

Agenda

City Commission of the City of Neodesha, KS

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

May 27, 2020 2:00 p.m.

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

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 May 13, 2020 Minutes
- Approval of May 20, 2020 Special Call Meeting Minutes
- Approval of May 21, 2020 Special Call Meeting Minutes
- Appropriation (2020) 10

Item 4: Business Items to Consider

- A. Ordinance 1730: KwikKom Franchise Agreement
- B. Resolution 20-07: A Payment Plan for Utility Customers
- C. Monitoring Well Access Agreement: Kerr McGee Site
- D. Gas Project: Change Order #1
- E. Change Order for Neodesha Splash Zone Painting Job
- F. Approve Cereal Malt Beverage License – Little Bear Trading Company
- G. Appointments to Neodesha Housing Authority

Item 5: Date/Time of Next Regular Meeting

Wednesday, June 10, 2020 at 2:00 p.m. – Regular Meeting, City Hall

Item 6: Executive Session: Non-Elected Personnel

Item 7: Adjournment

AGENDA COMMENTS
CITY COMMISSION MEETING
ZOOM Online Access
May 27, 2020

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: Ordinance: KwiKom Franchise Agreement

The Commission is asked to discuss and consider a franchise agreement with KwiKom Communications for the setup of fiberoptic cables to the City's utility pole network. For this agenda item, the Commission will consider Ordinance 1730 (a franchise agreement), and a pole attachment agreement.

RECOMMENDED MOTION: *I move to approve Ordinance 1730, a franchise agreement with KwiKom Communications, with a franchise fee of 5%, and approve the pole attachment agreement as presented.*

4.B: Resolution: A Payment Plan for Utility Customers

Submitted for the Commission's consideration is Resolution 20-07, a utility bill payment plan for City utility customers negatively impacted by the Coronavirus.

RECOMMENDED MOTION: *I move to approve Resolution 20-07 as presented.*

4.C: Monitoring Well Access Agreement: Kerr McGee Site

Staff has been contacted by a representative of Larsen & Associates, the winning bidder for the KDHE-approved project to install nine new monitoring wells in the area of the former Kerr McGee gas station located at 9th & Main. I have asked the City Attorney to review the documents, and have discussed this project with KDHE. Staff recommends approval of the access agreement.

RECOMMENDED MOTION: *I move to approve the access agreement with Larsen & Associates for the installation of monitoring wells in City Right of Way on Wisconsin Street, between 9th and 10th Streets.*

4.D: Gas Project: Change Order #1

The Change Order documents the price reduction to the overall gas project due to the change in linear feet of 4-inch gas and 6-inch gas line. Additionally, since our Public Works purchased a certain

number of gas meters, that cost can also be reduced on the project. The overall cost reduction on this change order is -\$51,165.27.

RECOMMENDED MOTION: *I move to approve Change Order #1 to the gas line project, with a cost reduction of \$51,165.27.*

4.E: Change Order for Neodesha Splash Zone Painting Job

During the pool paint project, we had asked the contractor for assistance in identifying why the pool leaked last year. While sandblasting, the contractor located two areas where the pool cement was extremely thin. The areas were repaired before painting. In addition to this repair work, the contractor also painted a blue streak logo on the bottom of the deep well of the pool. The cost for this change order is \$1,000.

RECOMMENDED MOTION: *I move to approve the Change Order from Fort Dem Enterprises, for painting and repair to the pool in the amount of \$1,000.*

4.F: Approve Cereal Malt Beverage License: Little Bear Trading Company

Due to the sale of the Little Bear Convenience Store, the new owner is asking that he be issued a cereal malt beverage license.

RECOMMENDED MOTION: *I move to approve the cereal malt beverage license for the Little Bear Trading Company for calendar year 2020.*

4.G: Appointments to Neodesha Housing Authority

The Commission is asked to reappoint Barbara Shoop and Karolyn Schultz to the Neodesha Housing Authority for a four-year term, with a term ending date of May 31, 2024.

RECOMMENDED MOTION: *I move to appoint Barbara Shoop and Karolyn Schultz to the Neodesha Housing Authority for four-year terms, with a term ending date of May 31, 2024.*

Item 6: Executive Session

Neodesha, Kansas

May 13, 2020

The Board of Commissioners met in regular session at 2:00 p.m. in the Commission Room at City Hall, practicing social distancing and conducting the meeting by live streaming with Zoom, on Wednesday, May 13, 2020 with Mayor Johnson presiding and Commissioners Moffatt and Nichol present.

