

## **Agenda**

City Commission of the City of Neodesha, KS

October 26, 2022 2:00 p.m.

ZOOM Online Access: <https://us02web.zoom.us/j/6203252828>

### Item 1: Opening Session

- Call to Order
- Roll Call
- Invocation
- Pledge of Allegiance
- Additions/Deletions to the Agenda
- Mayor's Report
- Commissioners' Reports
- City Administrator's Comments
- Community Development Director Report

### Item 2: Public Comments

Item 3: Consent Agenda (Routine agenda items can be approved with unanimous consent of the City Commission. Any item can be removed and placed in items of business.)

- Approval of October 12, 2022 Minutes
- Appropriation (2022) 19

### Item 4: Business Items to Consider

- A. MCImetro Right-of-Way Permit Agreement
- B. Solar Project: Addendum to the Project Approval Notice
- C. Discuss GRDA Replacement Options: KS Municipal Energy Agency
- D. Accept Resignation of Public Works Employee
- E. Appoint Interim Public Works Director

### Item 5: Date/Time of Next Regular Meeting

Wednesday, November 9, 2022 at 2:00 p.m. – Regular Meeting, City Hall

### Item 6: Executive Session

### Item 7: Adjournment

**AGENDA COMMENTS  
CITY COMMISSION MEETING  
October 26, 2022**

**Additions to the Agenda**

**RECOMMENDED MOTION:** *I move to approve the agenda as presented.*

**Consent Agenda**

**RECOMMENDED MOTION:** *I move to approve the consent agenda as presented.*

**Business Items to Consider**

**4.A: MCImetro Right-of-Way Permit Agreement**

The Commission is asked to consider approval of a Right-of-Way Permit Agreement with MCImetro. Provided as background, the City Attorney advised that we seek legal counsel from a qualified law firm to assist the City with various franchise and Right-of-Way agreements. Penny Speake, an attorney from the Healy Law Offices, Springfield, MO, has provided us with assistance in drafting the ROW agreement for MCImetro. This agreement is for the buried fiberoptic cables in the southeast portion of town.

**RECOMMENDED MOTION:** *I move to approve the Right-of-Way Permit Agreement with MCImetro as presented.*

**4.B: Solar Project: Addendum to the Project Approval Notice**

This agenda item was tabled by the Commission on October 12, 2022. Addendum 1 to the Project Approval Notice (PAN) is a request from Priority Power Management (the consultant), that the Commission approve the purchase of a transformer for the solar project, at a cost of approximately \$90,000. On attorney's advice, we are seeking additional legal assistance from Foulston Siefkin Law Offices, Wichita, KS. Pending that full consultation, the Commission may be asked to table this agenda item once again.

**RECOMMENDED MOTION:** *To be determined...*

**4.C: Discuss GRDA Replacement Options: Tom Saitta, KMEA**

The Commission will welcome Tom Saitta and Neal Daney, KS Municipal Energy Agency, for a short presentation, and discussion, regarding replacement options for when the Grand River Dam Authority (GRDA), power purchase agreement sunsets. Due to the discussion involving the financial affairs of a third-party, the Commission is asked to enter executive session for this discussion item. There is no action requested from the Commission for this agenda item.

**EXECUTIVE SESSION: Financial Affairs/Trade Secrets**

*I move to recess to an Executive Session including the Governing Body, City Administrator, City Clerk, and KMEA Staff to discuss data relating to financial affairs or trade secrets of a corporation, partnership, trust, or individual proprietorship, per KSA 75-4319(b)(4). The open meeting will resume in the Commission Room at \_\_\_\_\_ P.M.*

**4.D: Accept Resignation of Public Works Employee**

Public Works Director Jeremy Johnson has submitted his written resignation, to be effective October 28, 2022.

**RECOMMENDED MOTION:** *I move to accept Jeremy Johnson's resignation, effective October 28, 2022.*

**4.E: Appoint Interim Public Works Director**

The Commission is asked to appoint an interim Public Works Director.

**RECOMMENDED MOTION:** *I move to appoint \_\_\_\_\_ as the interim Public Works Director, effective October 28, 2022.*

**EXECUTIVE SESSION: Non-Elected Personnel**

*I move to recess to an Executive Session including the Governing Body, City Administrator, and City Clerk to discuss an individual employee's performance pursuant to the non-elected personnel matter exception, KSA 75-4319(b)(1) because if this matter were discussed in open session it might invade the privacy of those discussed. The open meeting will resume in the Commission Room at \_\_\_\_ p.m.*

The Board of Commissioners met in regular session at 2:00 p.m., on Wednesday October 12, 2022, in the Commission Room at City Hall conducting the meeting by live streaming with Zoom with Mayor Johnson presiding and Commissioners Moffatt and Nichol present.

Commissioner Moffatt moved to approve the agenda as presented. Seconded by Commissioner Nichol. Motion carried.

Commission reports were heard.

City Administrator reports were heard.

Community Development Director reports were heard.

Public Comments were invited and heard.

Commissioner Nichol moved to approve the consent agenda as presented consisting of minutes from the September 28, 2022 Meeting; and Appropriation (2022) 18. Seconded by Commissioner Moffatt. Motion carried.

Administrator Truelove addressed the Commission regarding a Resolution calling for a public hearing to show cause why the structure located at 1017 Grant Street should not be condemned and ordered repaired or demolished as an unsafe or dangerous structure. Discussion held.

