

*Kearney, Nebraska  
December 23, 2008  
7:00 p.m.*

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on December 23, 2008 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Cathy Vogt, Acting City Clerk; Council Members Randy Buschkoetter, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Collin Nabity, Heath Smallcomb, Brad Anderson, Trenton Snow, Matt Noffke, Loren Richards, Jerry Thompson, Steve Altmaier from KGFW Radio, Sara Giboney from 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**

Reverend Shannon Montgomery, a student at UNK, provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

The Mayor and Council members led the audience in the Pledge of Allegiance.

### **ANNOUNCEMENT**

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

### **RECOGNITION**

Mayor Clouse and Council Members recognized the volunteer firefighters who have given many hours of their time in responding to fire/rescue emergencies, firefighter training, assisting with public fire prevention and safety education programs, serving as fire department officers, and serving on various types of committees. Each of the following volunteers is being recognized: Brad Anderson (15 years), Chris Vasquez (15 years), Trenton Snow (10) years, Matt Noffke (5) years, Brad Norton (5) years, Jared Pettit (5) years, Loren Richards (5) years. Fire Chief Jerry Thompson presented the

firefighters with the awards.

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

## **III. PUBLIC HEARINGS**

### **LIQUOR LICENSE APPLICATION; THE GARAGE**

Mayor Clouse opened the public hearing on the Application for a Class CK-83704 Catering Liquor License submitted by THE GARAGE PRODUCTION COMPANY, dba "The Garage" located at 15 East 24th Street and the Manager Application for Heath Smallcomb and to consider approval of Resolution No. 2008-224.

According to Section 53-132(2) of the Nebraska Revised Statutes states: A retail license or bottle club license shall be issued to any qualified applicant if it is found by the Liquor Commission that:

1. the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located;
2. the applicant can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act;
3. the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to insure that the licensed business can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, and
4. the issuance of the license is or will be required by the present or future public convenience and necessity.

The Garage Production Corporation has made application for licenses to sell liquor, wine and beer at a new business called "The Garage", which is to be located at 15 East 24<sup>th</sup> Street. The corporation consists of the Nabitys and Smallcombs as corporate partners. Both Colin Nabyty and Heath Smallcomb had previous or current experience in operating this type of business. Mr. Nabyty currently operates the Chicken Coop here in Kearney and Mr. Smallcomb previously operated Cunningham's Journal here in Kearney.

This is a new business and an additional license to the community. Both Mr. Nabyty and Mr. Smallcomb are aware of the rules and regulations to operate this type of business and have in the past been very cooperative. The Application for Manager identifies Heath Smallcomb. According to the Police Department, Mr. Smallcomb had previous experience with no real record of legal problems. Staff would recommend approval of the application pending approval of the structure by the Building Inspection Division and

the State Fire Marshal's Office.

The City Council is concerned with the selling of alcohol to minors in our community, and wants to encourage all license holders to provide the necessary training to all employees that sell or dispense alcohol. Therefore, City staff has developed a form entitled "Liquor License Training Compliance" requiring applicants to document and verify training compliance of their employees. Mr. Smallcomb has returned the form indicating that once the business has been established, he and his employees will receive training.

Heath Smallcomb presented this matter to the Council. He purchased the Cunningham's Journal building and still owns the building. He managed it for eight years with a CK catering liquor license until it was leased to the current manager in 2003. Prior to Cunningham's, he helped his parents who owned Hilltop Lanes for many years by doing counterwork, bartending and food service. He worked at Kearney Keno for a couple of years and before that at Copperfields. He has been in the bar business since 1987.

Collin Nability, manager of Chicken Coop Sports Bar and Lumbergs, stated that he has 12-13 years experience in the bar business. He has been with Chicken Coop for seven years and Lumbergs. They acknowledge the training of employees by doing the TIPS training. He calls it "constant affirmation" by constantly reminding them that this is their job to check IDs and making sure they are all current with their training. He plans to do the same in the future with this new business. He has had only one violation; three years ago when an employee served to a minor. He did not see anything with the state which he thought might be due to their good record.

Council member Buschkoetter asked if they would be implementing some of the new technology such as the ID scanners for their new business. Mr. Nability stated it is something that they should be looking into more. Although he has been aware of the technology, it really does not fit with his current establishments. He could see since they will be offering some nights with live music and will be charging a cover charge and have a door person; the scanning machine would be a viable and safe option, at least on those nights. There will be other nights with entertainment that will not require a cover charge.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve or recommend approval to the Liquor Commission on the Application for a Class CK-83704 Catering Liquor License submitted by THE GARAGE PRODUCTION COMPANY, dba "The Garage" located at 15 East 24th Street and the Manager Application for Heath Smallcomb and approve **Resolution No. 2008-224**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

#### **RESOLUTION NO. 2008-224**

WHEREAS, THE GARAGE PRODUCTION COMPANY, dba "The Garage" has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of

Kearney, Nebraska, an application for a Class CK-83704 (Beer, Wine and Distilled Spirits – On and Off Sale) Catering Liquor License to do business at 15 East 24th Street, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, THE GARAGE PRODUCTION COMPANY, dba “The Garage” also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Heath Smallcomb; and