Commissioner Moffatt moved to approve the agenda as presented with the addition of Business Item 4G Land Bank: Consider Accepting Property Donation. Seconded by Commissioner Nichol. Motion carried.

Commission and Administrator Reports were heard.

Public Comments were invited and heard.

Commissioner Nichol moved to approve the Consent Agenda consisting of the minutes from the April 22, 2020 Commission Meeting; minutes from the May 1, 2020 Special Call Meeting; Appropriation (2020) 09; Raw Water Bond Project Pay Application 71; and Gas Line Project Appropriation 07. Seconded by Commissioner Moffatt. Motion carried.

Mayor Johnson read a proclamation per Congress and the President of the United States designating May 15, 2020 as Peace Officers' Memorial Day, and the week in which May 15, 2020 falls as National Police Week in the City of Neodesha. Thank you Chief Tomlinson, Neodesha Police Department, and all law enforcement officers, past and present, throughout our Nation.

Mayor Johnson read a proclamation designating May 17, 2020 through May 23, 2020 as Emergency Medical Services Week in the City of Neodesha. Thank you Chief Banzet, Neodesha Fire & EMS Department, and all other emergency services personnel, past and present, throughout our Nation.

Administrator Truelove addressed the Commission regarding the Notice to Proceed for the Gas Line Project. Discussion held.

Commissioner Moffatt moved to approve the Notice to Proceed for the gas line project as presented pending USDA concurrence. Seconded by Commissioner Nichol. Motion carried.

Administrator Truelove addressed the Commission regarding the approval of Resolution 20-07; a payment plan for utility customers. Discussion held.

Commissioner Nichol moved to table Resolution 20-07 until the next regularly scheduled Commission Meeting, May 27, 2020. Seconded by Commissioner Moffatt. Motion carried.

Administrator Truelove addressed the Commission regarding COVID 19 and the reopening of City playground equipment and the Civic Center. Discussion held.

Commissioner Moffatt moved to approve the reopening of the City playgrounds and Civic Center effective May 18, 2020, or such later date approved by the Governor for Phase 2 of the Reopening Kansas Plan. Seconded by Commissioner Nichol. Motion carried.

Administrator Truelove addressed the Commission regarding the consideration of setting a date for a Special Call Meeting to discuss land use for our Land Bank properties. Discussion held.

Commissioner Nichol moved to set Wednesday, May 20, 2020 at 1:30 p.m. as a Special Call Commission Meeting. Seconded by Commissioner Moffatt. Motion carried.

Commissioner Moffatt moved to convene as the Neodesha Land Bank to consider the donation of property located at 614 Main Street. Seconded by Commissioner Nichol. Motion carried.

Commissioner Nichol moved to accept the donation of property located at 614 Main Street into the Land Bank. Seconded by Commissioner Moffatt. Motion carried.

Commissioner Moffatt moved to adjourn as the Neodesha Land Bank Board and re-convene as the City of Neodesha Governing Body. Seconded by Commissioner Nichol. Motion carried.

Commissioner Moffatt moved to recess to an Executive Session including the Governing Body, City Administrator, Police Chief Sam Tomlinson, Fire Chief Duane Banzet 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 3:15 p.m. Seconded by Commissioner Nichol. Motion carried. The live streamed Zoom meeting was then placed on hold with audio, video and recording ceased for the rest of the meeting as no action is scheduled to take place.

At 3:15 p.m. the regular meeting of the Governing Body reconvened in the Commission Room at City Hall. No action taken.

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 KSA 75-4319(b)(1) because if this matter were discussed in open session

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Neodesha, Kansas
May 13, 2020
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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

At 3:45 p.m. the regular meeting of the Governing Body reconvened in the Commission Room at City Hall. No action taken.

The next regular meeting of the Governing Body will be held at City Hall on Wednesday, May 27, 2020 at 2:00 p.m.

At 3:50 p.m. Commissioner Nichol moved to adjourn. Seconded by Commissioner Moffatt. Motion carried.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

SPECIAL CALL FOR SPECIAL MEETING OF BOARD OF COMMISSIONERS

Neodesha, Kansas
May 20, 2020

To the Board of Commissioners:

The Board of Commissioners will hold a Special Call meeting Wednesday, May 20, 2020 at 1:30 p.m. for the following purposes:

1. Neodesha Land Bank: Discuss Land Use

The Board of Commissioners met in a Special Call Session Wednesday, May 20, 2020 with Mayor Johnson presiding and Commissioner Nichol present. Commissioner Moffatt was absent.

Administrator Truelove addressed the Commission regarding land use for the Neodesha Land Bank properties. Discussion held.