#### **RESOLUTION NO. 22-18**

**A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS AT WHICH TIME THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF THE STRUCTURE LOCATED AT 1017 GRANT LEGAL DESCRIPTION: FORD'S ADDITION, S20, T30, R16, BLOCK 002, LOTS 9&10, CITY OF NEODESHA, WILSON COUNTY, KANSAS, COMMONLY KNOWN AS 1017 GRANT, NEODESHA KS. MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS AN UNSAFE OR DANGEROUS STRUCTURE.**

**WHEREAS**, Ed Truelove, the Enforcement Officer of the City of Neodesha, did on the 12<sup>th</sup> day of October, 2022, file with the Governing Body of said City a statement in writing that certain unoccupied structures hereinafter described are unsafe and dangerous; **NOW, THEREFORE, BE IT RESOLVED** by the Governing body of the City of Neodesha that a hearing will be held on the 14th day Of December, 2022, before the Governing Body of the City at 2:00 p.m. in the Commission Room of City Hall, 1407 N. 8<sup>th</sup>; at which time the owner, his agent, any lien holder of record and any occupant of the structure located at 1017 Grant, Neodesha Kansas may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure and ordered repaired or demolished.

**BE IT FURTHER RESOLVED** that the City Clerk shall cause this Resolution to be published two consecutive times and shall give notice of the aforesaid hearing in the manner provided by law.

Commissioner Moffatt moved to adopt Resolution 22-18 setting a public hearing for December 14, 2022. Seconded by Commissioner Nichol. Motion carried.

Administrator Truelove addressed the Commission regarding a Resolution calling for a public hearing to show cause why the structure located at 1030 Walnut Street should not be condemned and ordered repaired or demolished as an unsafe or dangerous structure. Discussion held.

#### **RESOLUTION NO. 22-19**

**A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS AT WHICH TIME THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF THE STRUCTURE LOCATED AT 1030 WALNUT LEGAL DESCRIPTION: LOTS TWELVE (12), THIRTEEN (13), FOURTEEN (14), FIFTEEN (15) AND SIXTEEN (16), BLOCK TWO (2), DEET AND MORRIS FIRST ADDITION TO THE CITY OF NEODESHA, WILSON COUNTY, KANSAS, COMMONLY KNOWN AS 1030 WALNUT, NEODESHA KS. MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS AN UNSAFE OR DANGEROUS STRUCTURE.**

**WHEREAS**, Ed Truelove, the Enforcement Officer of the City of Neodesha, did on the 12th day of October, 2022, file with the Governing Body of said City a statement in writing that certain unoccupied structures hereinafter described are unsafe and dangerous; **NOW, THEREFORE, BE IT RESOLVED** by the Governing body of the City of Neodesha that a hearing will be held on the 14th day of December, 2022, before the Governing Body of the City at 2:00 p.m. in the Commission Room of City Hall, 1407 N. 8<sup>th</sup>; at which time the owner, his agent, any lien holder of record and any occupant of the structure located at 1030 Walnut, Neodesha Kansas may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure and ordered repaired or demolished.

**BE IT FURTHER RESOLVED** that the City Clerk shall cause this Resolution to be published two consecutive times and shall give notice of the aforesaid hearing in the manner provided by law.

Commissioner Moffatt moved to adopt Resolution 22-19 setting a public hearing for December 14, 2022 as presented.

Seconded by Commissioner Nichol. Motion carried.

Administrator Truelove addressed the Commission regarding a Resolution calling for a public hearing to show cause why the

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structure located at 1700 N 8<sup>th</sup> Street should not be condemned and ordered repaired or demolished as an unsafe or dangerous structure. The Commission approved this abatement resolution (22-17), September 28, 2022, but the resolution was not published in the newspaper as requested. Therefore, this resolution also repeals Resolution 22-17. Discussion held.

#### **RESOLUTION NO. 22-20**

**A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS AT WHICH TIME THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF THE STRUCTURE LOCATED AT 1700 N 8<sup>TH</sup> LEGAL DESCRIPTION: LOTS TWENTY-SIX (26) AND TWENTY-SEVEN (27), BLOCK ONE (1) J.H. PARK SUBDIVISION WILSON COUNTY KANSAS, COMMONLY KNOWN AS 1700 N 8TH, NEODESHA KS. MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS AN UNSAFE OR DANGEROUS STRUCTURE.**

**WHEREAS**, Ed Truelove, the Enforcement Officer of the City of Neodesha, did on the 28th day of September, 2022, file with the Governing Body of said City a statement in writing that certain unoccupied structures hereinafter described are unsafe and dangerous; **NOW, THEREFORE, BE IT RESOLVED** by the Governing body of the City of Neodesha that a hearing will be held on the 14<sup>th</sup> day of December, 2022, before the Governing Body of the City at 2:00 p.m. in the Commission Room of City Hall, 1407 N 8<sup>th</sup>; at which time the owner, his agent, any lien holder of record and any occupant of the structure located at 1700 N 8th Neodesha Kansas may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure and ordered repaired or demolished.

**BE IT FURTHER RESOLVED** that the City Clerk shall cause this Resolution to be published two consecutive times and shall give notice of the aforesaid hearing in the manner provided by law.

**BE IT FURTHER RESOLVED** that prior Resolution 22-17 is hereby repealed, voided and of no force or effect.

Commissioner Nichol moved to adopt Resolution 22-20 setting a public hearing for December 14, 2022 as presented. Seconded by Commissioner Moffatt. Motion carried.

Administrator Truelove addressed the Commission regarding the reappointment of members to the Economic Development Committee. Discussion held.

Commissioner Moffatt moved to reappoint Rod Froebe, Chris Goodwin, and Mitchell Peitz, to the Economic Development Committee for four-year terms, with a term ending date of December 31, 2026. Seconded by Commissioner Nichol. Motion carried.

Administrator Truelove addressed the Commission regarding information on the Kansas Department of Transportation, Project Programming Request Form 1302, and the requirement to submit this document in support of the Safe Routes to Schools project. Discussion held.

Commissioner Nichol moved to approve Form 1302, and authorize the Mayor to sign. Seconded by Commissioner Moffatt. Motion carried.

Administrator Truelove addressed the Commission regarding the approval of an engagement letter with UMB Bank, Scott Crist, to assist with the possible acquisition of finance, for a lease/purchase program for the solar project. Discussion held.