WHEREAS, a hearing was held relating to said application on December 23, 2008.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska approve or recommend approval to the Nebraska Liquor Control Commission of the issuance of a Class CK-83704 (Beer, Wine and Distilled Spirits – On and Off Sale) Catering Liquor License to THE GARAGE PRODUCTION COMPANY, dba “The Garage” located at 15 East 24th Street, Kearney, Nebraska, and to approve the application for Corporate Manager of Heath Smallcomb.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to record the Council action favoring the issuance of said license in the Minute Record of the proceedings of the Council.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**PERMANENT HIKE AND BIKE TRAIL EASEMENTS**

Mayor Clouse opened the public hearing on the proposed acquisitions for a Permanent Hike and Bike Trail Easement of the following: TRACT A – The Evangelical Lutheran Good Samaritan Society for a tract of land being the north 20.0 feet of Lot 2, Prairie View Gardens, an addition to the City of Kearney, Buffalo County, Nebraska; TRACT B – Good Samaritan Hospital for a tract of land being the north 20.0 feet of the east 75.0 feet of Lot 3, Prairie View Gardens, an addition to the City of Kearney, Buffalo County, Nebraska; and TRACT C – Lighthouse Point Subdivision Homeowners Association for a tract of land being a 20.0 foot strip of land being part of Lot 5 of Block 1, Lighthouse Point, an addition to the City of Kearney, Buffalo County, Nebraska and to consider approval of Resolution No. 2008-225.

Director of Park & Recreation Neal Lewis presented this matter to the Council. To construct the Lighthouse Point Trail extension, three right-of-way agreements were needed. One from the Lighthouse Point Subdivision Homeowners Association Inc., the second from the Good Samaritan Hospital (Richard Young), and the third from the Evangelical Lutheran Good Samaritan Society (Prairie Gardens). Part of the trail will be located on City park land. The Agreements were developed and approved by the City Attorney. The project is planned to be advertised for bids this spring. This project is funded by the Recreation Trails Program Grant in the amount of \$200,000 from the Nebraska Game and Parks with the City match being \$50,000. This amount has been included in the 2008-2009 budget. Total budget for the project is \$250,000.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the proposed acquisitions for a Permanent Hike and Bike Trail Easement of the following: TRACT A – The Evangelical Lutheran Good Samaritan Society for a tract of land being the north 20.0 feet of Lot 2, Prairie View Gardens, an addition to the City of Kearney, Buffalo County, Nebraska; TRACT B – Good Samaritan Hospital for a tract of land being the north 20.0 feet of the east 75.0 feet of Lot 3, Prairie View Gardens, an addition to the City of Kearney, Buffalo County, Nebraska; and TRACT C – Lighthouse Point Subdivision Homeowners Association for a tract of land being a 20.0 foot strip of land being part of Lot 5 of Block 1, Lighthouse Point, an addition to the City of Kearney, Buffalo County, Nebraska and approve **Resolution No. 2008-225**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2008-225**

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

WHEREAS, the City Council has held a public hearing upon the proposed acquisitions for Permanent Hike and Bike Trail Easement and voted in favor to proceed with the acquisitions; and

WHEREAS, the Lighthouse Point Subdivision Homeowners Association, Inc. has granted to the City of Kearney, Nebraska a Permanent Hike and Bike Trail Easement for a tract of land being a 20.0 foot strip of land being part of Lot 5 of Block 1, Lighthouse Point, an addition to the City of Kearney, Buffalo County, Nebraska, with the centerline of said 20.0 foot strip of land more particularly described as follows: referring to the northeast corner of Lot 5 of Block 1 in said Lighthouse Point and assuming the north line of said Lot 5 of Block 1 as bearing S89°26'19"W and all bearings contained herein are relative thereto; thence S89°26'19"W and on said north line a distance of 449.77 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the centerline of said 20.0 foot strip of land; thence S15°32'07"E a distance of 30.21 feet; thence S71°15'29"E a distance of 162.29 feet; thence S66°19'29"E a distance of 134.28 feet; thence S59°34'16"E a distance of 108.92 feet to the point of curvature; thence on a 150.0 foot radius curve to the right, forming a central angle of 46°55'41" a distance of 122.86 feet to a point on the east line of said Lot 5 of Block 1 and the point of termination, said point of termination being 291.25 feet southerly of the northeast corner of said Lot 5 of Block 1, Lighthouse Point, an addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, The Good Samaritan Hospital has granted to the City of Kearney, Nebraska a Permanent Hike and Bike Trail Easement for a tract of land being the north 20.0 feet of the east 75.0 feet of Lot 3, Prairie View Gardens, an addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, The Evangelical Lutheran Good Samaritan Society has granted to the City of Kearney, Nebraska a Permanent Hike and Bike Trail Easement for a tract of land being the north 20.0 feet of Lot 2, Prairie View Gardens, an addition to the City of Kearney, Buffalo County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City

of Kearney, Nebraska, that the Permanent Hike and Bike Trail Easements granted by the Lighthouse Point Subdivision Homeowners Association, Inc., The Good Samaritan Hospital, and The Evangelical Lutheran Good Samaritan Society to the City of Kearney, Nebraska, be and are hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

