

## **Agenda**

City Commission of the City of Neodesha, KS

November 27, 2024 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
- Civic Organization Reports
- Mayor's Report
- Commissioner's Reports
- City Administrator's Comments
- Community Development Director Report
- Financial Reports Distributed

### 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 November 13, 2024 Minutes
- Appropriation (2024) 21

### Item 4: Business Items to Consider

- A. Consider KMEA Large Scale Solar Agreement
- B. Resolution: Authorize KMEA Ninnescah Solar Agreement
- C. Dangerous Structures: 1010 Carolina; Review Yard Abatement
- D. Consider 2024 Budget Amendments
- E. Set Date & Time for 2024 Budget Amendment Hearing
- F. Approve Publication of 2024 Budget Amendment Hearing
- G. Accept Resignation of Public Works Department Employee

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

Wednesday, December 11, 2024 at 2:00 p.m. – Regular Meeting, City Hall

### Item 6: Executive Session

### Item 7: Adjournment

**AGENDA COMMENTS**  
**CITY COMMISSION MEETING**  
**November 27, 2024**

**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: Consider KMEA Large Scale Solar Agreement**

This agreement authorizes KMEA to execute it on behalf of the City of Neodesha. Tyson from KMEA is present to address any questions you may have.

**RECOMMENDED MOTION:** *I move to approve the agreement with KMEA for the Ninnescah Flats Solar Agreement as presented.*

**4.B: Resolution: KMEA Agreement for the Ninnescah Flats Solar Agreement**

This resolution authorizes KMEA to execute the previously approved agreement.

**RECOMMENDED MOTION:** *I move to approve Resolution 24-30 allowing KMEA to authorize the Ninnescah Flats Solar agreement on behalf of the City of Neodesha.*

**4.C: Dangerous Structures: 1010 Carolina; Review Yard Abatement**

The property has shown minimal to no progress in yard cleanup. The city recommends proceeding with the yard abatement process.

**RECOMMENDED MOTION:** *I move to proceed forward with the yard abatement resolution for the property located at 1010 Carolina Street ordering the yard abatement to commence.*

**4.D: Consider 2024 Budget Amendment**

After consulting with the Auditor, we have thoroughly reviewed and adjusted the budget amendment to align with the needs of the City of Neodesha.

- Added budget authority to Special Parks.
- Increased transfers from the Electric Fund to the General Fund.

**RECOMMENDED MOTION:** *I move to approve the 2024 budget amendment as presented.*

**4.E: Set Date & Time for 2024 Budget Amendment Hearing**

This is to schedule the hearing date for the budget amendment. The city recommends holding a special call meeting for this purpose, with the proposed date being December 20, 2024.

**RECOMMENDED MOTION:** *I move to set the date and time of the 2024 Budget Amendment Hearing to 12/20/2024 at \_\_\_\_\_pm.*

**4.F: Approve Publication of 2024 Budget Amendment Hearing**

Approving the publication date and time for the budget amendment Hearing.

**RECOMMENDED MOTION:** *I move to approve the publication of the 2024 Budget Amendment Hearing to be held 12/20/2024.*

**4.G: Accept Resignation of Public Works Department Employee**

Riley White has submitted his resignation effective December 6, 2024.

**RECOMMENDED MOTION:** *I move to accept the resignation of Public Works Department employee Riley White effective December 6, 2024.*

The Board of Commissioners met in regular session at 2:00 p.m., on Wednesday, November 13, 2024, in the Commission Room at City Hall conducting the meeting by live streaming with Zoom with Mayor Johnson presiding and Commissioners Banzet and Vail-Keller present.

Commissioner Banzet moved to approve the agenda as presented. Seconded by Commissioner Vail-Keller. Motion carried.

Civic organization reports were invited and heard.

Commission reports were heard.

City Administrator Comments were heard.

Community Development Director reports were heard.

Financial reports were distributed.

Public Comments were invited and heard.

Commissioner Vail-Keller moved to approve the consent agenda as presented consisting of minutes from the October 23, 2024 meeting; Appropriation (2024) 20; Water System Improvements Bond Appropriation 10; and Reimburse Fire Insurance Proceeds – 922 N 8th. Seconded by Commissioner Banzet. Motion carried.

The Governing Body welcomed Garrett Nordstrom, Governmental Assistance Services, to review certain Resolutions and agreements related to CDBG Projects for the City of Neodesha. After review of Resolution 24-28 and Resolution 24-29, public comments were invited and heard for discussion on the CDBG items and the Brown Hotel Project.

#### **RESOLUTION NO. 24-28**

#### **A RESOLUTION DECLARING A BUILDING BLIGHTED WITH RESPECT TO THE KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**WHEREAS**, Congress recognized the prevention and elimination of slum and blight as a national objective under the Housing and Community Development Act of 1974; and

**WHEREAS**, The State of Kansas in its Urban Renewal Law of 1955 declared that the prevention and elimination of slums and blight is a matter of state policy and concern; and

**WHEREAS**, The City of NEODESHA, KS, wishes to stabilize and improve the economic viability of the downtown commercial district by encouraging private property owners to make improvements on existing blighted buildings; and

**WHEREAS**, The Kansas Department of Commerce has grant funds available through the CDBG Program to assist property owners in addressing deficiencies on blighted buildings in cooperation with the municipality; and

**WHEREAS**, GRIFFITH DEVELOPMENT LLC, a NEVADA LLC, the owner of the building located at 519-525 MAIN ST, in the City of NEODESHA, KS wishes to participate in the program.

**NOW, THEREFORE, BE IT RESOLVED THAT:** the Governing Body of the City of NEODESHA, Kansas hereby declares that the above-mentioned building is a blighted structure under the Kansas Urban Renewal Law and that it has the following conditions of blight, decay or environmental contamination:

**EXAMPLES INCLUDE:** exterior siding damage, masonry damage, roof damage, window/door damage, inadequate structural support, and mechanical code violations and;

**FURTHERMORE**, these conditions are detrimental to public health and safety.

Commissioner Banzet moved to approve Resolution 24-28 declaring the property located at 519-525 W Main Street as a blighted structure. Seconded by Commissioner Vail-Keller. Motion carried.

#### **RESOLUTION NO. 24-29**

#### **RESOLUTION CERTIFYING LEGAL AUTHORITY TO APPLY FOR THE 2024 KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FROM THE KANSAS DEPARTMENT OF COMMERCE AND AUTHORIZING THE MAYOR/COMMISSIONER TO SIGN AND SUBMIT SUCH AN APPLICATION.**

**WHEREAS**, The City of NEODESHA, KANSAS, is a legal governmental entity as provided by the laws of the STATE OF KANSAS, and

**WHEREAS**, the City of NEODESHA, KANSAS, intends to submit an application for assistance from the COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

**THE APPLICANT** hereby certifies that the City of NEODESHA, KANSAS, is a legal governmental entity under the status of the laws of the STATE OF KANSAS and thereby has the authority to apply for assistance from the KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

**THE APPLICANT** hereby authorizes the MAYOR/COMMISSIONER of NEODESHA, KANSAS, to act as the applicant's official representative in signing and submitting an application for the assistance to the COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

**THE APPLICANT** hereby dedicates \$334,000 in cash funds toward this project and \$0 in force account labor for same.

Commissioner Vail-Keller moved to adopt Resolution 24-29 allowing Garrett Nordstrom to apply for the Kansas Small Cities CDBG program on behalf of the City of Neodesha and Griffith Developments LLC, a NEVADA LLC. Seconded by Commissioner Banzet. Motion carried.

