

# **KEARNEY CITY COUNCIL**

## **AGENDA**

**City Council Chambers, 18 East 22nd Street**

**June 24, 2025**

**5:30 p.m.**

### **I. ROUTINE BUSINESS**

1. Invocation/Moment of Silence.
2. Pledge of Allegiance.
3. Announcement on Open Meetings Act.
4. Roll call.
5. Oral Communication; Recognition of visitors.
  - Proclamation honoring Roger Jasnoch.

### **II. UNFINISHED BUSINESS**

### **III. PUBLIC HEARINGS**

1. **POSTPONED SINCE MAY 13, 2025. REMOVE FROM TABLE.** Conduct a public hearing on the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) to rezone from District AG, Agricultural District to District C-O, Office District for property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) and consider Ordinance No. 8748.
2. **POSTPONED SINCE MAY 13, 2025. REMOVE FROM TABLE.** Conduct a public hearing on the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) to rezone from District AG, Agricultural District to District C-2, Community Commercial District for property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) and consider Ordinance No. 8749.
3. **POSTPONED SINCE MAY 13, 2025. REMOVE FROM TABLE.** Conduct a public hearing on the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) for the Final Plat and Subdivision Agreement for McCaslin Subdivision, a subdivision being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) and consider Resolution No. 2025-44.

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

1. Approve Minutes of Regular Meeting held June 10, 2025.
2. Approve the Claims.
3. Receive recommendations of Planning Commission and set July 8, 2025 at 5:30 p.m. as date and time for hearing on those applications where applicable.
4. Authorize the Mayor to send a letter of no recommendation to the Nebraska Liquor Control Commission on the manager application for Christel Armstrong submitted by Walmart Inc dba Walmart 598 located at 5411 2nd Avenue in connection with their D-102565 liquor license.
5. Accept the Request for Qualifications (RFQ) received for the Kearney Volunteer Fire Department Fire Station No. 3 and adopt Resolution No. 2025-67 awarding the RFQ to Wilkins + Parkhill and approving the Standard Form of Agreement Between Owner and Architect between the City of Kearney and Wilkins + Parkhill.
6. Adopt Resolution No. 2025-68 approving the Developer Constructed Infrastructure Agreement for Elementary School Second Addition between the City of Kearney and Dave Chally, Managing Member of Stewardship Properties, LLC, a Nebraska Limited Liability Company, for the construction of a public water main to serve Lot 1, Elementary School Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska.
7. Adopt Resolution No. 2025-69 approving the Developer Constructed Infrastructure Agreement for The Meadows Second Addition between the City of Kearney and Jordan Starostka, Authorized Agent of Starostka Group Unlimited, Inc., a Nebraska Corporation, for the construction of water, sanitary sewer, paving and storm sewer improvements to serve The Meadows Second Addition, an Addition to the City of Kearney, Buffalo County, Nebraska.
8. Approve the Plans and Specifications in connection with the Swimming Pool Tub Sandblasting and Painting Project at Harmon Park Pool and set the bid opening date for July 15, 2025, at 2:00 p.m.
9. Approve the Utilities Department request to dispose of a 2008 American LaFrance Condor Sideload Refuse Truck by the method deemed most advantageous to the City of Kearney, including sale by auction, sealed bid, or private or public sale.
10. Approve the recommendation from the Development Services Division on the annual renewal of the following manufactured home court license until May 31, 2026: East Lawn Mobile Homes Estates, 2900 and 3010 Grand Avenue, Countryside Mobile Home Park, 1920 15th Avenue, L & M Mobile Home Park, 1110 Central Avenue, and Cornhusker Trailer Court, 1115 Avenue C and granting an extension until July 16, 2025 of the current manufactured home court licenses for Valley View Mobile Home Court, 2701 and 2801 Grand Avenue, to correct remaining deficiencies.

\* ***Any item listed on the Consent Agenda may, by the request of any single Council member, be considered as a separate item under the Regular Agenda Section of the Agenda.***

**V. CONSENT AGENDA ORDINANCES \***

**VI. REGULAR AGENDA**

1. Accept the proposals received for the Keno Lottery Operator and adopt Resolution No. 2025-70 approving the recommendation from the Keno RFP Review Committee awarding the proposal to EHPV Lottery Services, LLC known as “Big Red Keno”.
2. Introduction of Finance Director Brian Schultz.
3. Open Account Claim to University of NE Omaha - \$310.00.

**VII. REPORTS**

**VIII. ADJOURN**

Mayor Jonathan Nikkila  
 4 Regency Place  
 224-4309 cell  
[jnikkila@kearneygov.org](mailto:jnikkila@kearneygov.org)

Vice-President Randy Buschkoetter  
 1110 13th Avenue  
 234-5553 home  
 440-0358 cell  
[rbuschkoetter@kearneygov.org](mailto:rbuschkoetter@kearneygov.org)

Council Member Tami James Moore  
 704 10th Avenue  
 440-6992 cell  
[tmooore@kearneygov.org](mailto:tmooore@kearneygov.org)

Council Member Kurt Schmidt  
 1203 East 65th Street Place  
 224-7042 cell  
[klschmidtl@kearneygov.org](mailto:klschmidtl@kearneygov.org)

Council Member Alex Straatmann  
 4410 Avenue E  
 627-2503 cell  
[astraatmann@kearneygov.org](mailto:astraatmann@kearneygov.org)

City Manager Brenda Jensen  
 18 East 22nd Street  
 233-3214 office  
[bjensen@kearneygov.org](mailto:bjensen@kearneygov.org)

The Mayor and City Council reserve the right to adjourn into executive session as per Section 84-1410 of the Nebraska Revised Statutes. A current agenda is on file at the Office of the City Clerk at City Hall, 18 East 22nd Street, Kearney, Nebraska. For more information, call 233-3216 or visit our website at [www.cityofkearney.org](http://www.cityofkearney.org)

*Kearney, Nebraska*  
*June 10, 2025*  
*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 June 10, 2025, in the Council Chambers at City Hall. Present were: Jonathan Nikkila, President of the Council; Peggy Eynetich, City Clerk; Council Members Randy Buschkoetter, Tami James Moore, Kurt Schmidt and Alex Straatmann. Absent: None. Brenda Jensen, City Manager; Michael Tye, City Attorney; Kayla James, Director of Finance; Kevin Thompson, Captain of Operations; Gabe Kowalek, Police Lieutenant; Sarah Sawin, Director of Utilities; Melissa Dougherty-O'Hara, City Planner; and Jason Whalen, Fire Administrator; 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 Nikkila 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.

### **RECOGNITION/ORAL COMMUNICATIONS**

There were no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### **III. PUBLIC HEARINGS**

#### **DEVELOPMENT OF MCCASLIN SUBDIVISION**

Mayor Nikkila stated Public Hearings 1 through 3 pertaining to the development of McCaslin Subdivision, located north of 5740 2nd Avenue, submitted by Miller & Associates Applicant for Keith L. McCaslin, owner have been requested to be further postponed until the June 24, 2025 Council Meeting.

Moved by Straatmann, seconded by Moore to further postpone Public Hearings 1 through 3 pertaining to the development of McCaslin Subdivision until the June 24, 2025, Council Meeting. Roll call resulted as follows: Aye: Nikkila, Moore, Schmidt, Straatmann, Buschkoetter. Nay: None. Motion carried.

#### **REZONING OF PROPERTY LOCATED EAST OF CHERRY AVENUE AND SOUTH OF EAST 11TH STREET**

Mayor Nikkila opened the public hearing on the application submitted by Roger Harders (Applicant) for West Limited, LLC (Owner) to rezone from District C-3, General Commercial District to District AG, Agricultural District for property described as that part of the west half of the Northwest Quarter of Section 9, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (Parcel 2) (east of Cherry Avenue and south of East 11th Street) and consider Ordinance No. 8751.

Roger Harders presented this matter to the Council. Mr. Harders stated because commercial development did not occur as he had planned, he is requesting the property be rezoned to District Ag, Agricultural District, so that a potential sand and gravel business could operate there.

Mayor Nikkila clarified that Council is only voting on the proposed rezoning of the property; any potential future uses for the property would be discussed separately, at upcoming Planning Commission and/or City Council meetings. Mayor Nikkila further stated his understanding of the majority vote at Planning Commission was due to the potential location of a sand and gravel operation if the rezoning request was approved.

Melissa Dougherty O'Hara, City Planner, stated that the proposed rezoning request is not for a specific use type and further noted that only uses allowed in a District Ag, Agricultural District zoning would be permitted on this property.

Council Member Alex Straatmann questioned if Planning Commission and Council would need to approve a Conditional Use Permit for a sand and gravel operation at a future meeting. Ms. Dougherty O'Hara stated they would.

Council Member Randy Buschkoetter stated that the Ag zoning is not inconsistent with the area.

Council Member Kurt Schmidt questioned whether the small jet on the lot was for a driveway and further inquired if a sod farm was located to the north of this property. Mr. Harders stated the jet would be used for driveway purposes and that a sod farm is located

north of this property.

Council Member Buschkoetter commented that the proposed future use of this land is how the area where Cunningham's Lakeside is located, as well as Yanney, was developed; a lot of the value to that area was due to the lake.

There was no one present in opposition to this hearing.

Moved by Moore to close the public hearing on the application submitted by Roger Harders (Applicant) for West Limited, LLC (Owner) and introduced Ordinance No. 8751 rezoning from District C-3, General Commercial District to District AG, Agricultural District for property described as that part of the west half of the Northwest Quarter of Section 9, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (Parcel 2) (east of Cherry Avenue and south of East 11th Street) and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Schmidt seconded the motion to close the hearing and suspend the rules for Ordinance No. 8751. 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: Nikkila, Schmidt, Straatmann, Buschkoetter, Moore. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 8751 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Nikkila, Schmidt, Straatmann, Buschkoetter, Moore. Nay: None. Motion carried. Ordinance was read by number.

Moved by Schmidt seconded by Buschkoetter that Ordinance No. 8751 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Nikkila, Straatmann, Buschkoetter, Moore, Schmidt. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 8751 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.

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

Moved by Buschkoetter seconded by Nikkila that Subsections 1 through 9 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Nikkila, Buschkoetter, Moore, Schmidt, Straatmann. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held June 10, 2025.
2. Approve the following Claims:
  - PS Personnel Services
  - SMCS Supplies, Materials & Contractual Services

ER	Equipment Rental
CO	Capital Outlay
DS	Debt Service

922 Enterprises \$31,612.56 co; Agri Coop \$42,647.16 smcs; Alfred Benesch \$19,131.73 co; All City Garage Door \$18,352.00 smcs,co; All Copy \$435.17 smcs; All Safe Industries \$877.18 smcs; Ask Supply \$3,909.65 smcs; Aurora Cooperative \$160.00 smcs; Baker & Taylor \$3,532.99 smcs; BergankDV \$35,350.00 smcs; Blessing Const. \$25.84 smcs; BlueCross BlueShield \$329,627.87 smcs; Boehler, C \$60.00 smcs; Bosselman Energy \$900.28 smcs; Brungardt, S \$5.80 smcs; Buffalo Co. Board Comm. \$18,725.01 smcs; Buffalo Co. Sheriff \$505.00 smcs; Builders \$112.92 co; CaseGuard \$4,346.00 co; Cash Wa \$16,266.75 smcs; Central NE Bobcat \$3,880.16 smcs; Chesterman \$3,319.50 smcs; City of KY \$801,268.33 smcs,ps; City Service Valcon \$60,539.83 smcs; Community Action \$2,300.50 smcs; Construction Rental \$25.19 smcs; Cooper, J \$1.35 smcs; Copy Cat Printing \$3,013.80 smcs; Country Partners \$19,966.97 smcs; Cummins \$14,747.16 smcs; Dakota Pump \$14,611.87 smcs; Davis, D \$1,147.71 smcs; Depository Trust \$244,980.00 ds; Deterding's \$37,857.34 smcs; Dirks, L \$19.47 smcs; Dostal, K \$312.00 smcs; Dowhy Towing \$137.94 smcs; Eagle Distributors \$1,251.23 smcs; Eakes \$1,056.43 smcs; Electric Pump \$6,887.31 smcs; Electronic Systems \$311.60 smcs; Encore Performing Arts \$200.00 smcs; Entenmann-Rovin \$420.25 smcs; Entertainment Group \$500.00 smcs; Family Practice \$39.00 ps; Fountain Hills \$120.04 smcs; Franchini, L \$27.00 smcs; Frontier \$394.45 smcs; Gale/Cengage \$962.52 smcs; Give Nebraska \$20.00 ps; GM Concrete \$1,795.00 smcs; Go Smart Solutions \$3,233.40 co; Godfrey, C \$11.62 smcs; Graczyk Lawn \$405.00 smcs; Grainger \$3,743.41 smcs; Haven Lighting Solutions \$99.01 smcs; Hometown Leasing \$443.23 smcs; IRS \$215,578.86 ps; Jack Lederman \$85.00 smcs; Jack's Uniforms \$484.74 smcs; John T. Jones Const. \$85,000.00 co; Johnson Fitness \$310.00 smcs; KEA Constructors \$97,021.80 co; KY Towing \$164.00 smcs; KY Visitors Bureau \$201,144.73 smcs; Konica Minolta \$122.82 smcs; Lincoln Nat'l. Life \$10,393.73 smcs; MacQueen \$23,896.25 smcs; Magic Cleaning \$8,690.00 smcs; Mahoney Fire Sprinkler \$900.00 smcs; Mauslein Welding \$240.00 smcs; McCracken, Adam \$57.27 smcs; MCL Construction \$1,182,916.83 co; Menards \$43.72 smcs; MES \$95.68 smcs; Messenger, K \$28.00 smcs; Midlands Contracting \$25,949.50 smcs; Mid-NE Digging \$5,200.00 co; Midwest Connect \$10,906.96 smcs; Miller & Associates \$59,041.00 co; Mission Square \$8,242.36 ps; Molina, F \$133.74 smcs; Morris, K \$19.36 smcs; Mulholland, C \$14.26 smcs; Municipal Supply \$59,000.49 smcs; NE Child Support \$1,531.72 ps; NE Dept. Environment \$1,323,727.45 smcs,ds; NE Dept. Revenue \$65,531.54 ps; NE Machinery \$3,843.43 smcs; NE Public Health \$216.50 smcs; Nebraskaland Distrib. \$2,861.60 smcs; Nielsen Contracting \$480,579.80 smcs,co; Northwestern Energy \$5,110.58 smcs; NPPD \$6,452.15 smcs; Old Republic Aerospace \$5,000.00 smcs; Pep Co. \$330.76 smcs; Pfeiffer, D \$20.21 smcs; Prairie View Roofing \$859.00 smcs; Presto-X \$168.12 smcs; Prime Secured \$1,454.80 smcs; Province, N \$117.70 smcs; Ramierez, N \$3.00 smcs; Rasmussen Mechanical \$20,854.28 smcs; Reicksway Logistics \$10.10 smcs; Sapp Bros. \$5,372.25 smcs; Schindler Elevator \$1,545.12 smcs; School District #7 \$1,850.00 smcs; Schriener, D \$31.00 smcs; Sherwin Williams \$5,340.00 smcs; Sign Center \$554.88 co; SignIt \$43.00 smcs; Snap-On Tools \$73.50 smcs; Sobieszky, B \$56.71 smcs; Sobieszky, C \$188.09 smcs; Sontiq \$535.11 ps; SOS Portable Toilet \$561.00 smcs; State of NE/DAS \$44.10 smcs; Steinbrink's Landscaping \$3,789.61 smcs; Stutsman \$1,647.00 smcs; Sun Life \$83,232.20 smcs; Sylvester, K \$24.26 smcs; TK Elevator \$513.94 smcs; Townsend, L \$362.50 smcs; Trade

Well Pallet \$2,500.00 smcs; Tye & Rowling \$16,922.02 smcs; Union Bank & Trust \$117,140.95 ps; United Way of KY \$20.00 ps; Verizon \$15,437.19 smcs; Village Uniform \$224.28 smcs; Waldinger \$1,443.25 smcs; Waugh, B \$173.60 smcs; Western NRG \$5,582.42 co; World Book \$598.00 smcs; Zimmerman, D \$15.00 smcs; Payroll Ending 05/31/2025 -- \$752,265.73. 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. Adopt Resolution No. 2025-62 appointing the fulfillment of the term vacated by Chris Loofe on the Civil Service Commission

**RESOLUTION NO. 2025-62**

WHEREAS, Resolution No. 2005-96 calls for Citizen Board/Commission member appointments to be made by resolution submitted by the Mayor to the City Council for final approval; and

WHEREAS, one (1) vacancy currently exists on certain Boards/Commissions.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the following persons, as proposed by the City Manager of the City of Kearney, Nebraska, is hereby appointed to the designated Boards/Commissions for the terms indicated:

**CIVIL SERVICE COMMISSION**

Clint Edwards appointed to fulfill term of Chris Loofe to July 31, 2027

BE IT FURTHER RESOLVED that this resolution shall be in full force and effect from and after its adoption.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2025.

ATTEST:  
PEGGY EYNETICH  
CITY CLERK

JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR

- 4. Authorize the Mayor to send a letter of no recommendation to the Nebraska Liquor Control Commission on the Class C liquor license and manager applications for Cort Gracey, Manager submitted by Old West Steak Company of Kearney LLC dba Whiskey Creek Woodfire Grill located at 407 S 2nd Avenue.

- 5. Authorize the Mayor to send a letter of no recommendation to the Nebraska Liquor Control Commission on the Class C liquor license and manager applications for Scott Rodriguez, Manager submitted by Elevated Catering LLC dba Elevated Catering located at 5012 3rd Avenue, Suite 178.

- 6. Adopt Resolution No. 2025-63 approving Change Order No. 5 showing an increase in the amount of \$13,944.60, Application and Certificate for Payment No. 34-Final in the amount of \$23,846.00 and accept the Certificate of Substantial Completion submitted by John T. Jones Construction Co. and approved by Miller & Associates for the Water Resource Recovery Facility Phase 2 Improvements.

**RESOLUTION NO. 2025-63**

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 Change Order No. 5 showing an increase in the amount of \$13,944.60 as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, John T. Jones Construction Co. and Miller & Associates have filed with the City Clerk Application and Certificate for Payment No. 34-Final in the amount of \$23,846.00 as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$ 35,858,000.00</u>
Change Order No. 1 (07-12-2022)	- 639,633.00
Change Order No. 2 (08-22-2023)	+ 21,141.00
Change Order No. 3 (08-13-2024)	+ 156,336.00
Change Order No. 4 (09-10-2024)	+ 97,906.93
Change Order No. 5 (06-10-2025)	<u>+ 13,944.60</u>
Contract Sum To Date	35,507,695.53
Gross Amount Due	35,507,695.53
Retainage	<u>- 0.00</u>
Amount Due to Date	23,846.00
Less Previous Certificates for Payment	<u>- 35,483,849.53</u>

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of December 1, 2024 for primary plant operations and March 3, 2025 for HVAC, Grit Units, SCADA and mechanical Screens, as shown by Exhibit "C" 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. 5, as shown on Exhibit "A", Application and Certificate for Payment No. 34-Final, as shown on Exhibit "B" and the Certificate of Substantial Completion as shown on Exhibit "C" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2025.

ATTEST:  
PEGGY EYNETICH  
CITY CLERK

JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR

7. Adopt Resolution No. 2025-64 approving the purchase of an Enforcer Pumper and Enforcer 100-foot Ascendant Tower submitted by MacQueen Equipment, LLC, dba MacQueen Emergency Equipment Group, approve the Purchase Agreement and authorize the Fire Administrator to sign the Agreement.

**RESOLUTION NO. 2025-64**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA that the Purchase Agreement for an Enforcer Pumper and Enforcer 100-foot Ascendant Tower submitted by MacQueen Equipment, LLC, dba MacQueen Emergency Equipment Group be and is hereby accepted and approved to

initiate the build for the fire apparatus that is estimated to take between 40 to 51 months to build. The Agreement, marked as Exhibit "A" is attached hereto and made a part hereof.

BE IT FURTHER RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Fire Administrator be and is hereby authorized and directed to execute the same agreement on behalf of the City of Kearney.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2025.

ATTEST:  
PEGGY EYNETICH  
CITY CLERK

JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR

8. Adopt Resolution No. 2025-65 approving the Agreement between the City of Kearney and BergankDV for auditing services and authorizing the Director of Finance to sign the Agreement.

**RESOLUTION NO. 2025-65**

WHEREAS, Requests for Proposals were received in February 2024 for auditing services for the City of Kearney, Nebraska and the City of Kearney Community Redevelopment Authority; and

WHEREAS, the City received one proposal from BergankDV, which the City of Kearney Audit RFP Review Committee reviewed and recommended the proposal offered by BergankDV, be accepted; and

WHEREAS, the recommendation from City of Kearney Audit RFP Review Committee was accepted and approved on April 9, 2024 by the Kearney City Council; and

WHEREAS, in May 2025 the City received an engagement agreement from BergankDV to extend their auditing services for the City of Kearney, Nebraska and the City of Kearney Community Redevelopment Authority an additional year and a second agreement to perform agreed-upon procedures for the Lottery for an additional year.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the recommendation from Staff is hereby accepted and approved, that BergankDV, be accepted for auditing services for the City of Kearney, Nebraska, and the City of Kearney Community Redevelopment Authority a copy of which marked "Exhibit A" is attached hereto and made a part hereof by reference and for the second agreement to perform agreed-upon procedures for the Lottery a copy of which marked "Exhibit B" is attached hereto and made a part hereof by reference, extending both agreements for a period of one year for the fiscal year ending September 30, 2025, to be performed in accordance with the engagement agreement and separate Lottery agreement; and

BE IT FURTHER RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Finance Director be and is hereby authorized and directed to execute both agreements for one year on behalf of the City of Kearney.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2025.

ATTEST:  
PEGGY EYNETICH  
CITY CLERK

JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR

9. Adopt Resolution No. 2025-66 approving Change Order No. 1 showing an increase

in the amount of \$4,052.00, submitted by Industrial Process Technology for the Harmon Pool Pump Replacement Project.

**RESOLUTION NO. 2025-66**

WHEREAS, Industrial Process Technology, Inc. has agreed to perform services in connection with the Harmon Pool Circulation Pump and Associated Piping, and City staff, have filed with the City Clerk Change Order No. 1 showing an increase in the amount of \$4,052.00 as shown on Exhibit "A" 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. 1, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2025.

ATTEST:  
PEGGY EYNETICH  
CITY CLERK

JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR

**V. CONSENT AGENDA ORDINANCES**

**VI. REGULAR AGENDA**

**OPEN ACCOUNT CLAIM**

Moved by Nikkila seconded by Schmidt that the Open Account Claim in the amount of \$697.50 payable to Univ. NE Board Regents be allowed. Roll call resulted as follows: Aye: Nikkila, Schmidt, Buschkoetter. Nay: None. Moore and Straatmann abstain. Motion carried.

**VII. REPORTS**

Council Member Schmidt stated that four out-of-state individuals his workplace was hosting happened to stop at the coffee shop where Coffee with a Cop took place; they were very impressed that Kearney's Police Department does this.

Council Member Straatmann stated he recently flew through Kearney and noted that the flights were always full; he continues to receive questions about the return of the Chicago flight and noted that Staff is doing a great job at the Airport.