Commissioner Nichol moved to adjourn the Special Call Meeting to reconvene in the Commission Room at City Hall tomorrow, May 21, 2020 at 12:00 noon. Seconded by Mayor Johnson. Motion carried.

At 1:40 p.m. Commissioner Nichol moved to adjourn the meeting. Seconded by Mayor Johnson. Motion carried. Meeting adjourned.

ATTEST:

Devin Johnson, Mayor

Rhonda Howell, Assistant City Clerk

SPECIAL CALL FOR SPECIAL MEETING OF BOARD OF COMMISSIONERS

Neodesha, Kansas
May 21, 2020

To the Board of Commissioners:

The Board of Commissioners will hold a Special Call meeting Thursday, May 21, 2020 at 12:00 noon for the following purposes:

1. Neodesha Land Bank: Discuss Land Use

The Board of Commissioners met in a Special Call Session Thursday, May 21, 2020 with Mayor Johnson presiding and Commissioners Moffatt and Nichol present.

Administrator Truelove addressed the Commission regarding land use for the Neodesha Land Bank properties. The extensive discussion with Administrator Truelove and the Governing Body started with Community Development Director, Jeri Hammerschmidt, reporting on updates regarding contacts and uses for the various Neodesha Land Bank properties that are available. Discussion held. No action taken.

At 3:10 p.m. Commissioner Nichol moved to adjourn the meeting. Seconded by Commissioner Moffatt. Motion carried. Meeting adjourned.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

APPROPRIATIONS REPORT**ORDINANCE NO 10****5/27/2020**

<u>VENDOR</u>	<u>REFERENCE</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>CHECK DATE</u>
ADVANCE INSURANCE COMPANY	MAY PREMIUMS	564.60	54697	5/27/2020
BOUND TREE MEDICAL LLC	MEDICAL SUPPLIES	1,008.47	54698	5/27/2020
CALLTOWER	PHONE CHARGES	326.73	54699	5/27/2020
CERTIFIED LABORATORIES	DEGREASER	245.49	54700	5/27/2020
CINTAS	FIRST AID SUPPLIES	46.09	54701	5/27/2020
CLEAVER FARM & HOME	CULVERT TUBING	1,991.12	54702	5/27/2020
D & D AUTO REPAIR & ALIGNMENT	HEATER CORE, ANTIFREEZE	327.83	54703	5/27/2020
D C & B SUPPLY INC	SHOVELS	601.50	54704	5/27/2020
ECX SYSTEMS LLC	BARRACUDA EMAIL SECURITY 6/20	50.00	54705	5/27/2020
F ALLEN MOORHEAD, JR, MD	HEP C TEST W/C	44.72	54706	5/27/2020
FASTENAL COMPANY	BOLTS	82.14	54707	5/27/2020
FED EX	SHIPPING CHARGES	29.07	54708	5/27/2020
FOLEY INDUSTRIES INC	TRUCK INSPECTION	1,574.74	54709	5/27/2020
FORSYTHE'S HEATING & ELECTRIC	WASHER DRYER HOOK UP FD	959.48	54710	5/27/2020
FORT DEM ENTERPRISES	POOL PAINTING	39,341.00	54711	5/27/2020
G & W FOODS	LUNCH,FREEZER,SANDWICH BAGS	132.65	54712	5/27/2020
GERKEN RENT-ALL	SANITATION UNITS	556.20	54713	5/27/2020
GOOD RIDDANCE DISPOSAL	DEMOLITION @ DAVID GREENS	800.00	54714	5/27/2020
HACH COMPANY	LAB SUPPLIES	446.21	54715	5/27/2020
HAWKINS INC	CHEMICALS	5,564.17	54716	5/27/2020
IONWARE	BOSON MAINTENANCE AGREEMENT	337.50	54717	5/27/2020
KANSAS EMS ASSOCIATION	MEMBERSHIP DUES	240.00	54718	5/27/2020
KANSAS MUNICIPAL INSURANCE TRU	2019 W/C PREMIUM ADJUSTMENT	8,776.00	54719	5/27/2020
KANSAS ONE-CALL SYSTEM, INC	APRIL LOCATES	24.00	54720	5/27/2020
NKC Tire	TIRES	1,045.88	54721	5/27/2020
KEY EQUIPMENT & SUPPLY CO	WELDED BRASS BEARING WRAP	176.27	54722	5/27/2020
KUSTOM SIGNALS, INC	FRONT ZOOM CAMERA-PD	16,110.00	54723	5/27/2020
LAKELAND OFFICE SYSTEMS	OVERAGE CHARGES	65.34	54724	5/27/2020