*(continued on next page)*

Commissioner Banzet moved to approve the Agreement with Western Associates and Garrett Nordstrom for the CDBG Commercial Rehab: Brown Hotel Project as presented. Seconded by Commissioner Vail-Keller. Motion carried.

Commissioner Banzet moved to approve the agreement with Western Associates and Garrett Nordstrom for the Granby Street Project as presented noting that the funds for payment of this project are to be taken from the Infrastructure Sales Tax Fund. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding the consideration of 2024 Budget Amendments. Discussion held.

Commissioner Banzet moved to table the consideration of amendments to the second meeting in November. Seconded by Commissioner Vail-Keller. Motion carried.

As a result of the tabling of the consideration of 2024 Budget Amendments, the following agenda item was tabled to the next meeting as well.

Commissioner Vail-Keller moved to table the Approval of Publication for a Public Hearing for 2024 Budget Amendments to the second meeting in November. Seconded by Commissioner Banzet. Motion carried.

Administrator Jones along with Building Inspector Tommy John addressed the Commission regarding no progress being made on the dangerous structures located at 127 Mill. This agenda item was tabled from the October 23, 2024 meeting. Discussion held; no action taken.

Administrator Jones addressed the Commission regarding a P&Z variance request addressing set back issues and materials used to construct a fence at the property located at 552 S 5<sup>th</sup> Street. The P&Z Commission met on November 5 and November 7, 2024 to offer a recommendation on this request. Discussion held.

Commissioner Banzet moved to approve the variance for the property located at 552 S 5<sup>th</sup> Street allowing for set back requirements to be modified and materials to be used for fencing are IBC approved. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding a P&Z variance request addressing the rezoning of a residential property to a commercial property for business use as an auction house for the property located at 816 Iowa Street. The P&Z Commission met on November 5 and November 7, 2024 to offer a recommendation on this request. The owners of the property, interested business proprietors, and surrounding residents were present to discuss their viewpoints. Discussion held; no action taken.

Administrator Jones addressed the Commission regarding the consideration of a Holiday Bonus for employees. Discussion held.

Commissioner Banzet moved to approve Holiday Bonuses for all full & part-time employees in the amount of \$250 each. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding the consideration of increases to the Neodesha Splash Zone passes for the 2025 Season. Discussion held.

Commissioner Banzet moved to table this agenda item to the December 11, 2024 meeting. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding a request from an individual for the approval of an extended stay at the Riverwalk RV Park. Discussion held.

Commissioner Banzet moved to approve the request for an extended stay at Riverwalk RV Park for Crystal Cefarelli to December 1, 2024. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding moving the November 27, 2024 Commission Meeting date due to being the day before Thanksgiving. Discussion held; no action taken. Meeting set as originally scheduled.

Administrator Jones addressed the Commission regarding moving the meeting date and time for the Christmas Eve and Christmas Day holiday. The Christmas holiday falls on an originally scheduled Commission Meeting date. Discussion held.

Commissioner Vail-Keller moved to change the meeting date and time of the second meeting in December to Monday, December 23, 2024 at 4:00 p.m. Seconded by Commissioner Banzet. Motion carried.

Administrator Jones addressed the Commission regarding the resignation of a Fire/EMS Department employee. Discussion held.

Commissioner Banzet moved to accept the resignation of Firefighter/Paramedic Steven Fuller from the Neodesha Fire & EMS Department effective November 15, 2024. Seconded by Commissioner Vail-Keller. Motion carried. Mayor Johnson expressed well wishes and good luck to Steven on his future endeavor.

Commissioner Vail-Keller moved to recess to an Executive Session to include 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 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 4:50 p.m. Seconded by Commissioner Banzet. Motion carried. The live streamed Zoom meeting was then placed on hold with audio, video and recording ceased.

At 4:50 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.

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Neodesha, Kansas

November 13, 2024

*(continued from previous page)*

The next regular meeting of the Governing Body will be held at City Hall on Wednesday, November 27, 2024 at 2:00 p.m.  
At 4:50 p.m. Commissioner Banzet moved to adjourn. Seconded by Commissioner Vail-Keller. Motion carried.

ATTEST:

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Devin Johnson, Mayor

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Stephanie Fyfe, City Clerk

**APPROPRIATIONS REPORT**

**ORDINANCE NO 21**

**11/27/2024**

<b>VENDOR</b>	<b>REFERENCE</b>	<b>AMOUNT</b>	<b>CHECK NO</b>	<b>CHECK DATE</b>
ADVANCE INSURANCE COMPANY	DECEMBER PREMIUMS	483.34	74838	11/27/2024
AETNA BETTER HEALTH OF KS	OVERPAYMENT AMBULANCE FEES	1,402.62	74839	11/27/2024
DOUGLAS ALFORD	OVERPAYMENT AMBULANCE FEES	319.67	74840	11/27/2024
DORIS BOGNAR	OVERPAYMENT AMBULANCE FEES	122.13	74841	11/27/2024
CJ'S THREADS	EMBROIDERY	294.50	74842	11/27/2024
CORE & MAIN	PARTS & SUPPLIES	1,470.49	74843	11/27/2024
DON HATTAN	ELECTRIC TRUCK REPAIR	371.00	74844	11/27/2024
EAGLE'S EYE AERIAL IMAGING	MAKE MY MOVE VIDEO & IMAGES	1,950.00	74845	11/27/2024
ECX SYSTEMS LLC	BARRACUDA EMAIL SECURITY 12/24	50.00	74846	11/27/2024
JOE ELLIOTT	TRAINING REIMBURSEMENT	44.01	74847	11/27/2024
FED EX	SHIPPING CHARGES	48.69	74848	11/27/2024
FREDONIA TRUE VALUE HARDWARE	SUPPLIES	87.52	74849	11/27/2024
GALLS LLC	UNIFORMS	409.10	74850	11/27/2024
JUSTIN GILDART	OVERPAYMENT AMBULANCE FEES	35.83	74851	11/27/2024
J.P. COOKE CO	DOG & CAT TAGS	247.50	74852	11/27/2024
TOMMY JOHN	CLEANING SERVICES	200.00	74853	11/27/2024
KANSAS STATE TREASURER	MUNICIPAL COURT FEES	5,966.00	74854	11/27/2024
LAKELAND OFFICE SYSTEMS	COPIER LEASE/MAINTENANCE	864.31	74855	11/27/2024
MCCARTY'S OFFICE MACHINES INC	COPY PAPER	219.96	74856	11/27/2024
MEDICLAIMS INC	AMBULANCE COLLECTION FEES	1,677.02	74857	11/27/2024
MFA OIL	OIL & PROPANE	4,116.07	74858	11/27/2024
MIDWEST COMPUTER SALES	IT SERVICES	2,248.00	74859	11/27/2024
PAULLA MITCHELL	OVERPAYMENT AMBULANCE FEES	250.00	74860	11/27/2024
PAR FORMS PRINTING, INC	ENVELOPES	98.00	74861	11/27/2024
PEREGRINE CORPORATION	CITY LOGO SHIRTS	48.78	74862	11/27/2024
PITNEY BOWES	POSTAGE FOR METER	2,000.00	74863	11/27/2024
PITNEY BOWES	POSTAGE MACHINE LEASE	769.38	74864	11/27/2024
GWENDOLYN POOL	OVERPAYMENT AMBULANCE FEES	272.87	74865	11/27/2024