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

Moved by Lear seconded by Buschkoetter that Subsections 1 through 15 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held December 9, 2008.
2. Approve the following Claims:

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

Acushnet \$33.90 Smcs; Agri Coop \$433.05 Smcs; American First Aid \$57.05 Smcs; Anderson,S \$144.35 Smcs; Antelope Newspaper \$72.00 Smcs; Ask Supply \$209.46 Smcs; B&M Auto Interiors \$100.00 Smcs; Baird Holm \$250.00 Smcs; Baker & Taylor Books \$5,488.68 Smcs; Bamford \$1,050.81 Smcs; Barney Abstract \$210.00 Smcs; BBC Audiobooks \$160.97 Smcs; Bluecross Blueshield \$177,593.03 Smcs; Bosselman \$3,958.00 Smcs; Brilliance Audio \$182.63 Smcs; Broadfoot's \$400.00 Smcs; Buffalo Co Court \$255.29 Ps; Buffalo Co Register Deeds \$440.00 Smcs; Bungler,A \$27.76 Smcs; Cash-Wa \$295.20 Smcs; Center Point Large Print \$51.78 Smcs; Central NE Bobcat \$26,943.88 smcs,co; CH Diagnostic \$455.00 Smcs; Charter \$116.63 Smcs; Chartwells Dining Services \$642.85 Smcs; City Glass \$408.23 smcs,co; City of Ky \$16,480.97 smcs,ps; CODI \$75.00 Smcs; College Savings Plan of NE \$100.00 Ps; Community Link \$295.00 Smcs; Conseco Life Ins \$24.00 Ps; Copycat Printing \$130.99 Smcs; Cummins Central Power \$867.29 Smcs; Dawson Co PPD \$17,767.21 Smcs; Decker,K \$13.33 Smcs; Dell \$3,666.57 Co; Depository Trust \$307,808.63 Ds; Dreyer,D \$77.62 Smcs; Eakes \$1,948.55 Smcs; Ebsco \$1,164.00 Smcs; Ecolab \$30.00 Smcs; Eickhoff,B \$36.00 Ps; EMC Ins \$16,776.07 Smcs; Eustis Body Shop \$410.00 Smcs; Farmers Union Coop \$687.50 Smcs; Fedex \$243.52 Smcs; Fireguard \$946.49 Smcs; Frontier \$8,092.47 Smcs; Gale \$1,147.96 Smcs; Galls \$114.88 Smcs; Garrett Tires \$4,790.12 Smcs; Geotechnical Services \$9,894.25 Co; Gooch Brake \$1,811.90 Smcs; Gopher \$1,154.79 Smcs; Great Plains One Call \$206.34 Smcs; Grimes,J \$12.10 Smcs; Grint,K \$26.33 Smcs; Guideposts \$34.48 Smcs; HD Supply \$182.22 Smcs; Highsmith \$19.50 Smcs; Hinrichs,S \$23.72 Smcs; Holler,R \$3.79 Smcs; Holmes Plbg \$138.91 Smcs; ICMA RC \$4,154.21 Ps; IRS \$118,255.59 Ps; Jack Lederman \$1,634.75 Smcs;