LEAGUE OF KS MUNICIPALITIES	MEMBERSHIP DUES 2020	1,284.38	54725	5/27/2020
LOCKE SUPPLY	FLAREXMIP UNION	2.43	54726	5/27/2020
MCCARTY'S OFFICE MACHINES INC	OFFICE SUPPLIES	1,302.53	54727	5/27/2020
MERIDIAN ANALYTICAL LABS LLC	WASTE WATER ANALYSIS	98.25	54728	5/27/2020
MIDWEST COMPUTER SALES	SERVICE CALL,MTG OWL,BACKUP	3,827.75	54729	5/27/2020
MIDWEST MINERALS, INC	ROCK	384.75	54730	5/27/2020
NDB NEODESHA	INSURANCE PREMIUM DOWN PAYMENT	46,582.00	54732	5/27/2020
NEODESHA AUTO SUPPLY	BOOST PAC	1,524.24	54736	5/27/2020
NEODESHA DERRICK	YEARLY RENEWAL, PUBLICATIONS	230.75	54737	5/27/2020
O'MALLEY EQUIPMENT CO	FILTER ELEMENT,AIR&OIL FILTERS	179.06	54738	5/27/2020
RICHARD OSTERBUHR	CIVIC CENTER REFUND	300.00	54739	5/27/2020
PENMAC PERSONNEL SERVICES INC	TEMPORARY PERSONNEL SERVICE	10,330.22	54740	5/27/2020
PITTSBURG FOUNDRY	CUSTOM FREEZE BRAND	133.00	54741	5/27/2020
PORTER DRUG STORE	MEDICATION	38.55	54742	5/27/2020
QUALITY MOTORS	DOOR LOCK & ALARM	211.43	54743	5/27/2020
QUILL CORPORATION	PD OFFICE SUPPLIES	174.76	54744	5/27/2020
RED BUD SUPPLY INC	FUNNELS & CONES	1,374.87	54745	5/27/2020
ROMANS OUTDOOR POWER	BUSH HOG BLADES	181.35	54746	5/27/2020
SOUTHEAST KANSAS LIVING	SUMMER ADVERTISING	50.00	54747	5/27/2020
THOMPSON BROTHERS SUPPLY INC	OXYGEN,CYLINDER LEASE	127.05	54748	5/27/2020
TLC GROUNDSKEEPING INC	MAIN ST LANDSCAPE MAINTENANCE	1,549.84	54749	5/27/2020
TRI VALLEY DEVELOPMENTAL SERV	DOCUMENT DESTRUCTION	8.20	54750	5/27/2020
ULINE	TRUCK LID SPEAKER	1,183.94	54751	5/27/2020
UNIFIRST CORPORATION	UNIFORMS & SUPPLIES	2,238.99	54752	5/27/2020
VALNET TELECOMMUNICATIONS	STANDARD WEB HOSTING	39.95	54753	5/27/2020
WEIS FIRE & SAFETY	BUNKER PANTS	975.00	54754	5/27/2020
WESTERN AUTO	SUPPLIES	1,368.96	54755	5/27/2020
WILSON COUNTY CITIZEN	YEARLY SUBSCRIPTION RENEWAL	41.00	54756	5/27/2020
WILSON COUNTY REGISTER OF DEED	FAXED COPIES	2.00	54757	5/27/2020
WILSON MEDICAL CENTER	APRIL TAX DISTRIBUTION	17,606.93	54758	5/27/2020
WOODS LUMBER COMPANY	CAUTION TAPE, PUSH PLATE	189.71	54759	5/27/2020
FORT DEM ENTERPRISES	CHANGE ORDER-POOL PAINTING	1,000.00	54691	5/27/2020
EL TAPATIO	GWORKS TRAINING LUNCH	85.17	54387	3/3/2020
SAM TOMLINSON	SUPPLIES REIMBURSEMENT	458.55	54388	3/5/2020

