

*Kearney, Nebraska
December 19, 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 December 19, 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 Bruce Lear. Absent: Tami James Moore and Jonathan Nikkila. Michael Morgan, City Manager; Michael Tye, City Attorney; 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 of Operations and Dan Lillis, Engineering Assistant II, were also present. Members of the media present included: Mike Konz, Kearney Hub.

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 were no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

PROPOSED ACQUISITION OF A PERMANENT RIGHT OF WAY AND UTILITY EASEMENT GRANTED BY FOX CREEK DEVELOPMENT, LLC

Mayor Clouse opened the public hearing on the proposed acquisition of a Permanent Right of Way and Utility Easement granted by Timothy J. Norwood Sr., Member of Fox Creek Development, LLC, a Nebraska Limited Liability Company for a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th Principal Meridian, Buffalo County, Nebraska, dedicated for Access and Utility Easement purposes and consider Resolution No. 2023-182.

Tony Jelinek, Director of Utilities presented this matter to the Council. Mr. Jelinek stated the proposed Right of Way and Utility Easement would connect to an existing Right of Way and Utility Easement, allowing for public infrastructure to be built in Arbor View Third Subdivision.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt Resolution No. 2023-182 approving the proposed acquisition of a Permanent Right of Way and Utility Easement granted by Timothy J. Norwood Sr., Member of Fox Creek Development, LLC, a Nebraska Limited Liability Company for a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th Principal Meridian, Buffalo County, Nebraska, dedicated for Access and Utility Easement purposes. Roll call resulted as follows: Aye: Clouse, Lear, Buschkoetter. Nay: None. Moore and Nikkila absent. Motion carried.

RESOLUTION NO. 2023-182

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

WHEREAS, the City Council has held a public hearing upon the proposed acquisition for a Permanent Right of Way and Utility Easement and voted in favor to proceed with the acquisition; and

WHEREAS, Timothy J. Norwood Sr., Member of Fox Creek Development, LLC, a Nebraska Limited Liability Company, have granted to the City of Kearney, Nebraska, Permanent Right of Way and Utility Easement as follows:

PERMANENT RIGHT OF WAY AND UTILITY EASEMENT

A tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, dedicated for Permanent Right-of-Way & Utility Easement purposes, and more particularly described as follows: BEGINNING at the Southeast corner of Lot 7, Block 2, Arbor View Third, an addition to the City of Kearney, Buffalo County, Nebraska; thence S 89°44'06" E on the South line of said Arbor View Third, and all bearings contained herein are relative thereto, a distance of 60.00 feet to the Southwest corner of Lot 7, Block 1, Arbor View Third; thence S 00°14'22" W on the Southerly extension of the West line of

said Lot 7, Block 1 a distance of 152.00 feet to the Easterly extension of the South line of a 60.00 foot Right-of-way & Utility Easement as recorded in Document #2022-05962 and recorded in the Buffalo County Register of Deeds Office; thence N 89°44'06" W on said Easterly extension a distance of 30.00 feet to the Southeast corner of said 60.00 foot Easement; thence N 00°14'22" E on the East line of said 60.00 foot Easement a distance of 60.00 feet to the Northeast corner of said 60.00 foot Easement; thence N 89°44'06" W on the North line of said 60.00 foot Easement a distance of 30.00 feet to the Southerly extension of the East line of said Lot 7, Block 2; thence N 00°14'22" E on said Southerly extension a distance of 92.00 feet to the Point of Beginning. Containing 0.17 acres, more or less.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Permanent Right of Way and Utility Easement granted by Timothy J. Norwood Sr., Member of Fox Creek Development, LLC, a Nebraska Limited Liability Company, to the City of Kearney be and is hereby approved and accepted.

BE IT FURTHER RESOLVED that recognizing that, after the date of this Resolution, circumstances may arise necessitating minor changes, additions or deletions to the specific legal description of the said Easement, the Mayor is hereby authorized to make such minor changes, additions or deletions to the legal description as the Mayor deems reasonable or necessary.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

IV. CONSENT AGENDA

Mayor Clouse stated the Consent Agenda was amended on Monday, December 18, 2023 by adding Subsection 12.

Moved by Clouse seconded by Lear that Subsections 1 through 12 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear. Nay: None. Moore and Nikkila absent. Motion carried.