Commissioner Moffatt moved to approve the engagement letter with UMB Bank, for financial services associated with the proposed solar project. Seconded by Commissioner Nichol. Motion carried.

Administrator Truelove addressed the Commission regarding an addendum to the Project Approval Notice for the City's proposed solar project. This addendum addressed the need for the purchase of a second transformer related to the increase in AC output for 5 megawatts. Discussion held.

Commissioner Nichol moved to table this agenda item to the October 26, 2022 meeting. Seconded by Commissioner Moffatt. Motion carried.

Administrator Truelove addressed the Commission regarding appropriate locations for the placement of crosswalks on Main Street. Discussion held.

Commissioner Nichol moved to approve 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Streets, for the placement of crosswalks on Main Street. Seconded by Commissioner Moffatt. Motion carried.

Administrator Truelove addressed the Commission regarding the possible establishment of a 4.5-day work schedule for Staff. Discussion held. No action taken.

Administrator Truelove addressed the Commission regarding information about the trend towards establishing an Indigenous Peoples Day. Discussion held. No action taken.

At 3:25 p.m. Commissioner Moffatt requested a 5-minute recess. Seconded by Commissioner Nichol. Motion carried. The live streamed Zoom meeting was then placed on hold with audio, video and recording ceased.

At 3:30 p.m. the regular meeting of the Governing Body reconvened in the Commission Room at City Hall. The live streamed Zoom meeting then resumed with audio, video and recording.

Commissioner Moffatt moved to recess to an Executive Session including the Governing Body, City Administrator, and City Clerk in the Commission Room to discuss an individual employee's performance pursuant to the non-elected personnel matter exception

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KSA 75-4319(b)(1) because if this matter were discussed in open session it might invade the privacy of those discussed. The open meeting will resume in the Commission Room at 3:45 p.m. Seconded by Commissioner Nichol. Motion carried. The live streamed Zoom meeting was then placed on hold with audio, video and recording ceased.

At 3:45 p.m. the regular meeting of the Governing Body reconvened in the Commission Room at City Hall. The live streamed Zoom meeting then resumed with audio, video and recording. No action taken.

The next regular meeting of the Governing Body will be held at City Hall on Wednesday, October 26, 2022 at 2:00 p.m.

At 3:47 p.m. Commissioner Nichol moved to adjourn. Seconded by Commissioner Moffatt. Motion carried.

ATTEST:

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Devin Johnson, Mayor

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Stephanie Fyfe, City Clerk

**APPROPRIATIONS REPORT****ORDINANCE NO 19****10/26/2022**

<u>VENDOR</u>	<u>REFERENCE</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>CHECK DATE</u>
ADVANCE INSURANCE COMPANY	NOVEMBER PREMIUMS	497.48	71235	10/26/2022
AUTO ZONE	AUTO PARTS	283.28	71236	10/26/2022
BOUND TREE MEDICAL LLC	MEDICAL SUPPLIES	1,234.08	71237	10/26/2022
CALLTOWER	PHONE CHARGES	329.80	71238	10/26/2022
CANON FINANCIAL SERVICES	COPIER & PRINTER LEASE	669.67	71239	10/26/2022
CINTAS	FIRST AID SUPPLIES	533.35	71240	10/26/2022
ECX SYSTEMS LLC	BARRACUDA EMAIL SECURITY 11/22	50.00	71241	10/26/2022
ENVIROLINE CO INC	LIFTSTATION PUMP REPAIR	2,390.99	71242	10/26/2022
GRAINGER	FLEXIBLE IMPELLER	30.29	71243	10/26/2022
KANSAS DEPARTMENT OF REVENUE	2022 WTP FEES JULY-AUG-SEPT	1,242.27	71244	10/26/2022
KANSAS DEPT OF HEALTH & ENVIRO	Q9000 4TH QTR TESTING	659.00	71245	10/26/2022
LANDIS+GYR TECHNOLOGY INC	OCTOBER 2022 AMR	950.00	71246	10/26/2022
LAWSON PRODUCTS	SUPPLIES	424.77	71247	10/26/2022
LEAGUE OF KS MUNICIPALITIES	LABOR LAW POSTER	31.00	71248	10/26/2022
MEDICLAIMS INC	AMBULANCE COLLECTION FEES	2,334.61	71249	10/26/2022
MERIDIAN ANALYTICAL LABS LLC	WASTEWATER ANALYSIS	28.95	71250	10/26/2022
BANK OF AMERICA	ICE CONTROL/ROCK	1,037.87	71251	10/26/2022
NEODESHA AUTO SUPPLY	AUTO PARTS & SUPPLIES	1,282.66	71254	10/26/2022
NORTHERN TOOL & EQUIPMENT	SUPPLIES	218.99	71255	10/26/2022
O'REILLY AUTOMOTIVE INC	SUPPLIES	912.68	71257	10/26/2022
OFFICE OF THE STATE FIRE MARSH	BOILER PERMIT	90.00	71258	10/26/2022
PENMAC PERSONNEL SERVICES INC	TEMPORARY PERSONNEL SERVICE	1,258.40	71259	10/26/2022
PITNEY BOWES	POSTAGE FOR METER	1,193.37	71260	10/26/2022
PRIORITY POWER	OCTOBER BILLING	1,388.80	71261	10/26/2022
SEK MUSEUMS ALLIANCE	SEK-MA MEMBERSHIP DUES	50.00	71262	10/26/2022
SIGN DESIGN	TRANSFERS & DECAL	550.00	71263	10/26/2022
SOUTH EAST TOWING	RELOCATE VEHICLE 4 WATER LEAK	50.00	71264	10/26/2022
SPARKLIGHT	INTERNET SERVICE	118.48	71265	10/26/2022
T & R ELECTRIC INC	POLE MOUNT TRANSFORMERS	13,429.89	71266	10/26/2022