LINDA SCHAFER	OVERPAYMENT AMBULANCE FEES	25.00	74866	11/27/2024
SPARKLIGHT	INTERNET SERVICE	229.52	74867	11/27/2024
STUDEBAKER REFRIGERATION INC	ICE MACHINE RENTAL	97.85	74868	11/27/2024
TASC	CLAIM/ADMIN/RENEWAL FEES	1,302.64	74869	11/27/2024
THE RAWLINGS CO LLC	OVERPAYMENT AMBULANCE FEES	1,323.69	74870	11/27/2024
TRUCK CENTER COMPANIES	SUPPORT BRACKET	74.03	74871	11/27/2024
UNIFIRST CORPORATION	RUG/CLEANING SUPPLIES	442.64	74872	11/27/2024
US CELLULAR	GAS CHARTING	51.57	74873	11/27/2024
WILSON MEDICAL CENTER	HOSPITAL CHARGES	2,750.00	74874	11/27/2024

**\*\*\*\*TOTAL\*\*\*\*** **32,363.73**

**ACH ELECTRIC ENERGY STATEMENTS BILLED NOVEMBER 2024**

<b>KMEA - SPA Hydro Project</b>	<b>September 2024 Service</b>	<b>2,890.00</b>		
<b>KMEA - GRDA Power Supply Project</b>	<b>November 2024 Service</b>	<b>75,231.00</b>		
<b>KMEA - Energy Mgmt Project No 3</b>	<b>September 2024 Service</b>	<b>122,429.00</b>		
<b>TOTAL ACH Electric Energy Statements</b>		<b>200,550.00</b>		



**Ninnescah Flats Solar Project Agreement**

**between**

**Kansas Municipal Energy Agency**

**and**

**City of Neodesha, Kansas**

This Ninnescah Flats Solar Project Agreement ("Agreement") is made this **27<sup>th</sup> day of November, 2024**, by and between Kansas Municipal Energy Agency, a municipal energy agency organized and existing under the laws of the State, including particularly the Act (hereinafter "KMEA") and City of Neodesha, Kansas, a municipal corporation organized and existing under the laws of the State (hereinafter "City"), (KMEA and City hereinafter referred to collectively as "Parties" or, at times, individually as "Party").

**WITNESSETH:**

**WHEREAS**, KMEA consists of members (the "Members") which are (i) cities organized and existing under the laws of the State, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

**WHEREAS**, KMEA is authorized by the Act to plan, finance and construct projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and other energy for its Members; and

**WHEREAS**, City owns and operates a municipal electric system and is a Member in good standing of KMEA; and

**WHEREAS**, City is authorized under the laws of the State, including particularly K.S.A. 12-825j and the Act, to contract to buy from KMEA capacity and energy and related products to meet City's present and future requirements for a period not in excess of forty (40) years; and

**WHEREAS**, KMEA has entered or expects to enter into a power purchase agreement to acquire up to 90 MW of electric energy, capacity, and ancillary services from the Ninnescah Flats Solar Project in Pratt County, Kansas (the "Facility") for a period of thirty (30) years commencing on the Delivery Start Date (as defined herein) (the "KMEA- Ninnescah Flats PPA" as defined below in Section 1.18); and

**WHEREAS**, KMEA 's purchase of entitlements in the Ninnescah Flats Solar Project, as documented in the Ninnescah Flats PPA, excludes environmental attributes associated with the Project; and,

**WHEREAS**, KMEA desires to form the Ninnescah Flats Solar Project, through which Members who wish to participate will purchase electric energy, capacity, and ancillary services from the Facility; and

**WHEREAS**, this Agreement is intended to enable KMEA to pass through the benefits and obligations of the KMEA-Ninnescah Flats PPA to City, such that neither KMEA nor City obtains

a benefit or incurs a burden or obligation due to a drafting or other difference between this Agreement and the KMEA-Ninnescah Flats PPA; and

**WHEREAS**, City desires to participate in the Ninnescah Flats Solar Project, pursuant to the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

## **ARTICLE ONE: DEFINITIONS**

Any capitalized words used but not defined in this Agreement or its Schedules shall have the meaning as defined in the KMEA-Ninnescah Flats PPA or the SPP Open Access Transmission Tariff.

1.1 Act shall mean K.S.A. 12-885, *et seq.*, as amended, and all laws amendatory or supplemental thereto.

1.2 Agreement shall mean this Ninnescah Flats Solar Project Agreement between City and KMEA.

1.3 Business Day shall mean any weekday (*i.e.*, other than Saturday or Sunday) that is not a holiday observed by banks in the State.

1.4 City shall mean City of Neodesha, Kansas and its permitted successors and assigns.

1.5 City Entitlement shall mean four (4) megawatts, which is a portion of KMEA's allocated share of the Facility on which the City's entitlements to energy, capacity, and ancillary services and corresponding obligations hereunder are based.

1.6 City Percentage shall be set forth in Schedule 4.1, as attached hereto and expressed as a percentage, which may be modified from time to time.

1.7 Contract Price means \$50.00 per MWh, subject to the adjustments set forth in Sections 11.14 and 11.15 of the KMEA-Ninnescah Flats PPA.

1.8 Delivery Start Date shall mean the "Commercial Operation Date" or if KMEA elects to take "Test Energy" (as both terms are defined in the KMEA-Ninnescah Flats PPA) the date on which Test Energy is available for delivery.

1.9 Effective Date shall mean the date as of which this Agreement has been executed by both Parties, as reflected on the signature page(s).

1.10 "Environmental Attributes" means any current and future emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, compliance premium, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with an electric generating facility's benefits to the environment and capable of being measured, verified or calculated, including Renewable Energy Credits and the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets

or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person, including under any present or future federal, state or local law, regulation or bill or any international or foreign emissions trading program. Notwithstanding the foregoing, Environmental Attributes do not include any Energy, Ancillary Services, Accredited Capacity, PTCs, ITCs, or any other federal, state or local tax credits, grants or other tax incentives, or other incentives.

1.11 Event of Default shall have the meaning assigned to it in Section 11.1.

1.12 Facility shall mean that portion of the Ninnescah Flats Solar Project located in Pratt County, Kansas to which KMEA has entitlements pursuant to the KMEA-Ninnescah Flats PPA (*i.e.*, such term is intended to have the same meaning in this Agreement as it has in the KMEA-Ninnescah Flats PPA).

1.13 FERC shall mean the Federal Energy Regulatory Commission, or its successor in function.

1.14 Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

1.15 Governmental Authority shall mean (a) any federal, state, local, municipal or other government or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority (including SPP, FERC, NERC and any applicable regional reliability entity) lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power.

1.16 KMEA shall mean the Kansas Municipal Energy Agency, and its permitted successors and assigns.

1.17 KMEA Board of Directors shall mean the KMEA board of directors appointed by each Member pursuant to the provisions of Article V of the KMEA Bylaws and authorized in accordance with Article VII of the Second Amended and Restated Agreement to Create a Municipal Energy Agency.

1.18 KMEA-Ninnescah Flats PPA shall mean the Power Purchase Agreement between KMEA and Ninnescah Flats Solar, as may be amended from time to time.

1.19 Late Interest Rate shall mean, for any date, the lesser of (a)  $1/365$  of the sum of the per annum prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published) plus two percentage points (200 basis points) and (b) the maximum rate permitted by applicable law. In applying the Late Interest Rate, interest shall be compounded daily. In the event that the prime lending rate is no longer published in *The Wall Street Journal*, KMEA and the Participants will select an appropriate replacement source for the prime rate.

1.20 Members shall mean all members of KMEA, including City, all being municipal corporations or boards of public utilities, in either case (a) organized and existing under the laws of the State and (b) authorized, under the laws of the State, to engage in the local distribution and sale of electric power and energy.