1. Approve the following Claims:

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

911 Custom \$856.98 smcs; Advanced Property \$3,800.00 smcs; Anatum Geomobile \$9,249.37 smcs; Artisans \$40.00 smcs; Ask Supply \$73.57 smcs; Aurora Coop \$614.50 smcs; Aurora Coop \$34.88 smcs; AVFuel \$27,521.19 smcs; Baker & Taylor \$3,545.77 smcs; Beacon Observer \$26.00 smcs; Bisbee, A \$33.07 smcs; Bluecross Blueshield \$77,088.05 smcs; Bosselman \$10,477.51 smcs; Bossfuels \$20,296.38 smcs; Broadfoot's \$720.00 smcs; Brown Construction \$5,000.00 co; Buffalo Co. Redi-Mix \$2,712.05

smcs,co; Cacek, L \$150.00 smcs; Central Mercantile \$30.00 smcs; Central NE Bobcat \$7,380.00 co; Chesterman \$294.00 smcs; City of KY \$16,296.09 smcs,ps; Coldspring \$354.90 smcs; Comcate \$5,021.08 smcs; Commonwealth Electric \$999.62 smcs; Core & Main \$12,980.62 smcs; Country Partners \$43,749.00 smcs; Dent Popper \$375.00 smcs; Depository Trust \$1,531,923.76 ds; Ditch Witch \$6,382.53 smcs; DPC Industries \$12,495.20 smcs; Dutton-Lainson \$289.48 smcs; Eakes \$92,121.50 smcs,co; Expressions Catering \$22.88 smcs; Farmers Union \$652.50 smcs; Graczyk Lawn \$2,167.00 smcs; Graham Tire \$52.64 smcs; Heartland Motor Sports \$24,376.90 co; Hometown Leasing \$160.00 smcs; IRS \$208,213.31 ps; Jack Lederman \$29.00 smcs; JB Concrete \$6,477.00 co; Johnston, Don \$100.00 smcs; Kasson B&B \$200.00 smcs; KY Concrete \$4,565.69 co; KY Crete & Block \$132.30 co; KY Cultural Partners \$150.00 smcs; KY Hub \$921.72 smcs; KY Towing \$325.00 smcs; Kelly Supply \$244.01 smcs; Konica Minolta \$405.04 smcs; Lockmobile \$40.00 smcs; L-Tron \$11,418.75 co; Mac Tools \$168.29 smcs; Macqueen Equipment \$18,555.59 smcs; Mallory Safety \$84.60 smcs; Mast, G \$172.21 smcs; McCartney, Erin Chpt. 13 \$157.00 ps; Melson, K \$45.54 smcs; Menards \$88.95 smcs; Midstate Storage \$3,682.50 smcs; Mid-States Engineering \$8,526.50 co; Miller & Associates \$15,262.50 smcs; Miller Signs \$25.00 smcs; Millsap, M \$7.91 smcs; Mirror Image \$101.47 smcs; Mission Square \$7,720.10 ps; Molcyk, L \$268.22 smcs; Motorola \$500.00 smcs; Municipal Supply \$31,532.09 smcs; NDEE \$527,508.77 smcs,ds; NE Child Support \$1,419.72 ps; NE Dept. Revenue \$50.00 ps; NE Machinery \$269.26 smcs; NE State Fire Marshal \$240.00 smcs; Nielsen Contracting \$265,597.87 co; Nielsen, B \$32.08 smcs; Omnify \$486.50 smcs; O'Reilly Auto \$3,271.89 smcs; Overhead Door \$90.00 smcs; Police Chiefs Assn. \$100.00 smcs; Presto-X \$259.56 smcs; Pure Platinum \$375.00 smcs; Rasmussen Mechanical \$7,924.17 smcs; RDG Planning \$28,634.98 co; Ready Mixed Concrete \$3,579.95 co; Resource Mgmt. \$12,092.50 smcs; Riskowski, D \$150.00 smcs; Saylor, N \$200.00 smcs; Sports Imports \$91,251.39 co; Steinbrink's \$328,085.49 smcs; Tri City Concrete \$33,612.00 co; Turner Body Shop \$125.00 smcs; Union Bank & Trust \$110,858.45 ps; Unique Mgmt. \$233.00 smcs; USPS \$226.00 smcs; Vermeer \$2,257.24 smcs; Walters Electric \$650.00 smcs; Weaver, T \$29.26 smcs; Wilcac \$5.00 ps; Young, J \$173.17 smcs; Young, M \$122.00 smcs; 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.

2. Receive recommendations of Planning Commission and set January 9, 2024 at 5:30 p.m. as date and time for hearing on those applications where applicable.
3. Accept the bids received for the trade-in value and purchase of 72 EFI Gas Powered Motorized Golf Cars and award the bid submitted by Masek Golf Car Company in the total bid amount, less trade-in value, of \$294,740.00.
4. Adopt Resolution No. 2023-183 approving the X-1FBO System Agreement between GMSTEK, LLC and Kearney Flight Services to integrate the three (3) currently used programs into one software system used by the FBO.

RESOLUTION NO. 2023-183

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the X-1FBO System Agreement between GMSTEK, LLC and Kearney Flight Services

upgrading Kearney Flight Services software, allowing for the integration of the three (3) currently used programs, into one system, be and is hereby approved and the Agreement, marked as Exhibit A, is attached hereto and made a part hereof by reference.