Jacobsen, Orr, Nelson \$65.00 Smcs; Jonak,K \$31.25 Smcs; K&K Parts \$855.39 Smcs; Ky Chamber Comm \$563.00 Smcs; Ky Clinic \$108.00 Ps; Ky Crete & Block \$1,810.13 Co; Ky Hub \$2,563.04 Smcs; Ky Towing \$245.00 Smcs; KGFW/KQKY/KRNY \$555.00 Smcs; Kiplinger Tax Letter \$67.00 Smcs; Konica Minolta \$73.42 Smcs; Kowalek,G \$20.00 Smcs; Lang,L \$45.10 Smcs; Law Enforcement Training \$220.00 Smcs; League of NE Municipalities \$50.00 Smcs; Linden,J \$22.84 Smcs; Linweld \$12.60 Smcs; Lockmobile \$533.00 Smcs; Magic Cleaning \$660.00 Smcs; Mail Express \$275.94 Smcs; Manary,M \$19.53 Smcs; Marlatt Machine Shop \$510.93 Smcs; Masonic Temple Assn \$100.00 Smcs; Mattley Design \$325.00 Smcs; McIntosh,C \$41.41 Smcs; Metlife \$8.10 Ps; Mid American Signal \$8,500.00 Smcs; Midwest Lab \$2,116.40 Smcs; Milco Environmental \$7,250.24 Smcs; Miller & Associates \$21,938.50 smcs,co; Moonlight Embroidery \$2,059.75 Smcs; Morris Press \$2,945.99 Smcs; Moss & Barnett \$112.00 Smcs; Musil,J \$292.65 Smcs; NCS Equipment \$287.00 Smcs; NE Child Support \$2,837.74 Ps; NE Dept of Aeronautics \$995.00 Ds; NE Dept of Revenue \$28,634.79 Smcs; NE Machinery \$24,102.02 Co; NE Rural Water Assn \$50.00 Smcs; NE Safety & Fire \$245.00 Smcs; Northwestern Energy \$5,592.95 Smcs; NSC Racing \$1,000.00 Smcs; Office Depot \$205.58 Smcs; On Site Mobile \$63.00 Smcs; Otto Environmental Systems \$16,926.00 Smcs; Overhead Door \$197.00 Smcs; Oxford University Press \$86.94 Smcs; Paramount Linen \$46.64 Smcs; Pat's Plumbing \$275.00 Smcs; Pep Co \$102.20 Smcs; Pepsi Cola \$143.00 Smcs; Platte Valley Comm \$3,260.83 smcs,co; Presto-X \$210.00 Smcs; Quill \$425.22 Smcs; Random House \$480.60 Smcs; Recorded Books \$1,889.05 Smcs; Roesler,A \$63.30 Smcs; Safety-Kleen \$236.78 Smcs; Sage,P \$7.81 Smcs; Scherbarth \$6,821.75 Co; Sheldon,S \$58.84 Smcs; Sherman,B \$175.00 Smcs; Siel Construction \$93,473.97 Smcs; Steinbrink Landscaping \$148,766.00 Co; Stepanek,J \$39.11 Smcs; Story,G \$12.17 Smcs; Stover,J \$22.46 Smcs; Sungard Public Sector \$195.00 Smcs; Super Shine Auto Care \$8.00 Smcs; Sutphen Corp \$230.33 Smcs; Technical Maintenance \$434.84 Smcs; Tool Doctor \$12.00 Smcs; Tri-Cities Group \$655.00 Smcs; Turner Body Shop \$75.00 Smcs; Tye & Rademacher \$10,431.54 Smcs; Unique Management \$295.35 Smcs; Unisys \$180.80 Smcs; United Way \$300.00 Smcs; Vansyckle,J \$185.00 Smcs; Vermont Systems \$1,177.00 Smcs; Village Uniform \$126.40 Smcs; Whelen Engineering \$138.00 Smcs; Wiegand Security \$75.00 Smcs; Wilkins Hinrichs Stober \$20,785.03 Co; Wing Scale Service \$225.00 Smcs; WPCI \$453.00 Ps; Payroll Ending 12-20-2008 -- \$307,395.60. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$\_\_\_\_\_ to the City of Kearney.

3. Receive recommendations of Planning Commission and set January 13, 2009 at 7:00 p.m. as date and time for hearing on those applications where applicable.

4. Approve T-Hangar B-4 Lease Agreement between the City of Kearney and Central Nebraska Spinal Surgery Center/David Alvarado Benavides and approve **Resolution No. 2008-226**.

#### **RESOLUTION NO. 2008-226**

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the T-Hangar B-4 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Central

Nebraska Spinal Surgery Center/David Alvarado Benavides, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

5. Approve the application to extend Conditional Use Permit No. 2001-03 submitted by Carol Letcher of Beadle LLC and Ron Blessing of Blessing Construction to continue the Resource Extraction and Stockpiling Operation located ¾ mile north of 56th Street on the west side of Avenue N for a period of one year.

6. Approve the Intergovernmental Agreement between the City of Kearney and the Nebraska Department of Environmental Quality regarding the implementation of storm water management and approve **Resolution No. 2008-227**.

**RESOLUTION NO. 2008-227**

WHEREAS, the City of Kearney submitted a Storm Water Management Plan which identified the City of Kearney's plan for compliance with National Pollutant Discharge Elimination System – Phase II regulations; and

WHEREAS, the City of Kearney agrees to utilize funds which have been made available to the Nebraska Department of Environmental Quality; and

WHEREAS, grant monies are being awarded regarding storm water runoff under the National Pollutant Discharge Elimination System requirements; and

WHEREAS, grant funds in an amount up to \$60,592.00 and a nonfederal match of at least \$12,118.00 are to be used to implement the entitled "Storm Water Management Plan Program".

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Manager be and is hereby authorized and directed to execute the Intergovernmental Agreement between the City of Kearney and the Nebraska Department of Environmental Quality regarding the implementation of the Storm Water Management Plan Program. A copy of the said Agreement, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

7. Approve the following Agricultural Leases at the Kearney Regional Airport from January 1, 2009 until December 31, 2009: B & B Bendfeldt Farms, L.L.C. and Brenda Bendfeldt (229 irrigated acres); David R. Fleming (383 non-irrigated acres); David R. Fleming (272 irrigated acres); Donald D. Hendrickson (347 irrigated acres and 11 non-irrigated acres); Gary Henderson (34 irrigated acres); Lee Potter (62 irrigated acres); Thomas L. Larsen and Theodore A. Larsen (127 under pivot irrigation acres and 9 non-irrigated acres) and approve **Resolution No. 2008-228**.