1.21 Ninnescah Flats Solar shall mean Ninnescah Flats Solar, LLC.

1.22 Ninnescah Flats Solar Entitlement shall mean the attributes of the Facility to which KMEA is entitled as a result of the KMEA-Ninnescah Flats PPA, including electric energy, capacity, and ancillary services, and not including the Facility's Environmental Attributes.

1.23 Ninnescah Flats Solar Project shall mean the KMEA project created pursuant to this Agreement and the other Ninnescah Flats Solar Project Agreements for the relevant Members' purchase from KMEA of KMEA's Ninnescah Flats Solar Entitlement.

1.24 Ninnescah Flats Solar Project Agreement shall mean this Agreement or any substantially identical agreement entered into by KMEA with another Participant.

1.25 NERC shall mean the North American Electric Reliability Corporation.

1.26 Participant(s) shall mean City and/or one or more other Members who have executed a Ninnescah Flats Solar Project Agreement that is then in effect.

1.27 Payment Default shall have the meaning assigned to it in Section 11.1(a).

1.28 Person shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, an unincorporated organization or any government or political subdivision thereof.

1.29 SPP shall mean Southwest Power Pool, Inc., or any successor thereto.

1.30 State shall mean the State of Kansas.

1.31 Term shall mean the period in which this Agreement is in effect as set forth in Article Two.

1.32 Transfer shall have the meaning assigned to it in Section 9.1.

1.33 Transferee shall mean a Person to whom a Transfer is permitted and to whom a Transfer is made or proposed to be made, pursuant to Article Eleven.

1.34 Transferor shall mean a Party making or proposing to make a Transfer to another Person pursuant to Article Eleven.

## **ARTICLE TWO: TERM**

2.1 Term. This Agreement shall be effective and binding upon execution by both of the Parties as reflected on the signature page(s) below, and (absent earlier termination as permitted hereunder) shall continue in effect until the earlier of (a) the end of the delivery period and final billings, or (b) termination of the KMEA-Ninnescah Flats PPA. Deliveries shall commence on the

Delivery Start Date and continue through the earlier of (a) a period of thirty (30) years or (b) the termination of the KMEA-Ninnescah Flats PPA. Notwithstanding the foregoing, this Agreement is conditioned upon the Ninnescah Flats Solar Project receiving all approvals necessary under the Ninnescah Flats Solar PPA. In the event that such approvals are not achieved and the Ninnescah Flats Solar PPA is terminated as a result, this Agreement will become null and void and of no force or effect.

### **ARTICLE THREE: RELATIONSHIP TO OTHER CONTRACTS**

3.1 Other Ninnescah Flats Solar Project Agreements. Except for the identity of the Participants and each City Entitlement and City Percentage (and, as applicable, other information specific to each individual Participant), this Agreement is and shall remain identical to the other Ninnescah Flats Solar Project Agreements.

3.2 Relationship to SPP Markets. The Parties agree that this Agreement is premised on the continuing ability of KMEA to implement the Ninnescah Flats Solar Project within the transmission footprint of SPP and the operation of SPP's centralized markets. If, during the Term, the Facility is no longer located within the SPP footprint or otherwise operating within SPP's centralized markets, or if the City's load will no longer be located within SPP, or if for any other reason the implementation of the Ninnescah Flats Solar Project will no longer be conducted within SPP's centralized markets, then the Parties agree to undertake in good faith negotiations to amend this Agreement to provide for physical delivery to the City of its properly allocable share of the products available from the Facility, or otherwise to provide City with its properly allocable share of benefits from the Ninnescah Flats Solar Project, through means consistent with then-applicable tariffs. The Parties acknowledge that no such amendments shall diminish City's obligation to make payments to KMEA as required pursuant to Article Five.

3.3 No Ownership Interest Conveyed. This Agreement does not create any ownership or leasehold rights on the part of City with respect to the Facility.

### **ARTICLE FOUR: NINNESCAH FLATS SOLAR PROJECT OPERATIONS AND CITY PARTICIPATION**

4.1 City's Entitlement. Beginning on the Delivery Start Date, City shall purchase its City Percentage of the capacity, energy and other attributes of the Facility that are available to KMEA pursuant to the terms and conditions of the KMEA-Ninnescah Flats PPA. It is the intent of KMEA and the City that the benefits and obligations accruing to KMEA shall be flowed through to the City pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the KMEA-Ninnescah Flats PPA, the Parties to this Agreement shall look to the terms of the KMEA-Ninnescah Flats PPA to attempt to resolve such conflict. The City Entitlements and City Percentages of all Participants shall be set forth in Schedule 4.1 attached to this Agreement. KMEA will update Schedule 4.1 periodically as necessary, including without limitation to reflect changes resulting from actions taken pursuant to Section 9.4, Section 11.4, and/or any other applicable provision of this Agreement.

#### 4.2 SPP Operations

(a) The Parties acknowledge that (i) the actual capacity and energy available from KMEA's Ninnescah Flats Solar Entitlement at any given time will be a function of the Facility's then-available capability, the manner in which KMEA's portion of the Facility is offered into the SPP markets, and SPP's market dispatch, and (ii) the City

Percentage of the SPP-accredited capacity of the Facility to which City is entitled at any given time is likely to be less than City's Entitlement (which is based on nameplate capacity).

(b) All revenues received by KMEA and costs incurred by KMEA related to energy and ancillary services transactions in SPP in connection with the Facility will be allocated among the Participants based on their City Percentages, subject to Section 11.3 and other relevant provisions of Article Eleven if a Participant is in default under this Agreement. Each month, KMEA shall distribute to City its share of net revenues received by KMEA from SPP for sales of energy and ancillary services available from the Facility in the form of a credit on the monthly invoice rendered pursuant to Section 6.1.

(c) Unless KMEA is the load responsible entity ("LRE") for all of the Participants, then KMEA shall develop procedures by which KMEA will enable each LRE Participant (or the Market Participant representing it, which in some cases may be KMEA) to report its City Percentage of KMEA's Ninescah Flats Solar Entitlement to the SPP-accredited capacity associated with the Facility for purposes of any applicable resource-adequacy provisions of the SPP tariff.

4.3 No Environmental Attributes. The Parties acknowledge that the KMEA-Ninescah Flats PPA does not convey any rights to Environmental Attributes. City shall not claim the Environmental Attributes or other "renewable energy," "green energy," "clean energy," or similar attributes retained by Ninescah Flats Solar. City shall not make or originate any marketing claim, public statement, or representation that may diminish the value, marketability or use of the Ninescah Solar Project's Environmental Attributes. City shall cause a public statement to be redacted, removed, ceased, revised, corrected, or updated from or on any public forum promptly upon written notice from KMEA to avoid a double-counting claim. City shall indemnify KMEA from any claims arising out of City's breach of its obligations under this Section 4.3.

## **ARTICLE FIVE: COST RESPONSIBILITY**

5.1 General Principle. It is the Parties' intention that City will be responsible for its allocable share (as determined pursuant to this Article Five) of (a) the energy charges KMEA incurs in connection with the KMEA's Ninescah Flats Solar Entitlement, (b) all other charges KMEA incurs under or in connection with the KMEA-Ninescah Flats PPA, and (c) KMEA's administrative and other reasonable costs associated with its operation of the Ninescah Flats Solar Project (which shall include an allocable share of KMEA's general costs of providing services that are not directly assignable to any given project). City's obligation to pay for its allocable share of such costs shall be effective upon the Effective Date of this Agreement and continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Facility, or the taking of any action permitted by this Agreement. The provisions that follow are intended to implement, but not to narrow, this intention.