TLC GROUNDSKEEPING INC	MAIN ST LANDSCAPE MAINTENANCE	350.00	71267	10/26/2022
ED TRUELOVE	MILEAGE REIMBURSEMENT	182.50	71268	10/26/2022
UNIFIRST CORPORATION	RUG & CLEANING SUPPLIES	1,072.37	71269	10/26/2022
US CELLULAR	TABLET CHARGES	73.23	71270	10/26/2022
WILSON COUNTY COORDINATOR	LANDFILL CHARGES	88.00	71271	10/26/2022
<b>****TOTAL****</b>		<b>35,036.78</b>		

<b>ACH ELECTRIC ENERGY STATEMENTS BILLED OCTOBER 2022</b>
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KMEA - SPA Hyrdro Project	September 2022 Service	3,220.57
KMEA - GRDA Power Supply Project	November 2022 Service	97,841.77
KMEA - Energy Mgmt Project No 3	September 2022 Service	130,661.95
<b>TOTAL ACH Electric Energy Statements</b>		<b>231,724.29</b>



## RIGHT-OF-WAY PERMIT AGREEMENT

**THIS RIGHT-OF-WAY PERMIT AGREEMENT** ("Agreement") is made this 26th day of October, 2022 ("Effective Date"), by and between the **CITY OF NEODESHA**, County of Wilson, State of Kansas, a municipal corporation (the "City"), and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("MCImetro"), a Delaware limited liability company lawfully registered with the State of Kansas.

### RECITALS

A. MCImetro is an entity authorized by the Kansas Corporation Commission ("KCC") to provide telecommunications services, including Interexchange and Intraexchange Special Access and Private Line Services, and is registered to do business in the State of Kansas. MCImetro has requested permission to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of supplying Telecommunications Services within the corporate boundaries of the City. However, MCImetro currently is not providing services to the City.

B. Pursuant to Kansas law, MCImetro is authorized to construct, keep, maintain and operate its telecommunications facilities within the City's ROW, in accordance with regulations promulgated by the Federal Communications Commission ("FCC") and the KCC, as well as subject to the City's reasonable regulations related to the public health, safety and welfare.

C. It is agreed this is not a franchise agreement, but a ROW permit agreement. MCImetro does not presently intend to use the proposed facilities or ROW for the provision of any services for which a franchise is required by the City. It is agreed MCImetro will not construct any additional fiber facilities and will not own or operate any wireless equipment anywhere within the City without first obtaining a Franchise Agreement, if required by a change in services to be provided, and permits for the additional facilities or operations.

D. It is the City's policy to permit such use of the ROW for provision of such fiber optic infrastructure and services and further finds it to be in the public interest to grant permission to MCImetro to keep, maintain, and operate the fiber optic and related facilities in the ROW, subject to the exercise of the City's police powers, and subject to the terms and conditions outlined below.

### THE PARTIES THEREFORE AGREE:

1. **Definitions.** For the purpose of this Agreement, capitalized terms have the meaning specified in this section, and if not defined herein, their ordinary meaning:

"Affiliate" means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in MCImetro; (b) each person or entity in which MCImetro has, directly or indirectly, a

controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls MCImetro.

“Agreement” or “Permit” means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications thereto.

“Applicable Law” or “Law” means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

“Authorizations” means the permissions MCImetro must have in addition to this Permit to deploy Facilities and/or provide infrastructure and Services, which may include licenses, permits, zoning approvals, variances, exemptions, grants of authority to use private rights of way and/or easements or facilities, agreement to make attachments to poles, towers, buildings, and the like, and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

“Authorized Facilities” means Facilities that comply with the requirements of this Permit, and the City Code and/or Ordinances, and have all necessary authorizations in full force and effect.

“Construction and Maintenance” and variations of those terms refer to any activity performed in the ROW with respect to the Facilities, including installation, construction, modification, replacement, repair, operation, maintenance, or removal.

“Facilities” means any and all equipment and installations of any kind owned by MCImetro and under the control of MCImetro that are reasonably necessary and appropriate for the provision of infrastructure and Services including, but not limited to, underground fiber optic and coaxial cable, conduit, conduit enclosures and supporting structures.

“Permit” means the non-exclusive right granted, by ordinance and subject to this Agreement, to MCImetro to Construct and Maintain the Facilities on, over, under, upon, across and along the ROW within the Permit Area.

“Permit Area” means all the area within the boundaries of the City.

“Public rights-of-way” (“ROW”) mean only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as rights-of-way. The term does not include the airwaves above a right-of-way with regard to wireless communications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

“Services” means, for purposes of this Agreement, to provide Telecommunications Services by means of the Facilities owned by MCImetro or the leasing, operation, or maintenance of such Facilities by MCImetro, except that the term does not include cable service, or small cell wireless services.

“Telecommunications services” means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

2. **Grant.** Subject to the terms and conditions of this Agreement, including, but not limited to, the Permit obligations set forth in Section 3 below, MCImetro is hereby granted the nonexclusive right to Construct and Maintain its Authorized Facilities within the ROW, which Permit shall be exercised at MCImetro's sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of records which may affect the ROW. The Permit is not divisible, and MCImetro may not grant any person the right to use or occupy the ROW. The grant does not extend to any other service, and MCImetro may be required to obtain an additional permit, license or an amendment to this Permit before using and occupying the ROW to provide additional services.

A. Prior to installing any new or different Facilities and prior to providing any additional or different services, MCImetro will submit to the City for approval all designs for the Construction and Maintenance of such new Facilities and prior to the provision of such new Services, in strict compliance with all non-discriminatory, generally applicable regulations and standards required by the City.

B. Nothing herein shall be deemed to grant, convey, create, or vest in MCImetro a real property interest in land, including any fee, leasehold interest, or easement, or the right to place the new Facilities at any particular location within the ROW.