Council Member Tami James Moore noted how wonderful Heritage Days was on Saturday and that the fireworks show was amazing.

Brenda Jensen, City Manager, commented that last week and the weekend were very busy in Kearney.

**VIII. ADJOURN**

Moved by Straatmann seconded by Nikkila that Council adjourn at 5:45 p.m. Roll call

resulted as follows: Aye: Nikkila, Schmidt, Straatmann, Buschkoetter, Moore. Nay: None.  
Motion carried.

**ATTEST:**

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

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**PEGGY EYNETICH  
CITY CLERK**



# CITY COUNCIL AGENDA MEMO

## ITEM NO. III - #1-3

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**FROM:** *Melissa Dougherty-O'Hara, City Planner*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Development of McCaslin Subdivision*

**PRESENTER:** *Craig Bennett, Miller & Associates*

**Discussion:**

The applicant, Craig Bennett, requests approvals for rezonings, preliminary plat, and final plat for property generally located at vacant parcel (560331102) north of 6740 North 2nd Avenue. The applicant is seeking these approvals on behalf of Keith L. McCaslin. The property is located outside City Limits but within the two-mile extraterritorial jurisdiction. These requests are for future development.

**Rezonings**

The applicant requests to rezone 10.44-acres from AG, Agricultural District to C-O, Office District; and 7.30-acres from AG, Agricultural District to C-2, Community Commercial District. The zoning districts surrounding the subject property are AG to the north and east, AG and RR-2 to the south, and AG and RR-1 to the west. The C-O zoning district allows for most residential uses, many civic, all office use types, very limited commercial, and no industrial use types. The C-2 zoning district allows for most residential uses, many civic, office, and commercial uses, and limited industrial uses.

The Future Land Use Map (FLU) designation is MU2, Office/Commercial Retail Mixed Use. The C-O and C-2 zoning districts are compatible with the MU2 FLU designation; therefore, no FLU amendment is required. The surrounding FLU designations are MU2 and LDR to the north, MU2 to the south and east, and LDR to the west. The land uses surrounding the property are vacant agricultural land to the north and east (across 2nd Avenue), and vacant agricultural land and residential to the south and west. A tower is also located on the vacant agricultural lot to the south.

As indicated by the FLU map, the 2nd Avenue corridor is determined to be a primarily commercial corridor to allow for the City's future growth along this significant roadway. While residential development does exist along 2nd Avenue, the proposed C-2 zoning provides commercial or residential development options. The C-O zoning district allows for less intense commercial use types than the C-2 zoning district, with an emphasis on office use types. Plus, the C-O district acts as a transitional zoning district between the C-2 zoning district along 2nd Avenue and the RR-1 zoning to the west. Additional site development regulations, such as landscaping and screening, would buffer the C-O and C-2 zoning developments from the existing adjacent residential developments.

## ITEM NO. III - #1-3

### **Final Plat**

The final plat for McCaslin Subdivision contains 17.74-acres to be configured into four lots. The lots range in size from 3.10-acres to 4.35-acres. The lot widths and lot areas meet the minimum requirements of the C-O and C-2 zoning districts. The plat also indicates three new public road dedications, including two east-west connections, 70th Street and 69th Street, and a north-south 3rd Avenue. Nebraska Department of Transportation will have final approval for the connection to 2nd Avenue from 70th Street and 69th Street. A previously recorded ingress/egress easement exists where the future 70th Street is proposed. The lots adjacent to 2nd Avenue will have restricted access; however, there are options for access along 70th Street, 69th Street, or 3rd Avenue. The western lots will have primary access from 3rd Avenue, with Lot 1, Block 1 also having access options along 70th Street. Additionally, where necessary and required, easements have been provided for utilities.

An Infrastructure Feasibility Plan (IFP) has been provided showing the road connectivity, future connections to City services, and stormwater. Temporary cul-de-sacs will be located at the west end of 70th Street and the south end of 3rd Avenue until such time the streets are constructed further west (70th Street) and south (3rd Avenue). They also provide emergency access turnarounds for emergency service vehicles. All streets will be built to City standards (paved with curb and gutter).

The subject property will not be annexed into the City and no connections to City services (sanitary sewer and connections) are available to the area at this time. Therefore, individual well and septic systems will need to serve each lot. The IFP does indicate the location of future sanitary sewer and water infrastructure in 70th Street and 3rd Avenue when such time services extend to the area.

A proposed regional stormwater detention cell is located in the northwest corner of the subject property, to which all drainage will be directed for the lots. When the roads are constructed, inlets will be installed to convey stormwater to the detention cell. A northern portion of the subject property (Lot 1 and Lot 2, Block 1, and Lot 1, Block 2) is located within the regulated floodplain (100-year flood or 1% annual chance of flood). Any developments within these areas must meet all of the requirements for floodplain development. A LOMR-F (an exemption from floodplain development regulation approved by FEMA) was approved for the eastern portions of Lot 1, Block 2 and Lot 1, Block 3.

A final plat has been provided, which meets the minimum requirements of the subdivision regulations. The Planning Commission approved a preliminary plat, and the rezonings and final plat were recommended for approval by unanimous vote on April 18, 2025.

### **Comprehensive Plan Related Reference**

'Establish and maintain land use development patterns and densities in the community, that best conform with the desires and needs of the residents and emphasize improved quality of development and livability for residents of community' (LU2, Land Use Policies, Page 219).

'Maintain fair and flexible zoning and land use regulations so that future commercial development activities can continue in the Central Business District, 2nd Avenue, Highway 30 corridor, and Cherry Avenue corridor.' (LU AS 2, Land Use Action Strategies, Page 219)

## ITEM NO. III - #1-3

'Continue to encourage compatible adjacent land uses during the planning and implementation of development activities' (LU3, Land Use Policies, Page 219).

Staff's finding of facts:

- The proposed rezonings are compatible with development in the area and with the FLU designation and purpose.
- Both the C-O and C-2 zoning districts allow options for residential or commercial development.
- The lots comply with the C-O and C-2 zoning districts' site development regulations.
- The roadway dedications provide public access for lots within the subdivision and road connectivity to existing development located both west and south of the subject property.
- A regional stormwater detention cell will serve all of the proposed lots.
- The subdivision's layout is compatible with the surrounding land uses.
- The rezonings and final plat requests are consistent with the 2016 Comprehensive Plan, as referenced.

### **Fiscal Note:**

Public infrastructure will be built in the future and at such time, as outlined in the Subdivision Agreement, such general obligations will be tied to these infrastructure improvements. These estimated reimbursable costs, shown below, are a preliminary estimate of the infrastructure expenses to the City:

- |                  |              |
|------------------|--------------|
| • Water          | \$149,052.35 |
| • Sanitary sewer | \$10,493.00  |

### **Recommended Action:**

Staff and Planning Commission recommend approval of the rezonings and final plat, all as presented.

## ORDINANCE NO. 8748

**AN ORDINANCE OF THE CITY OF KEARNEY, NEBRASKA, TO CHANGE SPECIFIED PORTIONS OF THE BOUNDARY OF DISTRICT AG, AGRICULTURAL DISTRICT TO DISTRICT C-O, OFFICE DISTRICT; TO PROVIDE FOR CHANGES IN THE ZONING MAP ACCORDINGLY; 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.**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KEARNEY, NEBRASKA:**

**Section 1.** That property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Commencing at a mag nail at the Northeast corner of the Northeast Quarter of Section 23; thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 480.72 feet to the Northerly extension of the West line of Heiden Third Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska and the POINT OF BEGINNING; thence continuing S 89°38'59" W on said North line of the Northeast Quarter a distance of 580.05 feet to a 5/8" rebar at the Northerly extension of the East line of Austin Estates Fifth Subdivision, a tract of land being part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and the Northerly extension of the West line of Heiden Second Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence S 00°20'48" W on said Northerly extension of the East line of Austin Estates Fifth Subdivision and said Northerly extension of the West line of Heiden Second Subdivision a distance of 783.03 feet to a 5/8" rebar w/cap at the Northwest corner of said Heiden Second Subdivision; thence N 89°50'58" E on the North line of said Heiden Second Subdivision a distance of 580.06 feet to a 5/8" rebar at the Northwest corner of said Heiden Third Subdivision; thence N 00°20'39" E on said Northerly extension of the West line of Heiden Third Subdivision, a distance of 785.05 feet to the Point of Beginning. Containing 10.44 acres, more or less all located in Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue), be rezoned from District AG, Agricultural District to District C-O, Office District.

**Section 2.** That the City Manager is hereby directed to cause the zoning map to be changed and amended accordingly.

**Section 3.** That all ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

**Section 4.** This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law and shall be published in pamphlet form by authority of the City Council.

**INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_  
PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

\_\_\_\_\_  
**JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR**

\_\_\_\_\_  
**PEGGY EYNETICH  
CITY CLERK**

**-REZONING EXHIBIT-**  
**AG DISTRICT TO C-2 DISTRICT**  
**AG DISTRICT TO C-0 DISTRICT**

**LEGAL DESCRIPTION FOR C-2 ZONING**

A tract of land being part of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-three (23), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska, and more particularly described as follows:

Commencing at a mag nail at the Northeast corner of the Northeast Quarter of Section 23;  
 thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 106.24 feet to a 5/8" rebar w/cap on the West line of a tract of land described in Trustee's Deed recorded as Inst. 2002-12452 in the Buffalo County Register of Deeds Office and the POINT OF BEGINNING;

thence S 18°35'14" E on said West line of the tract described in Inst. 2002-12452 a distance of 105.89 feet to a 5/8" rebar w/cap on the West line of the tract of land described in Return of Appraisers, Tract 31, recorded as Inst. 1999-5114 in the Buffalo County Register of Deeds Office;

thence S 00°09'52" W on said West line a distance of 391.86 feet to a 5/8" rebar w/cap;

thence S 03°47'26" W continuing on said West line a distance of 164.38 feet to a 5/8" rebar w/cap;

thence S 00°29'00" E continuing on said West line a distance of 130.03 feet to a 5/8" rebar w/cap at the Northeast corner of Heiden Third Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska;

thence S 89°50'58" W on the North line of said Heiden Third Subdivision a distance of 402.05 feet to a 5/8" rebar at the Northwest corner of said Heiden Third Subdivision;

thence N 00°20'39" E on the Northerly extension of the West line of said Heiden Third Subdivision a distance of 785.05 feet to the North line of said Northeast Quarter;

thence N 89°38'59" E on said North line of the Northeast Quarter a distance of 374.48 feet to the Point of Beginning.

Containing 7.30 acres, more or less.

**LEGAL DESCRIPTION FOR C-0 ZONING**

A tract of land being part of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-three (23), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska, and more particularly described as follows:

Commencing at a mag nail at the Northeast corner of the Northeast Quarter of Section 23;

thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 480.72 feet to the Northerly extension of the West line of Heiden Third Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska and the Northerly extension of the West line of Heiden Second Subdivision, a subdivision being part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska;

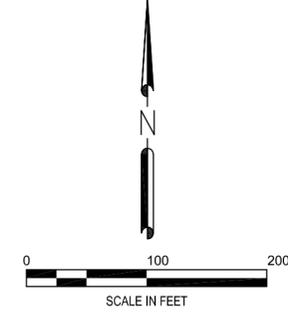
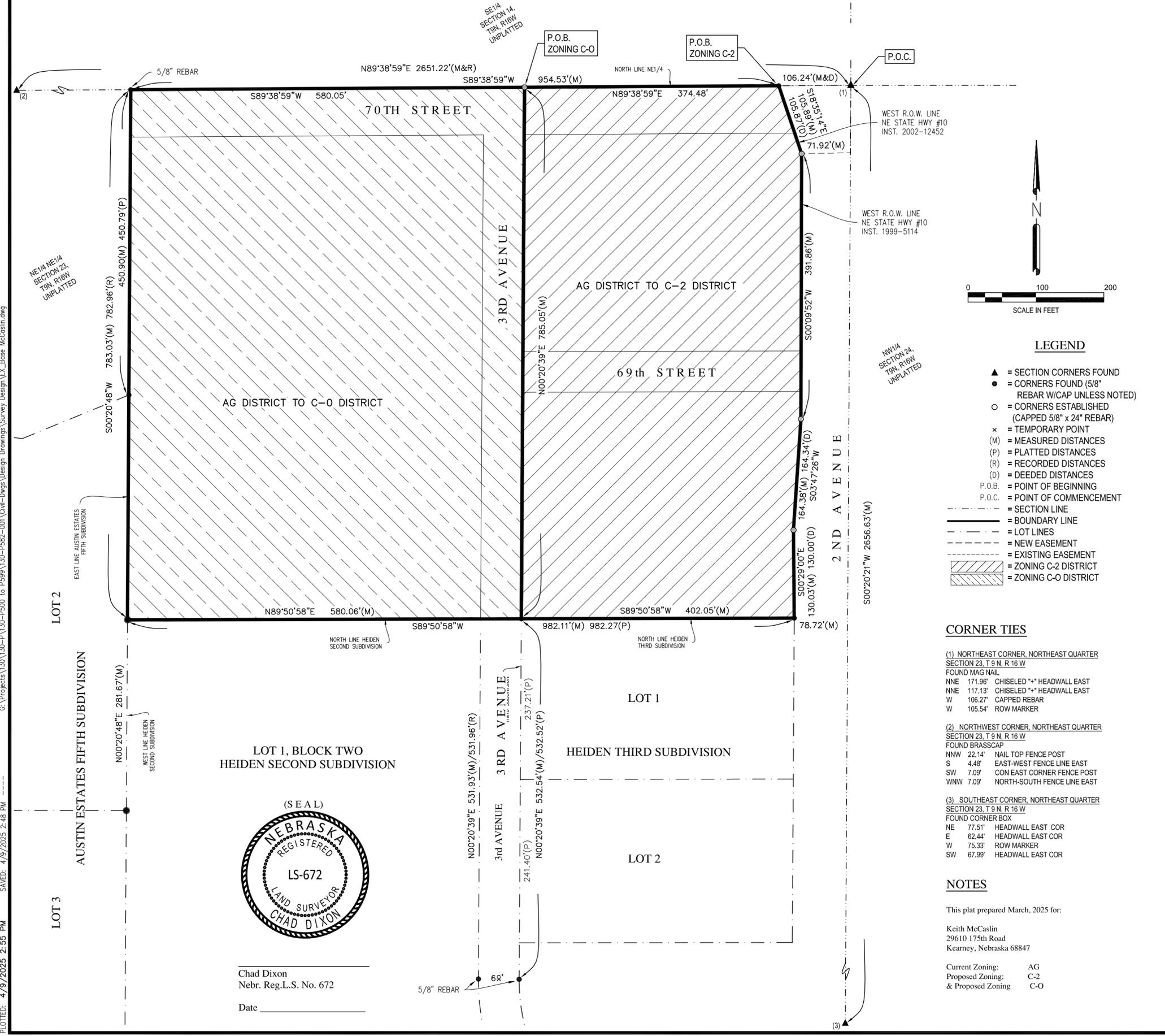
thence S 00°20'48" W on said Northerly extension of the East line of Austin Estates Fifth Subdivision and said Northerly extension of the West line of Heiden Second Subdivision a distance of 783.03 feet to a 5/8" rebar w/cap at the Northwest corner of said Heiden Second Subdivision;

thence N 89°50'58" E on the North line of said Heiden Second Subdivision a distance of 580.06 feet to a 5/8" rebar at the Northwest corner of said Heiden Third Subdivision;

thence N 89°50'58" E on the North line of said Heiden Second Subdivision a distance of 580.06 feet to a 5/8" rebar at the Northwest corner of said Heiden Third Subdivision;

thence N 00°20'39" E on said Northerly extension of the West line of Heiden Third Subdivision, a distance of 785.05 feet to the Point of Beginning.

Containing 10.44 acres, more or less.



**LEGEND**

- ▲ = SECTION CORNERS FOUND
- = CORNERS FOUND (5/8" REBAR W/CAP UNLESS NOTED)
- = CORNERS ESTABLISHED (CAPPED 5/8" x 24" REBAR)
- x = TEMPORARY POINT
- (M) = MEASURED DISTANCES
- (P) = PLATTED DISTANCES
- (R) = RECORDED DISTANCES
- (D) = DEEDED DISTANCES
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT
- = SECTION LINE
- = BOUNDARY LINE
- = LOT LINES
- = NEW EASEMENT
- = EXISTING EASEMENT
- ▨ = ZONING C-2 DISTRICT
- ▨ = ZONING C-0 DISTRICT

**CORNER TIES**

- (1) NORTHEAST CORNER, NORTHEAST QUARTER SECTION 23, T 9 N, R 16 W  
 FOUND MAG NAIL  
 NNE 171.96' CHISELED "\*" HEADWALL EAST  
 NNE 117.13' CHISELED "\*" HEADWALL EAST  
 W 106.27' CAPPED REBAR  
 W 105.54' ROW MARKER
- (2) NORTHWEST CORNER, NORTHEAST QUARTER SECTION 23, T 9 N, R 16 W  
 FOUND BRASSCAP  
 NNW 22.14' NAIL TOP FENCE POST  
 S 4.48' EAST-WEST FENCE LINE EAST  
 SW 7.09' CON EAST CORNER FENCE POST  
 WNW 7.09' NORTH-SOUTH FENCE LINE EAST
- (3) SOUTHEAST CORNER, NORTHEAST QUARTER SECTION 23, T 9 N, R 16 W  
 FOUND CORNER BOX  
 NE 77.51' HEADWALL EAST COR  
 E 62.44' HEADWALL EAST COR  
 W 75.33' ROW MARKER  
 SW 67.99' HEADWALL EAST COR

**NOTES**

This plat prepared March, 2025 for:  
 Keith McCaslin  
 29610 175th Road  
 Kearney, Nebraska 68847

Current Zoning: AG  
 Proposed Zoning: C-2  
 & Proposed Zoning: C-0

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Chad Dixon  
 Nebr. Reg.L.S. No. 672  
 Date \_\_\_\_\_

**REZONING EXHIBIT**

<b>M&amp;A</b> Miller & Associates Consulting Engineers, P.C.	PARTY CHIEF: CHAD DIXON LS 626
	DRAWN BY: Byron Mason
1111 CENTRAL AVENUE KEARNEY, NE 68847-8833 Tel: 308-234-6458 Fax: 308-234-1146 www.miller-engineers.com	REVISION-DATE & REASON
BUFFALO CO-McCASLIN SUBDIVISION	

## ORDINANCE NO. 8749

AN ORDINANCE OF THE CITY OF KEARNEY, NEBRASKA, TO CHANGE SPECIFIED PORTIONS OF THE BOUNDARY OF DISTRICT AG, AGRICULTURAL DISTRICT TO DISTRICT C-2, COMMUNITY COMMERCIAL DISTRICT; TO PROVIDE FOR CHANGES IN THE ZONING MAP ACCORDINGLY; 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.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KEARNEY, NEBRASKA:

**Section 1.** That property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Commencing at a mag nail at the Northeast corner of the Northeast Quarter of Section 23; thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 106.24 feet to a 5/8" rebar w/cap on the West line of a tract of land described in Trustee's Deed recorded as Inst. 2002-12452 in the Buffalo County Register of Deeds Office and the POINT OF BEGINNING; thence S 18°35'14" E on said West line of the tract described in Inst. 2002-12452 a distance of 105.89 feet to a 5/8" rebar w/cap on the West line of the tract of land described in Return of Appraisers, Tract 31, recorded as Inst. 1999-5114 in the Buffalo County Register of Deeds Office; thence S 00°09'52" W on said West line a distance of 391.86 feet to a 5/8" rebar w/cap; thence S 03°47'26" W continuing on said West line a distance of 164.38 feet to a 5/8" rebar w/cap; thence S 00°29'00" E continuing on said West line a distance of 130.03 feet to a 5/8" rebar w/cap at the Northeast corner of Heiden Third Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; thence S 89°50'58" W on the North line of said Heiden Third Subdivision a distance of 402.05 feet to a 5/8" rebar at the Northwest corner of said Heiden Third Subdivision; thence N 00°20'39" E on the Northerly extension of the West line of said Heiden Third Subdivision a distance of 785.05 feet to the North line of said Northeast Quarter; thence N 89°38'59" E on said North line of the Northeast Quarter a distance of 374.48 feet to the Point of Beginning. Containing 7.30 acres, more or less all located in Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue), be rezoned from District AG, Agricultural District to District C-2, Community Commercial District.

**Section 2.** That the City Manager is hereby directed to cause the zoning map to be changed and amended accordingly.

**Section 3.** That all ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

**Section 4.** This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law and shall be published in pamphlet form by authority of the City Council.

**INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_  
PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

\_\_\_\_\_  
**JONATHAN NIKKILA  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR**

\_\_\_\_\_  
**PEGGY EYNETICH  
CITY CLERK**

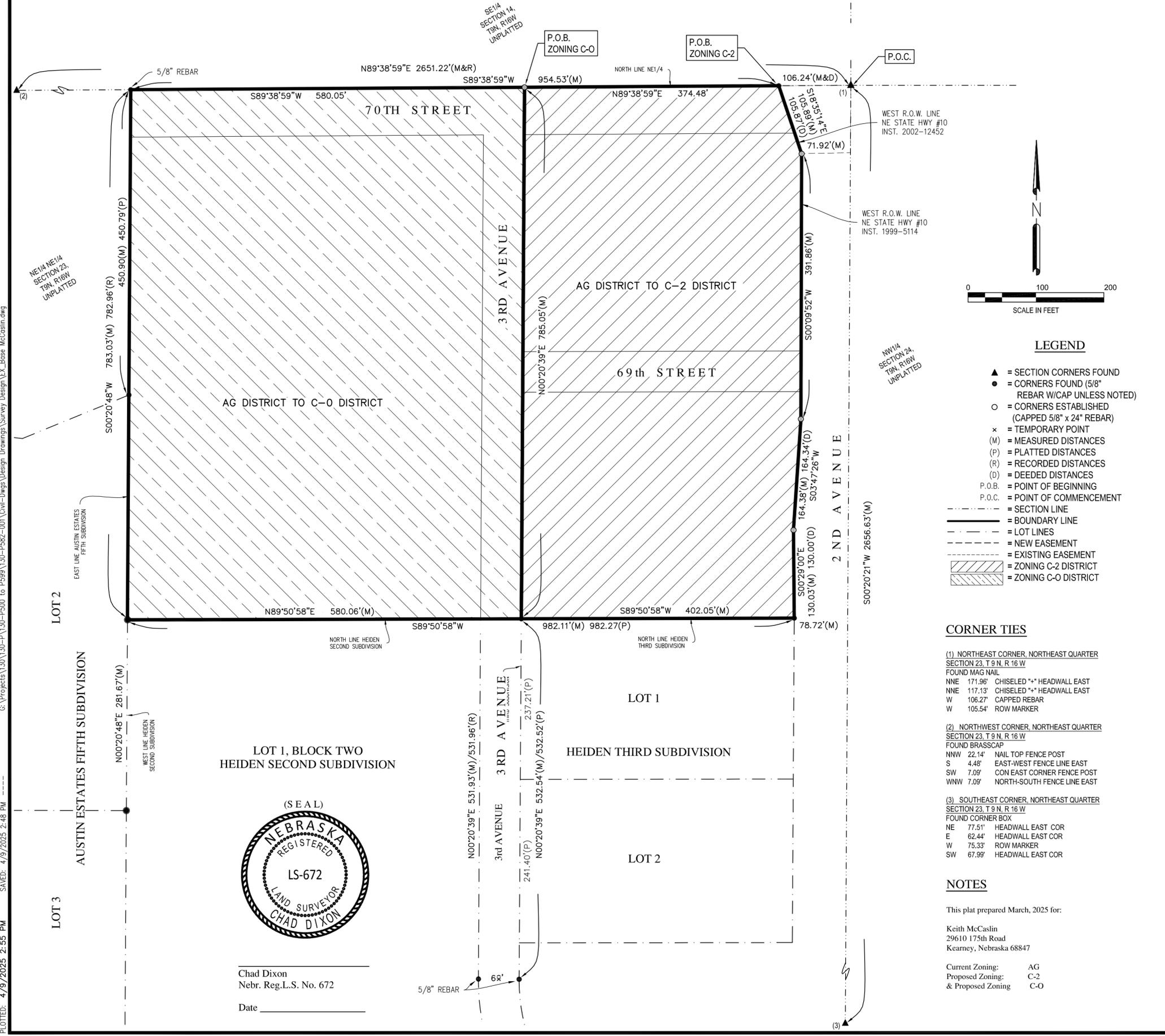
**-REZONING EXHIBIT-**  
**AG DISTRICT TO C-2 DISTRICT**  
**AG DISTRICT TO C-0 DISTRICT**

**LEGAL DESCRIPTION FOR C-2 ZONING**

A tract of land being part of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-three (23), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska, and more particularly described as follows:  
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 thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 106.24 feet to a 5/8" rebar w/cap on the West line of a tract of land described in Trustee's Deed recorded as Inst. 2002-12452 in the Buffalo County Register of Deeds Office and the POINT OF BEGINNING;  
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 thence S 89°50'58" W on the North line of said Heiden Third Subdivision a distance of 402.05 feet to a 5/8" rebar at the Northwest corner of said Heiden Third Subdivision;  
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 Containing 7.30 acres, more or less.