5.2 Cost Responsibility for Ninescah Flats Solar Project Costs. Starting with the first month following the Delivery Start Date, City shall pay energy charges, transmission charges as may be applicable, and administrative charges that reflect its properly allocable share of all of KMEA's net costs related to the Ninescah Flats Solar Project.

(a) Each month, City's Ninescah Flats Solar Project energy charge shall be calculated as the City Percentage of the total of KMEA's "Monthly Payments" (as defined in the KMEA-Ninescah Flats PPA) payment to Ninescah Flats Solar

associated with the Facility for the preceding month, as charged to KMEA under the KMEA-Ninnescah Flats PPA. For information purposes only, KMEA will pay the Contract Price for its share of the energy actually delivered from the Facility, which will form the basis for City's monthly payment obligation hereunder.

(b) Each month, City's Ninnescah Flats Solar Project transmission charge shall be its properly allocable share of any applicable transmission-related costs paid by KMEA for the month that are directly related to the Ninnescah Flats Solar Project and that are not otherwise reimbursed to KMEA by the City pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, SPP study costs, costs of upgrades, and any costs associated with Auction Revenue Rights, Transmission Congestion Rights or Long-Term Congestion Rights, in each case arising in connection with the Ninnescah Flats Solar Project.

(c) City's administrative charge each month shall be (i) an amount established by KMEA from time to time based on KMEA's Budget, plus (ii) where applicable, City's portion of KMEA's costs incurred in the prior month that are related to the Ninnescah Flats Solar Project but were not included in KMEA's Budget.

### 5.3 City Obligation to Establish Rates and Pay Allocable Share of KMEA's Costs.

(a) All amounts payable by City for its allocable share of all of KMEA's net costs related to the Ninnescah Flats Solar Project shall be due whether or not the Facility is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of KMEA, or any other person under this agreement or the KMEA-Ninnescah Flats PPA, or any other agreement for any cause whatsoever.

(b) Payments made by City under this agreement to or on KMEA's behalf, whether or not reduced to judgment, shall be made as operating expenses from the revenues of City's electric utility system and from other funds of City's electric system legally available for the payment of costs and expenses of its electric system, and shall be in addition to, and not in substitution for, any other payments, whether on account of dues or otherwise, owed by City to KMEA. City's obligation to make payments under this Agreement to KMEA, whether or not reduced to judgment, shall not constitute general obligations of City, and City shall not be required to make such payments from any source other than the revenues and funds mentioned in the preceding sentence.

(c) City shall establish, impose, maintain, enforce, and collect rates, fees, and charges for electric power and energy to its customers which shall provide City with revenues sufficient to meet its obligations to KMEA under this Agreement, and shall pay all such obligations from, or constitute a charge or lien on, the gross revenues of City's municipal electric system.

## **ARTICLE SIX: BILLING AND PAYMENTS**

6.1 Timing and Method of Invoices. Charges will be billed to City each calendar month, based on KMEA's Ninnescah Flats Solar Project costs for the preceding month. KMEA shall prepare and render such monthly invoices based on its actual payment of charges assessed to KMEA for the preceding month under the KMEA-Ninnescah Flats PPA. KMEA shall provide each monthly invoice by e-mail to the City on or before the last Business Day of the month.

6.2 Timing and Method of Payments. City shall pay the invoiced amount by the last Business Day of the month (provided, however, that the City shall not have less than seven (7) Business Days after issuance of the invoice in which to make its payment), via a bank wire transfer or ACH debit to KMEA's bank account in accordance with the instructions provided in writing by KMEA. Interest shall be payable on all amounts not paid on or before the payment due date, over the actual number of days elapsed from the payment due date to the date such amounts are paid, at the Late Interest Rate.

6.3 True-Ups. To the extent any portion of a monthly invoice is based on KMEA's budget or other estimates or projections, KMEA shall true up the related charges as soon as practicable after it has the necessary information regarding actual costs. Any overpayments by City shall be credited on the next invoice provided to City, and any underpayments shall be added to the next invoice provided to City.

6.4 Disputes. If City disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to KMEA. Any such protest shall be subject to the limitations set forth in Section 6.6. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

6.5 Audits. Not more than once a year, one or more of the Participants may conduct an audit of (i) records maintained by KMEA in connection with the Ninnescah Flats Solar Project, and (ii) all costs charged to each Participant. If City wishes to initiate such an audit, it shall offer the other Participants the opportunity to participate. The costs of such audits shall be borne by the Participants that agree to participate in the audit, either directly or through reimbursement to KMEA. KMEA shall cooperate with one such audit in any given twelve-month period, by making available documents and other information reasonably requested in connection therewith, during normal business hours.

6.6 Restriction on Challenges. No challenge may be raised by the City with respect to the validity of costs incurred by KMEA under the KMEA-Ninnescah Flats PPA (including challenges to the correctness and/or prudence of such costs) except to the extent that KMEA can in turn raise the challenge under the KMEA-Ninnescah Flats PPA, and the resolution of any such challenge under the KMEA-Ninnescah Flats PPA shall be dispositive as between City and KMEA.

6.7 Pass-Through of Refunds or Damages. If, pursuant to the KMEA-Ninnescah Flats PPA, KMEA receives any refund or payment for damages (as opposed to credits against its monthly bills, which will simply reduce KMEA's costs to be passed through to City hereunder) of any of its Ninnescah Flats Solar Project costs, it shall promptly pay to City an allocable share of such refund



or damages based on the same methodology and percentage or billing determinant(s) that were originally used to collect from City the charges to which the refund relates.

6.8 Future Prepay Agreements. In the event that KMEA participates in a future prepay agreement, any discount associated with that prepay will be netted against the City's cost responsibility identified in Section 5.2.

## **ARTICLE SEVEN: INFORMATION REGARDING NINNESCAH FLATS SOLAR PROJECT**

7.1 Provision of Information on Ninnescah Flats Solar Project. KMEA will make reasonable efforts to obtain any specific Facility information requested by City regarding the Ninnescah Flats Solar Project.

7.2 KMEA Budget. KMEA's annual budget will include allocations to the Ninnescah Flats Solar Project. City shall have the right to review and have input on the KMEA budget via the KMEA Board of Directors.

7.3 Confidentiality. The Parties recognize that some or all of the information provided by KMEA to City hereunder, either orally or in writing, will be deemed confidential and subject to certain restrictions pursuant to the KMEA-Ninnescah Flats PPA. City hereby agrees to abide by all such restrictions on the use of confidential information it obtains hereunder. The confidentiality provisions of the KMEA-Ninnescah Flats PPA are set forth in Schedule 7.3 attached hereto and made a part hereof by reference. If any subsequent amendment to the KMEA-Ninnescah Flats PPA modifies such provisions, Schedule 7.3 shall be deemed to be automatically amended to reflect the then-current confidentiality provisions. The Parties recognize that any confidentiality restrictions hereunder must be consistent with applicable Kansas laws on open records and open meetings.

## **ARTICLE EIGHT: LIABILITY AND INDEMNIFICATION**

8.1 General Indemnification of KMEA. City expressly agrees, proportionate to the City's Percentage and to the fullest extent permitted by law, to indemnify, hold harmless and defend KMEA against any and all claims, liability, costs or expenses (including without limitation attorneys' fees and expenses) for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of the KMEA-Ninnescah Flats PPA, KMEA's participation in the Ninnescah Flats Solar Project, and/or the generation, transmission or distribution of capacity and energy from the Facility, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of KMEA or its employees acting within the course and scope of their employment.