BE IT FURTHER RESOLVED by the President and Council of the City of Kearney, Nebraska that the Airport Director is hereby authorized and directed to execute the same Agreement on behalf of Kearney Flight Services.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
 PEGGY EYNETICH
 CITY CLERK

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

5. Adopt Resolution No. 2023-184 approving the Application and Certificate for Payment No. 12 in the amount of \$285,034.67 and Change Order No. 3 showing an increase in the amount of \$5,400.00, submitted by Nielsen Contracting, LLC and approved by Miller and Associates for 2021 Part 5 - Talmadge Street & Yanney Avenue - Bid B, Paving and Storm Sewer.

RESOLUTION NO. 2023-184

WHEREAS, Nielsen Contracting, LLC of Kearney, Nebraska has performed services in connection with 2021 Part 5 Improvements; Extension of Talmadge Street (Bid B includes Paving and Storm Sewer), and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 12 in the amount of \$285,034.67 as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Nielsen Contracting, LLC and Miller & Associates have filed with the City Clerk Change Order No. 3 showing an increase to the contract sum in the amount of \$5,400.00 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$ 1,616,081.00
Change Order No. 1 (4/12/22)	+ \$3,114.82
Change Order No. 2 (10/11/2022)	+ 863,585.55
Changer Order No. 3 (12/19/2023)	+ <u>5,400.00</u>
Contract Sum To Date	2,488,181.37
Gross Amount Due	2,486,007.58
Retainage (1%)	- <u>24,860.08</u>
Amount Due to Date	2,461,147.50
Less Previous Certificates for Payment	<u>2,176,112.83</u>
Current Payment Due	\$ <u>285,034.67</u>

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. 12, as shown on Exhibit "A" and Change Order No. 3 as shown on Exhibit "B" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
 PEGGY EYNETICH
 CITY CLERK

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

6. Adopt Resolution No. 2023-185 approving the Application and Certificate for Payment No. 16 in the amount of \$1,401,083.36 submitted by John T. Jones Construction Co. and approved by Miller & Associates for the WWTP Phase II Improvements; Water Resource Recovery Facility.

RESOLUTION NO. 2023-185

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. 16 in the amount of \$1,401,083.36 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$ 35,218,367.00
Change Order No. 1 (07-12-2022)	- 639,633.00
Change Order No. 2 (08-22-2023)	+ 21,141.00
Contract Sum To Date	35,239,508.00
Gross Amount Due	27,443,735.61
Retainage	- 2,030,490.18
Amount Due to Date	25,413,245.43
Less Previous Certificates for Payment	- 24,012,162.07
Current Payment Due	<u>\$ 1,401,083.36</u>
Balance to finish, including retainage	<u>\$ 9,826,262.57</u>

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

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
 PEGGY EYNETICH
 CITY CLERK

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

7. Adopt Resolution No. 2023-186 accepting the letter submitted by RDG Planning & Design certifying the work performed under contract by Brown Construction for the Kearney Community Tennis Facility is 100% complete in accordance with contract documents.

RESOLUTION NO. 2023-186

WHEREAS, Brown Construction of Kearney, Nebraska has performed services in connection with the construction of the Community Tennis Facility, and the City's engineer, RDG Planning and Design, have now submitted a letter to the City Clerk certifying the work performed under the contract by Brown Construction for the Kearney Community Tennis Facility is 100% complete in accordance with contract documents and shown on Exhibit "A" attached hereto and made a part hereof and is hereby accepted and approved.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

8. Approve the purchase of a Menart SP-30 Tow Behind Compost Turner in the amount of \$137,118.00 submitted by Murphy Tractor & Equipment under the Sourcewell Cooperative Purchasing Contract program to be used by the Utilities Department.

9. Accept the bids received for the Cemetery NE Addition Irrigation Project and award the bid submitted by Tilley Sprinklers in the amount of \$125,000.00.

10. Adopt Resolution No. 2023-187, repealing Resolution No. 2023-131, and adopt the 2023-2024 Comprehensive Fee Schedule amending the fees associated with overnight hangar space at Kearney Regional Airport.

RESOLUTION NO. 2023-187

WHEREAS, the Mayor and City Council of the City of Kearney have established fees for items and services provided to its citizens; and

WHEREAS, the Comprehensive Fee Schedule setting forth the fees for such items and services to be provided during the 2023-2024 fiscal year was adopted by Resolution No. 2023-131 on September 12, 2023 by the City Council; and

WHEREAS, the Comprehensive Fee Schedule attached hereto as Exhibit "A" sets out the proposed fees for such items and services to be provided during the 2023-2024 fiscal year; and

WHEREAS, it is recommended that such Comprehensive Fee Schedule be adopted.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Comprehensive Fee Schedule attached hereto as Exhibit "A" is hereby approved and adopted.