**LEGAL DESCRIPTION FOR C-0 ZONING**

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 thence S 00°20'48" W on said Northerly extension of the East line of Austin Estates Fifth Subdivision and said Northerly extension of the West line of Heiden Second Subdivision a distance of 783.03 feet to a 5/8" rebar w/cap at the Northwest corner of said Heiden Second Subdivision;  
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 thence N 00°20'39" E on said Northerly extension of the West line of Heiden Third Subdivision, a distance of 785.05 feet to the Point of Beginning.  
 Containing 10.44 acres, more or less.



**LEGEND**

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- = NEW EASEMENT
- = EXISTING EASEMENT
- = ZONING C-2 DISTRICT
- = ZONING C-0 DISTRICT

**CORNER TIES**

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 FOUND MAG NAIL  
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(3) SOUTHEAST CORNER, NORTHEAST QUARTER SECTION 23, T 9 N, R 16 W  
 FOUND CORNER BOX  
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 SW 67.99' HEADWALL EAST COR

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Chad Dixon  
 Nebr. Reg.L.S. No. 672  
 Date \_\_\_\_\_

**NOTES**

This plat prepared March, 2025 for:

Keith McCaslin  
 29610 175th Road  
 Kearney, Nebraska 68847

Current Zoning: AG  
 Proposed Zoning: C-2  
 & Proposed Zoning: C-0

**REZONING EXHIBIT**

<b>M&amp;A</b> Miller & Associates Consulting Engineers, P.C.	PARTY CHIEF: CHAD DIXON LS 626
	DRAWN BY: Byron Mason
JOB NUMBER: 130-P582-25	REVISION-DATE & REASON
1111 CENTRAL AVENUE KEARNEY, NE 68847-8833 Tel: 308-234-6458 Fax: 308-234-1146 www.miller-engineers.com	

BUFFALO CO-McCASLIN SUBDIVISION

## RESOLUTION NO. 2025-44

**BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA**, that the plat of McCaslin Subdivision, a subdivision being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska for a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Commencing at a mag nail at the Northeast corner of the Northeast Quarter of Section 23; thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 106.24 feet to a 5/8" rebar w/cap on the West line of a tract of land described in Trustee's Deed recorded as Inst. 2002-12452 in the Buffalo County Register of Deeds Office and the POINT OF BEGINNING; thence S 18°35'14" E on said West line of the tract described in Inst. 2002-12452 a distance of 105.89 feet to a 5/8" rebar w/cap on the West line of the tract of land described in Return of Appraisers, Tract 31, recorded as Inst. 1999-5114 in the Buffalo County Register of Deeds Office; thence S 00°09'52" W on said West line a distance of 391.86 feet to a 5/8" rebar w/cap; thence S 03°47'26" W continuing on said West line a distance of 164.38 feet to a 5/8" rebar w/cap; thence S 00°29'00" E continuing on said West line a distance of 130.03 feet to a 5/8" rebar w/cap at the Northeast corner of Heiden Third Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; thence S 89°50'58" W on the North line of said Heiden Third Subdivision and on the North line of Heiden Second Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska a distance of 982.11 feet to a 5/8" rebar w/cap at the Northwest Corner of said Heiden Second Subdivision and the East line of Austin Estates Fifth Subdivision, a subdivision being part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; thence N 00°20'48" E on the Northerly extension of the West line of said Heiden Second Subdivision and the East line of said Austin Estates Fifth Subdivision a distance of 783.03 feet to a 5/8" rebar on the North line of said Northeast Quarter; thence N 89°38'59" E on said North line of the Northeast Quarter a distance of 954.53 feet to the Point of Beginning. Containing 17.74 acres, more or less all located in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of

said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

**BE IT FURTHER RESOLVED** that the Subdivision Agreement, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

**BE IT FURTHER RESOLVED** that the President of the Council be and is hereby authorized and directed to execute the final plat on behalf of the City of Kearney, Nebraska.

**PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

\_\_\_\_\_  
**PEGGY EYNETICH**  
**CITY CLERK**

\_\_\_\_\_  
**JONATHAN NIKKILA**  
**PRESIDENT OF THE COUNCIL**  
**AND EX-OFFICIO MAYOR**

**Subdivision Agreement For  
McCaslin Subdivision,  
A Subdivision being part of the Northeast Quarter of the Northeast  
Quarter (NE1/4 NE1/4) of Section Twenty-three (23), Township Nine (9)  
North, Range Sixteen (16) West of the Sixth Principal Meridian Buffalo  
County, Nebraska**

**WHEREAS**, Keith L. McCaslin, a Single Person, and \_\_\_\_\_ (print name), \_\_\_\_\_ (print title) of Heritage Bank, Trustee and Beneficiary (hereinafter referred to as "Owner" or "Developer"), desire to develop the following described tract of land (hereinafter referred to as "McCaslin Subdivision");

LEGAL DESCRIPTION

A tract of land being part of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-three (23), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska, and more particularly described as follows: Commencing at a mag nail at the Northeast corner of the Northeast Quarter of Section 23; thence S 89°38'59" W on the North line of said Northeast Quarter, and all bearings contained herein are relative thereto, a distance of 106.24 feet to a 5/8" rebar w/cap on the West line of a tract of land described in Trustee's Deed recorded as Inst. 2002-12452 in the Buffalo County Register of Deeds Office and the POINT OF BEGINNING; thence S 18°35'14" E on said West line of the tract described in Inst. 2002-12452 a distance of 105.89 feet to a 5/8" rebar w/cap on the West line of the tract of land described in Return of Appraisers, Tract 31, recorded as Inst. 1999-5114 in the Buffalo County Register of Deeds Office; thence S 00°09'52" W on said West line a distance of 391.86 feet to a 5/8" rebar w/cap; thence S 03°47'26" W continuing on said West line a distance of 164.38 feet to a 5/8" rebar w/cap; thence S 00°29'00" E continuing on said West line a distance of 130.03 feet to a 5/8" rebar w/cap at the Northeast corner of Heiden Third Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence S 89°50'58" W on the North line of said Heiden Third Subdivision and on the North line of Heiden Second Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska a distance of 982.11 feet to a 5/8" rebar w/cap at the Northwest Corner of said Heiden Second Subdivision and the East line of Austin Estates Fifth Subdivision, a subdivision being part of the Northeast Quarter (NE1/4) of Section Twenty-Three (23), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence N 00°20'48" E on the

Northerly extension of the West line of said Heiden Second Subdivision and the East line of said Austin Estates Fifth Subdivision a distance of 783.03 feet to a 5/8" rebar on the North line of said Northeast Quarter; thence N 89°38'59" E on said North line of the Northeast Quarter a distance of 954.53 feet to the Point of Beginning. Containing 17.74 acres, more or less.

**WHEREAS**, the Owner's representative has met with the City of Kearney Development Review Team (DRT) and the DRT has assigned the development, DRT No. 20-029; and

**WHEREAS**, the Owner agrees to waive their right to protest annexation into corporate limits at the request of the City; and

**WHEREAS**, the Owner agrees to waive all rights of protest to future improvement districts that may be created; and

**WHEREAS**, the Owner agrees to connect to City water and sanitary sewer, at which time the Owner's water or sanitary sewer facilities become unusable and the respective City main is available within three-hundred-feet (300') of the Owner's property; and

**WHEREAS**, the Owner must obtain approval from the Nebraska Department of Transportation (NDOT) for proposed roadway access locations to 2<sup>nd</sup> Avenue, which is a controlled access roadway;

**NOW, THEREFORE**, the undersigned Owner and the City of Kearney, Nebraska (hereinafter referred to as the "City"), in consideration of the mutual covenants and agreements herein contained, agree as follows.

**OWNER AGREES AS FOLLOWS:**

- 1) That by signing this Subdivision Agreement the Owner hereby agrees to enter into a Developer Constructed Infrastructure Agreement with the City of Kearney to construct the following improvements in accordance with the City of Kearney Standard Specifications and in accordance with the terms and conditions of Sections 1301 through 1319 inclusive of Chapter 9 of the Kearney City Code.
  - a) Construction of a thirty-six-foot (36') wide (back of curb to back of curb) 47B Portland Cement concrete street pavement (thickness to be determined at the time of design), including storm sewer as follows;
    - i) From the existing pavement of 2<sup>nd</sup> Avenue located near the northeast corner of Lot 1, Block 2 of McCaslin Subdivision, westward along 70<sup>th</sup> Street of McCaslin Subdivision to align with the west lot line of Lot 1, Block 1 of McCaslin Subdivision.
    - ii) From the existing pavement of 2<sup>nd</sup> Avenue located near the southeast corner of Lot 1, Block 2 of McCaslin Subdivision, westward along 69<sup>th</sup> Street of

- McCaslin Subdivision to the proposed pavement of 3<sup>rd</sup> Avenue, near the west lot line of Lot 1, Block 2 of McCaslin Subdivision.
- iii) From the proposed pavement of 70<sup>th</sup> Street near the northwest corner of Lot 1, Block 2 of McCaslin Subdivision, southward along 3<sup>rd</sup> Avenue of McCaslin Subdivision to align with the south lot line of Lot 1, Block 3 of McCaslin Subdivision.
- b) Construction and maintenance of a six-inch thick (6"), ninety-foot (90') diameter temporary crushed rock cul-de-sac at the west end of 70<sup>th</sup> Street, near the west lot line of Lot 1, Block 1 of McCaslin Subdivision.
- i) The temporary cul-de-sac shall be an all-weather roadway suitable to support emergency service vehicles.
  - ii) The temporary cul-de-sac shall be maintained year-round by the Owner, including blading, snow removal, and furnishing additional aggregate as required to allow the cul-de-sac to be utilized at all times.
  - iii) The temporary cul-de-sac will be open to the public.
  - iv) The temporary cul-de-sac shall be removed at which time future and subsequent development requires the construction of a permanent roadway continuing west along 70<sup>th</sup> Street.
  - v) The exact location of the temporary cul-de-sac shall be coordinated with the City and/or adjacent property Owners at the time of design.
- c) Construction and maintenance of a six-inch thick (6"), ninety-foot (90') diameter temporary crushed rock cul-de-sac at the south end of 3<sup>rd</sup> Avenue, near the south lot line of Lot 1, Block 3 of McCaslin Subdivision.
- i) The temporary cul-de-sac shall be an all-weather roadway suitable to support emergency service vehicles.
  - ii) The temporary cul-de-sac shall be maintained year-round by the Owner, including blading, snow removal, and furnishing additional aggregate as required to allow the cul-de-sac to be utilized at all times.
  - iii) The temporary cul-de-sac will be open to the public.
  - iv) The temporary cul-de-sac shall be removed at which time future and subsequent development requires the construction of a permanent roadway continuing west along 3<sup>rd</sup> Avenue.
  - v) The exact location of the temporary cul-de-sac shall be coordinated with the City and/or adjacent property Owners at the time of design.

Including all appurtenances, pavement removal and replacement, curbs, storm sewers and inlets, conduit and electrical wiring for street lights to be placed in accordance with the City of Kearney's standard street lighting requirements, as necessary. Based on the Owner's estimates the cost of the paving and storm sewer is \$988,462.33 and the reimbursement obligation of the City is estimated at \$10,493.00.

- 2) To develop and construct the following improvements in accordance with the City of Kearney Standard Specifications, when the respective City infrastructure (water and sanitary sewer) is adjacent to the subdivision for connection and service.
  - a) Construction of sixteen-inch (16") diameter ductile iron pipe water main as follows;
    - i) From the west lot line of Lot 1, Block 1, eastward along 70<sup>th</sup> Street to the east lot line of Lot 1, Block 2, all of McCaslin Subdivision.
  - b) Construction of eight-inch (8") diameter ductile iron pipe water main as follows;
    - i) From the proposed water main located along 70<sup>th</sup> Street near the north lot line of Lot 1, Block 1, southward along 3<sup>rd</sup> Avenue to the south lot line of Lot 1, Block 3, all of McCaslin Subdivision.Including all appurtenances, paving removal and replacement, water main connections, boring, encasement pipe, fittings, valves, fire hydrants, and water services. Based on the Owner's estimate the cost of the water main is \$299,541.00 and the reimbursement obligation of the City is estimated at \$149,052.35.
  - c) Construction of eight-inch (8") vitrified clay pipe sanitary sewer main as follows;
    - i) From the future sanitary sewer trunk main running within or near 70<sup>th</sup> Street of McCaslin Subdivision, southward along 3<sup>rd</sup> Avenue of McCaslin Subdivision to the southernmost extent, aligning with the south lot line of Lot 2, Block 1 of McCaslin Subdivision.Including all appurtenances, pavement removal and replacement, sanitary sewer main connections, boring, encasement pipe, fittings, manholes, and sanitary sewer main, including engineering and construction inspection fees, is \$712,684.28 and the reimbursement obligation of the City is estimated at \$275,876.69.
- 3) Owner agrees to connect to City water and sanitary sewer, at which time the Owner's water or sanitary sewer facilities become unusable and the respective City main is available within three-hundred-feet (300') of the Owner's property.
- 4) Owner agrees to design, construct, and maintain regional stormwater management facilities in accordance with Chapter 56 of the Kearney City Code and in accordance with the approved Infrastructure Feasibility Plan. Owner agrees that the cost to maintain and the maintenance of all open spaces in the subdivision, including stormwater management facilities, un-paved road right-of-way, roadway medians, boulevards, public sidewalks and other public right-of-way and open spaces, will be the obligation and responsibility of the Owner or an association of property Owners.
- 5) To indemnify and hold harmless the City and its agents and employees against all claims, damages, loses, or expenses, including reasonable attorney's fees that arise or allegedly arise out of the design or construction of the public improvements and the stormwater management facilities, not due to the negligence or omissions on the part of the City, its agents and employees.

**CITY AGREES AS FOLLOWS:**

- 1) To enter into a Developer Constructed Infrastructure Agreement or the City's District Process, if it is determined that the Developer and City would benefit from public infrastructure being extended into, along, or throughout the subdivision for service of the subdivision.

**THE PARTIES AGREE AS FOLLOWS:**

- 1) This instrument is the final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between parties that allegedly exists.
- 2) This instrument contains the entire agreement between the parties, and no statements, promises or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by both parties and endorsed on this agreement.
- 3) This agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and shall be binding upon heirs, executors, administrators, and subsequent title owners in interest, devisees, and successors of the Owner hereto.



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025

**CITY OF KEARNEY, NEBRASKA, a Municipal Corporation**

By \_\_\_\_\_  
Jonathan Nikkila, President of the Council and Ex-Officio Mayor

**STATE OF NEBRASKA )**  
**) ss**  
**COUNTY OF BUFFALO )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Jonathan Nikkila, President of the Council and Ex-Officio Mayor of the City of Kearney, Nebraska, a Municipal Corporation, known to me to be the identical person who signed the foregoing signature to be his voluntary act and deed and that its municipal corporate seal was thereto affixed by proper authority.

\_\_\_\_\_  
Notary Public

(Owners), for the Preliminary Plat for Westesen Acres, a subdivision being part of the Northwest Quarter of the Northwest Quarter of Section 28, Township 8 North, Range 15 West of the 6th P.M., Kearney County, Nebraska (901 V Road (HWY 50A)) be approved.

**\*FINAL ACTION\***

Roll call resulted as follows: Aye: Baker, Cochran, Rickard, Yaw, McGinnis, Dart, Malone, Dakan. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

**FINAL PLAT NO. 2025-05**

Application submitted by Trenton Snow (Applicant) for David and Elizabeth Westesen Trustees and Westesen Lands, Inc. (Owners), for the Final Plat for Westesen Acres, a subdivision being part of the Northwest Quarter of the Northwest Quarter of Section 28, Township 8 North, Range 15 West of the 6th P.M., Kearney County, Nebraska (901 V Road (HWY 50A)).

Chairman Dart opened the public hearing.

This item was discussed during Rezoning No. 2025-07.

There was no one present in opposition to this hearing.

Chairman Dart closed the hearing.

Baker's motion was based on the City's finding of fact.

Moved by Baker and seconded by Malone that the application submitted by Trenton Snow (Applicant) for David and Elizabeth Westesen Trustees and Westesen Lands, Inc. (Owners), for the Final Plat for Westesen Acres, a subdivision being part of the Northwest Quarter of the Northwest Quarter of Section 28, Township 8 North, Range 15 West of the 6th P.M., Kearney County, Nebraska (901 V Road (HWY 50A)) be submitted to City Council with a recommendation for approval.

Roll call resulted as follows: Aye: Cochran, Rickard, Yaw, McGinnis, Dart, Malone, Dakan, Baker. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

**REZONING NO. 2025-08**

Application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) to rezone from District AG, Agricultural District to District C-O, Office District for property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue).

Chairman Dart opened the public hearing.

Craig Bennett (Miller & Associates) presented this item to the Planning Commission.

Mr. Bennett stated the subject property will be known as McCaslin Subdivision. It is located north of the corporate limits on the west side of 2<sup>nd</sup> Avenue, south of the roundabout, northeast of Austin Estates, and northwest of Menards. Currently, there is a platted subdivision to the south that includes dedicated right-of-way for 3<sup>rd</sup> Avenue, which has not yet been developed. Mr. McCaslin has excavated material from the northwest corner of the site and used it to fill in some of the floodplain area through the means of a LOMR F (letter of map revision with fill). The current Future Land Use (FLU) map designation is MU2, which is compatible with the proposed C-O and C-2 zoning districts. The FLU map designations surrounding the subject property are MU2 to the north and the south, and LDR on the west. The subject property is currently zoned AG. AG and RR-

2 abut the subject property on the south side. The remaining parcels surrounding the subject property are zoned AG, with the exception of the RR-1 lot located southwest of the subdivision.

Mr. Bennett noted that no City stormwater infrastructure is available to the site. However, there is a drainage way along the north side that conveys stormwater drainage northeasterly. But the closest stormwater drainage infrastructure is located within the corporate limits around Menards east of 2<sup>nd</sup> Avenue, and then west of 2<sup>nd</sup> Avenue around Spruce Hollow Estates. A floodplain and floodway are located on the subject property. The excavation he mentioned previously brought a majority of this area out of the floodplain. Over the past year and a half the developer has built up the area to bring the proposed eastern lots out of the floodplain. The closest sanitary sewer is a 30-inch trunk main located about half a mile south. The goal is to bring a sanitary sewer trunk main up the old abandoned railroad tracks that will eventually serve a lift station. However, the timeline for when sanitary sewer will get to this subdivision is unknown. He noted the closest water infrastructure is in the same location as the stormwater infrastructure. Eventually, there would be a looping piece of infrastructure that would go through the project site, but there is nothing adjacent at this particular time.

Mr. Bennett then explained the history behind the road circulation. When Austin Estates Sixth was preliminary platted to the west of McCaslin Subdivision, it included the right-of-way dedication for 8<sup>th</sup> Avenue. The preliminary plat showed a future eastward extension of 8<sup>th</sup> Avenue from the northeast corner of Austin Estates Sixth across the northern portion of the project site. Because this preliminary plat was previously approved, it set the precedent for the road connection. Austin Estates Sixth intended to use the extension of 8<sup>th</sup> Avenue for connectivity and secondary access. McCaslin Subdivision will honor this previously approved location for connection. There are power poles along the north side of the subject property that have been placed there by NPPD. They are located within the north right-of-way line for 70<sup>th</sup> Street. There is a 60-foot ingress-egress easement that allows access from 2<sup>nd</sup> Avenue to Austin Estates Sixth. This was required for secondary access because that particular subdivision only had one point of ingress-egress. That 60-foot ingress-egress easement will be encompassed by the 70-foot right-of-way being dedicated for 70<sup>th</sup> Street. Normal right-of-way width is 60-feet. However, they are dedicating 70-feet because of the power poles located on the north side of the site.

Mr. Bennett then reiterated how Mr. McCaslin went through the process of bring a majority of the eastern portion of the subject property out of the floodplain. Therefore, the developable areas are up and out of the floodplain. In addition, the preliminary plat shows connectivity to 3<sup>rd</sup> Avenue to the south. Residential houses are located to the east of the dedicated 3<sup>rd</sup> Avenue right-of-way to the south. However, they already have driveways going onto 2<sup>nd</sup> Avenue because they were developed when 2<sup>nd</sup> Avenue was just a two-lane highway. Mr. Bennett noted discussions with City staff regarding the necessity for 3<sup>rd</sup> Avenue. It was determined that it would be needed for continuing circulation to avoid having multiple driveways that would come out onto 2<sup>nd</sup> Avenue. The residential lots would be able to keep their driveways until such time as they are redeveloped. The proposed plat shows 3<sup>rd</sup> Avenue, eventually extending north to 70<sup>th</sup> Street. 69<sup>th</sup> Street would provide connectivity between 3<sup>rd</sup> Avenue and 2<sup>nd</sup> Avenue as well.

Mr. Bennett noted that the eastern lots contain approximately 3-acres with no intentions for development at this time. However, with the lots being along 2<sup>nd</sup> Avenue, a commercial use would be fitting. The elevation drops about 20-feet across the site. There is quite a

bit of relief from Dawson Public Power's tower located southwest of the subject property. A house was recently constructed over the past year on the lot adjacent to the southwest corner of the subject property. Because of this, the C-O zoning district is being proposed for the west two lots to allow for a softer use type adjacent to the residential.