**RESOLUTION NO. 2008-228**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed on behalf of the City of Kearney, Nebraska to execute the following Agriculture Lease Agreements on property located at the Kearney Regional Airport from January 1, 2009 until December 31, 2009:

- B & B Bendfeldt Farms, L.L.C. and Brenda Bendfeldt (229 irrigated acres) – annual cash rent is \$37,663.62;
- David R. Fleming (383 non-irrigated acres) – annual cash rent is \$26,810.00;
- David R. Fleming (272 irrigated acres) – annual cash rent is \$44,233.88;
- Gary Henderson (34 irrigated acres) – annual cash rent is \$5,389.00;
- Donald D. Hendrickson (347 irrigated acres and 11 non-irrigated acres) – annual cash rent is \$57,952.24;
- Ron Hendrickson (75 acres dry land hay) – annual cash rent is \$3,750.00;
- Lee Potter (62 irrigated acres) – annual cash rent is \$10,106.00;
- Thomas L. Larsen and Theodore A. Larsen (127 under pivot irrigation acres and 9 non-irrigated acres) – annual cash rent is \$21,182.02.

A copy of the Agreements, marked Exhibits “1”, “2”, “3”, “4”, “5”, “6”, “7”, “8”, are attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**8.** Approve Application and Certificate for Payment No. 6 in the amount of \$25,205.33 submitted by Blessing, LLC and approved by Brungardt Engineering for the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and approve **Resolution No. 2008-229**.

**RESOLUTION NO. 2008-229**

WHEREAS, Blessing, LLC has performed services in connection with the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and the City's engineer, Brungardt Engineering, have filed with the with the City Clerk Change Order No. 6 showing a decrease in the amount of \$3,450.60 as shown on Exhibit “A” attached hereto and made a part hereof by reference; and

WHEREAS, Blessing, LLC and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 6 in the amount of \$25,205.33 as shown on Exhibit “B” attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$1,004,396.00
Change Order No. 1 (4-8-2008)	- 136,500.00
Change Order No. 2 (10-14-2008)	+ 9,872.50
Change Order No. 3 (10-28-2008)	+ 3,241.00
Change Order No. 4 (10-28-2008)	+ 4,380.00
Change Order No. 5 (10-28-2008)	+ 12,517.30

Change Order No. 6 (12-23-2008)	- 3,450.60
Contract Sum to Date	894,456.20
Total Completed and Stored to Date	868,266.50
Retainage	.00
Amount Due to Date	868,266.50
Less Previous Certificates for Payment	<u>843,061.17</u>
Current Payment Due	\$ 25,205.33

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. 6 as shown on Exhibit "A" and Application and Certificate for Payment No. 6 as shown on Exhibit "B" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

9. Approve Change Order No. 3 showing an increase in the amount of \$17,315.78, Application and Certificate for Payment No. 7-Final in the amount of \$93,473.97, and the Certificate of Substantial Completion submitted by Siel Construction, Inc. and approved by Miller & Associates in connection with the Landfill Construction – Cell 7 Project and approve **Resolution No. 2008-230**.

#### RESOLUTION NO. 2008-230

WHEREAS, Siel Construction, Inc. of Franklin, Nebraska has performed services in connection with the Landfill Construction – Cell 7 Project, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 3 showing an increase in the amount of \$17,315.78 as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Siel Construction, Inc. and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 7-Final in the amount of \$93,473.97, as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$743,317.80
Change Order No. 1 (7-22-2008)	+ 7,476.00
Change Order No. 2 (12-9-2008)	+ 8,600.00
Change Order No. 3 (12-23-2008)	<u>+ 17,315.78</u>
Contract Sum to Date	776,709.58
Total Completed and Stored to Date	776,709.58
Retainage	.00
Amount Due to Date	776,709.58
Less Previous Certificates for Payment	<u>683,235.61</u>
Current Payment Due	\$ 93,473.97

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of December 5, 2008, 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. 3, as shown on Exhibit "A", Application and Certificate for Payment No. 7-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 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**10.** Approve Change Order No. 3 showing a decrease in the amount of \$10,000.00, Application and Certificate for Payment No. 10-Final in the amount of \$21,876.00, and the Certificate of Substantial Completion submitted by Central Contracting Corp. and approved by Miller & Associates for the construction of the Kearney Area Landfill Tipping Station located at 6711 West 56th Street and approve **Resolution No. 2008-231**.

#### RESOLUTION NO. 2008-231

WHEREAS, Central Contracting Corporation has performed services in connection with the Kearney Area Landfill Tipping Station, and the City's engineer, Miller & Associates, have filed Change Order No. 3 showing a decrease to the contract sum in the amount of \$10,000.00, as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, Central Contracting and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 10-Final in the amount of \$21,876.00, as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$444,470.00
Change Order No. 1 plus an additional 94 work days (2-12-2008)	+ 1,897.00
Change Order No. 2 (6-10-2008)	+ 1,154.00
Change Order No. 3 (12-23-2008)	- 10,000.00
Contract Sum To Date	\$437,521.00

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of November 17, 2008, 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. 3, as shown on Exhibit "A", Application and Certificate for Payment No. 10-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 23RD DAY OF DECEMBER, 2008.