8.2 Waiver of Indirect Damages. To the fullest extent permitted by law, neither Party shall be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement.

8.3 Waiver of Sovereign Tort Immunity. Nothing herein shall be construed as a waiver by City of the sovereign tort immunity granted to City under the laws of the State.

## ARTICLE NINE: ASSIGNMENT

9.1 General Limitations on Transfers. Except as otherwise provided in this Article Nine, neither Party may sell, lease, assign, transfer, convey or otherwise dispose of in any manner, directly or indirectly (collectively, "Transfer") all or any part of its rights, obligations, benefits, advantages, titles and interest in this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed, and any such Transfer in contravention of this Article Nine shall be null and void *ab initio*. For purposes of this Section 9.1, any ground that is reasonably likely to have an adverse effect on the non-transferring Party may constitute a ground for withholding or conditioning its consent and shall be described to the Transferor in reasonable detail if consent is denied.

9.2 Notice of Proposed Transfer. If a Party desires to Transfer its interest in this Agreement, then no less than sixty (60) days prior to such proposed Transfer, the Transferor shall provide written notice thereof to the other Party. The notice shall identify the proposed Transferee and the date on which the Party proposes to effect the Transfer.

### 9.3 Transfers by KMEA.

(a) In connection with any Transfer by KMEA of its Ninnescah Flats Solar Entitlement to any Person into which KMEA is merged or that otherwise acquires or succeeds to the entirety of KMEA's business, KMEA shall assign this Agreement and Transfer all of its rights and obligations hereunder to such Person. KMEA shall not be required to obtain City's consent for any such Transfer (provided, however, that nothing in this Section 9.3(a) shall affect the rights of City with respect to any vote of the KMEA Board of Directors regarding the proposed merger or other transaction of which the Transfer is a part).

(b) Any other Transfer by KMEA of its Ninnescah Flats Solar Entitlement to any successor or assignee shall require the consent of all Participants. In connection with any such assignment, KMEA shall assign this Agreement and Transfer all of its rights and obligations hereunder to such successor or assignee.

9.4 Transfers by City. If City proposes to Transfer its interest in this Agreement, KMEA shall have the right to terminate this Agreement effective as of the proposed Transfer date, with the result that KMEA re-acquires the rights to the City Entitlement, and that City is released from its obligations hereunder. If KMEA chooses to exercise this right, it shall provide notice of its election to City no later than thirty (30) days after receiving the notice provided by City pursuant to Section 9.2. If KMEA chooses not to exercise this right, the proposed Transfer may go forward if KMEA consents. The Parties acknowledge and agree that any such consent may reasonably be conditioned on such matters as the Transferee's creditworthiness. If City Transfers any portion of its participation interest in the Ninnescah Flats Solar Project to another Person or if KMEA exercises its option to terminate this Agreement and re-acquire the rights to the City Entitlement, KMEA shall prepare a revised Schedule 4.1 reflecting the current Participant identities and, where applicable, the revised City Entitlements and City Percentages of all Participants.

9.5 Conditions Required for Permitted Transfers. As a condition precedent to any permitted Transfer hereunder:

(a) at the time of the Transfer, either (i) the Transferor must not be in default of any of its material obligations under this Agreement or (ii) such default must be cured on or prior to the date of the Transfer; and

(b) the Transferor shall deliver to the other Party documents satisfactory to it evidencing Transferee's acceptance of the Transfer and assumption of all of the Transferor's obligations under this Agreement.

## **ARTICLE TEN: DISPUTE RESOLUTION**

10.1 Dispute Notice. If a dispute arises between the Parties, then the aggrieved Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the dispute.

10.2 Negotiations. Representatives of the Parties shall in good faith attempt to resolve such dispute by informal negotiations within ten (10) Business Days from the date of receipt of a dispute notice under Section 10.1.

10.3 Involvement of Senior Executives. If the dispute is not resolved within ten (10) Business Days following receipt of the dispute notice or such later date as the Parties may mutually agree, then each Party shall promptly designate its most senior executive responsible for the subject matter of the dispute who shall have authority to resolve the dispute. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute and shall meet within twenty (20) Business Days, at a time and place mutually acceptable to the senior executives.

10.4 Arbitration. If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall, subject to Section 10.5, be resolved solely and exclusively by binding arbitration, using the following procedures (absent agreement of the Parties to different procedures).

(a) The arbitration shall be conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(b) Unless the dispute uniquely affects just one Participant, each other Participant that is affected by the dispute shall, for purposes of a particular arbitration, declare which Party it supports. In applying the provisions of this Section 10.4, each reference to a "Party" will be deemed to include all aligned Participants, and the aligned parties shall act in a collective manner to exercise their rights and fulfill their obligations hereunder. A Participant that elects not to participate will nonetheless be bound by the outcome of the arbitration.

(c) Arbitration shall be held in Wilson County, Kansas. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq. Notwithstanding references herein to use of the AAA Commercial Arbitration Rules and possible AAA

selection of arbitrators, it is not the Parties' intention to require use of AAA or any other organization to administer any arbitration.

(d) The Party asserting a claim for relief and the Party opposing such relief shall each select one arbitrator within ten (10) days of the receipt of the Demand, or if such Party fails to make such selection within ten (10) days from the receipt of the Demand, the AAA shall make such appointment upon the written request of the other Party. The two arbitrators thus appointed shall select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment.

(e) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitration panel. The arbitration panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(f) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to (1) consider or award any form of damages barred by Section 8.2, or any other multiple or enhanced damages, whether under statutory or common law, or (2) require any modifications to this Agreement.

(h) Each Party understands that it will not be able to bring a lawsuit concerning the affected dispute, except as necessary to enforce this Section 10.4 or an arbitration award.

10.5 Agency Jurisdiction. Notwithstanding anything to the contrary in Section 10.4, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

## **ARTICLE ELEVEN: DEFAULT AND REMEDIES**

11.1 Events of Default. The following shall be Events of Default under this Agreement:

- (a) The failure of City to make a payment when due under this Agreement (a "Payment Default"); or
- (b) Assignment of this Agreement by City other than as permitted pursuant to Article Nine or any other action or omission by City that would cause KMEA to be in breach of any provision of the KMEA-Ninnescah Flats PPA; or
- (c) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; *provided, however*, that if such default cannot be cured within such

60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

(d) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity (except as limited in Section 8.2 and Section 11.5, and subject to the provisions of Section 10.4). The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.3 Suspension of City Entitlement. If City has committed a Payment Default, KMEA may temporarily suspend City's right to receive its City Entitlement and the associated City Percentage of revenues and benefits. Such suspension shall continue until the earlier of (i) City shall have cured such Payment Default or (ii) City's project share has been permanently transferred or sold.

11.4 Termination of Participation. If at any time City fails to cure a Payment Default within sixty (60) days after notice of City's non-payment has been provided by KMEA, City's participation in the Ninnescah Flats Solar Project shall immediately and permanently be terminated; provided, however, City's obligation to make payments under this Agreement shall not be eliminated or reduced. KMEA shall promptly provide notice of any such termination to all Participants.

11.5 No Termination by City. In response to any Event of Default by KMEA, City shall not have the right to terminate this Agreement.

11.6 No Liability of KMEA Relating to Provision of Information. Notwithstanding any provision to the contrary contained in this Agreement, the Parties acknowledge and agree that KMEA shall not be liable for monetary damages to City arising from or in connection with any reports, notices, certificates, documents, information or data of any kind or nature (whether or not prepared by or on behalf of KMEA) provided to City pursuant to or in connection with this Agreement.