Mr. Bennett then presented the final plat. The mapped FEMA line is still shown on the plat, although some of it has been brought out with the LOMR F. He indicated the location of the floodway and noted if 70<sup>th</sup> Street goes through, then a floodway structure would have to be built to allow stormwater from the north to continue through that area. He also presented the Infrastructure Feasibility Plan (IFP) which indicates the dedicated road rights-of-way and the future infrastructure locations. The subdivision will be served by well and septic until such time that the water and sewer infrastructure is able to be developed. The borrow site will act as the regional detention cell for the subdivision. However additional structures will need to be added for it to comply with stormwater drainage requirements. Stormwater drainage flows northwesterly across the lots. Inlets within the street would convey the water into the detention cell. From there an outlet or control structure located in the detention cell pond will convey the water directly into the floodway.

Member Yaw stated 69<sup>th</sup> Street is the only road going into the subdivision.

Mr. Bennett explained the phasing of the road construction. If they were to develop a lot, City standards require them to pave the roads around those lots. They are not putting in water and sewer at this time, but they are showing how the subdivision could be served. Well and septic will be used to serve the subdivision during in the interim.

Chairman Dart asked if there is currently a means by which water flows to the northwest corner where the water is collected.

Mr. Bennett responded water currently flows to the northwest corner which is lower than the floodway. The developer dug below the floodway line to get borrow material to fill into this area. Currently, stormwater will overflow from that area with what he has got constructed now. The future detention cell will have a berm around the outside with a control structure that will retain the overage for the 10-year storm and then release it. The current elevation of the pond when it is full determines the level the water can get to before it must be removed. He explained that the current storage capacity of the pond is not accounted for when calculating the required storage capacity of the permanent pool. If it was a really dry year there might be a lot of storage out there, but he cannot account for it.

Chairman Dart stated the northwest quadrant would not be very developable due to the detention pond.

Mr. Bennett confirmed and explained that Mr. McCaslin's current plan is to construct a building on that lot and have the pond as an amenity.

Member Malone stated they will not see any construction out there until such time as they have a buyer.

Mr. Bennett confirmed. He noted that realistically, 69<sup>th</sup> Street could go away if somebody wanted to combine the east two lots to create a 6-acre lot. The only access from 2<sup>nd</sup> Avenue would then be 70<sup>th</sup> Street, which is required for circulation.

Member Malone asked how that works with the State of Nebraska, allowing limited access onto 2<sup>nd</sup> Avenue.

Mr. Bennett responded 2<sup>nd</sup> Avenue used to be a highway. It is no longer a State of Nebraska highway south of the roundabout that is north of the subject property. However, they do retain controlled access even though they do not maintain the road. Any portion of the road south of the roundabout is either maintained by the County or the City, depending on whose jurisdiction it is.

Member Malone asked if water from the west and south drains into the pond on the subject property or if it is picked up somewhere else.

Mr. Bennett noted the location of the floodway boundaries and stated the natural drainage runs through the floodway. The pond is located south of the floodway and is higher in elevation, although the developer has dug the borrow material lower.

Member Malone asked if the runoff from the west is getting picked up somewhere else.

Mr. Bennett explained how it was a big borrow area for many years. However, they quit borrowing from that area and tapered it up to slope. All of that drainage now comes down and goes through a private pond. When the area to the west was platted, an outlot was created to account for the floodway. All that drainage comes down easterly, ends up in the floodway, and is conveyed northeasterly. The ponds adjacent to the subject property were self-made by a developer years ago for aesthetic reasons. Ultimately, they overflow and dump into this channel as well. Currently four pipes come across the road with natural drainage through the rest of this area until it comes to a bridge structure on 2<sup>nd</sup> Avenue.

Chairman Dart stated in regards to the passage of stormwater; nothing is changing for the property immediately to the north.

Mr. Bennett confirmed. He stated water will not cross the floodway onto the property to the north. Both properties drain to the floodway.

Chairman Dart stated the developer is not increasing runoff from this property.

Mr. Bennett confirmed this. The pond technically acts as retention of some sort, but there are currently no developed areas. He noted the required stormwater detention for the 10-year storm will be provided at the time of development and it will be a regional cell. Therefore, none of these lots will have to provide their own stormwater detention.

City Planner stated Staff's findings of fact are the proposed rezonings are compatible with development in the area and with the FLU designation and purpose. Both the C-O and C-2 zoning districts allow options for residential or commercial development. The lots are compliant with the C-O and C-2 zoning districts' site development regulations. The roadway dedications provide public access for lots within the subdivision and road connectivity to existing development both west and south. A regional stormwater detention cell will serve all of the proposed lots. This subdivision's layout is compatible with the surrounding land uses. The future development of this property is consistent with the 2016 Comprehensive Plan, as referenced. Staff recommends approval of the rezonings, preliminary plat, and final plat, all as presented.

Member McGinnis asked if City Staff received any public comment on the project.

City Planner responded they did receive a few calls questioning what was going to occur on the property, along with one call concerning the roadway connectivity.

Member McGinnis stated City Staff sends out letters to surrounding property owners. He mentioned the Associate Planner confirmed those were sent out. However, the Planning

Commission members did not get an email before the meeting notifying them that they were sent out.

City Planner noted the Commissioners usually received a courtesy email letting them know that those letters were sent.

Member McGinnis stated he likes receiving that email in case they get phone calls from people. He asked if the lack of an email was not a change in policy, but just an oversight.

City Planner confirmed it was an oversight.

Member McGinnis stated when he visited the subject property he did not see the signage indicating there is a hearing.

Member Malone responded he thinks there was.

Member McGinnis asked if Member Malone saw one.

Member Malone responded yes.

Member McGinnis asked if it was on 2<sup>nd</sup> Avenue.

Member Malone responded it faced 2<sup>nd</sup> Avenue.

Member McGinnis explained he did not see it. He was concerned maybe the wind blew it down or that it was not there at all.

City Planner stated they could check after the meeting.

Member Malone stated the C-O on the west side is adjacent to a couple of houses. He noted the developer could build office buildings, but somebody could also put a single-family house there with no problem.

Mr. Bennett confirmed this and stated there has been some intention for those lots to be residential. From a zoning perspective, having C-O between C-2 and RR-1 or RR-2 makes for a nice transition. Residential development is likely, especially with the continued existence of the pond area.

Tom McCarty (100 Clearview Drive) lives across from the subject property in Clearview Subdivision. He has lived there for almost 50 years. He is concerned about what is happening in this area and added he would prefer to see residential development out there as opposed to commercial. However, he also happens to be a real estate broker with Coldwell Banker Real Estate in Kearney. He asked if before a building permit is issued on either of those two front lots, will a concrete street be required on 70<sup>th</sup> Street and will it go all the way to the west.

City Planner responded the extent of the requirement for them to develop that street is only through their development. They cannot build the street on somebody else's property.

Mr. McCarty clarified he is only talking about the portion the developer is proposing. His question is will 70<sup>th</sup> Street be required to be paved before somebody can build on Lot 1, Block Two.

City Planner responded the developer will have to build the street adjacent to the property he is developing. It could be phased if there is no development on Lot 1, Block One. In this case, 70<sup>th</sup> Street would only have to be constructed up to 3<sup>rd</sup> Avenue.

Mr. McCarty stated the developer could just put that street in and build something on Lot 1, Block 2.

City Planner confirmed.

Member McGinnis asked if the road has to be concrete or if can it be gravel.

City Planner responded it is the intention of the City that the developer will build the streets to City standards. They have not had a request from the applicant to change that. So, it is their understanding that at this time he is wanting to build them to City standards.

Member McGinnis asked what is City standard.

City Planner responded it is the road right-of-way and paved with concrete.

Mr. McCarty asked if that included curb and gutter as well.

City Planner responded yes.

Mr. Bennett showed Mr. McCarty where on the IFP he had noted that there would be 36-foot wide curb and gutter on all of the streets.

Mr. McCarty noted there are 29 houses in Clearview Subdivision. In his opinion, anytime you have commercial development around residential it does not add a lot. His final comment was regarding the water issue with storm detention. He stated it does not take a 1% flood to overflow, it can happen anytime Kearney has a large rain. He asked if it was possible to build out that retention pond.

Mr. Bennett stated the developer already built up part of Lot 1, Block One.

Member McGinnis asked for the record if Mr. McCarty is in support of this project based on what he knows.

Mr. McCarty responded he is not against it as he sells commercial real estate. He just hopes whoever is his neighbor builds a decent project that would allow commercial use. The C-2 district allows a lot of use types. He asked Member McGinnis if it would make a difference whether or not he supports the project.

Member McGinnis stated he does not know. When someone says they are opposed to something, the effect depends upon their conviction and how strong and their rationale for opposition. What he senses from Mr. McCarty is that he has some questions about the project, but he is not really opposed to the project.

Mr. McCarty confirmed that is accurate because he knows eventually it is going to happen. There is already existing commercial in the area. In addition, he knows that 2<sup>nd</sup> Avenue is not controlled by the City and that they prefer not to have access points directly off of 2<sup>nd</sup> Avenue. He noted where an access road was constructed further southeast of the subject property. He asked why they did not do that on the subject property because now there will be two streets directly accessing 2<sup>nd</sup> Avenue.

Chairman Dart asked if he is correct in saying there are two east-west roads shown on the plat connecting to 2<sup>nd</sup> Avenue with no other direct access from 2<sup>nd</sup> Avenue allowed onto the lots.

Mr. McCarty responded yes.

Chairman Dart stated that is not that different from other locations along 2<sup>nd</sup> Avenue. He is aware of the secondary road farther south. However, once you get to a certain point there are more access points off of 2<sup>nd</sup> Avenue.

Member Malone asked what the State standards are for curb cuts. Such as how many are allowed within half a mile.

City Planner stated the City works with NDOT and that they see 2<sup>nd</sup> Avenue as a major commercial corridor. Various access points have been selected to facilitate the flow of traffic along 2<sup>nd</sup> Avenue in conjunction with the development needs of the community. For example, in this subdivision they are allowing for the construction of 69<sup>th</sup> Street and 70<sup>th</sup> Street. Those two streets will be the only ways in which the lots to the east can be accessed. None of the lots will have direct access off of 2<sup>nd</sup> Avenue. Driveways and access points will not be permitted according to their access management program.

Member Rickard stated the lots will have to be accessed using one of the access roads.

City Planner stated multiple developments along 2<sup>nd</sup> Avenue have gone through this process. They work with NDOT to find access points in conjunction with the needs of development along 2<sup>nd</sup> Avenue. Due to Clearview Subdivision being developed more than 50 years ago, it does not have a secondary access point. This is somewhat concerning for emergency services that may need to access the lots. The development would not meet some of the standards that are required today. This is why they have to find an amicable way in which development can occur. 2<sup>nd</sup> Avenue is seen as the primary commercial corridor which they would like to blend in with some of the existing residential developments. This is also why there are landscape buffer yard requirements for commercial developments adjacent to residentially zoned properties. When considering the development of this subdivision, the lots to the west will have some additional site development requirements due to their proximity to low-density residential to the west.

Member McGinnis wondered if when this corridor fully develops the speed limit will drop to reflect the urbanization of the area. He does not know when that would happen or who controls the speed limits.

City Planner responded she would have to check who has final say on that. She would imagine that it is probably the State. However, Member McGinnis is correct that as more access points are added onto a roadway, speedways can change.

Mr. Bennett stated that there would not be any driveway access onto 2<sup>nd</sup> Avenue. He noted 2<sup>nd</sup> Avenue is a very wide corridor with four lanes and a middle turn lane. Access onto 2<sup>nd</sup> Avenue provides great connectivity and circulation. Having said that, not allowing driveways onto 2<sup>nd</sup> Avenue is what they agreed to. Ultimately, the developer did not want 3<sup>rd</sup> Avenue to exist because it does not go south or north. But to meet the objective of master planning, they are trying to limit the number of driveways coming out onto 2<sup>nd</sup> Avenue. That is why 3<sup>rd</sup> Avenue has to stay and instead they are using street connectivity to get back onto 2<sup>nd</sup> Avenue as opposed to just driveways. His client would have preferred not to have streets this many streets.

Member McGinnis stated he is going to assume the City Planner is correct and the State controls the speed limit in that corridor. He then asked if the public can initiate a request with the State to reexamine speed limits or if the State does that on their own based upon a traffic count.

City Planner responded that her understanding is if a group of citizens came together and wanted the State to evaluate an area for speed, the State would take that into consideration and honor that request. Now, how they determine speeds on a roadway depends on how that road is engineered. In addition, there has to have been a certain amount of crashes or traffic incidents on the roadway that has caused issue. There are

many metrics that go into how they determine a speed limit. This includes doing a speed study to capture the speeds. From there the State could decide to either increase or decrease the speed limit.

Member McGinnis asked if property owners in that area banded together and wanted to approach the State, could they contact the City Planner to find out who they should contact.

City Planner confirmed this and mentioned they could also contact the City Engineer in Public Works.

Member McGinnis acknowledged that process and stated there could eventually be a safety issue.

City Planner responded potentially.

Mr. McCarty thinks the C-O zoning is great and has no issue with it at all. He would prefer if the whole thing were zoned C-O. He then asked if they would they consider a planned district (PD) for the two front lots along 2<sup>nd</sup> Avenue so that there is some say so in what goes out there.

Member Malone explained whether or not they would require a PD depends on the developers plans. They would not declare a planned district without a specific project.

Mr. McCarty asked if they cannot control that.

Member Malone responded if a developer came in asked for specific variations from code, then they would consider a PD. However, until there is actually a project in place to evaluate, they would not say a PD is required.

City Planner added the only way in which they could require a PD preemptively is if the lots contained 4-acres or more. Since they are not 4-acres or more, a PD plan would not be required at this time.

Kenneth Richter stated he owns the property to the north where all the water runs through. He has owned that property since 1974 and there has always been a water issue there coming down the hill and running through McCaslin's and his property. He does not think it will ever change. He explained that a previous owner put a dam in which held water and helped with holding the runoff. Mr. McCaslin removed that dam and moved all of the dirt. After removing the dirt, he did not pack it in very well so it became an unstable base for development. This can be fixed if the dirt is packed in hard. He does not think the water problem will ever change out there. He then noted he has all commercial frontage on his property, so he is not against commercial along there. He is mainly concerned about the water that he has been putting up with for 50 years.

Chairman Dart asked Mr. Bennet if as a result of this development, will the means of getting water off of the property change in some way as to not allow it to become an issue for the people that live north of there.

Mr. Bennett responded the way the pond was constructed to borrow material does not currently provide stormwater detention. However, it will eventually be constructed to provide stormwater detention. This will be done by elevating the pond using berms. Stormwater detention is required to be constructed before any development can occur, and currently it has not been constructed.

Member McGinnis asked if the stormwater detention will be improved to the point where it decreases the amount of runoff onto Mr. Richter's property.

Mr. Bennett responded it is not going to decrease the amount of runoff that occurs out there. When a property is developed, stormwater detention is required to be provided for the difference between a pre-development runoff rate and a post-development runoff rate. The pre-development rate is what is out there today. That runoff is going to continue to go down through the floodway, just as the runoff from Mr. Richter's ground continues to stream into the floodway. If Mr. Richter were to develop his ground, then he would have to detain the increased runoff between the pre-development and post-development.

Member McGinnis clarified there will be no change.

Mr. Bennett responded currently there would be no change. Once the land is developed there will be a change from the pre-development runoff rate to the post-development runoff rate. The stormwater detention would need to make it so that the 10-year stormwater runoff is released at the same rate that it is today.

Chairman Dart asked Mr. Richter to show the Commissioners where the property he owns is located relative to the subject property.

Mr. Richter indicated the plot of land he owns north of the subject property that has been developed for various commercial uses. This is why he cannot say he is against commercial property next to agriculture because he has done it.

Member Rickard stated the goal is to maintain the stormwater runoff rate, not make it worse. He believes that Mr. Richter is not going to stop the development as long as it does not make the water runoff problem any worse.

Mr. Richter noted the water has been a problem forever. He stated this project is like any other development. The second you add a building or pavement, there is going to be more runoff. As long as they construct the detention cell to retain the extra runoff, the water problems should not be any different than what it has been for the last 50-years.

Member Rickard mentioned they could eventually get a City street nearby with some culverts and drainage.

Mr. Richter stated he has some culverts on his property about 6-foot deep that go down to Clearview Subdivision and Wood River to the north.

Mr. Bennett pointed out that there is currently a C-2 commercial property right across from Clearview Subdivision. And that this C-2 corridor is consistent all the way along 2<sup>nd</sup> Avenue.

Chairman Dart closed the hearing.

Yaw's motion was based on the City's finding of fact.

Moved by Yaw and seconded by Rickard that the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) to rezone from District AG, Agricultural District to District C-O, Office District for property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) be submitted to City Council with a recommendation for approval.

Roll call resulted as follows: Aye: Rickard, Yaw, McGinnis, Dart, Malone, Dakan, Baker, Cochran. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

### **REZONING NO. 2025-09**

Application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) to rezone from District AG, Agricultural District to District C-2, Community Commercial District for property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue).

Chairman Dart opened the public hearing.

This item was discussed during Rezoning No. 2025-08.

Chairman Dart closed the hearing.

Yaw's motion was based on the City's finding of fact.

Moved by Yaw and seconded by Rickard that the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) to rezone from District AG, Agricultural District to District C-2, Community Commercial District for property described as a tract of land being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) be submitted to City Council with a recommendation for approval.

Roll call resulted as follows: Aye: Yaw, McGinnis, Dart, Malone, Dakan, Baker, Cochran, Rickard. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

### **PRELIMINARY PLAT NO. 2025-06**

Application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) for the Preliminary Plat for McCaslin Subdivision, a subdivision being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue). **\*FINAL ACTION\***

Chairman Dart opened the public hearing.

This item was discussed during Rezoning No. 2025-08.

Chairman Dart closed the hearing.

Yaw's motion was based on the City's finding of fact.

Moved by Yaw and seconded by Rickard that the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) for the Preliminary Plat for McCaslin Subdivision, a subdivision being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) be approved. **\*FINAL ACTION\***

Roll call resulted as follows: Aye: McGinnis, Dart, Malone, Dakan, Baker, Cochran, Rickard, Yaw. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

**FINAL PLAT NO. 2025-06**

Application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) for the Final Plat for McCaslin Subdivision, a subdivision being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue).

Chairman Dart opened the public hearing.

This item was discussed during Rezoning No. 2025-08.

Chairman Dart closed the hearing.

Yaw's motion was based on the City's finding of fact.

Moved by Yaw and seconded by Rickard that the application submitted by Miller & Associates (Applicant) for Keith L. McCaslin (Owner) for the Final Plat for McCaslin Subdivision, a subdivision being part of the Northeast Quarter of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (vacant parcel (560331102) north of 6740 North 2nd Avenue) be submitted to City Council with a recommendation for approval.

Roll call resulted as follows: Aye: Dart, Malone, Dakan, Baker, Cochran, Rickard, Yaw, McGinnis. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

**REPORTS**

None.

**ADJOURNMENT**

Moved by Rickard seconded by Yaw that the meeting be adjourned.

Roll call resulted as follows: Aye: Malone, Dakan, Baker, Cochran, Rickard, Yaw, McGinnis, Dart. Abstain: None. Absent: Scott-Pandorf. Nay: None. Motion carried.

*Melia Smith*

**Melia Smith  
Recording Secretary**

**PS PERSONNEL SERVICES**  
**SMCS SUPPLIES, MATERIALS, AND CONTRACTUAL SERVICES**  
**ER EQUIPMENT RENTAL**  
**CO CAPITAL OUTLAY**  
**DS DEBT SERVICE**

**Claims**  
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Vendor	Amount	Purpose	Vendor	Amount	Purpose
1000bulbs.com	\$1,290.74	smcs	Boogaarts	\$24.74	smcs
4Imprint	\$1,643.01	smcs	Bosselman	\$9,550.39	smcs
Accent Wire-Tie	\$1,843.96	smcs	Bossfuels	\$20,049.62	smcs
Ace Hardware	\$47.14	smcs	Brady Worldwide	\$329.93	smcs
Ace Irrigation	\$52.00	smcs	Brand Mgmt.	\$427.74	smcs
Acushnet	\$8,433.98	smcs	Breeze Transports	\$34.00	smcs
Adobe	\$2,060.79	smcs	Broadfoot's	\$1,050.00	smcs
Advance Auto Parts	\$6.64	smcs	Buffalo Co. Redi-Mix	\$33,341.63	smcs,co
Aero Specialties	\$1,372.46	co	Buffalo Co. Treasurer	\$30.75	smcs,co
Agri Coop	\$93,095.10	smcs	Buffalo Outdoor Power	\$966.10	smcs,co
Aim Surplus	\$991.05	smcs	Builders	\$933.89	smcs,co
Alfred Benesch	\$653.23	smcs	Business Code College	\$60.00	smcs
All City Garage	\$15,182.00	smcs	Cabela's	\$96.29	smcs
Alley Rose	\$40.00	smcs	Cal/Amp	\$808.50	smcs
Allo	\$708.04	smcs	Candlewood Suites	\$561.23	smcs
Alstrom, Jon	\$150.00	smcs	Canva	\$119.40	smcs
Amazon	\$18,727.05	smcs,co	Casey's	\$391.27	smcs
American	\$28.64	smcs	Cash Wa	\$12,484.33	smcs
American Backflow	\$1,860.71	smcs	CDW Govt.	\$446.39	smcs
American Button	\$267.70	smcs	Genex	\$31.35	smcs
American Legion	\$283.38	smcs	Central Electronics	\$16.78	smcs
American Red Cross	\$1,756.00	smcs	Central Hydraulic	\$110.75	smcs
Anderson Bros.	\$1,707.00	co	Central NE Bobcat	\$2,373.61	smcs
Anything Truck	\$281.11	smcs	Chemsearch	\$395.00	smcs
Apex Controls	\$241.51	smcs	Chesterman	\$4,838.75	smcs
Apple	\$7.96	smcs	Cintas	\$638.21	smcs
Apple Market	\$28.67	smcs	City of Kearney	\$35,782.71	smcs,ps
Arbico Organics	\$246.10	smcs	CityServiceValcon	\$63,501.20	smcs
Armor Equipment	\$1,369.08	smcs	Clan Lab Investigators	\$695.00	smcs
Arnold Motor	\$109.18	smcs	Clever Waiver	\$49.99	smcs
Ask Supply	\$2,350.54	smcs	Coaching Systems	\$1,800.00	smcs
AT&T	\$4,742.64	smcs	Cold Spring Granite	\$1,549.80	smcs
Aurora Coop	\$561.84	smcs	Column Public Notice	\$656.59	smcs
Aussie Hydraulics	\$137.09	smcs	Comfy Bowl	\$95.00	smcs
Automatic Systems	\$1,556.63	smcs	Comm. Action Partnership	\$1,751.50	smcs
Axon	\$341.25	smcs	Computer Hardware	\$1,629.90	co
B&H Photo	\$670.46	co	Consolidated Concrete	\$10,525.74	smcs,co
Baird Holm	\$4,215.75	smcs	Constant Contact	\$157.00	smcs
Baker & Taylor	\$2,849.91	smcs	Construction Rental	\$2,609.14	smcs
Ballard	\$96.29	smcs	Consumers Supply	\$2,695.00	smcs
Beacon Athletics	\$387.00	smcs	Control Yours	\$110.00	smcs
Benchmark Govt.	\$55.80	smcs	Copycat	\$803.23	smcs
Benjamin, Brook	\$27.93	smcs	Cornhusker Quick Stop	\$24.78	smcs
Benson Tree	\$2,999.00	smcs	Country Partners	\$56,436.84	smcs
Blackstone Library	\$1,254.15	smcs	Court Reserve	\$174.91	smcs
Blick Art	\$363.78	smcs	Cracker Barrel	\$1,309.46	smcs
Blue Force Gear	\$69.50	smcs	Crane River Theater	\$4,800.00	smcs
Blue to Gold	\$179.00	smcs	Culligan	\$343.40	smcs
BlueCross BlueShield	\$224,695.71	smcs	Cutter & Buck	\$576.82	smcs
Bomgaars	\$1,478.62	smcs,co	D & K Products	\$2,931.71	smcs

