

## AGREEMENT

**THIS AGREEMENT** entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, between the City of Kearney, a Municipal Corporation located in Buffalo County, Nebraska, herein referred to as "CITY", and the Plaza Neighborhood Association, \_\_\_\_\_, City of Kearney, Buffalo County, State of Nebraska, herein after referred to as "THE ASSOCIATION".

**WHEREAS**, the City and the Association have earlier entered into an Agreement dated May 18, 2001, with reference to certain dewatering wells which the City has allowed to be located within its right-of-way in order to alleviate the high water table or ground water issues in the Plaza Neighborhood; and

**WHEREAS**, the parties now wish to update that agreement and again define the responsibilities of the parties in this matter;

**WHEREAS**, the parties continue to understand and acknowledge that the City of Kearney has and will have in the future no legal responsibility for the high water tables in the Plaza Neighborhood area, nor will the City have any legal responsibility of any kind for flood damage sustained by any residents of the Plaza Neighborhood or with reference to the Association, however, the City is willing to continue to allow two dewatering wells to be located within its right-of-way in order to assist the Association in an attempt to lower water tables by pumping groundwater into the adjacent storm sewer system and away from the area;

**WHEREAS**, the City of Kearney wishes to assist property owners and the Association by the provisions of this Agreement.

**NOW, THEREFORE,** the parties to this Agreement, in consideration of mutual covenants and stipulations as set forth herein, do hereby agree as follows:

1. The City will continue to have title to any personal property described as dewatering wells abutting Lot 31, Block 4, Kearney Plaza Subdivision and Lot 10, Block 3, Kearney Plaza 3<sup>rd</sup> Subdivision. The wells have be located on public right-of-way and the City will permit the wells to remain in the public right-of-way until such time as the City determines that they are not necessary or until the City determines, in its sole discretion, that it is in the best interests of the City to remove said wells. Should the City decide to remove said wells, the City will provide thirty (30) days notice to the Association or its successors prior to removing said wells from the right-of-way.

2. The Association agrees to be fully responsible for the operation, maintenance, as well as any and all costs of any kind attributable to the operation and maintenance of said wells. The parties specifically agree that the City of Kearney will have no responsibility of any kind to provide for the operation, maintenance, or upkeep of said wells. The City shall further have no responsibility of any kind to check on said wells and/or determine that they are operational or functioning properly; this shall be the responsibility of the Association. The parties acknowledge that the prior agreement obligated the Association to provide for payment for electrical and energy costs to operate such wells up to an annual limit of \$1,200.00, however, the City of Kearney has paid for these expenses since the wells were put in operation. The City of Kearney agrees that it will cover the electrical costs for the operation of said wells in the past and will waive any claim against the Association for any past electrical costs paid for by the City. The Association agrees that upon the signing of this agreement they will be

responsible for paying the electrical costs on these wells in the future of up to \$1,200.00 annually. Any costs in excess of the \$1,200.00 will be paid for by the City. However, the City will have the option of transferring the responsibility to pay all electrical costs back to the association, at the City's sole discretion. The City will provide the Association with 180 days notice of this change. While the City will have no obligation to pay for any maintenance on these wells in the future, the City will pay the current bill for repairs, not to exceed \$1,200.00.

3. The Association agrees and understands that the operation of said wells on City property shall not, in any manner, accrue or be construed to accrue, vest or grant property owners any legal interest whatsoever in the City right-of-way or in the wells, and shall not be construed as an admission or any acceptance of legal duty or responsibility on the part of the City either for the continued operation of the wells or for the conditions which the parties seek to alleviate.

4. The City reserves the right to meter or otherwise measure pumping flows, and to claim said pumping rates as a credit in any water rights proceedings involving the City.

5. The Parties agree that this Agreement may not be assigned without the express written consent of the City.

6. This instrument contains the entire Agreement between the parties and no statements, promises, or inducements made by either party or agent of either part that are not contained in this Agreement shall not be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this Agreement.

7. This Agreement shall be for the benefit of and be binding on the heirs, executors, administrators, assigns and successors of the respected parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

PLAZA NEIGHBORHOOD ASSOCIATION

By: \_\_\_\_\_  
President

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF BUFFALO )

Before me, a Notary Public qualified in said county, personally came \_\_\_\_\_ the President of the Plaza Neighborhood Association, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution hereof to by his voluntary act and deed of the association.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2009.

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

(SEAL)

CITY OF KEARNEY, NEBRASKA

By: \_\_\_\_\_  
Stanley Clouse, Mayor

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF BUFFALO )

Before me, a Notary Public qualified in said county, personally came Stanley Clouse, Mayor the City of Kearney, Nebraska, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution hereof to by his voluntary act and deed of the corporation.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2009.

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

(SEAL)