ATTEST:

STANLEY A. CLOUSE

MICHAELLE E. TREMBLY  
CITY CLERK

PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR

**11.** Approve Change Order No. 1 showing an increase in the amount of \$9,617.90, Application and Certificate for Payment No. 4 in the amount of \$142,738.84 submitted by Blessing, LLC and approved by Miller & Associates in connection with the 2008 Part III Improvements consisting of Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street and approve **Resolution No. 2008-232**.

### RESOLUTION NO. 2008-232

WHEREAS, Blessing, LLC of Kearney, Nebraska has performed services in connection with the 2008 Part III Improvements consisting of Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing an increase in the amount of \$9,617.90 as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Blessing, LLC and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 4 in the amount of \$142,738.84 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$336,216.00
Change Order No. 1 (12-23-2008)	<u>+ 9,617.90</u>
Contract Sum to Date	345,833.90
Total Completed and Stored to Date	330,402.90
Retainage	6,608.06
Amount Due to Date	323,794.84
Less Previous Certificates for Payment	<u>125,856.00</u>
Current Payment Due	\$197,938.84
Per City's Direction 138 days @ \$400	<u>- 55,200.00</u>
	\$142,738.84

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" and Application and Certificate for Payment No. 4, as shown on Exhibit "B", be and are hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**12.** Approve Application and Certificate for Payment No. 3 in the amount of \$25,640.67 submitted by Wilke Contracting, Inc. and approved by Miller & Associates in connection with the 2007 Part 5 Improvements consisting of bridge work on 4th Street

between 2nd Avenue and 3rd Avenue and approve **Resolution No. 2008-233**.

### RESOLUTION NO. 2008-233

WHEREAS, Wilke Contracting Corporation has performed services in connection with the 2007 Part V Improvements consisting of the bridge work on 4th Street between 2nd Avenue and 3rd Avenue, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 3 in the amount of \$25,640.67 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$310,147.48
Contract Sum to Date	\$310,147.48
Gross Amount Due	284,896.34
Retainage	2,848.96
Amount Due to Date	282,047.38
Less Previous Certificates for Payment	<u>256,406.71</u>
Current Payment Due	\$ 25,640.67

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 3, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**13.** Approve Application and Certificate for Payment No. 7 in the amount of \$10,767.00 submitted by Eriksen Construction Co., Inc. and approved by Miller & Associates in connection with the Northwest Well Field Improvements; Phase III - Water Conditioning Facility and Control System and approve **Resolution No. 2008-234**.

### RESOLUTION NO. 2008-234

WHEREAS, Eriksen Construction Co. of Blair, Nebraska has performed services in connection with the Northwest Well Field Improvements – Phase III (Water Conditioning Facility and Control System), and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 7 in the amount of \$10,767.00, as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$410,900.00
Change Order No. 1 (8-26-2008)	<u>+ 406.06</u>
Contract Sum To Date	411,306.06
Gross Amount Due	381,806.06
Retainage	11,454.18
Amount Due to Date	370,351.88

Less Previous Certificates for Payment	<u>359,584.88</u>
Current Payment Due	\$ 10,767.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 7, as shown on Exhibit "A" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**14.** Approve the bids received for the 2008 Part 7 Improvements consisting of Water District No. 2008-553 for 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition and approve **Resolution No. 2008-235** awarding the bid to Judds Brothers Construction from Lincoln, Nebraska in the amount of \$379,370.00.

#### **RESOLUTION NO. 2008-235**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on December 16, 2008 at 2:00 p.m. for the 2008 Part 7 Improvements consisting Water District No. 2008-553 for 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$428,514.00; and

WHEREAS, the said engineers have recommended the bid offered by Judds Brothers Construction of Lincoln, Nebraska in the sum of \$379,370.00 be accepted as the lowest responsible bid for the 2008 Part 7 Improvements consisting Water District No. 2008-553 for 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Judds Brothers Construction of Lincoln, Nebraska be and is the lowest responsible bidder for the 2008 Part 7 Improvements consisting Water District No. 2008-553 for 56th Street from the southwest corner of Lot 11 of Block 6, Eastbrooke Eighth Addition east to the southeast corner of Lot 1 of Block 7, Eastbrooke Eighth Addition; and Sewer District No. 2008-494 in a 20-foot sanitary sewer easement located along the south side of Block 3, Bel Air Third Addition to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Judds Brothers Construction of Lincoln, Nebraska in the sum of \$379,370.00 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer’s Opinion of Probable Construction Cost in the amount of \$428,514.00 be and is hereby accepted.