**PS PERSONNEL SERVICES**  
**SMCS SUPPLIES, MATERIALS, AND CONTRACTUAL SERVICES**  
**ER EQUIPMENT RENTAL**  
**CO CAPITAL OUTLAY**  
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**Claims**  
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Dandee Concrete	\$20,997.00	smcs,co	Floyd's Truck Center	\$6,139.21	smcs
Dan's Plumbing	\$388.30	smcs	Friesen Chevrolet	\$60.79	smcs
Data Shield	\$270.45	smcs	Friesen Ford	\$493.98	smcs
Davis Equipment	\$2,852.24	smcs	Frontier	\$3,042.70	smcs
Dawson Public Power	\$42,180.31	smcs	Fuehrer, Austin	\$6.74	smcs
Daylight Donuts	\$130.85	smcs	Fun Express	\$116.93	smcs
DBS Metal Design	\$6,750.00	co	Gale/Cengage	\$694.84	smcs
Decked	\$1,275.00	smcs	Game & Parks Mailroom	\$15.00	smcs
Demco	\$294.37	smcs	Garrels, Jason	\$550.00	smcs
Depository Trust Co.	\$826,696.26	ds	Garrett Tires	\$9,719.04	smcs
Detectachem	\$501.55	smcs	Gaylor Palms	\$1,541.24	smcs
Digicert	\$528.00	smcs	Gdit FAA	\$15.00	smcs
Dillons Fuel	\$72.56	smcs	Gear For Sports	\$800.59	smcs
Discount Online Parts	\$53.95	smcs	General Parts	\$1,097.28	smcs
Dish	\$146.10	smcs	Get Sling	\$563.90	smcs
Dival Safety	\$383.45	smcs	Global Aviation	\$100.00	smcs
Dmilaco	\$178.16	smcs	Glowforge Store	\$176.00	smcs
Dollar General	\$49.22	smcs	Go Physical Therapy	\$220.00	ps
Donkey Towing	\$125.00	smcs	Gonzalez, Rosas	\$39.61	smcs
Door Dash	\$442.90	smcs	Good Sportsman	\$68.00	smcs
Dostal, Kameron	\$624.00	smcs	Goodwill	\$9.98	smcs
Dowhy Towing	\$125.00	smcs	GPM Truck	\$1,908.26	smcs
Dry Creek Arsenal	\$10,796.45	smcs	Graham Tire	\$598.85	smcs
DTS Technology	\$32.09	smcs	Grainger	\$1,991.68	smcs
Dutton-Lainson	\$1,047.86	smcs	Great Plains Comm.	\$1,010.01	smcs
E Replacement Parts	\$148.85	smcs	Green Parts Store	\$204.14	smcs
Eagle Distributing	\$1,660.51	smcs	Hansen Int'l Truck	\$471.98	smcs
Eakes	\$5,276.66	smcs	Harbor Freight	\$512.54	smcs
Echo Electric	\$222.90	smcs	Heiman Fire	\$4,030.00	smcs
Ecolab	\$134.54	smcs	Heritage Landscape	\$105.36	smcs
Eileen's Cookies	\$28.00	smcs	Hi-Line Motors	\$364.00	smcs
Elite K9	\$91.35	smcs	Hilton Baltimore	\$227.95	smcs
Elliott Equipment	\$403,096.74	smcs,co	HireRight	\$10.76	smcs
Elyria Gardens	\$342.16	smcs	Hobby Lobby	\$536.59	smcs
Emblem Authority	\$996.00	smcs	Holiday Inn Express	\$418.70	smcs
Engel, Taya	\$28.15	smcs	Holmes Plumbing	\$2,485.65	smcs
Enterprise	\$49.95	smcs	Home Depot	\$7,118.50	smcs,co
Epic Sports	\$464.98	co	Hometown Leasing	\$10,486.00	co
ESO Solutions	\$6,080.56	smcs	Hooker Bros.	\$685.00	smcs
Etrailer	\$239.72	smcs	Houser, Lee	\$777.90	smcs
Etsy	\$42.80	smcs	Hub Int'l	\$7,209.92	smcs
Eyemed	\$2,508.60	smcs	Hydrovac Supply	\$5,040.09	smcs
EZ Turf	\$156.63	co	Hy-Vee	\$2,860.29	smcs
Facebook	\$184.52	smcs	IACA	\$25.00	smcs
Family Fresh	\$59.04	smcs	Idemia Identity & Security	\$17,107.00	smcs
Fastenal	\$176.52	smcs	Ihydrant	\$3,210.00	smcs
Faz, Anthony	\$320.00	smcs	Instacart	\$23.57	smcs
FBI Nat'l Academy	\$695.00	smcs	Int'l Road	\$677.18	smcs
Feld Fire	\$4,151.86	smcs	Invoice Home	\$5.28	smcs
Financial Partners Group	\$2,768.29	co	Iprint Technologies	\$1,322.00	smcs
Flight Light	\$207.10	smcs	IRS	\$227,004.82	ps

**PS PERSONNEL SERVICES**  
**SMCS SUPPLIES, MATERIALS, AND CONTRACTUAL SERVICES**  
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Jack Lederman	\$357.55	smcs,co	Microsoft	\$120.81	smcs
Jackson Services	\$351.14	smcs,co	Midland Scientific	\$1,906.91	smcs
Jensen, Brenda	\$182.00	smcs	Midlands Contracting	\$270.00	smcs
Jimmy Johns	\$179.60	smcs	Mid-NE Digging	\$2,600.00	co
John T. Jones Const.	\$23,846.00	co	Midplains Equipment	\$940.30	smcs
Johnson Brothers	\$4,793.97	smcs	Mid-State Irrigation	\$83.15	smcs
Johnson Landscape	\$7,784.11	smcs	Midway USA	\$1,710.11	smcs
Johnstone Supply	\$1,497.45	smcs	Midwest Connect	\$640.69	smcs
Jon Don	\$176.06	smcs	Midwest Petroleum	\$519.80	smcs
Kanopy	\$1,570.35	smcs	Midwest Turf	\$394.03	smcs
Katom Restaurant	\$233.63	smcs	Miller & Associates	\$68,438.37	co
Kea Constructors	\$70,725.06	smcs	Miller, Janice	\$36.13	smcs
Kearney Animal Shelter	\$15,675.50	smcs	Mirror Image	\$345.22	smcs
Kearney Crete & Block	\$8,834.94	smcs,co	Mission Square	\$20,797.33	ps
Kearney Hub	\$739.58	smcs	Modern Imaging	\$141.90	smcs
Kearney Power Sports	\$1,628.18	smcs	Moonlight Embroidery	\$153.00	smcs
Kearney Tire & Auto	\$1,326.64	smcs	Municipal Supply	\$99,771.74	smcs,co
Kearney Towing	\$583.25	smcs	MyRec	\$6,760.00	smcs
Kearney Warehouse	\$804.05	smcs	Napa	\$4,212.77	smcs
Keifer Aquatics	\$1,246.30	smcs	NASRO	\$50.00	smcs
Kelly Supply	\$3,615.24	smcs	Nat'l Safety Gear	\$636.75	smcs
Kewanna Screenprinting	\$430.72	smcs	Navigator Motorcoaches	\$240.00	smcs
KGFW KQKY KRNY	\$200.00	smcs	NDEE	\$725.00	smcs
Kimball Midwest	\$110.11	smcs	NE Board Public Account.	\$200.00	smcs
Kingery, Kael	\$21.61	smcs	NE Child Support	\$1,531.72	ps
Konica Minolta	\$430.94	smcs	NE Flight School	\$45.00	smcs
Kowalek, Gabe	\$182.50	smcs	NE Generator	\$50,272.76	smcs,co
Kully Supply	\$103.72	smcs	NE Machinery	\$298,766.63	smcs,co
Lakeshore Learning	\$39.57	smcs	NE Truck Center	\$587.62	smcs
Landmark Implement	\$9,050.05	smcs	NE335	\$10.70	smcs
Law Enforcement	\$890.00	smcs	Network Solutions	\$238.28	smcs
LCL Truck Equip.	\$3,897.42	smcs	NI SFM Boiler	\$36.00	smcs
League NE Municipalities	\$1,166.00	smcs	NLETC	\$175.00	smcs
Lerner LPG	\$199.99	smcs	North American Rescue	\$708.60	smcs
Levander's	\$1,462.80	smcs	North Carolina Farms	\$546.80	smcs
Lincoln Journal Star	\$14.99	smcs	Northwestern Energy	\$1,239.88	smcs
Lincoln Pro Baseball	\$357.00	smcs	NU CPS Registration	\$1,100.00	smcs
Lindner, Lacie	\$283.50	smcs	Office Depot	\$204.82	smcs
Line of Fire Defense	\$836.70	smcs	Office Max	\$1,679.46	smcs
Logan Contractors	\$308.73	smcs	Olde Towne Tattoo	\$26.00	smcs
Macqueen	\$17,860.51	smcs	Omaha Sports	\$2,985.32	smcs
Marriott	\$1,386.84	smcs	Omaha Track	\$1,498.00	smcs
Matheson Trigas	\$1,692.94	smcs	Omnify	\$563.50	smcs
Mauslein Welding	\$732.10	smcs	One Call Concepts	\$643.82	smcs
McCormack Distrib.	\$58.95	smcs	O'Reilly Auto	\$3,716.29	smcs
MCL Construction	\$1,231,270.07	co	OTC Brands	\$1,498.42	smcs
Med Tech Forensics	\$1,430.53	smcs	Outdoor Recreation	\$556.94	smcs
Menards	\$12,326.06	smcs,co	Packer Brothers	\$132.75	smcs
Merrill Company	\$741.96	smcs	Panera Bread	\$122.66	smcs
MFAC	\$259.21	smcs	Papermart	\$246.69	smcs
Michael's	\$202.04	smcs	Paying for Event	\$80.00	smcs

**PS PERSONNEL SERVICES**  
**SMCS SUPPLIES, MATERIALS, AND CONTRACTUAL SERVICES**  
**ER EQUIPMENT RENTAL**  
**CO CAPITAL OUTLAY**  
**DS DEBT SERVICE**

**Claims**  
**June 24, 2025**  
**Page 4**

PB Online Postage	\$515.00	smcs	Sirchie Acquisition	\$170.47	smcs
Pep Co.	\$275.63	smcs	SLA Corp.	\$3,207.48	smcs
Peterbilt of Lincoln	\$1,139.40	smcs	SOS Portable Toilets	\$75.00	smcs
Petsmart	\$497.26	smcs	Southern Glazier's	\$1,839.84	smcs
Phillips 66	\$143.00	smcs	Spectrum	\$142.99	smcs
Ping	\$72.40	smcs	Sprinkler Warehouse	\$5,670.08	smcs
Plaid Online	\$84.90	smcs	Steinbrink Landscaping	\$5,581.31	smcs
Platte Valley Auto	\$2,322.18	smcs	Stryker Sales	\$2,314.07	co
Platte Valley Comm.	\$1,725.06	smcs	Stutsman	\$2,745.00	smcs
PMC	\$45.00	smcs	Supply House	\$188.57	smcs
Pollard Water	\$465.29	smcs	Swim Outlet	\$1,477.51	smcs
Poster My Wall	\$44.90	smcs	T&T Mobile Washing	\$1,072.50	smcs
Prairie Legal	\$147.39	smcs	Target	\$515.32	smcs
Prairie Moon Nursery	\$2,506.32	smcs	Target Solutions Learning	\$7,140.56	smcs
Presto-X	\$621.87	smcs	TCH Central	\$916.16	co
Prime Secured	\$1,544.80	smcs	Teachers Pay Teachers	\$19.24	smcs
Prime Video	\$6.41	smcs	Tiger Tough	\$253.60	smcs
Pro Dryers	\$84.47	smcs	Titan Machinery	\$2,239.68	smcs
PSI Exams	\$175.00	smcs	T-Mobile	\$70.80	smcs
Quizzizz	\$468.00	smcs	Tommy's Express	\$455.00	smcs
Ray Allen Manufacturing	\$195.97	smcs	Tractor Supply	\$4,131.42	smcs
RDG Planning	\$6,428.75	co	Traffic Safety Store	\$290.02	smcs
Ready Mixed Concrete	\$21,400.00	smcs,co	Trans Lux Midwest	\$1,515.79	smcs
Reams	\$290.64	smcs	Transunion	\$110.40	smcs
Recon Power Bikes	\$151.98	smcs	Trausch, Pat	\$60.00	smcs
Recreonics	\$784.54	smcs	Travel Guard Group	\$24.36	smcs
Redman's Shoes	\$280.00	smcs,co	Tri City Concrete	\$1,489.25	smcs
Reinke's	\$1,054.81	smcs	Triple Crown Products	\$1,314.31	smcs
Rentokil	\$1,163.73	smcs	True Value	\$749.92	smcs
Rheome Tree	\$9,700.00	smcs	Turner Body Shop	\$939.83	smcs
Ring, Eric	\$321.75	smcs	Ty's Outdoor	\$116.54	smcs
River Front Glass	\$632.10	smcs	U.S Postmaster	\$436.00	smcs
S&J Construction	\$23,315.00	co	Uber	\$74.54	smcs
Safelite Solutions	\$289.99	smcs	UL	\$9,537.76	smcs
Sam's Club	\$179.64	smcs	Uline	\$961.77	smcs
Sandhill Plastics	\$169.96	smcs	Unifirst Corp.	\$177.15	smcs
Sapp. Bros.	\$1,004.00	smcs	Union Bank & Trust	\$117,906.22	ps
Sayler Screenprinting	\$5,880.43	smcs,co	Unique Management	\$139.80	smcs
Schroeder, Micah	\$235.50	smcs	United	\$982.13	smcs
Scrimger, John	\$17.60	smcs	University of MO	\$16,300.00	smcs
Second Look Training	\$650.00	smcs	UPS	\$253.48	smcs
Secretary of State	\$32.50	smcs	USPS	\$932.18	smcs
See Clear Cleaning	\$2,022.50	smcs	Vestis Services	\$587.42	smcs
Seivert, James	\$124.11	smcs	Video Kingdom	\$129.99	smcs
Select Sprayers	\$280.85	smcs	Village Services	\$206.81	smcs
Sell, Andrew	\$30.90	smcs	VW Golf	\$122.33	smcs
Sellmark	\$720.00	smcs	Wal-Mart	\$2,201.31	smcs
Sherwin Williams	\$461.77	smcs	Walters Electric	\$4,860.07	smcs
Shuffle Board	\$695.00	smcs	Warren-T Plumbing	\$750.94	smcs
Siebert, Paul	\$150.00	smcs	Western NRG	\$225.00	smcs
Sig Sauer	\$641.98	smcs	White Cap	\$28,759.90	co





# COUNCIL AGENDA MEMO

## ITEM NO. IV - #4

---

**FROM:** *Peggy Eynetich, City Clerk  
Jake Misener, Deputy City Clerk*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Walmart Inc dba Walmart 598 Manager Application*

**PRESENTER:** *No Presenter – Consent Agenda*

**Discussion:**

On May 29, 2025 the City received the attached manager application for Christel Armstrong submitted by Walmart Inc dba Walmart 598 located at 5411 2nd Avenue in connection with their D-102565 liquor license.

Walmart 598 has held a liquor license since 1995. Ms. Armstrong has submitted the Liquor License Training Compliance form, and their Certificates of Training are on file with the City.

**Fiscal Note:**

There is no fiscal impact regarding this application.

**Recommended Action:**

Staff recommends authorizing the Mayor to submit a letter of no recommendation to the Nebraska Liquor Control Commission.



# CITY OF KEARNEY, NEBRASKA LIQUOR LICENSE TRAINING COMPLIANCE

Please complete this form in type or print and return to the Kearney City Clerk, 18 East 22nd Street, Kearney, Nebraska no later than **June 10, 2025**. If additional space is required to answer any question, submit another separate page. **You and all employees must have completed or will complete training which has been approved by the Nebraska Liquor Control Commission.**

Date: June 2, 2025

Applicant: Walmart INC dba Walmart 598

Proposed licensed address: 5411 2nd Avenue

Number of employees: Full Time 251 Part-Time 126

Are any employees under the age of 19 years? Yes X No \_\_\_\_\_

If under the age of 19 years, what precautions have you taken or will take to ensure that these employees will not have access to, or handle, sell, or consume alcoholic beverages?

Our register blocks all minors from completing any restricted transactions. All associate complete computer based training to educate on all restricted transactions.

What training program have you and your staff taken with regard to the dispensing and/or selling of alcoholic beverages to the public?

- Responsible Beverage Server Training Program  
 Date completed. **Attach Training Certificate for each employee**
  - Other – Please list the certified training program you and your staff have taken or will be taking within the time specified in the City of Kearney’s Liquor Policy.  
\_\_\_\_\_ Date completed. **Attach Training Certificate for each employee**
- 
- 
- 

I hereby certify that proper training on the dispensing and/or selling of alcoholic beverages to the public have been or will be provided and completed by all persons associated with the business and the Training Certificate(s) are attached hereto or will be provided as required by the City’s Liquor License Policy.

  
\_\_\_\_\_  
Corporate Manager



## Application Copy

File Number: 102565

AMENDMENT TYPE Manager Change Amendment	APPLICATION DATE RECEIVED 2025-05-14
CURRENT MANAGER NAME KELLY J QUINTERO	CURRENT MANAGER EMAIL [REDACTED]
NEW MANAGER NAME Christel K. Armstrong	NEW MANAGER EMAIL [REDACTED]

### QUESTIONS

#### Class D Beer, Wine, Spirits Off S

1. Per Nebraska Revised Statute 53-103.18 - Manager, defined: Manager means a person appointed by a corporation or limited liability company to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the Nebraska Liquor Control Act as though he or she were the applicant, including residency.

What is the premises manager's name?

Christel K. Armstrong

2. What is the manager's address?

[REDACTED]

3. What is the manager's phone number?

[REDACTED]

4. What is the manager's email address? An email will be sent to them to obtain their personal information.

[REDACTED]

5. What county is the manager registered to vote in?

The manager must be a resident of the state of Nebraska. If the manager is not registered to vote they can complete their voter registration here - <https://www.nebraska.gov/apps-sos-voter-registration/>

Dawson

6. Is the manager married?

Yes

Cameron M. Armstrong

7. Do you have prior experience or training in selling, serving or managing alcohol sales?

No

8. Do you qualify under Nebraska Liquor Control Act (53-131.01) and do you intend to supervise, in person, the management of the business?

Yes

9. READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY §53-125(5)

Has the new manager, or their spouse, EVER been convicted of or plead guilty to any charge? Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year (& month if known) of the conviction or plea. This question includes traffic violations other than speeding. PLEASE NOTE: NOTIFICATION IS REQUIRED TO THE LIQUOR COMMISSION IF ANY ARRESTS OR CONVICTIONS OCCUR AFTER THE SUBMISSION OF THIS APPLICATION

Yes

(document uploaded)

DOCUMENTS

TYPE	FILE NAME	DESCRIPTION
Affidavit of non-participation	image2025-05-14-124218_Part9.pdf	
Explanation of Convictions/Guilty Pleas	image2025-05-14-124218_Part5.pdf	
Additional Document	image2025-05-14-124218.pdf	
Additional Document	image2025-05-14-124236.pdf	

APPLICANT

Walmart Licensing

DECLARATION

I (We) the applicant(s) agree and consent

I declare under penalty of perjury that I have read the contents of this amendment application and, to the best of my knowledge, believe all statements made in this application are true, correct, and complete.

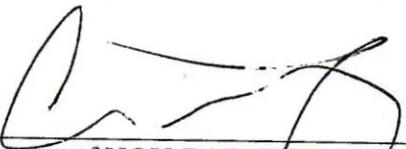
**SPOUSAL AFFIDAVIT OF  
NON PARTICIPATION INSERT**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov

Office Use

I acknowledge that I am the spouse of a liquor license holder. My signature below confirms that I will not have any interest, directly or indirectly in the operation of the business (§53-125(13)) of the Liquor Control Act. I will not tend bar, make sales, serve patrons, stock shelves, write checks, sign invoices, represent myself as the owner or **in any way participate in the day to day operations of this business in any capacity.** The penalty guideline for violation of this affidavit is cancellation of the liquor license.

I acknowledge that I am the applicant of the non-participating spouse of the individual signing below. I understand that my spouse and I are responsible for compliance with the conditions set out above. If, it is determined that my spouse has violated (§53-125(13)) the commission may cancel or revoke the liquor license.

  
\_\_\_\_\_  
Signature of **NON-PARTICIPATING SPOUSE**  
Cameron Armstrong  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature of **APPLICANT**  
Christel Armstrong  
\_\_\_\_\_  
Print Name

State of Nebraska, County of Dawson

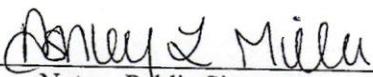
State of Nebraska, County of Buffalo

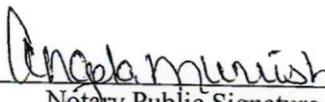
The foregoing instrument was acknowledged before me  
this April 14, 2025 (date)

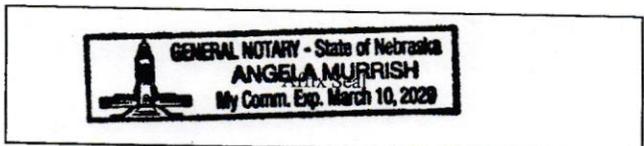
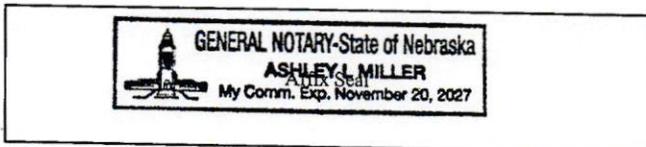
The foregoing instrument was acknowledged before me  
this April 25, 2025 (date)

by Ashley L. Miller  
\_\_\_\_\_  
Name of person acknowledged  
(Individual signing document)

by Angela Murrish  
\_\_\_\_\_  
Name of person acknowledged  
(Individual signing document)

  
\_\_\_\_\_  
Notary Public Signature

  
\_\_\_\_\_  
Notary Public Signature



In compliance with the ADA, this spousal affidavit of non participation is available in other formats for persons with disabilities.  
A ten day advance period is requested in writing to produce the alternate format.