## **ARTICLE TWELVE: REPRESENTATIONS AND WARRANTIES**

12.1 KMEA's Representations. KMEA hereby makes the following representations, warranties and covenants to City as of the Effective Date and through the end of the Term:

(a) KMEA is a governmental entity and body public and corporate duly organized, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by KMEA of this Agreement have been duly authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of KMEA, enforceable in accordance with its terms.

(d) There is no pending, or to the knowledge of KMEA, threatened action or proceeding affecting KMEA before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, KMEA's sole continuing covenant with respect to this Section 12.1(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

12.2 City's Representations. City hereby makes the following representations, warranties and covenants to KMEA as of the Effective Date and through the end of the Term:

(a) City is a municipal corporation of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

(d) There is no pending, or to the knowledge of City, threatened action or proceeding affecting City before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, City's sole continuing covenant with respect to this Section 12.2(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

(e) City is and shall remain throughout the term of this Agreement a Member of KMEA.

(f) City will establish, maintain and collect such rates, fees and charges for the electric service of its electric utility system so as to provide revenues at least sufficient to enable City to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.

(g) The obligations of City to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by City pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The City shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The City shall not issue

any evidence of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.

(h) The City covenants to maintain its electric system in good repair in accordance with Good Utility Practice, to cooperate with KMEA, and to keep accurate records and accounts.

(i) The City shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the City assign all or any part of its City Entitlement or any or all of its interests under this Agreement, except upon the approval of KMEA pursuant to Article 9, such approval not to be unreasonably withheld or delayed.

(j) City's electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by KMEA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.

#### **ARTICLE THIRTEEN: CREDITWORTHINESS**

City shall provide such financial information and operating data as KMEA is required to obtain from City under the KMEA-Ninnescah Flats PPA or any rules or regulations applicable to KMEA related to the Ninnescah Flats Solar Project.

#### **ARTICLE FOURTEEN: MISCELLANEOUS**

14.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State, without regard to conflicts of law doctrines.

14.2 Jury Trial. Each of the Parties waives to the fullest extent permitted by law any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement or under any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection with this Agreement and agrees that any such action or proceeding shall be tried before a court and not before a jury.

14.3 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed as follows, or to such other address as any Party may designate by written notice to the other Parties.

For notice to KMEA:

Kansas Municipal Energy Agency  
6300 West 95th Street  
Overland Park, KS 66212  
Email: mahlberg@kmea.com

Attention: General Manager

For notice to City:

City of Neodesha, Kansas  
1407 N 8th  
P.O. Box 336  
Neodesha, KS 66757  
Email: bjones@neodeshaks.org

Attention: City Administrator

14.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

14.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

14.6 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

14.7 Third-Party Beneficiaries. Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person other than the Parties, their respective successors and permitted assigns.

14.8 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

14.9 Headings and Table of Contents. Section headings and the table of contents used in this Agreement (including headings used in any schedules and/or exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

14.10 Schedules and Exhibits. The schedules and exhibits hereto, together with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

14.11 Amendments and Waivers.

(a) Except as expressly provided with respect to updates of Schedules 4.1 and 7.3, this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties.



(b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

14.12 Survival. Except for Section 4.1, Articles Five and Six (to the extent applicable to obligations arising prior to termination), the confidentiality requirements in Article 7.3, and Articles Eight, Ten and Eleven, which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement either in its entirety or as to a particular Party in accordance with its terms.

14.13 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

KANSAS MUNICIPAL ENERGY AGENCY

By: \_\_\_\_\_  
Name: Paul N. Mahlberg  
Title: General Manager  
Dated: \_\_\_\_\_

CITY OF NEODESHA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

[SEAL]

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk  
Dated: \_\_\_\_\_

**SCHEDULE 4.1**

<b>CITY</b>	<b>CITY ENTITLEMENT (Megawatts)</b>	<b>CITY PERCENTAGE</b>
City A	—	___%
City B	—	___%
City C	—	___%
City D	—	___%
City E	—	___%
City F	—	___%
City G	—	___%
City H	—	___%
City Z	—	___%
<b>TOTALS</b>	—	<b>100.000%</b>

**[This Schedule 4.1 will be provided after all City Participants have been determined.]**

### SCHEDULE 7.3 CONFIDENTIALITY

Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form, and whether or not designated at the time exchanged as confidential. The obligations of the Parties hereunder shall survive for a period of three (3) years following termination or expiration of this Agreement.

Permitted Disclosure. Each Party has the right to disclose Confidential Information of the other Party to (i) a Governmental Authority or any person filing an open records request under the Kansas Open Records Act (Kan. Stat. Ann. § 45-214 et seq.) to the extent such disclosing Party determines, in its reasonable judgment, such disclosure to be legally required by the Governmental Authority or Applicable Law on the condition that, if appropriate, commercially reasonable efforts are undertaken to receive confidential treatment by such Governmental Authority; (ii) its advisors, auditors, legal counsel, and insurers; (iii) its Affiliates and its and their respective officers, directors, members, managers, employees and agents that have a need to know such information; (iv) its service providers to the extent required in connection with the performance of its obligations hereunder; (v) its partners, investors, lenders and bona fide potential investors and lenders; and (vi) bona fide potential purchasers and their representatives of an interest in the receiving Party or, with respect to Seller, the Facility.

Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority or person provided such Confidential Information pursuant to a Kansas Open Records Act request) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section.

Remedies. The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained herein.

Prior Agreements. To the extent that (i) the Parties are party to any confidentiality or non-disclosure agreement related to the subject matter of this Agreement, any such agreement between the Parties is replaced by the confidentiality provisions of this Section, and (ii) the Parties are otherwise bound by or subject to the terms of an agreement regarding confidentiality or non-disclosure, as between the Parties, such other agreement will no longer apply to this Agreement, and the obligations of the Parties regarding confidentiality will instead be replaced by the obligations under this Section.

“Confidential Information” means information provided by one Party to the other in connection with this Agreement including (i) this Agreement (which is the Confidential Information of both Parties), including the pricing and other commercial terms hereof; (ii) the content of documents, ideas, business methods, finances, prices, business plans, financial development plans, manpower plans, customer lists or details, computer systems, software, know-how, trade secrets or other matters of the disclosing Party; and (iii) other information related to or disclosed in connection with this Agreement. Notwithstanding the foregoing, “Confidential Information” does not include information that (x) at the time of disclosure is, or thereafter becomes, generally available to, or known by, the public other than as a result of a disclosure by the receiving Party or its representatives in violation of this Agreement; (y) was provided to the receiving Party from a source other than the disclosing Party not known to be subject to any confidentiality obligation to the disclosing Party; or (z) was otherwise independently acquired or developed by the receiving Party

without reference to the Confidential Information of the disclosing Party or otherwise violating its obligations under this Agreement.

“Governmental Authority” means any federal or state government, political subdivision thereof, or regulatory or quasi-regulatory authority, including SPP, NERC, applicable regional reliability organization, and any municipality, township or county, or any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any Person owned or controlled by any of the foregoing.