3. **Franchise.** MCImetro acknowledges and agrees that this Agreement is not a franchise agreement under K.S.A. 12-2001 et seq. MCImetro shall obtain a franchise, in accordance with Applicable Law, before MCImetro may use the ROW for the provision inside the City of any telecommunications services for which a franchise is required, including, but not limited to, “cable services” (as defined by 47 U.S.C. § 522(6)); and “open video system services” (without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B)). If MCImetro is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a contract franchise ordinance.

4. **Term.** The initial term of this Agreement shall be for a period beginning on the Effective Date, stated above, and ending ten (10) years thereafter. Thereafter, this Agreement shall automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Agreement at least one hundred eighty (180) days before the expiration of the then current term. Any such additional term shall be deemed a continuation of this Agreement on the same terms and conditions unless the

Parties agree to amend. Upon termination, all of the City's consents to use and occupancy of the ROW, and MCImetro's rights to use and occupy the ROW are also terminated. Notwithstanding the foregoing, all of MCImetro's duties related to use of the ROW, and its duties to indemnify the City, shall survive termination until the Facilities are moved, or MCImetro's obligations terminate by agreement of the Parties.

**5. Compliance with Law and Other City Regulations.**

A. The authority of MCImetro to use and occupy the ROW shall always be subject and subordinate to the reasonable non-discriminatory, generally applicable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the ROW, provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. MCImetro shall be subject to all Applicable Laws now or hereafter adopted by the City.

B. As a condition of this Agreement, MCImetro is required to obtain and is responsible for any necessary permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC. MCImetro shall also comply with all Applicable Laws including, but not limited to, those relating to the construction in, maintenance and use of the ROW. The foregoing compliance obligations shall be subject to MCImetro's right to challenge in good faith such Applicable Laws.

C. All work, if any, upon the streets and public places of the City performed by MCImetro will be done under the general supervision of the City's Public Works Department. Nothing in this Agreement shall be construed as a waiver of any laws, regulations, or rules of the City or of the City's right to require MCImetro to secure the appropriate Authorizations, or to pay the applicable fees associated with same. Nothing in this Agreement shall act as a waiver of the City's police powers.

D. All work involved in the Construction and Maintenance of the Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. MCImetro shall comply with applicable codes and industry standards, as amended from time to time. MCImetro shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, MCImetro shall at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, and to comply with safety requirements for all permits, licenses and other forms of approval or authorization. MCImetro will comply with any reasonable City requirements for identification of Facilities and for identification of employees, subcontractors, vehicles, and equipment when performing work within the ROW.

**6. Use of ROW.**

A. MCImetro shall comply with all non-discriminatory, generally applicable City ordinances. In the event of a conflict between this Agreement and the City Ordinance, the City Ordinance shall control.

B. Pursuant to Kansas law, and amendments thereto, and subject to the provisions of this Agreement, MCImetro shall have the right to Construct and Maintain its Facilities along, across, upon and under the ROW. The Facilities shall be so Constructed and Maintained so as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities, and to maximize efficient use of the ROW. MCImetro is prohibited from installing its lines longitudinally under any City road or shoulder, and all installations of MCImetro's Facilities under hard surfaces shall be installed via the boring method, in accordance with plans submitted to and approved by the City, unless otherwise agreed by the City upon MCImetro's showing of undue hardship. For purposes of this requirement, the term "hard surfaces" shall mean concrete, asphalt, or any other hard surface with similar structural characteristics. In no event may Facilities be Constructed and Maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with Applicable Laws.

C. MCImetro shall participate in the Kansas One Call utility location program with respect to all of its Facilities in the ROW. MCImetro and its contractors shall coordinate with the City the placement of any new Facilities in a manner which minimizes adverse impact on public improvements, the ROW, and users of them, as reasonably determined by the City in a non-discriminatory, generally applicable manner. Further, City may require MCImetro to coordinate construction activities with other entities occupying the ROW whenever commercially reasonable. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by the public improvements and the users of same. Except as otherwise approved by the City, which approval shall not be unreasonably withheld, MCImetro shall install the Facilities a minimum of two (2) horizontal and two (2) vertical feet away from water, sanitary and storm sewer lines, and one (1) vertical foot away from all other public utilities along the route.

D. City shall have commercially reasonable access to inspect any work conducted by MCImetro during Construction and Maintenance of Facilities.

E. All of the materials, plans and installation, reconstruction, or relocation of any Facilities shall be approved in advance by or as directed by the City and in accordance with any other approved specifications for performing work in the ROW. Prior to construction, reconstruction, or relocation of any Facilities in the ROW, MCImetro shall, at its own cost and expense, prepare and deliver to the City for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed, or conditioned.

F. MCImetro shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical locations of the Facilities as constructed or reconstructed in the ROW, which shall be promptly provided to the City.

G. Nothing in this Agreement shall be interpreted as granting MCImetro the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the ROW.

7. **Duty of Competent Supervision and Performance.** The Parties further understand and agree that, in the performance of work under this Agreement, MCImetro and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other City Facilities. The Parties understand and intend that energy generated, stored, or transported by City or other entities' Facilities will not be interrupted during the continuance of this Agreement, except in emergencies endangering life or threatening grave personal injury or property damage. MCImetro shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; as well as employees, agents, contractors, and subcontractors of the City; and the general public, from harm or injury while performing work pursuant to this Agreement. In addition, MCImetro shall furnish its employees, agents, contractors, and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. MCImetro agrees that in emergency situations in which it may be necessary to de-energize any part of the City's equipment, MCImetro shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

A. When circumstances require de-energizing of the Facilities, notice shall be given in advance to the City and the City's electric supplier. Only the City or the City's electric supplier is permitted to perform the de-energizing process.