**SPOUSAL AFFIDAVIT OF  
NON PARTICIPATION INSERT**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov

Office Use

I acknowledge that I am the spouse of a liquor license holder. My signature below confirms that I will not have any interest, directly or indirectly in the operation of the business (§53-125(13)) of the Liquor Control Act. I will not tend bar, make sales, serve patrons, stock shelves, write checks, sign invoices, represent myself as the owner or **in any way participate in the day to day operations of this business in any capacity.** The penalty guideline for violation of this affidavit is cancellation of the liquor license.

I acknowledge that I am the applicant of the non-participating spouse of the individual signing below. I understand that my spouse and I are responsible for compliance with the conditions set out above. If, it is determined that my spouse has violated (§53-125(13)) the commission may cancel or revoke the liquor license.

*Cameron M. Armstrong*  
Signature of **NON-PARTICIPATING SPOUSE**  
Cameron M. Armstrong  
Print Name

*Christel Armstrong*  
Signature of **APPLICANT**  
Christel Armstrong  
Print Name

State of Nebraska, County of Dawson

State of Nebraska, County of Buffalo

The foregoing instrument was acknowledged before me  
this 19<sup>th</sup> of May 2025 (date)

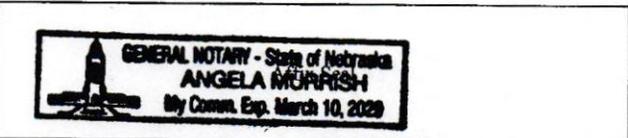
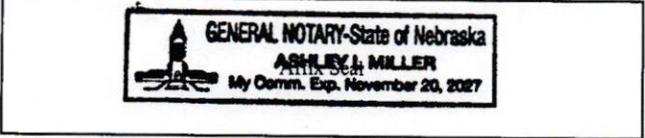
The foregoing instrument was acknowledged before me  
this 23<sup>rd</sup> day of May 2025 (date)

by Cameron M. Armstrong  
Name of person acknowledged  
(Individual signing document)

by Christel Armstrong  
Name of person acknowledged  
(Individual signing document)

*Ashley L Miller*  
Notary Public Signature

*Angela Murphy*  
Notary Public Signature



In compliance with the ADA, this spousal affidavit of non participation is available in other formats for persons with disabilities. A ten day advance period is requested in writing to produce the alternate format.



# COUNCIL AGENDA MEMO

## ITEM NO. IV - #5

---

**FROM:** *Brenda Jensen, City Manager  
Jason Whalen, Fire Administrator*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Fire Station #3 Professional Design Consultant Selection*

**PRESENTER:** *No Presenter – Consent Agenda*

**Discussion:**

As the City of Kearney is working towards the development of Fire Station #3 for the Kearney Volunteer Fire Department, the City advertised for Request for Qualifications for Professional Design Services for the design of the new fire station. On May 6th, nine (9) firms/teams submitted statements of qualification. Three (3) firms/teams were shortlisted to interview with the selection committee. Firms/teams submitting qualifications for the project included: CMBA Architects, Good Life Architects, LLC, Prochaska & Associates, Stone Group Architects, Davis Design, Erickson Sullivan Architects & Associates, LLC, Leo A. Daly, and Wilkins + Parkhill.

A selection committee made up of City Staff from Administration and the Fire Department as well as representatives from the Kearney Volunteer Fire Department conducted interviews with short-listed firms to review and score the qualification-based proposals and recommends pursuing an agreement with the Wilkins ADP + Parkhill team. Wilkins ADP + Parkhill's proposal scored the highest based on the outlined criteria of fire station experience, team and services expertise, experience with Construction Manager at Risk style of construction, schedule and budget success, communication and references, and scope and project approach.

**Fiscal Note:**

Professional design services are factored into the project budget and are included in the FY 2026 budget for the overall project costs of the Fire Station #3 project.

**Recommended Action:**

Staff recommends accepting the Committee's recommendation on the selection of Wilkins ADP + Parkhill Team and approving the Agreement for Professional Design Services for Kearney Volunteer Fire Department Station #3 with Wilkins ADP + Parkhill.

## **RESOLUTION NO. 2025-67**

**BE IT RESOLVED** by the President and Council of the City of Kearney, Nebraska, that the Standard Form of Agreement Between Owner and Architect entered into by the City of Kearney and Wilkins Architecture Design Planning LLC for the purpose of providing professional services for the Kearney Volunteer Fire Department Fire Station No. 3, be and is hereby approved. The Agreement, marked as Exhibit 'A', is hereby attached hereto and made a part hereof by reference.

**BE IT FURTHER RESOLVED** that the President of the Council be and is hereby authorized and directed to execute the Standard Form of Agreement Between Owner and Architect on behalf of the City of Kearney.

**PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

---

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

---

**PEGGY EYNETICH  
CITY CLERK**



# AIA® Document B101® – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Fifteenth day of June in the year Two Thousand Twenty Five  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect’s client identified as the Owner:  
*(Name, legal status, address and other information)*

City of Kearney, Nebraska  
18 East 22<sup>nd</sup> Street  
Kearney, NE 68847

and the Architect:  
*(Name, legal status, address and other information)*

Wilkins Architecture Design Planning LLC  
2204 University Drive, Suite 130  
Kearney Nebraska 68845  
308-237-5787

for the following Project:  
*(Name, location and detailed description)*

City of Kearney Fire Station No. 3  
1307 East 48th Street  
Kearney, NE

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Phase One:

Facilities Assessment and Conceptual Master Planning for the City of Kearney owned fire facilities.

1) Analysis of existing facilities and site infrastructure including:

A. All aspects of the following fire facilities including building envelope, building systems, technology, built-in equipment and site provisions and access:

Fire Station #1 at 2211 Avenue A in Kearney

Fire Station #2 at 3820 30th Avenue in Kearney

Fire Station #3 at 5145 Airport Road (at Kearney Regional Airport)

2) Develop Program Needs Analysis, planned facilities will be designed to accommodate projected growth in Kearney Volunteer Fire Department (KVFD) and projected fire fighting advancements for the next period of years to be determined by the city of Kearney.

3) Incorporating analysis of No.1 and No. 2 above, prepare options for Conceptual Master Plan(s) incorporating operations, procedures and Owner required improvements.

4) Perform general evaluation of adjacent property/land and plan expansion of existing site or site improvement elsewhere.

Init.

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5) Upon finalization of the program, ARCHITECT will site the program on the existing site or develop the Design Criteria to site elsewhere.

6) Prepare Conceptual Master Plan Concept Level cost estimates based on options developed.

**§ 1.1.2** The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

Phase Two: consists of a new Kearney Volunteer Fire Department ("KVFD") fire station, to be known as Fire Station No. 3 with an anticipated size of 15,000 to 20,000 square feet to meet the operational and functional requirements of the fire department.

1307 East 48th Street  
Kearney, NE 68845

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

TBD

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Complete bidding documents December 2026

.2 Construction commencement date:

March 2027

.3 Substantial Completion date or dates:

*(Paragraphs deleted)* July 2027

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project:

*(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)*

Will be determined after conferring with Owner. Likely to be competitive bid design-bid-build method.

*(Paragraphs deleted)*

**§ 1.1.7** The Owner identifies the following representative in accordance with Section 5.3:

*(List name, address, and other contact information.)*

Jason Whalen  
Fire Administrator  
2211 Ave A  
Kearney, NE 68848  
308-233-3226

**§ 1.1.8** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

Init.

*(List name, address, and other contact information.)*

N/A

**§ 1.1.9** The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

**.1** Geotechnical Engineer:

TBD

**.2** Topographic Surveyor:

TBD

**.3** Other, if any:

*(List any other consultants and contractors retained by the Owner.)*

**§ 1.1.10** The Architect identifies the following representative in accordance with Section 2.3:

*(List name, address, and other contact information.)*

Jacob M. Sertich  
Wilkins Architecture Design Planning LLC  
2204 University Drive, Suite 130  
Kearney Nebraska 68845  
308-237-5787

**§ 1.1.11** The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

*(List name, legal status, address, and other contact information.)*

**§ 1.1.11.1** Consultants retained under Basic Services:

**.1** Structural Engineer:

Olsson, Inc.  
601 P Street, Ste 200  
Lincoln, NE 68501

**.2** Mechanical Engineer:

Olsson, Inc.  
601 P Street, Ste 200  
Lincoln, NE 68501

**.3** Electrical Engineer:

Olsson, Inc.  
601 P Street, Ste 200  
Lincoln, NE 68501

**.4** Civil Engineer:

Olsson, Inc.  
601 P Street, Ste 200  
Lincoln, NE 68501

**.5** Architect:

Parkhill

Init.

4222 85<sup>th</sup> Street  
Lubbock, TX 79423

**§ 1.1.11.2** Consultants retained under Supplemental Services:

N/A

**§ 1.1.12** Other Initial Information on which the Agreement is based:

N/A

**§ 1.2** The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 1.3.1** Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

**§ 2.4** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

**§ 2.5** The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

**§ 2.5.1** Commercial General Liability with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) for each occurrence and Four Million Dollars and Zero Cents (\$ 4,000,000.00 ) in the aggregate for bodily injury and property damage.

Init.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

*(Paragraph deleted)*

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) per claim and Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

*(Paragraph deleted)*

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, and request the Owner's approval.

### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

**§ 3.4.4** The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### **§ 3.5.3 Negotiated Proposals**

**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

- 4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor’s submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect’s professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor’s responsibility. The Architect’s review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor’s design professional, provided the submittals bear such professional’s seal and signature when submitted to the Architect. The Architect’s review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Owner/Architect

Init.

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Owner
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	Owner
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

**§ 4.1.2 Description of Supplemental Services**

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

4.1.1.1 Programming: The program was already developed in a previous study.

4.1.1.6 Building Information Modeling: The Architect, as a part of basic services, shall provide a Building Information Model, but any updates to the Building Information Model during construction phase would be Additional Services.

4.1.1.8 Civil Engineering: The Architect shall contract with a civil engineering firm to provide design and

documentation of all site work above and below ground beyond a line 5' from the outside face of the building wall to the adjacent public right of way or utility whichever is farther.

4.1.1.10 Architectural Interior Design: The Architect shall provide interior design services for all interior finishes which are built-in or permanently applied to built-in construction.

4.1.1.20 Architect's coordination of the Owner's Consultants: Architect to coordinate with any consultant that the Owner provides.

**§ 4.1.2.2** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

4.1.1.1 Programming: The program was already developed in a previous study.

4.1.1.9 Landscape Design: The Owner shall provide landscape design which shall include all trees, plantings, edging, mulching, ground cover, and irrigation.

4.1.1.21 Telecommunications/Data Design: The Owner shall contract with a qualified Telecommunications/Data firm for the design, purchase and installation of all equipment, racks, etc. The Architects Engineer Consultant will design and specify all concealed wiring and terminations based on this information provided by the Owner.

4.1.1.22 Security evaluation and planning: The Owner shall contract with a qualified Security, Access Control and Surveillance firm for the design, purchase, and installation of all security, access control, and surveillance equipment. The Architect's Electrical Engineer Consultant will design and specify all concealed wiring, terminations and pathways based on this information provided by the Owner.

4.1.1.28 Furniture, Furnishings, and Equipment Design: The Owner shall contract for services to design, purchase and installation of furniture, furnishings, and equipment outside this contract. The Architect shall coordinate with this information provided by the Owner's consultants if available prior to completion of the construction Documents.

*(Paragraph deleted)*

## **§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

*(Paragraph deleted)*

- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
  - .9 Evaluation of the qualifications of entities providing bids or proposals;
  - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- or,

.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 One ( 1 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Eight ( 8 ) visits to the site by the Architect during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve ( 12 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

*(Paragraph deleted)*

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the

Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official

regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

*(Paragraphs deleted)*

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 9.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:  
*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

N/A

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the

completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum  
(Insert amount)

Phase One Facilities Assessment and Conceptual Master Planning Fixed Fee of \$42,500 plus reimbursable expenses.

.2 Percentage Basis  
(Insert percentage value)

Phase Two: 8% of Construction Costs, plus reimbursables

.3 Other  
(Describe the method of compensation)

(Paragraphs deleted)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Managing Principal	\$200.00/hour
Professional	\$175.00/hour
Technical	\$120.00/hour
Professional Support	\$ 75.00/hour

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as follows:  
*(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)*

N/A

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Thirty	percent (	30	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Managing Principal	\$200.00
Professional	\$175.00
Technical	\$120.00
Professional Support	\$ 75.00

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;

*(Paragraphs deleted)*

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of

additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

- .9 All taxes levied on professional services and on reimbursable expenses;
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Eight percent ( 8 %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

### § 11.10 **Payments to the Architect**

#### § 11.10.1 **Initial Payments**

§ 11.10.1.1 An initial payment of Zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

*(Paragraph deleted)*

#### § 11.10.2 **Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

1.50 % monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

*(Include other terms and conditions applicable to this Agreement.)*

12.1 Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the Owner agrees that, except for negligence on the part of the Design Professional, the Owner will hold harmless, indemnify and defend the Design Professional from and against any and all claims arising out of the professional services provided under this agreement.

12.2 It is understood and agreed that this contract does not contemplate handling of, or design including use of, asbestos, or any other hazardous waste material. Therefore, the Owner agrees to hold harmless, defend and indemnify the Architect/Engineer from all claims, lawsuits, expenses, or damages arising from or related to the handling, use, treatment, purchase, sale, storage or disposal of asbestos products or any hazardous waste material (or hazardous material in general).

12.3 Architect and the Owner mutually agree, to the fullest extent permitted by law, to indemnify and hold each other

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to personal injury or property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

12.4 Notwithstanding any other provision of this Agreement, the Owner agrees that, to the fullest extent permitted by law, Architect total liability to the Owner for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through the Architect under this Agreement, shall not exceed the total amount of the Architects fees earned under this Agreement. The Owner acknowledges that such causes include, but are not limited to, Architect's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect  
*(Paragraphs deleted)*
- .4 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
Jonathan Nikkila, Mayor of Kearney  
*(Printed name and title)*

  
\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
Jacob M. Sertich, AIA/Managing Principal  
*(Printed name, title, and license number, if required)*



# COUNCIL AGENDA MEMO

## ITEM NO. IV - #6

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**FROM:** Sarah Sawin, Director of Utilities

**MEETING:** June 24, 2025

**SUBJECT:** Developer Constructed Infrastructure Agreement for Elementary School Second Addition

**PRESENTER:** No Presenter – Consent Agenda

**Discussion:**

The Developer for Elementary School Second Addition (Barney Financial at 5402 N Avenue) has agreed to enter into a Developer Constructed Infrastructure Agreement to build a public water main, meeting City Specifications. The Developer has signed the Developer Constructed Infrastructure Agreement and plans to begin work soon.

The estimated cost of the public improvements is \$10,000.00 for the water infrastructure.

The public infrastructure will be constructed according to the City of Kearney Standard Specifications and will be conveyed to the City to own and operate after it is accepted by the City Council.

**Fiscal Note:**

The City will reimburse the Developer for infrastructure that would normally be a general obligation cost to the City, if it were built under the improvement district method. The estimated reimbursable cost is \$0.00, as the primary purpose of the main and fire hydrant is fire protection.

**Recommended Action:**

Staff recommends that the Council approve the Resolution authorizing the Mayor to sign the Developer Constructed Infrastructure Agreement for Elementary School Second Addition (Barney Financial at 5402 N Avenue) on behalf of the City.

## **RESOLUTION NO. 2025-68**

**BE IT RESOLVED** by the President and City Council of the City of Kearney, Nebraska that the agreement entitled “Developer Constructed Infrastructure Agreement for Elementary School Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska” between the City of Kearney and Dave Chally, Managing Member of Stewardship Properties, LLC, a Nebraska Limited Liability Company for the construction of a public water main for Lot 1, Elementary School Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska be and is hereby accepted and approved. The Agreement, marked as Exhibit “A” is attached hereto and made a part hereof.

**BE IT FURTHER RESOLVED** that the President of the Council be and is hereby authorized and directed to execute the same agreement on behalf of the City of Kearney.

**PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

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

---

**PEGGY EYNETICH  
CITY CLERK**

**Developer Constructed Infrastructure Agreement For  
Elementary School Second Addition,  
An Addition to the City of Kearney, Buffalo County, Nebraska**

**WHEREAS**, Dave Chally, Managing Member of Stewardship Properties, LLC, a Nebraska Limited Liability Company (hereinafter referred to as “Owner” or “Developer”), being the Owner of the following described tract of land;

Lot 1, Elementary School Second Addition, an Addition to the City of Kearney, Buffalo County, Nebraska; and

**WHEREAS**, the Owner desires to construct a public water main to serve the previously described property, in accordance with Construction Plans on file with the City of Kearney, Development Services; and

**WHEREAS**, the Owner’s representative has met with the City of Kearney Development Review Team (DRT) and the DRT has assigned the development, DRT No. 24-009; and

**WHEREAS**, public improvements must be designed and constructed in compliance with the City of Kearney Subdivision Design Manual and Standard Specifications; and

**WHEREAS**, the Owner desires to utilize the Developer Constructed Infrastructure process outlined in Chapter 9 of the Kearney City Code to design, construct and pay for the public improvements;

**NOW, THEREFORE**, the undersigned Owner and the City of Kearney, Nebraska (hereinafter referred to as the “City”), in consideration of the mutual covenants and agreements herein contained, agree as follows.

**OWNER AGREES AS FOLLOWS:**

- 1) To comply with the terms and conditions of the City Code, Sections 9-1301 through 9-1319 inclusive: entitled “Developer Constructed Infrastructure,” a copy of which is attached hereto and made part hereof by reference. NO WORK SHALL BE PERMITTED ON THE PUBLIC IMPROVEMENTS UNTIL BONDS AND INSURANCE ARE IN PLACE AND APPROVED BY THE CITY. The Owner agrees to construct the following improvements:
  - a) Construction of six-inch (6”) diameter ductile iron pipe water main as follows;
    - i) From the existing sixteen-inch (16”) water main located along the east side of N Avenue, westward crossing N Avenue ending with a fire hydrant located approximately one-hundred-fifty-feet (150’) north of the south lot line of Lot 1, Elementary School Second Addition.

Including all appurtenances, paving removal and replacement, water main connections, boring, encasement pipe, fittings, valves, fire hydrants, and water services. Based on the Owner's estimate the cost of the water main is \$10,000.00.

- 2) To contact the City for review prior to any changes being made to the quantity of reimbursable infrastructure. Any changes made and items added to the project that will alter or increase the reimbursement amount, as compared to the estimate from the City, will be at the City's discretion for reimbursement.
  - a) Any proposed changes shall be sent to the City Engineer and the Director of Utilities for review. An approval to increase the reimbursement amounts will need to come, in writing, from the City.
- 3) To retain the services of a licensed Professional Engineer, hereinafter referred to as "Engineer", to design the water. To have the Engineer submit a complete set of plans and specifications for the public improvements to the City's Director of Public Works and Director of Utilities for formal review.
  - a) Plans and specifications shall be in conformance with the City Code and the City Standard Specifications and all current design policies.
  - b) All plan and profile sheets shall be scaled 1"=20'.
  - c) When grading operations disturb more than one (1) acre of land, plans and specifications for the grading and for the control of sediment and erosion shall be submitted to the City's Director of Public Works. Fourteen (14) days shall be allowed for this review process. In addition, a Notice of Intent (NOI) shall be submitted to the City's Director of Public Works and the Nebraska Department of Environment and Energy. Once the authorization has been granted by the Nebraska Department of Environment and Energy, a copy must be submitted to the City's Director of Public Works. A Storm Water Pollution Prevention Plan must be prepared prior to submission of a CSW-NOI, as required, by a qualified individual such as a Professional Engineer, Certified Landscape Architect, and/or Certified Professional in erosion and sediment control. These plans must be implemented and maintained through the life of the project. In the public improvements are in a designated floodplain, the Owner shall obtain a Floodplain Permit from the Floodplain Administrator. The Owner shall submit a statement from a licensed Engineer to the Floodplain Administrator stating that the improvements will not raise the floodway elevation in excess of one (1) foot.
  - d) Construction shall not begin until plans have been approved, a preconstruction meeting held, and all bonds and insurance coverages are approved, as set forth in Paragraph 1 under "OWNER AGREES AS FOLLOWS".
  - e) The Owner shall have the Engineer submit the plans to all applicable authorities for approval as required by State Statutes and Federal mandates. Construction shall not begin until a copy of approval letters from the applicable authorities have been received and are on file with the City's Director of Utilities. Such submissions

should include, but are not limited to, water plans to the Nebraska Department of Health and Human Services, 404 permits to the U.S. Army Corp of Engineers, sanitary sewer plans to the Nebraska Department of Environmental and Energy, dam structure plans to the State of Nebraska Department of Natural Resources.

- f) Preliminary plan submittals must include three (3) sets of 11"x17" drawings and delivered to the City's Utilities Department, Public Works Department, and Development Services Department.
- g) Construction plan submittals must include five (5) complete sets of drawings; one (1) set to be full sized (22"x34") and four (4) sets to be half sized (11"x17"), and one (1) electronic set in .pdf and one (1) set in .tif format, for all of the public improvements to be constructed.
- h) The Owner shall request a pre-construction meeting with the City's Director of Public Works and Director of Utilities prior to construction activities.
- i) All construction inspection/observation shall be performed by technicians certified by the American Concrete Institute, the Nebraska Department of Roads, the National Institute for Certification in Engineering Technologies, or by technicians that have demonstrated adequate testing abilities to the City's Director of Public Works. All construction observation operations shall be under the direction of an Engineer licensed in the State of Nebraska and shall be in conformance with the approved plans and specifications. All underground utilities must be reviewed by the construction observer prior to backfill activities. Full time construction observation is required during all utilities backfill operations and during all continuous concrete pours in excess of 150 square yards. At the City's request, bi-weekly meetings may be required onsite with the Owner's Engineer and construction observation personnel.

Deliverables shall be submitted to the City's Director of Utilities in accordance with the following schedule:

- |   |                          |
|---|--------------------------|
| 1. Daily Diary of Construction Activities | Submit Bi-weekly         |
| 2. Compaction Test Results                | Submit Bi-weekly         |
| 3. Concrete Compression Test Results      | Submit Bi-weekly         |
| 4. Concrete Air and Slump Test Results    | Submit Bi-weekly         |
| 5. SWPPP required inspections and actions | Submit Bi-weekly         |
| 6. Certificate of Substantial Completion  | Submit at end of project |

These submittals must be sent via electronic email in a .pdf format on the second and fourth Wednesday of each month. The subject line must contain the name of the project development.

SUBMITTAL ADDRESS: [ssawin@kearneygov.org](mailto:ssawin@kearneygov.org)

Public Improvements will not be accepted, placed in operation or maintained by the City until the required construction observations and submittals have been completed.