BE IT FURTHER RESOLVED that the President of the Council of the City of Kearney, Nebraska, be and is hereby authorized and directed to execute contracts for such improvements in accordance with the bid, plans, specifications, and general stipulations pertaining thereto.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**15.** Approve Addendum to the South Central Area Law Enforcement Services (SCALES) Agreement to include the Aurora Police Department, the Holdrege Police Department and the Phelps County Sheriff’s Office and approve **Resolution No. 2008-236.**

**RESOLUTION NO. 2008-236**

WHEREAS, on July 25, 2006 the City Council passed and approved Resolution No. 2006-129 entering into an Interlocal Agreement with the cities of Kearney, Hastings, and Grand Island, and the counties of Buffalo, Adams, and Hall, Nebraska, which Agreement established a law enforcement alliance between the entities that allow for the equitable sharing of investigative resources on major criminal investigations, promote cooperation among area agencies to combat crime and criminals in the most effective manner possible, to create a mechanism by which purchases can be made jointly thereby reducing the costs for individual agencies and enhancing the abilities of all member agencies to acquire necessary investigative resources that might otherwise be too expensive, and to provide an example and leadership to other agencies in methods of cooperation and efficiency; and

WHEREAS, the Phelps County Sheriff’s Office, Holdrege Police Department and the Aurora Police Department have expressed a desire to enter into said Interlocal Agreement and become members of the South Central Area Law Enforcement Services.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be and are hereby authorized and directed to execute on behalf of the City of Kearney the said “Addendum to SCALES Interlocal Agreement for Cooperative Law Enforcement Services as set forth in Exhibit “A”, attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**V. CONSENT AGENDA ORDINANCES**

**ORDINANCE NO. 7496 – AMEND ARTICLE 4 “BONDS; REQUIRED” OF CHAPTER 1 OF CITY CODE**

This Ordinance is a modification of City Code relating to bonds which are required by state law for certain officials of cities, towns, or villages pursuant to §11-104 of the Nebraska Revised Statute. The City has always been required to obtain bonds with reference to the Finance Director; however, due to a language change which was included in the statute in the last legislative session, cities now have the option of providing for bonds or "evidence of equivalent insurance". This language change was added to give municipalities the flexibility of either obtaining individual bonds or including these individuals in existing insurance coverage of an equivalent amount as required by law. Adding this language would allow the City to add coverage through its existing insurance program without the need of separate bonds for these city officials.

The bond required for the City Manager was not changed and is still required. However, in visiting with Barney Insurance representatives, it was suggested to reduce the amount of the bond to \$5,000.

City Attorney has reviewed this with representatives of Barney Insurance and they have requested this modification so that this coverage can be incorporated in the already existing insurance plan with EMC. With the change in State law, this will eliminate the premium needed for bonding the Director of Finance and Administration. Coverage will be provided through the City's existing insurance carrier.

Council Member Buschkoetter introduced Ordinance No. 7496, being Subsection 1 of Agenda Item V to amend Article 4 "Bonds and Oaths" of Chapter 1 "Administration" of the City Code as follows: Section 1-401 "Bonds; Required" to reflect the changes in state law by providing the option of requiring a bond or evidence of equivalent insurance for municipal officers and Council Members; to amend Section 1-402 "Bonds; City Manager and Director of Finance and Administration" to provide the option of providing a bond or evidence of equivalent insurance for the Director of Finance and Administration and to reduce the amount of the bond required for the City Manager to \$5,000.00, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. 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. 7496 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7496 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance,

Ordinance No. 7496 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**ORDINANCE NO. 7497 – CREATE PAVING DISTRICT NO. 2008-934**

The City received a letter from a property owner requesting paving improvements for this area. The street requested to be improved is a graveled street. In accordance with the City's paving assessment policy (Resolution No. 2006-103), residential properties that have graveled streets wherein the special assessments would be paid as follows: 50 percent by special sales tax funds and the other 50 percent would be assessed against the property in the district or available grant funds. Therefore, a property owner has requested a district so that when special sales tax funds are available, the district has already been requested and they would be line for available funding.

Council Member Buschkoetter introduced Ordinance No. 7497, being Subsection 2 of Agenda Item V to create Paving Improvement District No. 2008-934 for 18th Street from 8th Avenue to 9th Avenue, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. 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. 7497 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7497 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7497 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**ORDINANCE NO. 7498 – CREATE PAVING DISTRICT NO. 2008-935**

The City received a letter from a property owner requesting paving of the alley lying between 2nd Avenue and 3rd Avenue from 12th Street to 13th Street.

Council Member Buschkoetter introduced Ordinance No. 7498, being Subsection 3 of Agenda Item V to create Paving Improvement District No. 2008-935 for a 20-foot wide alley lying between 2nd Avenue and 3rd Avenue from 12th Street to 13th Street, and

moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. 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. 7498 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7498 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7498 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

## **VI. REGULAR AGENDA**

### **ACCEPTING AGREEMENTS FOR ANNEXATION**

Mayor Clouse opened for discussion the Agreements submitted by Nebco, Inc. (Kearney Crete & Block), A.I. Leasing, Inc. (Kearney Implement), and Cabela's Inc. with regard to annexing areas on the north side of East Highway 30 and to consider approval of Resolution No. 2008-237.

City Manager Michael Morgan stated has been meeting with a number of business owners who own property adjacent to the Kearney city limits extending generally East of Antelope Avenue along Highway 30 to approximately Cherry Avenue. It is the City's desire to annex these businesses into the City of Kearney and the City has now been able to finalize agreements with three property owners for the annexation of their property; these businesses include Kearney Crete and Block, Kearney Implement, and the Kearney Cabela's retail location. City staff and representatives of Morris Press have exchanged information and negotiations are underway.