BE IT FURTHER RESOLVED that Resolution No. 2023-131 be and is hereby repealed in its entirety.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
PEGGY EYNETICH
CITY CLERK

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

11. Adopt Resolution No. 2023-188 approving the Agreement to Provide Services between the Kearney Police Department and Dalgle Law Group, LLC (DLG) to conduct Consulting Services for the Kearney Police Department.

RESOLUTION NO. 2023-188

BE IT RESOLVED by the President and Council of the City of Kearney, that the Kearney Police Chief be is hereby authorized and directed to execute the Agreement to Provide Services between the Dalgle Law Group, LLC "DLG" and the Kearney Police

Department (KPD) to conduct consulting services for the Kearney Police Department whose scope of work will include reviewing and analyzing the current policy and procedure manual at KPD and development of policies and procedures that meet common practice in the industry, National accreditation standards, and NE legal standards. A copy of the Agreement, marked as Exhibit “1”, is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2023.

ATTEST:
 PEGGY EYNETICH
 CITY CLERK

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

12. ADDENDUM ITEM: Adopt Resolution No. 2023-189 setting the interest rate, providing equal annual installments, providing the interest rate for delinquent installments for special assessments for 2024 with regard to the creation of paving, water and sanitary sewer districts; and to establish a policy on reimbursing developers for infrastructure costs for Developer Constructed Infrastructure Agreements.

RESOLUTION NO. 2023-189

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA:

Section 1. Streets that have been improved by paving, curbing and guttering and incidental work, and/or the installation of water mains, and/or the installation of sanitary sewer mains shall be assessed to lots and parcels of ground where specially benefited by said improvements and the total amount of said special assessments does not exceed the costs of said improvements exclusive of the cost of the intersections and areas formed by the crossing of streets, avenues and alleys as heretofore determined by the Mayor and City Council.

Section 2. All special assessments provided for by the laws of the state shall become due fifty (50) days after the date of levy and may be paid within that time without interest, but if not so paid, each installment, except the first, shall draw interest at the rate of 6.0 per centum per annum from the date the Board of Equalization convened until the same become delinquent. This interest rate is effective for the 2024 calendar year.

Section 3. Such assessments shall become delinquent in equal annual installments as follows:

Paving	Water	Sanitary Sewer
1/10th fifty days after date of Board of Equalization	1/5th fifty days after date of Board of Equalization	1/5th fifty days after date of Board of Equalization
1/10th one year after date of Board of Equalization	1/5th one year after date of Board of Equalization	1/5th one year after date of Board of Equalization
1/10th two year after date of Board of Equalization	1/5th two year after date of Board of Equalization	1/5th two year after date of Board of Equalization
1/10th three year after date of Board of Equalization	1/5th three year after date of Board of Equalization	1/5th three year after date of Board of Equalization
1/10th four year after date of Board of Equalization	1/5th four year after date of Board of Equalization	1/5th four year after date of Board of Equalization

1/10th five year after date of Board of Equalization		
1/10th six year after date of Board of Equalization		
1/10th seven year after date of Board of Equalization		
1/10th eight year after date of Board of Equalization		
1/10th nine year after date of Board of Equalization		

Such assessments shall become delinquent in equal annual installments over such period of years as set forth above. Delinquent installments shall bear interest at the rate specified in Section 45-104.01 of the Nebraska Revised Statutes, which is currently set at fourteen percent, and such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of general taxes and shall be subject to the same penalties.

Section 4. Pursuant to Section 9-1310 of the Kearney City Code, the City will reimburse Developers for infrastructure costs considered the responsibility of the City as outlined in paragraphs 1, 2, 3, and 4 of Section 57-103(B) of the Kearney City Code based on the most recent unit price bids received by the City, and approved by the City Council, for similar projects. The attached schedule of unit price bids is hereby approved by the City Council and shall be used by the City Engineer to calculate infrastructure reimbursements to Developers for qualified Developer Constructed Infrastructure Agreements approved by the City Council during the 2024 calendar year. Developers will not be reimbursed for infrastructure items not included on the attached schedule of unit price bids.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 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

OPEN ACCOUNT CLAIM

Mayor Clouse announced that Regular Agenda Item 1, granting permission to pay the Open Account Claim in the amount of \$5,652.21 to Nebraska Public Power District would be postponed to the January 9, 2024, Council meeting.

VII. REPORTS

None.

VIII. ADJOURN

Moved by Clouse seconded by Lear that Council adjourn at 5:33 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear. Nay: None. Moore and Nikkila absent. Motion carried.

ATTEST:

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

**PEGGY EYNETICH
CITY CLERK**