8. **Limitation on Use of Portion of ROW.** The City shall have the authority to prohibit the use or occupation of a specific portion of ROW by MCImetro due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include, but not be limited to, the following:

A. The prohibition is based upon a recommendation of the Director of Public Works or the city engineer that is related to public health, safety and welfare, and is nondiscriminatory among providers, including incumbent providers;

B. MCImetro has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the City for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

C. The City reasonably determines, after affording MCImetro reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

D. The specific portion of the ROW for which MCImetro seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state, or federal law.

9. **Repair of Damage to ROW.** MCImetro shall notify City any time repair of damage to the ROW is needed, including, but not limited to, any public drain, sewer, catch basin, water pipe, pavement or other public improvement caused by the activities of MCImetro, or of any agent, employee, or subcontractor of MCImetro, while occupying, installing, repairing, or maintaining Facilities in the ROW. City will repair and restore such damage, but MCImetro shall be solely responsible for the actual verifiable costs of repairing and restoring the ROW, including, but not limited to, any public drain, sewer, catch basin, water pipe, pavement, or other public improvement to their functional equivalence before the damage. City shall invoice MCImetro for the actual, verifiable and reasonable costs incurred to repair and restore the ROW. MCI shall promptly reimburse the City for all such costs of the repairs and restoration, but under no circumstances more than thirty (30) days following receipt of the invoice.

10. **Fees.** Pursuant to Kansas law and amendments thereto, the City may assess any of the following fees against MCImetro for use and occupancy of the ROW, and such fees shall be imposed on all such providers in a nondiscriminatory and competitively neutral manner:

A. An annual fee of One Thousand Dollars (\$1,000.00) for the existing approximately eight hundred thirty-nine (839) linear feet of fiber located within the City ROW.

B. A permit fee in connection with issuing each construction permit to set fixtures in the ROW within the City to compensate the City for issuing, processing and verifying the permit application;

C. An excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity of MCImetro, its assigns, contractors and subcontractors with the exception of construction and repair activity required pursuant to Kansas law related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which take into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

D. Inspection fees to recover all reasonable costs associated with the City's inspection of the work of MCImetro, its assigns, contractors, and/or subcontractors in the ROW; and

E. Repair and restoration costs associated with repairing and restoring the ROW because of damage caused by MCImetro, its assigns, contractors, and/or subcontractors in the right-of-way.

#### **11. Indemnification and Hold Harmless.**

A. It shall be the responsibility of MCImetro to take adequate measures to protect, maintain, and defend its Facilities in the ROW from harm or damage. If MCImetro fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it shall have no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures, including calling Kansas One Call for utility locations and observing marker posts when working near MCImetro's Facilities.

B. MCImetro shall defend, indemnify and hold the City and its officers, board members, council members, commissioners, representatives, employees, agents, and contractors harmless against any and all claims, lawsuits, judgments, costs, liens, losses, damages, fines, taxes, special charges, penalties, payments, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence or intentional misconduct of MCImetro, any agent, officer, director, representative, employee, contractor, or subcontractor of MCImetro, or its respective officers, agents, employees, directors or representatives, while installing, repairing, operating, or maintaining Facilities in the ROW. MCImetro further releases City from any liability claims, demands, actions and/or causes of action, whatsoever arising out of or related to any loss, damage, or injury (including death) that may be sustained by MCImetro or MCImetro's employees, agents, contractors, subcontractors, or invitees, while exercising the privileges granted by this Permit Agreement and further, MCImetro agrees to hold City harmless from the same.

C. The indemnity provided by this subsection does not apply to any liability resulting from the negligence and willful misconduct of the City, its officers, employees, contractors, or subcontractors. If MCImetro and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Kansas without, however,



waiving any governmental immunity available to the City under state law and without waiving any defenses of the Parties under state or federal law. This section is solely for the benefit of the City and MCImetro and does not create or grant any rights, contractual or otherwise, to any other person or entity.

12. **No Consequential Damages.** Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for any consequential, incidental, indirect, liquidated, punitive or special damages or lost revenue or lost profits to any person arising out of this Agreement or the performance or nonperformance of any provision of this Agreement, even if such Party has been informed of the possibility of such damages.

13. **Insurance and Performance Bond.**

A. During the term of this Agreement, MCImetro shall obtain and maintain adequate insurance coverage, as agreed to by the City, for the activities and property located within the City's ROW for the duration of this Permit, at its sole expense, with financially reputable insurers that are licensed, authorized or permitted to do business in the State of Kansas. MCImetro shall provide the following insurance:

i. Workers' compensation as required by the laws of the State of Kansas and employer's liability with limits of \$1,000,000 each accident/disease/policy limit.

ii. Commercial general liability with limits of Seven Million Dollars (\$7,000,000) per occurrence for bodily injury and property damage ad Seven Million Dollars (\$7,000,000 general aggregate, including coverage for contractual liability, personal and advertising injury and products/completed operations liability. The City shall be included as an additional insured as their interest may appear under this Agreement with respect to liability arising from MCImetro's operations under this Agreement.

iii. Automobile liability of Six Million Dollars (\$6,000,000.00) Combined Single Limit each accident for bodily injury and property damage covering all owned, hired and non-owned vehicles. The City shall be included as an additional insured as their interest may appear under this Agreement with respect to liability arising from MCImetro's operations under this Agreement.

iv. Property Coverage [based on number and types of appurtenances amount will need to be discussed by the Parties], all property pertaining to the operation of the Facilities and services provided will be insured against direct physical loss and extended coverage perils. MCImetro will be named Insured under this policy and all loss adjustment will be negotiated with and payable to MCImetro for their implementation of repair and replacement of all damaged property. The City will be named as a loss payee as its interests may appear.

B. MCImetro shall, as a material condition of this Agreement, prior to the commencement of any work in the ROW, deliver to the City a certificate of insurance, reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force. Upon receipt of notice from its insurer(s) MCImetro shall provide the City with thirty (30) days' prior written notice of cancellation of any required coverage.