The three Annexation Agreements indicate that the businesses in question are in agreement with the City moving forward with annexation and confirm the City's obligations once annexation has been completed. The properties in question are currently served by City services or such services are available to the properties.

The issue of annexation will then be presented to the Planning Commission for its review on January 16. On January 27, 2009 the Council would then pass a resolution of intent indicating that it intends to move forward with the annexation of the specified

properties and scheduling the matter for a public hearing. A map of the area to be annexed, as well as notice of the public hearing, would be published for the public hearing to occur on February 10, 2009.

The area in question is either served or can be served by city utilities. Accordingly, additional utility improvements will not be required. However, as conditions warrant, the City of Kearney will construct to city standards a new road between Morris Press and Kearney Implement. The estimated cost for the road is \$80,000.

Moved by Kearney seconded by Lammers to accept the Agreements submitted by Nebco, Inc. (Kearney Crete & Block), A.I. Leasing, Inc. (Kearney Implement), and Cabela's Inc. with regard to annexing areas on the north side of East Highway 30 and approve **Resolution No. 2008-237**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

### **RESOLUTION NO. 2008-237**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreements for Annexation between the City of Kearney and Nebco, Inc. (Kearney Crete & Block), A.I. Leasing, Inc. (Kearney Implement), and Cabela's Inc. be and are hereby accepted.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Agreements on behalf of the City of Kearney for the annexation of the respective business.

BE IT FURTHER RESOLVED that the City Manager and City Attorney continue the negotiations with Morris Press.

PASSED AND APPROVED THIS 23RD DAY OF DECEMBER, 2008.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **OPEN ACCOUNT CLAIMS: PLATTE VALLEY STATE BANK - \$48,742.30, NPPD - \$55,913.01**

Moved by Lammers seconded by Kearney that Open Account Claims in the amount of \$48,742.30 payable to Platte Valley State Bank, and in the amount of \$55,913.01 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney. Nay: None. Clouse and Lear abstained. Motion carried.

## **VII. REPORTS**

### **UPDATE ON CHERRY AVENUE**

City Manager Michael Morgan stated he attended the State Highway Commission meeting on December 19<sup>th</sup> with Mayor Clouse. At that meeting, they discussed an agenda item that is very important to Kearney regarding the Kearney East interchange and bypass. This project has been identified with a number which is a positive step.

This project approval took place with full support of the Highway Commission. The layout was presented at that meeting, access control and the formal request to proceed with preliminary and then formal design. They will need to reclassify roads as their status is adjusted due to the new street system. It will also include the relinquishment approval which at some point the City will assume responsibility for 2nd Avenue when the project is completed.

The entire project was presented with a revised estimate of \$47.6 million for Phases I, II and III and they expect that Phase I which is I-80 to 11th Street to start construction in spring 2010. All phases should be completed within a total of five years. They had great cooperation with Nebraska Department of Roads throughout the past months on the decisions that needed to be made. The federal authorities are doing the final environmental review and the State Deputy Director is anxious to get this environmental assessment done and move forward. This is the last step for the State of Nebraska to take regarding this project. This means that the funding is there and they are proceeding.

One thing that was very impressive to the State Commission and one thing that they commented on is that seldom do they see projects that have federal, state, county and city cooperation and funding. They were very impressed with Buffalo County's commitment to connect Cherry Avenue, 11th Street, 56th Street, etc. They believed that the City of Kearney and Buffalo County had stepped up to the plate whether it was funding or additional roadways to connect and make this project feasible. The State Commission commented they wished that everyone across the state would follow that same pattern. When they negotiated the agreements, there were some specific requirements for extensions of roadways and Buffalo County agreed to do those.

Mayor Clouse agreed. When the maps were presented at the meeting, each place there was a gap, they were able to share with them the plans to connect, the plans for the entrance into the Airport, plans to upgrade the Airport, information about where the contributions were coming from, how the City is going to fund this and how the County is going to fund this project. They could look at the entire picture with no mention of if or when they build this. The statement was when you build this, what is your timeline so we can match our timelines so it all hits at the same time. They were impressed that we had gone that far with our planning and we do have a plan in place that would be implemented as soon as their piece was done, we are going to be ready to tie in and make it happen.

### **SALES TAX**

City Manager Michael Morgan stated the City has seen the first decline in sales tax revenues for the last month of October 2008 which was down two percent. The prior month was eight percent to the good and the month before that was 15 percent to the good. This last report is not necessarily an alarming number. For 2007, the overall was 5.2 percent. Year to date, Kearney will still be six to eight percent to the good and they will continue to monitor the sales tax numbers. This is a much better number than many jurisdictions would be reporting. They do have a little cushion, but do not necessarily want to use it. The high fuel prices have come down and have favorably impacted the budget compared to last year. They are saving some significant dollars in that line item.

A much higher number had been budgeted for fuel so each month that they are lower is a positive.

**VIII. ADJOURN**

Moved by Kearney seconded by Buschkoetter that Council adjourn at 7:40 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

**ATTEST:**

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

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**CATHY M. VOGT  
ACTING CITY CLERK**