- j) To provide the City with five (5) complete sets of As-Built/As-Recorded drawings; one (1) set to be full sized (22"x34") and four (4) sets to be half sized (11"x17"), and one (1) electronic set in .pdf and one (1) set in .tif format, for all of the public improvements to be constructed.
- k) To sell and convey title of the water main free and clear of any liens, encumbrances, security interests or mortgages to the City for the sum of five dollars (\$5.00), following inspection and acceptance by the City.
- 4) To indemnify and hold harmless the City and its agents and employees against all claims, damages, loses, or expenses, including reasonable attorney's fees that arise or allegedly arise out of the design or construction of the public improvements and the stormwater management facilities, not due to the negligence or omissions on the part of the City, its agents and employees.

**CITY AGREES AS FOLLOWS:**

- 1) To comply with City Code, Sections 9-1301 through 9-1319 inclusive: entitled "Developer Constructed Infrastructure," as it applies to the public improvements for this development set forth in this agreement.
- 2) To reimburse the Owner for the infrastructure that would be a general obligation cost to the City if the infrastructure was built through the district process. The estimated reimbursement is \$0.00 for water infrastructure because the proposed water main is strictly fire protection for the site and no benefit to the City.
- 3) To own, operate and maintain the proposed public infrastructure as described in Paragraph 1, OWNER AGREES, of this agreement after the developer constructed infrastructure has been accepted as part of the City water system.

**THE PARTIES AGREE AS FOLLOWS:**

- 1) This instrument is the final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between parties that allegedly exists.
- 2) This instrument contains the entire agreement between the parties, and no statements, promises or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by both parties and endorsed on this agreement.
- 3) This agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and shall be binding upon heirs, executors, administrators, and subsequent title owners in interest, devisees, assignees and successors of the Owner hereto.





# COUNCIL AGENDA MEMO

## ITEM NO. IV - #7

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**FROM:** Sarah Sawin, Director of Utilities

**MEETING:** June 24, 2024

**SUBJECT:** Developer Constructed Infrastructure Agreement for The Meadows Second Addition

**PRESENTER:** No Presenter – Consent Agenda

**Discussion:**

The Developer for The Meadows Second Addition has agreed to enter into a Developer Constructed Infrastructure Agreement to build, public improvements: water, sanitary sewer, paving and storm sewer, meeting City Specifications. The Developer has signed the Developer Constructed Infrastructure Agreement and plans to begin work soon.

The estimated cost of the public improvements is \$665,615.00 for water, \$620,985.00 for sanitary sewer, and \$2,139,799.91 for paving and storm sewer infrastructure.

The public infrastructure will be constructed according to the City of Kearney Standard Specifications and will be conveyed to the City to own and operate after it is accepted by the City Council.

**Fiscal Note:**

The City will reimburse the Developer for infrastructure that would normally be a general obligation cost to the City, if it were built under the improvement district method. The estimated reimbursable cost is as follows:

- Water is \$236,332.11
- Sanitary sewer is \$6,127.37
- Paving and storm sewer is \$115,885.60

**Recommended Action:**

Staff recommends that the Council approve the Resolution authorizing the Mayor to sign the Developer Constructed Infrastructure Agreement for The Meadows Second Addition on behalf of the City.

## **RESOLUTION NO. 2025-69**

**BE IT RESOLVED** by the President and City Council of the City of Kearney, Nebraska that the agreement entitled “Developer Constructed Infrastructure Agreement for The Meadows Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska” between the City of Kearney and Jordan Starostka, Authorized Agent of Starostka Group Unlimited, Inc., a Nebraska Corporation for the construction of water, sewer, paving, and storm sewer improvements for The Meadows Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska be and is hereby accepted and approved. The Agreement, marked as Exhibit “A” is attached hereto and made a part hereof.

**BE IT FURTHER RESOLVED** that the President of the Council be and is hereby authorized and directed to execute the same agreement on behalf of the City of Kearney.  
**PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

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

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**PEGGY EYNETICH  
CITY CLERK**

**Developer Constructed Infrastructure Agreement For  
The Meadows Second Addition,  
An Addition to the City of Kearney, Buffalo County, Nebraska**

**WHEREAS**, Jordan Starostka, Authorized Agent of Starostka Group Unlimited, Inc., a Nebraska Corporation (hereinafter referred to as “Owner” or “Developer”), being the Owner of the following described tract of land;

The Meadows Second Addition, an Addition to the City of Kearney, Buffalo County, Nebraska; and

**WHEREAS**, the Owner desires to construct the public improvements, water main, sanitary sewer main, paving and stormsewer main to serve the previously described property, in accordance with the Infrastructure Feasibility Plan on file with the City of Kearney, Development Services; and

**WHEREAS**, the Owner’s representative has met with the City of Kearney Development Review Team (DRT) and the DRT has assigned the development, DRT No. 10-003; and

**WHEREAS**, public improvements are necessary in 41<sup>st</sup> Street 42<sup>nd</sup> Street, 43<sup>rd</sup> Street, V Avenue, and X Avenue; and

**WHEREAS**, the City and Owner agree that an eight-foot (8’) wide hike/bike trail shall be constructed along the north side of 39<sup>th</sup> Street with the City paying half of the cost and the lot Owner paying half of the cost, and the trail will be located two-feet (2’) north of the north right-of-way line of 39<sup>th</sup> Street; and

**WHEREAS**, lots within the development are anticipated to be single family development, requiring only one water and sanitary sewer service respectively, except the following:

- Lots 1 & 16, Block Ten
- Lots 1-5, Block Eleven
- Lots 1, 14-15, & 28, Block Twelve
- Lots 1 & 16, Block Thirteen
- Lot 1, Block Fourteen

all of The Meadows Second Addition; and

**WHEREAS**, public improvements must be designed and constructed in compliance with the City of Kearney Subdivision Design Manual and Standard Specifications; and

**WHEREAS**, the Owner desires to utilize the Developer Constructed Infrastructure process outlined in Chapter 9 of the Kearney City Code to design, construct and pay for the public improvements;

**NOW, THEREFORE**, the undersigned Owner and the City of Kearney, Nebraska (hereinafter referred to as the "City"), in consideration of the mutual covenants and agreements herein contained, agree as follows.

**OWNER AGREES AS FOLLOWS:**

- 1) To comply with the terms and conditions of the City Code, Sections 9-1301 through 9-1319 inclusive: entitled "Developer Constructed Infrastructure," a copy of which is attached hereto and made part hereof by reference. NO WORK SHALL BE PERMITTED ON THE PUBLIC IMPROVEMENTS UNTIL BONDS AND INSURANCE ARE IN PLACE AND APPROVED BY THE CITY. The Owner agrees to construct the following improvements:
  - a) Construction of a sixteen-inch (16") diameter ductile iron pipe water main as follows;
    - i) From the existing water main located near the northeast corner of Lot 16, Block Eight of The Meadows First Addition, northward along X Avenue to the northern extent of the X Avenue right-of-way of The Meadows Second Addition.
  - b) Construction of an eight-inch (8") diameter ductile iron pipe water main as follows;
    - i) From the existing water main located near the southeast corner of Lot 16, Block Eight of The Meadows First Addition, eastward along the north side of 41<sup>st</sup> Street to the eastern extent of the 41<sup>st</sup> Street right-of-way of The Meadows Second Addition.
    - ii) From the existing water main located near the northeast corner of Lot 1, Block Nine of The Meadows First Addition, northward along V Avenue to the northern extent of the V Avenue right-of-way of The Meadows Second Addition.
    - iii) Along the north side of 42<sup>nd</sup> Street of The Meadows Second Addition, from the proposed eight-inch (8") water main located along V Avenue near the northeast corner of Lot 2, Block Eleven, eastward to the proposed sixteen-inch (16") water main located along X Avenue near the southeast corner of Lot 15, Block Twelve, all of The Meadows Second Addition.
    - iv) Along the north side of 43<sup>rd</sup> Street of The Meadows Second Addition, from approximately ten-feet (10') east of the western extent of the right-of-way near the west lot line of Lot 1, Block Fourteen, eastward to the eastern extent of the right-of-way, all of The Meadows Second Addition.

Including all appurtenances, paving removal and replacement, water main connections, boring, encasement pipe, fittings, valves, fire hydrants, and water

services. Based on the Owner's estimate the cost of the water main is \$665,615.00 and the general obligation cost is \$236,332.11.

c) Construction of a twelve-inch (12") vitrified clay pipe sanitary sewer main as follows;

i) From the existing sanitary sewer main located in the intersection of X Avenue and 42<sup>nd</sup> Street, both of The Meadows Second Addition, northward along X Avenue to approximately one-hundred-sixty-feet (160') north of the northern extent of the X Avenue right-of-way of The Meadows Second Addition.

d) Construction of an eight-inch (8") vitrified clay pipe sanitary sewer main as follows;

i) From the existing sanitary sewer main located in the intersection of X Avenue and 41<sup>st</sup> Street, both of The Meadows Second Addition, eastward along 41<sup>st</sup> Street of The Meadows Second Addition ending with a manhole approximately thirty-feet (30') west of the eastern extent of the 41<sup>st</sup> Street right-of-way of The Meadows Second Addition.

ii) From the existing sanitary sewer in the intersection V Avenue and 42<sup>nd</sup> Street, both of The Meadows Second Addition, northward along V Avenue ending approximately fifteen-feet (15') south of the northwest corner of Lot 1, Block Twelve of The Meadows Second Addition.

iii) From the existing sanitary sewer in the intersection X Avenue and 42<sup>nd</sup> Street, both of The Meadows Second Addition, westward along 42<sup>nd</sup> Street ending approximately twenty-feet (20') west of the east lot line of Lot 28, Block Twelve of The Meadows Second Addition.

iv) From the sanitary sewer in the intersection X Avenue and 43<sup>rd</sup> Street, both of The Meadows Second Addition, eastward along 43<sup>rd</sup> Street ending with a manhole approximately thirty-feet (30') west of the eastern extent of the 43<sup>rd</sup> Street right-of-way of The Meadows Second Addition.

v) From the sanitary sewer in the intersection X Avenue and 43<sup>rd</sup> Street, both of The Meadows Second Addition, westward along 43<sup>rd</sup> Street to the western extent of the 43<sup>rd</sup> Street right-of-way of The Meadows Second Addition.

vi) From the sanitary sewer in the intersection V Avenue and 43<sup>rd</sup> Street, both of The Meadows Second Addition, northward along V Avenue ending approximately one-hundred-twenty-feet (120') north of the north lot line of Lot 1, Block Thirteen of The Meadows Second Addition.

Including all appurtenances, pavement removal and replacement, sanitary sewer main connections, boring, encasement pipe, fittings, manholes, and sanitary sewer main, including engineering and construction inspection fees, is \$620,985.00 and the general obligation cost is \$6,127.37.

e) Construction of a six-inch (6") thick, thirty-six-foot (36') wide (back of curb to back of curb) 47B Portland Cement concrete pavement, including storm sewer as follows;

- i) From the north edge of the existing pavement of V Avenue, northward along V Avenue of The Meadows Second Addition ending inline with the north lot line of Lot 1, Block Fourteen of The Meadows Second Addition.
  - ii) From the north edge of the existing pavement of X Avenue, northward along X Avenue of The Meadows Second Addition ending inline with the north lot line of Lot 16, Block Thirteen of The Meadows Second Addition.
  - iii) Along 42<sup>nd</sup> Street of The Meadows Second Addition, from the eastern edge of pavement of V Avenue, eastward to the western edge of pavement of X Avenue, all of The Meadows Second Addition.
  - iv) Along 43<sup>rd</sup> Street of The Meadows Second Addition, from the western extent of the right-of-way inline with the west lot line of Lot 1, Block Fourteen of The Meadows Second Addition, eastward to the eastern extent of the right-of-way inline with the east lot line of Outlot D of The Meadows Second Addition.
  - v) From the eastern edge of the existing pavement of X Avenue, eastward along 41<sup>st</sup> Street of The Meadows Second Addition ending inline with the east lot line of Outlot C of The Meadows Second Addition.
- f) Construction and maintenance of a six-inch thick (6"), ninety-foot (90') diameter temporary crushed rock cul-de-sac off the following end of pavement areas:
- V Avenue aligning with the north lot line of Lot 1, Block Fourteen, of The Meadows Second Addition.
  - X Avenue aligning with the north lot line of Lot 16, Block Thirteen, of The Meadows Second Addition.
- i) The temporary cul-de-sac shall be an all-weather roadway suitable to support emergency service vehicles.
  - ii) The temporary cul-de-sac shall be maintained year-round by the Owner, including blading, snow removal, and furnishing additional aggregate as required to allow the cul-de-sac to be utilized at all times.
  - iii) The temporary cul-de-sac will be open to the public.
  - iv) The temporary cul-de-sac shall be removed at which time future platting and subsequent development requires the construction of a permanent roadway continuing along each respective roadway.
- g) Construction of an eight-foot (8') wide hike/bike trail along the north side of 39<sup>th</sup> Street, located within the ten (10)-foot utility/ trail easement located on the north side of 39<sup>th</sup> Street; the trail should extend along the entirety of this subdivision's frontage of 39<sup>th</sup> Street.

Including all appurtenances, pavement removal and replacement, curbs, storm sewers and inlets, conduit and electrical wiring for street lights to be placed in accordance with the City of Kearney's standard street lighting requirements, as

necessary. Based on the Owner's estimates the cost of the paving and storm sewer is \$2,139,799.91 and the general obligation cost is \$115,885.60.

- 2) To contact the City for review prior to any changes being made to the quantity of reimbursable infrastructure. Any changes made and items added to the project that will alter or increase the reimbursement amount, as compared to the estimate from the City, will be at the City's discretion for reimbursement.
  - a) Any proposed changes shall be sent to the City Engineer and the Director of Utilities for review. An approval to increase the reimbursement amounts will need to come, in writing, from the City.
- 3) Other utilities not operated by the City, the Developer agrees to negotiate with electric, telecommunications, gas and other utilities, if applicable, within the development, including conduit and electrical wiring for street lights to be placed in accordance with the City's standard street lighting requirements.
- 4) Owner agrees that the cost to maintain and the maintenance of all open spaces in the subdivision, including stormwater detention cells, un-paved road right-of-way, roadway medians, boulevards, public sidewalks and other public right-of-way and open spaces, will be the obligation and responsibility of the Owner or an association of property Owners.
- 5) To maintain all storm water facilities in perpetuity with all such maintenance costs borne collectively and proportionally by each Owner of each lot of the subdivision in the drainage basin served by the detention facilities. Should the Owner(s) of the property within the subdivision fail to maintain the storm water detention facilities, the City is hereby granted the right to enter upon the property where the storm water detention facility is located and provide for such maintenance and shall charge the property Owners within this subdivision proportionally for any and all costs relating to said maintenance. The minimum charge for maintenance by the City, shall be one hundred dollars (\$100.00) for a mobilization fee and thereafter at a rate of one hundred and forty dollars (\$140.00) per hour for equipment and labor, or a fraction thereof said fees being subject to change in the future to account for inflation.
- 6) To allow the City access to said storm water facilities in the event of an emergency or in the event that the Owner(s) fail to maintain the detention facilities as required in this agreement. Owner further agrees in the event the City shall have cause to maintain the storm water facilities, any and all costs incurred by the City due to the maintenance of the storm water facility shall be paid by the property Owner(s) of the subdivision on a collective and proportional basis.
- 7) To retain the services of a licensed Professional Engineer, hereinafter referred to as "Engineer", to design the water, sanitary sewer, paving and stormsewer. To have the Engineer submit a complete set of plans and specifications for the public improvements to the City's Director of Public Works and Director of Utilities for formal review.

- a) Plans and specifications shall be in conformance with the City Code and the City Standard Specifications and all current design policies.
- b) All plan and profile sheets shall be scaled 1"=20'.
- c) When grading operations disturb more than one (1) acre of land, plans and specifications for the grading and for the control of sediment and erosion shall be submitted to the City's Director of Public Works. Fourteen (14) days shall be allowed for this review process. In addition, a Notice of Intent (NOI) shall be submitted to the City's Director of Public Works and the Nebraska Department of Environment and Energy. Once the authorization has been granted by the Nebraska Department of Environment and Energy, a copy must be submitted to the City's Director of Public Works. A Storm Water Pollution Prevention Plan must be prepared prior to submission of a CSW-NOI, as required, by a qualified individual such as a Professional Engineer, Certified Landscape Architect, and/or Certified Professional in erosion and sediment control. These plans must be implemented and maintained through the life of the project. In the public improvements are in a designated floodplain, the Owner shall obtain a Floodplain Permit from the Floodplain Administrator. The Owner shall submit a statement from a licensed Engineer to the Floodplain Administrator stating that the improvements will not raise the floodway elevation in excess of one (1) foot.
- d) Construction shall not begin until plans have been approved, a preconstruction meeting held, and all bonds and insurance coverages are approved, as set forth in Paragraph 1 under "OWNER AGREES AS FOLLOWS".
- e) The Owner shall have the Engineer submit the plans to all applicable authorities for approval as required by State Statutes and Federal mandates. Construction shall not begin until a copy of approval letters from the applicable authorities have been received and are on file with the City's Director of Utilities. Such submissions should include, but are not limited to, water plans to the Nebraska Department of Health and Human Services, 404 permits to the U.S. Army Corp of Engineers, sanitary sewer plans to the Nebraska Department of Environmental and Energy, dam structure plans to the State of Nebraska Department of Natural Resources.
- f) Preliminary plan submittals must include three (3) sets of 11"x17" drawings and delivered to the City's Utilities Department, Public Works Department, and Development Services Department.
- g) Construction plan submittals must include five (5) complete sets of drawings; one (1) set to be full sized (22"x34") and four (4) sets to be half sized (11"x17"), and one (1) electronic set in .pdf and one (1) set in .tif format, for all of the public improvements to be constructed.
- h) The Owner shall request a pre-construction meeting with the City's Director of Public Works and Director of Utilities prior to construction activities.

- i) All construction inspection/observation shall be performed by technicians certified by the American Concrete Institute, the Nebraska Department of Roads, the National Institute for Certification in Engineering Technologies, or by technicians that have demonstrated adequate testing abilities to the City's Director of Public Works. All construction observation operations shall be under the direction of an Engineer licensed in the State of Nebraska and shall be in conformance with the approved plans and specifications. All underground utilities must be reviewed by the construction observer prior to backfill activities. Full time construction observation is required during all utilities backfill operations and during all continuous concrete pours in excess of 150 square yards. At the City's request, bi-weekly meetings may be required onsite with the Owner's Engineer and construction observation personnel.

Deliverables shall be submitted to the City's Director of Utilities in accordance with the following schedule:

- |   |                          |
|---|--------------------------|
| 1. Daily Diary of Construction Activities | Submit Bi-weekly         |
| 2. Compaction Test Results                | Submit Bi-weekly         |
| 3. Concrete Compression Test Results      | Submit Bi-weekly         |
| 4. Concrete Air and Slump Test Results    | Submit Bi-weekly         |
| 5. SWPPP required inspections and actions | Submit Bi-weekly         |
| 6. Certificate of Substantial Completion  | Submit at end of project |

These submittals must be sent via electronic email in a .pdf format on the second and fourth Wednesday of each month. The subject line must contain the name of the project development.

SUBMITTAL ADDRESS: [ssawin@kearneygov.org](mailto:ssawin@kearneygov.org)

Public Improvements will not be accepted, placed in operation or maintained by the City until the required construction observations and submittals have been completed.

- j) To provide the City with five (5) complete sets of As-Built/As-Recorded drawings; one (1) set to be full sized (22"x34") and four (4) sets to be half sized (11"x17"), and one (1) electronic set in .pdf and one (1) set in .tif format, for all of the public improvements to be constructed.
  - k) To sell and convey title of the water main, sanitary sewer main, paving and stormsewer free and clear of any liens, encumbrances, security interests or mortgages to the City for the sum of five dollars (\$5.00), following inspection and acceptance by the City.
- 8) To indemnify and hold harmless the City and its agents and employees against all claims, damages, loses, or expenses, including reasonable attorney's fees that arise or allegedly arise out of the design or construction of the public improvements and the stormwater management facilities, not due to the negligence or omissions on the part of the City, its agents and employees.

- 9) To pay connection fees associated with Sanitary Sewer Connection District 92-1A in the amount of \$9,790.60 (\$13.23/ft. x 740.03 ft.) for the platted area adjacent to 39<sup>th</sup> Street.
- 10) To pay connection fees associated with Water Connection District 92-1A in the amount of \$7,304.10 (\$9.87/ft. x 740.03 ft.) for the platted area adjacent to 39<sup>th</sup> Street.

**CITY AGREES AS FOLLOWS:**

- 1) To comply with City Code, Sections 9-1301 through 9-1319 inclusive: entitled “Developer Constructed Infrastructure,” as it applies to the public improvements for this development set forth in this agreement.
- 2) To reimburse the Owner for the infrastructure that would be a general obligation cost to the City if the infrastructure was built through the district process. The estimated reimbursement for water infrastructure, sanitary sewer, paving, and storm sewer infrastructure are found above in “Owner Agrees as Follows”. The estimated reimbursement was calculated using the quantities provided by the Developers’ Engineer and the current reimbursement amounts for the year the Developer Constructed Infrastructure Agreement is approved by City Council. Final reimbursement for the project will be calculated using the actual construction/installed quantities multiplied by the reimbursement amounts for the year the agreement was approved by City Council.
- 3) To own, operate and maintain the proposed public infrastructure as described in Paragraph 1, OWNER AGREES, of this agreement after the developer constructed infrastructure has been accepted as part of the City water, sanitary sewer, street and storm sewer systems.
- 4) To accept the public components of the storm sewer system contained within the public street rights-of-way or easements dedicated to the City. All other components of the storm drainage system, including stormwater management facilities, such as detention basins, bio-swales, infiltration trenches, sediment basins, underground water storage, open ditches to stormwater detention facilities and similar facilities shall not be the responsibility of the City and shall be maintained in perpetuity as specified in the “Owner Agrees” section of this agreement.

**THE PARTIES AGREE AS FOLLOWS:**

- 1) This instrument is the final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between parties that allegedly exists.
- 2) This instrument contains the entire agreement between the parties, and no statements, promises or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract

may not be enlarged, modified, or altered except in writing signed by both parties and endorsed on this agreement.

- 3) This agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and shall be binding upon heirs, executors, administrators, and subsequent title owners in interest, devisees, assignees and successors of the Owner hereto.





# COUNCIL AGENDA MEMO

## ITEM NO. IV - #8

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**FROM:** *Scott Hayden, Director of Recreational Services*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Plans and Specifications for Harmon Swimming Pool Tub Sandblasting and Painting Project*

**PRESENTER:** *No Presenter – Consent Agenda*

**Discussion:**

The City is ready to advertise and receive bids for sandblasting and painting the Harmon Pool tub.

Attached is a letter from Miller & Associates requesting approval of the plans and Specifications, and to set the bid opening date for 2:00 p.m., July 15, 2025.

The Engineer's Opinion of Probable Construction Cost is \$160,000. The work involved is scheduled to be completed this fall.

**Fiscal Note:**

This project is budgeted in the FY 2026 budget and will be funded through the Aquatic Development Fund and the General Fund.

**Recommended Action:**

Staff and the City's engineer for the project, Miller & Associates, recommend approving the proposed Plans and Specifications and setting the bid opening date for July 15, 2025 at 2:00 p.m.