C. MCImetro shall, as a material condition of this Agreement, prior to the commencement of work in the ROW, deliver to the City a performance bond in the amount of One Hundred Thousand Dollars (\$100,000.00), payable to the City to ensure the appropriate and timely performance in the Construction and Maintenance of Facilities located in the ROW. The required performance bond must be with a good and sufficient surety, authorized to transact business in the State of Kansas, and satisfactory to the City in form and substance.

D. No policies of insurance required to be obtained by MCImetro shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with the City, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by MCImetro's contractors or the contractor's employees or agents.

E. MCImetro shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

F. MCImetro shall require any contractors or subcontractors to obtain and maintain substantially the same insurance as required of MCImetro including the City as an additional insured as their interest may appear under this Agreement

14. **Notification of Claims.** MCImetro or the City shall promptly advise the other in writing of any known claim or demand against MCImetro or the City related to or arising out of MCImetro's activities in ROW.

15. **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable state limits on municipal liability or governmental immunity.

16. **Relocation of Facilities.** If requested by the City, in order to accomplish Construction and Maintenance activities directly related to improvements for the health, safety and welfare of the public, MCImetro shall remove its Facilities from the ROW or shall relocate or adjust its Facilities within the ROW at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City

or its contractors as a result of MCImetro's failure to timely relocate or adjust its facilities shall be borne and promptly paid by MCImetro.

17. **Termination.** City will have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW, (ii) if MCImetro's Authorizations with respect to the Facilities and/or provision of Service are terminated, revoked, expired, or otherwise abandoned, or (iii) in the event of MCImetro's breach of this Agreement.

A. In the event of MCImetro's breach of this Agreement, the City shall have the right to terminate this Agreement in accordance with the following procedure. The City shall first serve a written notice upon MCImetro, setting forth in detail the nature of the breach, and MCImetro shall have thirty (30) days thereafter to cure such breach. If the breach remains uncured at the end of the thirty (30) day period, the City may terminate this Agreement by serving written notice upon MCImetro. If curing such default has commenced and MCImetro is diligently proceeding to complete performance to the reasonable satisfaction of the City, but the cure cannot be reasonably completed within thirty (30) days, MCImetro shall be granted additional time to complete such cure as mutually agreed by the Parties. In addition, the City may pursue any other remedies available to it at law or equity.

B. The following are breaches of this Agreement: (1) MCImetro fails to perform or comply with any of the conditions or covenants of this Agreement and such failure continues for a period of thirty (30) days. (2) MCImetro fails to pay any sums required under the Permit Agreement, or (3) MCImetro's acts or omissions create an imminent hazard to persons or properties which MCImetro cannot or does not immediately correct.

C. Nothing in this Agreement, nor the act of entering into this Agreement shall be construed as a limitation of the City's authority to modify or abandon the ROW the City now has.

18. **Removal of Facilities.** Following the termination of the Permit for any reason, or in the event MCImetro ceases to operate and abandons any Facilities, then upon the City's written request, MCImetro shall within one hundred twenty (120) days, remove such Facilities from the ROW, and restore the ROW and property to the City in as good condition as it was at the time of MCImetro's entry thereon. Alternatively, MCImetro, upon written consent from the City, which will not be unreasonably denied or delayed, convey ownership of its Facilities to another entity, or the City, authorized to place Facilities in the ROW and provide City with the exact location of the Facilities along with a drawing of the Facility design prior to ownership of the Facilities transferring.

19. **Transfer and Assignment.** MCImetro agrees that this Permit Agreement and rights and duties under this Permit Agreement shall not be assigned or transferred, either in

whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest, or property therein, pass to or vest into any entity without the prior written consent of the City, which will not be unreasonably denied or delayed. MCImetro will give the City notice of such a transfer or assignment and make itself available to respond to reasonable inquiries by the City. A fundamental corporate change in MCImetro's parent corporation or any entity having a controlling interest in MCImetro shall constitute a transfer and subject MCImetro to the provisions of this Section. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the City shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness. The prior consent of the City shall not be required with respect to intra-corporate transfers or reorganizations between or among wholly owned or controlled subsidiaries or Affiliates of MCImetro, or any entities, directly or indirectly, controlling or controlled by, or under common control with MCImetro. Any transfer or assignment shall be assignable only to a provider or its Affiliate which holds a current and valid certificate of convenience and authority from the KCC, and any such assignment shall be preconditioned upon the City receiving written notice of the assignment (including notice of the name and address of the assignee and contact information) and a copy of the assignee's current certificate of convenience and authority no later than sixty (60) days prior to the effective date of the assignment provided the transfer or assignment does not create any additional burden upon the ROW, or adversely affect the City's interests under this Agreement and Permit. Any assignee or transferee must accept, by becoming a signatory, to this Agreement, all obligations of MCImetro, as well as take responsibility for all acts and omissions of MCImetro known and unknown. Any attempted assignment of this Agreement without satisfying the requirements of this section shall be void.

**20. Receivership, Foreclosure or Act of Bankruptcy.**

A. The Permit granted hereunder to MCImetro shall, at the option of the City, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or trustee to take over and conduct the business of MCImetro whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receiver or trustee shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all breaches under this Agreement.

B. In the case of foreclosure or other judicial sale of MCImetro's Facilities, or any part thereof, including or excluding this Agreement, the City may serve notice of termination upon MCImetro and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) The City shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and (2) such

successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions to this Agreement.

21. **Reservation of Rights.** In entering into this Agreement, neither the City's nor MCImetro's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Agreement, neither the City nor MCImetro waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or MCImetro may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this Agreement or any present or future laws, ordinances, and/or rulings which may be the basis for the City and MCImetro entering into this Agreement.

