. 5-Final in the amount of \$25,232.50, and accept the Certificate of Substantial Completion submitted by Duncan Theis Construction and approved by Miller & Associates for the Harmon Park Bathhouse Renovation.

RESOLUTION NO. 2023-51

WHEREAS, Duncan Theis Construction, Inc. has performed services in connection with the Harmon Park Bathhouse Renovation, and the City’s engineer, Miller & Associates, have filed with the City Clerk Change Order No. 2 showing a decrease to the contract sum in the amount of \$501.00 as shown on Exhibit “A” attached hereto and made a part hereof by reference; and

WHEREAS, Duncan Theis Construction, Inc. and Miller & Associates have filed with the City Clerk Application and Certificate for Payment No. 4 in the amount of \$43,952.40 as shown on Exhibit “B” attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$ 233,400.00
Change Order No. 1 (01-10-2023)	+ 7,934.00
Contract Sum To Date	225,466.00
Gross Amount Due	221,925.00
Retainage (10%)	- 22,192.50
Amount Due to Date	199,732.50
Less Previous Certificates for Payment	- 155,780.10
Current Payment Due	\$ 43,952.40

WHEREAS, Duncan Theis Construction, Inc. and Miller & Associates have filed with the City Clerk Application and Certificate for Payment No. 5-Final in the amount of \$25,232.50 as shown on Exhibit “C” attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$ 233,400.00
Change Order No. 1 (01-10-2023)	+ 7,934.00
Change Order No. 2 (03-28-2023)	- 501.00
Contract Sum To Date	224,965.00
Gross Amount Due	224,965.00
Retainage (0%)	- 0.00
Amount Due to Date	224,965.00
Less Previous Certificates for Payment	199,732.50
Current Payment Due	\$ 25,232.50

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of March 16, 2023, 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", Application and Certificate for Payment No. 4, as shown on Exhibit "B", Application and Certificate for Payment No. 5-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 28TH DAY OF MARCH, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

10. Adopt Resolution No. 2023-52 approving Application and Certificate for Payment No. 10 in the amount of \$319,167.36 submitted by Caldwell Tank and approved by Miller & Associates for the 2.0 MG Elevated Water Tower.

RESOLUTION NO. 2023-52

WHEREAS, Caldwell Tank of Louisville, Kentucky and Miller & Associates have filed with the City Clerk Application and Certificate for Payment No. 10 in the amount of \$319,167.36 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$ 4,973,000.00</u>
Change Order (10-11-2022)	<u>- 10,991.50</u>
Contract Sum To Date	4,962,008.50
Gross Amount Due	3,970,008.50
Retainage (10%)	<u>- 397,000.85</u>
Amount Due to Date	3,573,007.65
Less Previous Certificates for Payment	<u>- 3,253,840.29</u>
Current Payment Due	\$ 319,167.36

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that the Application and Certificate for Payment No. 10, as shown on Exhibit "A" be and is hereby accepted and approved.

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

11. Adopt Resolution No. 2023-53 approving Change Order No. 1 showing an increase in the amount of \$18,331.98 submitted by RMV Construction LLC and approved by Alfred Benesch and Company for AIP/CARES Act Project No. 3-31-0045-036 in connection with the Terminal Building Expansion project at the Kearney Regional Airport.

RESOLUTION NO. 2023-53

WHEREAS, RMV Construction, LLC of Kearney, Nebraska has performed services in connection with Terminal Expansion project at the Kearney Regional Airport Re-Bid (Airport Improvement Program/CARES Act Project No. 3-31-0045-036), and the City's engineer, Alfred Benesch and Company, have filed with the City Clerk Change Order No. 1 showing an increase to the contract sum in the amount of \$18,331.98 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows;

Original Contract Sum	\$ 4,773,394.00
Change Order No. 1 (03-28-2023)	+ 18,331.98
Total New Revised Contract Amount	\$ 4,791,725.98

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

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 2023.

ATTEST:
 PEGGY EYNETICH
 CITY CLERK

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

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

REDEVELOPMENT PROJECT FOR BURMOOD INVESTMENTS, LLC FOR PROPERTY LOCATED IN PATRIOT INDUSTRIAL PARK

Mayor Clouse opened for discussion Resolution No. 2023-54 approving the redevelopment project submitted by Burmood Investments, LLC for Redevelopment Area #12 for an area described as Lot 5, Block 1 Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, together with the 30-foot wide vacated alley in Block 1 as shown and dedicated on Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, from the East right-of-way line of Piper Avenue, abutting Lot 5, Block 1, of said Patriot Industrial Park on the North (4415 Patriot Boulevard).

Kayla James, Finance Director presented this matter to the Council. Ms. James explained Burmood Investments, LLC, is considering the construction of a pre-engineered metal building totaling 10,900 square feet to be used as an office and shop facility for Nebraska Generator Service, LLC, currently located in Gibbon, NE. The total new valuation of the property upon completion is estimated to be \$1,107,190 and the current valuation of the property is \$31,620. The incremental valuation is estimated to be \$1,075,570. The annual increment in real estate taxes upon total completion of the Project is estimated to be \$20,021.

Ms. James stated that on March 13, 2023, the CRA moved that the Project be granted 90% of the annual increment in real estate taxes, not to exceed the lessor of \$270,289, or the certified eligible Project Costs over a period not to exceed fifteen years beginning with Tax Year 2023.

Dustin Burmood, Burmood Investments, LLC, and Nebraska Generator Service, LLC, stated the facility would be used for the sale and service of generators.