**CITY OF KEARNEY, NEBRASKA  
ADVERTISEMENT FOR BIDS/PROPOSALS**

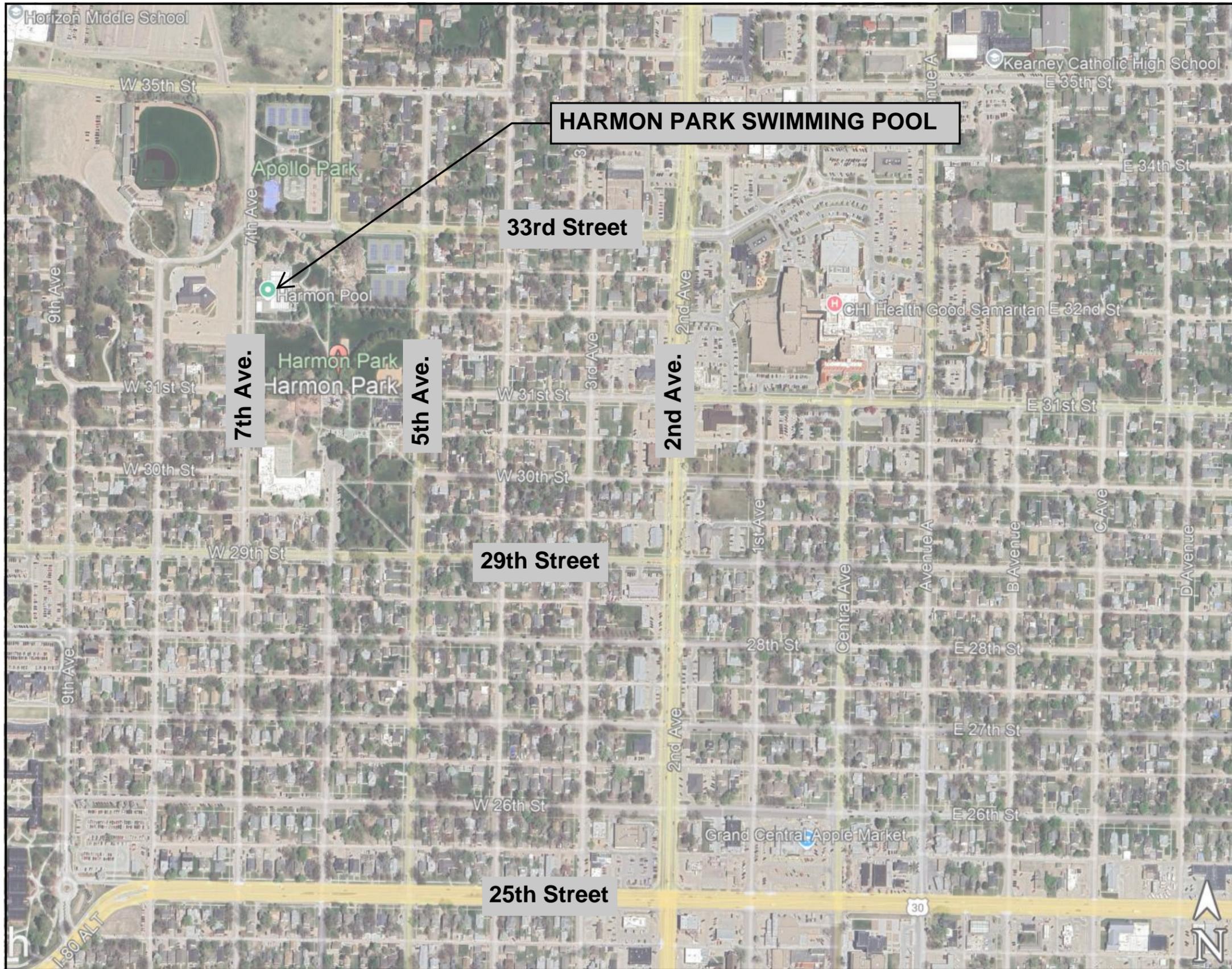
Sealed proposals will be received at the City Clerk's Office, City Hall, 18 East 22nd Street, Kearney, Nebraska, until 2:00 PM, Local Time on July 15, 2025, for the Swimming Pool Tub Sandblasting and Painting Project at Harmon Park Pool in Kearney, Nebraska.

Proposals received after the specified time of closing will be returned unopened. The envelope shall be marked "SWIMMING POOL TUB SANDBLASTING AND PAINTING PROJECT". The City will accept only those sealed proposals, either hand delivered or received via the U.S. Mail or other commercial carrier at the City Clerk's Office, City Hall, 18 East 22nd Street, Kearney, Nebraska. Items transmitted by facsimile or electronically will not be accepted.

The Contractor may obtain copies of the CONTRACT DOCUMENTS from Miller & Associates, Consulting Engineers, P.C., 1111 Central Avenue, P.O. Box 306, Kearney, NE 68847, Telephone 308/234-6456, upon payment of \$30 for each set. A complete set of electronic copies of drawings, specifications, contract documents and proposal form may be obtained from [www.miller-engineers.com](http://www.miller-engineers.com) for a fee of \$30 (non-refundable). Once logged into the website, go to "Bidding Documents" [in the upper right-hand corner of the homepage] and you can select the set of documents to download.

No proposal submitted by any contractor which contains a condition or qualification shall be recognized or accepted by the City Council, and any letter or communication accompanying the proposal which contains a condition or qualification upon the proposal which has the effect of qualifying or modifying any provision of the specifications in any manner, shall be construed as a qualifying proposal and may be rejected by the City Council as not responsible. The City of Kearney reserves the right to reject any or all proposals and to waive any informalities or irregularities in the proposals received, and to accept any proposal which is deemed most favorable to the City of Kearney.

The City of Kearney is an equal opportunity employer and requires all contractors and consultants to comply with all applicable Federal and State laws and regulations. The Owner, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin, sex, age and disability/handicap in consideration for an award.



**HARMON PARK SWIMMING POOL**

**33rd Street**

**7th Ave.**

**5th Ave.**

**2nd Ave.**

**29th Street**

**25th Street**

**VICINITY MAP**

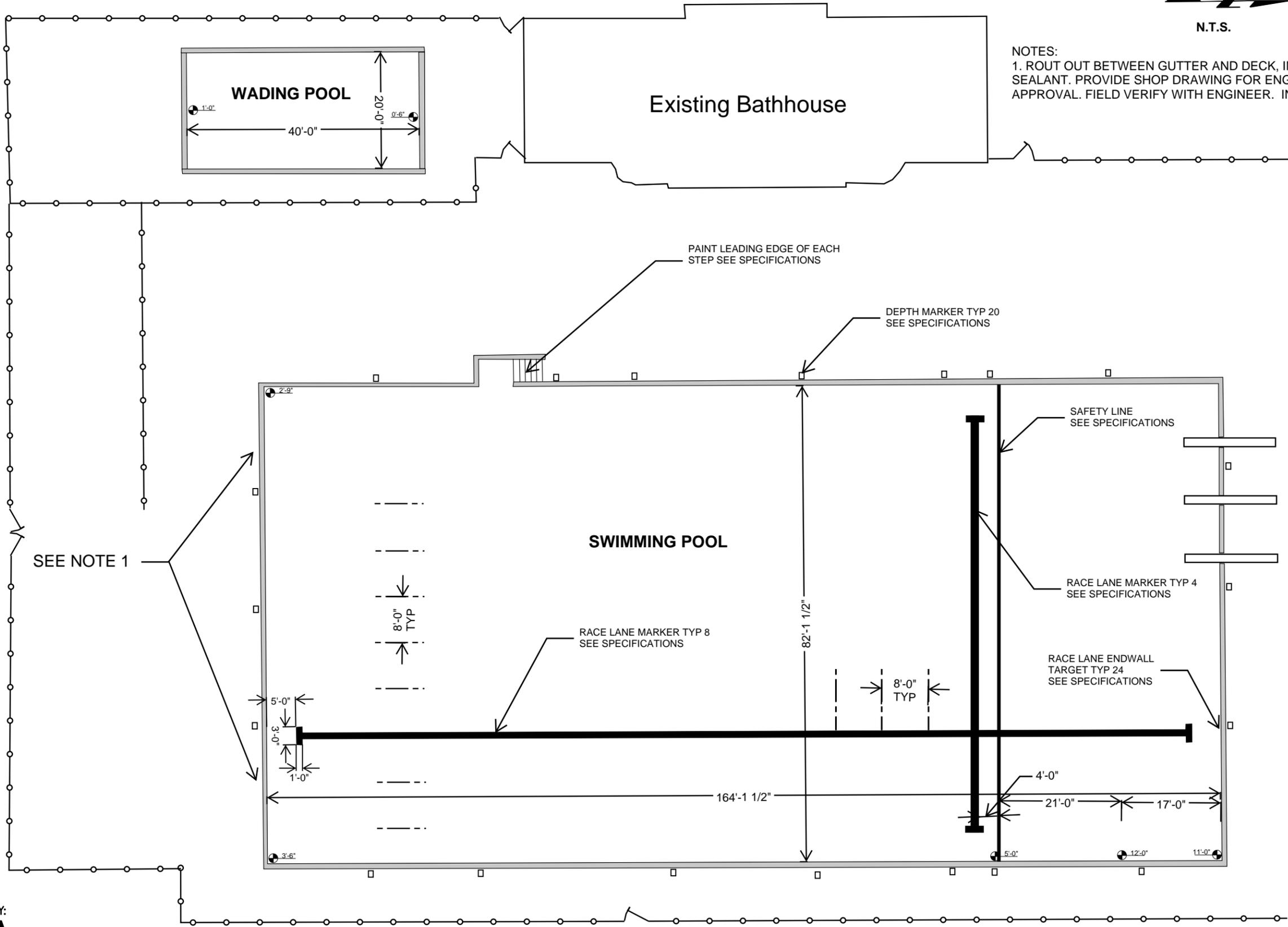
**FIGURE 1**  
**SWIMMING POOL TUB**  
**SANDBLASTING &**  
**PAINTING**  
**3207 7<sup>TH</sup> AVENUE**  
**KEARNEY, NEBRASKA**  
**JUNE 2025**

PREPARED BY:  
**MA**  
 MILLER & ASSOCIATES  
 CONSULTING ENGINEERS, P.C.  
 1111 CENTRAL AVENUE  
 KEARNEY, NE 68847  
 CERTIFICATE OF  
 AUTHORIZATION #CA0021



N.T.S.

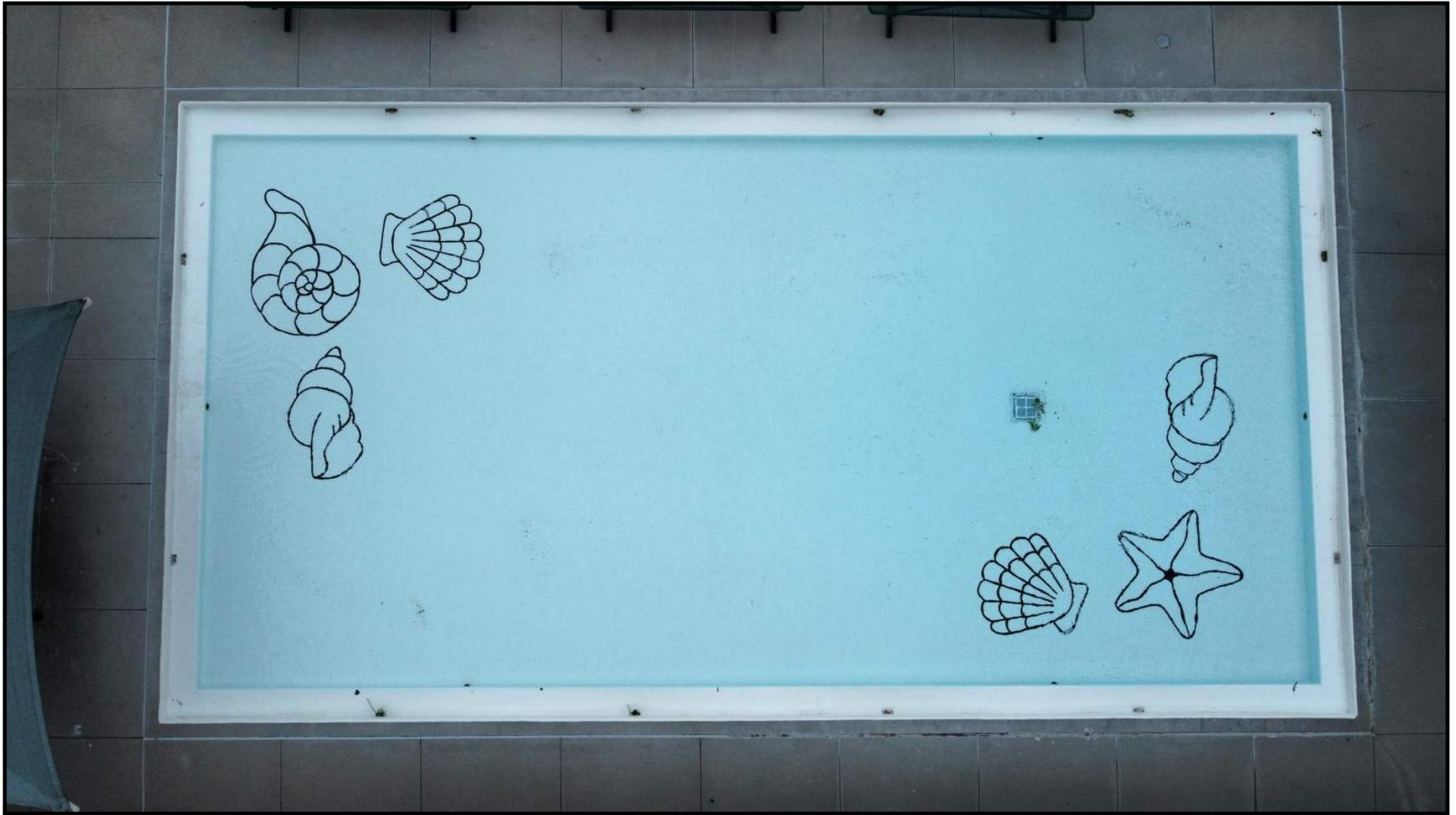
NOTES:  
1. ROUT OUT BETWEEN GUTTER AND DECK, INSTALL BACKER ROD AND SEALANT. PROVIDE SHOP DRAWING FOR ENGINEERS REVIEW AND APPROVAL. FIELD VERIFY WITH ENGINEER. INCIDENTAL TO PROJECT



# SWIMMING POOL LAYOUT

**FIGURE 2**  
**SWIMMING POOL TUB**  
**SANDBLASTING &**  
**PAINTING**  
3207 7<sup>TH</sup> AVENUE  
KEARNEY, NEBRASKA  
JUNE 2025

PREPARED BY:  
**M&A**  
MILLER & ASSOCIATES  
CONSULTING ENGINEERS, P.C.  
1111 CENTRAL AVENUE  
KEARNEY, NE 68847  
CERTIFICATE OF  
AUTHORIZATION #CA0021



N.T.S.

**ALTERNATE: WADING POOL  
DETAILED FIGURES TO BE PAINTED**

**FIGURE 3  
SWIMMING POOL TUB  
SANDBLASTING &  
PAINTING  
3207 7<sup>TH</sup> AVENUE  
KEARNEY, NEBRASKA  
JUNE 2025**

PREPARED BY:



MILLER & ASSOCIATES  
CONSULTING ENGINEERS, P.C.  
1111 CENTRAL AVENUE  
KEARNEY, NE 68847  
CERTIFICATE OF  
AUTHORIZATION #CA0021



# COUNCIL AGENDA MEMO

## ITEM NO. IV - #9

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**FROM:** *Sarah Sawin, Director of Utilities  
Clint Smith, Assistant Director of Utilities*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Sale of Surplus Utilities Equipment*

**PRESENTER:** *No Presenter – Consent Agenda*

**Discussion:**

The Utilities Department is requesting the permission to sell the equipment listed below by the method deemed most advantageous to the City, including sell by auction, sealed bid, or by private or public sale.

Equipment:

- 2008 American LaFrance Condor Sideload refuse Truck

Section 1-1519, "Surplus Stock" of Article 15, "Purchasing" of Chapter 1, "Administration" of the City Code requires approval of the City Council to sell equipment of \$20,000 or more in value.

**Fiscal Note:**

The proceeds of the individual equipment sales will be distributed back to the Sanitation Division within the Utilities Department.

**Recommended Action:**

Staff recommends allowing the City to sell the above listed equipment by the method deemed most advantageous to the City, including sell by auction, sealed bid, or by private or public sale.



# COUNCIL AGENDA MEMO

## ITEM NO. IV - #10

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**FROM:** *Brenda Jensen, City Manager*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Renewal of Manufactured Home Court Licenses and Extension Request for Valley View Mobile Home Court*

**PRESENTER:** *No Presenter – Consent Agenda*

**Discussion:**

Each year, all manufactured home courts are inspected for compliance with City regulations. The Development Services Department works directly with all court owners to ensure that the requirements are met. Manufactured home courts are required to apply to renew the court's license by the first day of March each year, with the license expiring on the last day of May.

During this application period, from March to May, the courts are inspected for compliance. At the May 27, 2025, City Council renewed six (6) court licenses and granted a 30-day extension to five (5) more. Four (4) additional courts have met all renewal requirements: East Lawn Mobile Home Estates, Countryside Mobile Home Park, L & M Mobile Home Park, and Cornhusker Trailer Court.

The following court, Valley View Mobile Home Court, is requesting another 30-day extension to complete the non-compliant items remaining on their list. Valley View Mobile Home Court has been given until July 16, 2025, to comply. This court will be brought to the July 22nd Council meeting for consideration based on the progress made towards compliance with City regulations.

**Fiscal Note:**

There are no adverse financial considerations regarding the renewal of manufactured home court licenses.

**Recommended Action:**

Staff recommends approval for the renewal of the manufactured home court license for East Lawn Mobile Home Estates, Countryside Mobile Home Park, L & M Mobile Home Park, and Cornhusker Trailer Court until May 31, 2026, and approval for granting Valley View Mobile Home Park another 30-day extension of their current license.



# COUNCIL AGENDA MEMO

## ITEM NO. VI - #1

**FROM:** *Brenda Jensen, City Manager*

**MEETING:** *June 24, 2025*

**SUBJECT:** *Keno Lottery Operator*

**PRESENTER:** *Brenda Jensen, City Manager*

**Background:**

On November 6, 1990, the voters of the City of Kearney, at a special election, voted in favor of conducting a Keno lottery as permitted under the Nebraska County and City Lottery Act for the purpose of community betterment, as defined in the law. Since the establishment of Keno in Kearney, the City has had two entities operate Keno on its behalf: Kearney Keno, Inc. and Kearney Gaming, LLC. The City has had an ongoing agreement with Kearney Gaming, LLC, to be the City's exclusive Keno operator since August 2001. The present contract terminates in August 2025, and pursuant to that Agreement, it would automatically renew for a six-year period unless either party provides notice to the other in the year prior to when the contract terminates.

On August 13, 2024, the Council authorized the City Manager to give notice of non-renewal to Kearney Gaming, LLC. The Council indicated, at the time, that it wished to pursue a request for proposals (RFP) to determine whether there may be other Keno operators that wish to submit proposals to be Kearney's sole Keno operator.

On April 1, 2025, the City issued a request for proposals for Keno operators, which closed on May 14, 2025. The City received proposals from EHPV Lottery Services, LLC, known as "Big Red Keno", Kearney Gaming, LLC, and Community First Keno, LLC.

**Discussion:**

The City Manager created a Keno RFP Review Committee comprised of two (2) Council Members, three (3) community members, and City Staff to review the proposals submitted. The Committee met on May 20, 2025, to review the proposals. The Committee recommended that in-person interviews be conducted with all three entities.

On June 11, 2025, the Committee interviewed Big Red Keno, Kearney Gaming, LLC, and Community First Keno, LLC. The Committee scored each interview based on the following criteria: uniqueness compared to other proposals, key personnel, experience, payout structure, handling of shortages, technology utilization, vision for Keno in Kearney, and handling of game interruptions.

After interviews, the Committee deliberated and recommended Big Red Keno to become the next Keno Operator on behalf of the City of Kearney.

## ITEM NO. VI - #1

Big Red Keno has been operating Keno since 1991 and currently has 279 Keno locations. They are the Keno lottery operator for the following entities:

- The City of Omaha, which has Interlocal Cooperation Agreements with Douglas County and the Cities of Bennington, Eagle, Milford, and Valley;
- The City of Lincoln, which has an Interlocal Cooperation Agreement with Lancaster County;
- The City of Fremont, which has Interlocal Cooperation Agreements with the Cities of Cedar Bluffs, Inglewood, and Kennard; and
- The City of Norfolk, which has an Interlocal Cooperation Agreement with the City of Hoskins.

Big Red Keno is proposing an Interlocal Cooperation Agreement between the City of Kearney and the City of Omaha to create a joint Keno lottery operation. In this arrangement, the City of Omaha would hold the original lottery operator agreement with Big Red Keno and perform all lottery administration, including management of the lottery operator agreement under the Interlocal Cooperation Agreement. In return, the City and its local Keno locations would join the largest Keno game in Nebraska; the City would receive a guaranteed 8.75% of gross Keno sales in Kearney for community betterment, which is higher than the current agreement; and the local businesses/satellite Keno locations would receive a higher percentage share of the gross sales made at their individual locations, with no cap.

### **Fiscal Note:**

City Staff estimates that Big Red Keno would generate increased revenue for the Community Betterment Fund due to the higher guaranteed payout to the City of 8.75% of sales; however, the exact amount remains indeterminable at this time.

### **Recommended Action:**

City Staff recommends approval of the resolution accepting the Committee's recommendation and approving EHPV Lottery Services, LLC, known as "Big Red Keno", as the next Keno Operator for the City and directing Staff to finalize an agreement for Council approval.

## **RESOLUTION NO. 2025-70**

**WHEREAS**, on May 14, 2025, the City of Kearney received three (3) Request for Proposals (RFPs) for Keno Lottery Operator; and

**WHEREAS**, on June 11, 2025, the Keno RFP Review Committee, comprised of two (2) Council members, three (3) community members and City Staff, held interviews with representatives from EHPV Lottery Services, LLC, known as “Big Red Keno”, Kearney Gaming, LLC, and Community First Keno, LLC, scored the interviews and recommended the proposal offered by EHPV Lottery Services, LLC, known as “Big Red Keno” be accepted for Kearney’s Keno Lottery Operator by the Kearney City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the President and City Council of the City of Kearney, Nebraska, that the said Keno RFP Review Committee recommendation is hereby accepted, and that the proposal from EHPV Lottery Services, LLC, known as “Big Red Keno”, be and is hereby accepted for Keno Lottery Operator services for the City of Kearney, Nebraska.

**PASSED AND APPROVED THIS 24TH DAY OF JUNE, 2025.**

**ATTEST:**

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

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**PEGGY EYNETICH  
CITY CLERK**

PS PERSONNEL SERVICES  
SMCS SUPPLIES, MATERIALS, AND CONTRACTUAL SERVICES  
ER EQUIPMENT RENTAL  
CO CAPITAL OUTLAY  
DS DEBT SERVICE

Vendor	Amount	Purpose
University of NE Omaha	\$310.00	smcs