22. **Notices.** MCImetro shall at all times maintain on file with the City a point of contact or a telephone number that allows the City to reach an authorized person, who shall be available at all times and qualified to respond to the City's concerns or requests regarding this Agreement and to act on behalf of MCImetro in the event of an emergency. Failure to maintain an emergency contact will subject MCImetro to a penalty of \$100 per incident and shall eliminate the City's liability to MCImetro for any actions the City deems reasonably necessary given the specific circumstances. Emergency notice by MCImetro to the City may be made by telephone to the City Manager. All other notices between the Parties shall be in writing and shall be made by personal delivery, by certified mail, return receipt requested, or by an overnight delivery service providing proof of delivery.

**City:**  
City Administrator  
City of Neodesha, Kansas  
1407 N. 8<sup>th</sup> St.  
P.O. Box 336  
Neodesha, KS 66757

**MCImetro:**  
MCImetro Access Transmission Services LLC  
Attn: Franchise/ROW Manager  
600Hidden Ridge  
Irving, TX 75038

With copy to:  
Doug Depew,  
City Attorney  
620 Main  
Neodesha, KS 66757

With copy to:  
Verizon Legal Department  
Attn: Network Legal Team  
1300 I Street, NW  
5<sup>th</sup> Floor  
Washington, DC 20005

A. Notwithstanding the above, the Parties may agree to utilize electronic communications such as NJUNS notifications, as well as email, for notifications related to any permit applications, approval processes or necessary transfer or relocation of Facilities.

23. **Failure to Enforce.** The failure of either Party to enforce and remedy any noncompliance with the terms and conditions of this Agreement shall not constitute a waiver of rights nor a waiver of the other Party's obligations as provided herein.

24. **Materials and Claims/Liens.** All materials furnished for any work done in the Permit Area by MCImetro shall be at MCImetro's sole cost and expense. MCImetro agrees to protect the Facilities installed in the ROW and property of the City, and City, from all claims of contractors, laborers, and material men pertaining to such work, if any. MCImetro shall promptly pay all contractors and materialmen furnishing labor, materials, or services with any respect to any work performed by or on behalf of MCImetro in the ROW and property of the City, so as to minimize the possibility of a lien attaching to the any property of the City or the Facilities in the ROW. Should any such lien be made or filed by reason of such work performed by or on behalf of MCImetro, MCImetro shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

25. **Severability.** If any clause, sentence, or section of this Agreement is or shall become invalid under any Applicable Law, rule of law or held to be invalid by a court of competent jurisdiction, such invalidity shall not materially alter the essence of this Agreement to either Party, such provision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared invalid.

26. **Force Majeure.** If either the City or MCImetro is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fires, floods, earthquake, or like acts of nature, war, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation epidemic or pandemic, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts require by this Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

27. **Applicable Law.** This Agreement, the performance hereunder, and all suits and special proceedings hereunder shall be interpreted according to the laws of the State of Kansas, and MCImetro hereby consents to the personal jurisdiction of the Courts of Kansas with regard to any matter related to this Agreement or the use of the Permit granted hereby. Venue will only lie in a State Court within Wilson County, Kansas, unless such venue is not available or appropriate as a matter of law.

28. **Modification.** This agreement shall not be modified or amended except by written instrument executed by the City and MCImetro, or its successors, transfers, heirs or assigns.

29. **Counterparts.** This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument. To facilitate execution of this Agreement, the Parties may execute and exchange electronic form counterparts of the signature pages to this Agreement.

**EXECUTED** the day and year first above stated.

[Signatures continue on following page.]

**CITY OF NEODESHA, KANSAS**

By: \_\_\_\_\_  
Devin Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie Fyfe, City Clerk

**ACKNOWLEDGEMENT**

STATE OF KANSAS

COUNTY OF WILSON

On this 26th day of October, 2022, before, the undersigned authority, a Notary Public in and for said State and County, personally appeared Devin Johnson and Stephanie Fyfe, who, being duly sworn according to law, acknowledged they are the Mayor and City Clerk of the City of Neodesha, Kansas, and that as such Mayor and City Clerk, being authorized to do so, executed the Right of Way Permit Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

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

My Appointment Expires:

\_\_\_\_\_



**MCIMETRO ACCESS TRANSMISSION SERVICES LLC**

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

Name: Dina Dye

Title: Senior Manager-Network Regulatory/Real Estate

**ACKNOWLEDGEMENT**

STATE OF Texas

COUNTY OF Dallas

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before, the undersigned authority, a Notary Public in and for said State and County, personally appeared \_\_\_\_\_ of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and that as such \_\_\_\_\_, being authorized to do so, executed the Right of Way Permit Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal.

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

My Appointment Expires:

\_\_\_\_\_

## ADDENDUM 1 TO PROJECT APPROVAL NOTICE

This Project Approval Notice Addendum 1 (the "Addendum 1") is issued and entered into in accordance with the Project Approval Notice ("PAN") dated as of July 13, 2022, between POW Solar LLC, a Texas limited liability company ("Developer"), and the City of Neodesha, Kansas, a municipality organized under the laws of Kansas] ("Client"). In connection therewith, and effective as of October 12, 2022 (the "Addendum 1 Effective Date"), Client and Developer have each executed this Addendum 1 and upon execution and delivery of this Addendum by both Client and Developer the terms and conditions set below shall be considered as part of the PAN.

1. In order to meet the Project schedule defined in the PAN, the Client approves the purchase of the equipment listed in Table 1 ("Equipment"). Client agrees to reimburse Developer for Equipment, up to the price listed in Table 1, in the event the Project is cancelled or delayed beyond the equipment delivery date.

Table 1

Equipment	Not To Exceed Cost
Qty (1) 3MVA Transformer	\$95,000

This Addendum 1 is agreed to, accepted, and executed to be effective as of the Addendum 1 Effective Date.

### POW SOLAR LLC

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

Name: Kevin Boudreaux

Title: Senior Managing Director - Sustainability

Date: \_\_\_\_\_

### CITY OF NEODESHA

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_