Moved by Moore seconded by Buschkoetter finding that the redevelopment project set forth in the application submitted by Burmood Investments, LLC would not be economically feasible without the use of tax-increment financing, that the proposed redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing and, that the costs and benefits of the proposed redevelopment project are found to be in the long term best interests of the community; and further move that the redevelopment project be granted 90 percent of the annual increment in real estate taxes, not to exceed the lessor of \$270,289, or the certified eligible Project Costs over a period not to exceed fifteen years beginning with Tax Year 2023 and to adopt Resolution No. 2023-54 granting the Chairman and legal counsel the authority to negotiate and execute a redevelopment contract with Burmood Investments, LLC. Roll call resulted as follows: Aye: Clouse, Nikkila, Moore, Buschkoetter. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2023-53

WHEREAS, the City of Kearney, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 1991, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has declared an area of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, the Community Redevelopment Authority of the City of Kearney, Nebraska (the "Authority"), has prepared a Redevelopment Plan for Area #12 pursuant to Section 18-2111 of the Act ("Redevelopment Plan"), and recommended the Redevelopment Plan to the Planning Commission of the City; and

WHEREAS, the Planning Commission of the City reviewed the Redevelopment Plan pursuant to the Act and submitted its recommendations, if any, to the Authority, pursuant to Section 18-2114 of the Act; and

WHEREAS, in accordance with Section 18-2114 of the Act, the Authority submitted its recommendation, along with the recommendation from the Planning Commission to the City Council; and

WHEREAS, following consideration of the recommendations of the Planning Commission and the Authority, and following the public hearing with respect to the Redevelopment Plan, the City approved the Plan; and

WHEREAS, there has been presented to the City by the Authority for approval pursuant to and in accordance with Section 18-2119 of the Act a specific Redevelopment

Project within the Redevelopment Plan and as authorized in the Redevelopment Plan, as legally described as Lot 5, Block 1 Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, together with the 30-foot wide vacated alley in Block 1 as shown and dedicated on Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, from the East right-of-way line of Piper Avenue, abutting Lot 5, Block 1, of said Patriot Industrial Park on the North; (Parcel ID 620143565); and

WHEREAS, the City Council has determined that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project have been found to be in the long-term best interests of the community.

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

1. The Redevelopment Plan of the City previously approved for the area described on the attached Exhibit "A", including the Redevelopment Project legally described as Lot 5, Block 1 Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, together with the 30-foot wide vacated alley in Block 1 as shown and dedicated on Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, from the East right-of-way line of Piper Avenue, abutting Lot 5, Block 1, of said Patriot Industrial Park on the North; (Parcel ID 620143565); is hereby determined to be feasible and in conformity with the general plan for the development of the City of Kearney as a whole and the Redevelopment Plan, including the Redevelopment Project identified on Exhibit "A", is in conformity with the legislative declarations and determinations set forth in the Act.

2. The City Council hereby determines that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project are found to be in the long-term interests of the community.

3. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act.

4. Pursuant to Section 18-2147 of the Act, ad valorem taxes levied upon real property in a redevelopment project for the benefit of any public body, included or authorized in the Plan which is legally Lot 5, Block 1 Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, together with the 30-foot wide vacated alley in Block 1 as shown and dedicated on Patriot Industrial Park, an addition to the City of Kearney, Buffalo County, Nebraska, from the East right-of-way line of Piper Avenue, abutting Lot 5, Block 1, of said Patriot Industrial Park on the North; (Parcel ID 620143565); shall be divided, for a period not to exceed 15 years after the effective date of the provision, which effective date shall be identified in the Project Redevelopment Contract, as follows:

a. That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each public body upon the redevelopment project valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid

into a special fund of the Authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds, of loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies.

c. Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

5. The President and City Clerk are authorized and directed to execute and file with the Treasurer and Assessor of Buffalo County, Nebraska, an Allocation Agreement and Notice of Pledge of Taxes with respect to the Redevelopment Project substantially in the form attached hereto as Exhibit "B" with appropriate insertions.

6. Recognizing that, after the date of this Resolution, circumstances may arise necessitating changes, additions or deletions to the specific legal description of the Redevelopment Project (described in Paragraphs 1 and 4 above and the attached Exhibit "B"), the City Manager is hereby authorized to make such changes, additions or deletions to the legal description as the City Manager deems reasonable or necessary, together with the authority to execute all documents, certificates or instruments necessary in connection therewith, specifically including the execution of an Amended Allocation Agreement and Notice of Pledge of Taxes with respect to the Redevelopment Project.

PASSED AND APPROVED THIS 28TH DAY OF MARCH, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

OPEN ACCOUNT CLAIM

Moved by Buschkoetter seconded by Nikkila that the Open Account Claim in the amount of \$105,967.09 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Nikkila, Moore, Buschkoetter. Nay: None. Clouse abstained. Lear absent. Motion carried.

VII. REPORTS

CLOSED SESSION

Moved by Clouse seconded by Nikkila that Council adjourn into closed session at 5:37 p.m. for the protection of the public interest to discuss real estate matters and possible litigation matters. Roll call resulted as follows: Aye: Clouse, Moore, Buschkoetter, Nikkila. 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 and possible litigation matters. 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 Nikkila that Council reconvene in regular session at 6:34 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Nikkila, Moore. Nay: None. Lear absent. Motion carried.

VIII. ADJOURN

Moved by Clouse seconded by Nikkila that Council adjourn at 6:35 p.m. Roll call resulted as follows: Aye: Clouse, Nikkila, Moore, Buschkoetter. Nay: None. Lear absent. Motion carried.

ATTEST:

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

**PEGGY EYNETICH
CITY CLERK**