**RESOLUTION NO. 24-30**

**A RESOLUTION OF THE CITY OF NEODESHA KANSAS, AUTHORIZING THE EXECUTION OF THE NINNESCAH FLATS SOLAR PROJECT AGREEMENT BETWEEN THE CITY OF NEODESHA KANSAS, AND THE KANSAS MUNICIPAL ENERGY AGENCY; AND MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the Kansas Municipal Energy Agency ("KMEA") is a municipal energy agency organized and existing under the laws of the State of Kansas, including K.S.A. 12-885 *et seq.*; and

**WHEREAS**, the City of Neodesha, Kansas (the ""City") owns or operates a utility furnishing electricity (the "System") and the City is a member in good standing of KMEA; and

**WHEREAS**, the City is authorized to enter into contracts for the supply of electricity from any person, firm, corporation or other municipality for a period not in excess of forty (40) years under K.S.A. 12-825j; and

**WHEREAS**, KMEA has or expects to enter into a Power Purchase Agreement (the "Purchase Agreement") to purchase up to 90 MW of electric energy, capacity benefits, ancillary services, and excluding environmental attributes related thereto (collectively, the "Energy") from the Ninnescah Flats Solar Facility in Pratt County, Kansas (the "Facility"); and

**WHEREAS**, KMEA and certain member cities, including the City, desire to form a project, through which member cities who wish to participate will purchase a portion of the Energy from KMEA; and

**WHEREAS**, City desires to participate in the Ninnescah Flats Solar Project, pursuant to the terms and conditions set forth in the Ninnescah Flats Solar Project Agreement (the "Ninnescah Flats Agreement"), in substantially the form presented to the governing body with this Resolution;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS:**

**Section 1. Approval.** The Ninnescah Flatts Agreement is hereby approved in substantially the form presented to the governing body this date.

**Section 2. Pledge of Revenues; Obligation to Make Payments.** The governing body of the City hereby pledges the gross revenues (the "Revenues") of the City's electric utility system (the "System") to the City's payment obligations under the Ninnescah Flats Agreement. The payments by the City for electricity under the Ninnescah Flats Agreement shall constitute operating expenses of the System. The obligation of the City to make payments to KMEA under the Ninnescah Flats Agreement, whether or not reduced to judgment, shall not constitute general obligations of the City, and the City shall not be required to make such payments from any source other than the Revenues of the System.

**Section 3. Rate Covenant.** The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Revenues sufficient to (a) pay all operating expenses of the System, including the obligation to make

the payments required by the **Ninnescah Flats Agreement**: (b) pay the principal of and interest on all the bonds and any other indebtedness of the System (the "System Indebtedness") as and when the same become due; and (c) provide reasonable and adequate reserves to satisfy covenants in the resolutions authorizing System Indebtedness and for the general protection and benefit of the System.

**Section 4. Execution of Ninnescah Flats Agreement.** The Mayor and Clerk are hereby authorized to execute the Ninnescah Flats Agreement in substantially the form presented to the governing body this date with such changes or additions as the Mayor and Clerk shall deem necessary and appropriate, such official's signature thereon being conclusive evidence of such official's and the City's approval thereof. The Mayor and Clerk are authorized and directed to execute any and all other documents or certificates necessary to effect the purposes set forth in this Resolution and the Ninnescah Flats Agreement.

**Section 5. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

**ADOPTED AND APPROVED by the governing body of the City of Neodesha, Kansas this 27<sup>th</sup> day of November, 2024.**

ATTEST:

\_\_\_\_\_  
Devin Johnson, Mayor

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

(Seal)

2024

**Amended  
Certificate  
For Calendar Year 2024**

To the Clerk of Wilson, State of Kansas  
We, the undersigned, duly elected, qualified, and acting officers of  
City of Neodesha  
certify that: (1) the hearing mentioned in the attached publication was held;(2) after the Budget Hearing this Budget was duly approved and adopted as the maximum expenditure for the various funds for the year.

		2024 Amended Budget			
Table of Contents:		Page No.	Amount of 2023 Tax that was Levied	Adopted 2024 Expenditures	Proposed Amended 2024 Expenditures
Fund	K.S.A.				
100 General	79-2929a	2	435,762	4,400,490	4,600,735
201 Special Parks	79-2929a	3			64,000
702 Electric	79-2929a	4		4,999,460	4,999,460
Totals		XXXXXXXXXX	435,762	9,399,950	9,664,195
Summary of Amendments		5			

Attested date: \_\_\_\_\_

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Devin Johnson, Mayor

Assisted by:  
\_\_\_\_\_

\_\_\_\_\_  
Emily Vail-Keller, Commissioner

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Duane Banzet, Commissioner

Email:  
\_\_\_\_\_  
\_\_\_\_\_

Governing Body

CPA Summary
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Adopted Budget

100 General	2024 Adopted Budget	2024 Proposed Budget
Unencumbered Cash Balance January 1	61,185	208,886
Receipts:		
Ad Valorem Tax	435,762	435,762
Delinquent Tax		
Motor Vehicle Tax	68,789	68,789
Recreational Vehicle Tax	1,357	1,357
16/20M Vehicle Tax	384	384
Receipts	1,833,013	1,833,013
Transfer from Gas	1,720,000	1,720,000
Transfer from Water	30,000	30,000
Transfer from Electric	200,000	400,000
Transfer from Sewer	50,000	50,000
Interest on Idle Funds		
<b>Total Receipts</b>	<b>4,339,305</b>	<b>4,539,305</b>
<b>Resources Available:</b>	<b>4,400,490</b>	<b>4,748,191</b>
Expenditures:		
Administration	186,000	186,000
Municipal Court	13,800	13,800
Police	1,105,400	1,105,400
Airport	32,500	32,500
Fire	628,600	628,600
EMS	1,071,850	1,336,095
Swimming Pool	97,400	97,400
Neodesha Historical Museum	14,700	14,700
Parks & Facilities	293,720	229,720
Streets	532,020	532,020
Service Improvements	69,500	69,500
WMC - Sales Tax Payment	355,000	355,000
<b>Total Expenditures</b>	<b>4,400,490</b>	<b>4,600,735</b>
Unencumbered Cash Balance December 31	0	147,456

CPA Summary
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City of Neodesha

2024

Adopted Budget

702 Electric	2024 Adopted Budget	2024 Proposed Budget
Unencumbered Cash Balance January 1	501,571	353,002
Receipts:		
Ad Valorem Tax		
Delinquent Tax		
Motor Vehicle Tax		
Recreational Vehicle Tax		
16/20M Vehicle Tax		
Receipts	4,762,000	4,762,000
Interest on Idle Funds		
<b>Total Receipts</b>	<b>4,762,000</b>	<b>4,762,000</b>
<b>Resources Available:</b>	<b>5,263,571</b>	<b>5,115,002</b>
Expenditures:		
Electric Administration	422,660	422,660
Electric Distribution	980,800	980,800
Electric Production	3,016,000	2,816,000
Transfer to General Fund	200,000	400,000
Transfer to Electric Reserves	200,000	200,000
Capital Outlay	180,000	180,000
<b>Total Expenditures</b>	<b>4,999,460</b>	<b>4,999,460</b>
Unencumbered Cash Balance December 31	264,111	115,542

CPA Summary
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**Notice of Budget Hearing for Amending the**

**2024 Budget**

The governing body of

**City of Neodesha**

will meet on the day of December \_\_, 2024 at \_\_ \_\_.m. at Commission Room for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of funds.

Detailed budget information is available at City Hall, 1407 N 8th Street, Neodesha, KS and will be available at this hearing.

**Summary of Amendments**

Fund	2024 Adopted Budget			2024 Proposed Amended Expenditures
	Actual Tax Rate	Amount of Tax that was Levied	Expenditures	
100 General	42.557	435,762	4,400,490	4,600,735
201 Special Parks			0	64,000
702 Electric			4,999,460	4,999,460
			0	0
			0	0
			0	0

Devin Johnson

Official Title: Mayor