NEODESHA MEMORIAL PARK FUND	REIMBURSEMENT	50.00	54389	3/5/2020
WESTAR ENERGY (EVERGY)	STREET LIGHTS	160.79	54390	3/6/2020
SOCKET TELECOMM LLC	PHONE CHARGES	306.41	54391	3/10/2020
SPARKLIGHT	INTERNET SERVICE	120.25	54392	3/13/2020
RWD NO 4	AIRPORT WATER	27.16	54393	3/13/2020
SPARKLIGHT	INTERNET SERVICE	147.19	54394	3/13/2020
WL CO REGISTER OF DEEDS	FILING FEES	21.00	54395	3/13/2020
WESTAR ENERGY (EVERGY)	AIRPORT LIGHTS	62.28	54451	3/13/2020
VISA	CONFERENCE, SUPPLIES	2,148.17	54452	3/13/2020
MONTGOMERY CO ACTION COUNCIL	MEMBERSHIP DUES	100.00	54454	3/17/2020
FREDONIA OUTDOOR EQUIPMENT	MOWERS	21,211.34	54455	3/18/2020
SOUTHERN STAR CENTRAL GAS PIPELINE	GAS	36,537.62	54456	3/24/2020
SPARKLIGHT	INTERNET SERVICE	172.47	54457	3/24/2020
US POST OFFICE	BOX FEE	274.00	54458	3/24/2020
SPARKLIGHT	INTERNET SERVICE	86.30	54459	3/25/2020
WEX BANK	FUEL PURCHASES	1,575.39	54460	3/27/2020
US POST OFFICE	UTILITY BILLING	313.24	54461	3/31/2020
SPARKLIGHT	INTERNET SERVICE	136.39	54462	4/2/2020
DEBRA COLLINS	UTILITY REIMBURSEMENT	397.77	54463	4/8/2020
D & D AUTO	VEHICLE REPAIR	858.22	54464	4/8/2020
RWD NO 4	AIRPORT WATER	27.16	54561	4/9/2020
WESTAR ENERGY (EVERGY)	STREET LIGHTS	142.74	54562	4/9/2020
SPARKLIGHT	INTERNET SERVICE	120.25	54563	4/9/2020
PETTY CASH	REIMBURSEMENT	173.35	54564	4/9/2020
SPARKLIGHT	INTERNET SERVICE	147.19	54565	4/9/2020
WESTAR ENERGY (EVERGY)	LIGHTS	67.15	54566	4/9/2020
SOCKET TELECOMM LLC	PHONE CHARGES	248.59	54567	4/9/2020
SPARKLIGHT	INTERNET SERVICE	86.30	54569	4/28/2020
SPARKLIGHT	INTERNET SERVICE	172.47	54570	4/28/2020
US POST OFFICE	UTILITY BILLING	307.89	54598	4/30/2020

****TOTAL****

242,751.89

ORDINANCE NO. 1730

AN ORDINANCE OF THE CITY OF NEODESHA, KANSAS, GRANTING JMZ CORPORATION, DOING BUSINESS AS KWIKOM COMMUNICATIONS, A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A TELECOMMUNICATIONS FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

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

This Franchise Agreement (the "Agreement") is entered into as of the 27th day of May, 2020 ("Effective Date") by and between the CITY OF NEODESHA, KANSAS, a municipal corporation ("City"), and JMZ CORPORATION, doing business as KwiKom Communications ("JMZ").

RECITALS

A. JMZ owns, maintains, operates and/or controls, in accordance with any applicable regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission, telecommunications networks serving JMZ's customers through advanced fiber facilities and other wireless carrier customers through fiber-fed facilities.

B. JMZ seeks to enter the City's right-of-way ("ROW"), and other real property of the City, to install, maintain and operate a fiber optic and/or coaxial network (the "Network"), so that JMZ and/or its customers (the "Customers") may provide data, telecommunications and other services to the enterprises, residents and visitors of the City and others (the "Services").

C. Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process ("Facility" or "Facilities").

D. Certain systems of JMZ which are specific parts or types of the Facilities may be located on streetlights, stand-alone poles, thirty party utility poles, and other structures located on or within the Public ROW or City owned property as permitted under this Agreement.

E. JMZ desires to obtain from City as permitted by law, City is willing to grant JMZ as required by law, the right to access the Public ROW to locate, place, attach, install, bury underground, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1 – INSTALLATION OF THE NETWORK

1.1 Permitted Installation. JMZ may at JMZ's sole cost and expense and during the term of the Agreement, locate, construct, place, attach, install, bury underground, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. JMZ shall undertake and perform work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 Installation Specifications. The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the City and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the City's use of its property. For each installation of Facilities, JMZ shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction time frames for the installation of Facilities no later than forty-five (45) days prior to the planned start of the installation. JMZ shall, at the written request of the City, attend a planning session regarding any installation proposed by JMZ. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at the specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the City shall not release JMZ from the responsibility for, or the correction of, any errors or omissions that may be contained in the plans, specifications or permits. JMZ shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such errors or omissions and obtaining any amendments for corrected City-approved permits as may be necessary. JMZ shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditioned or delayed by the City and any conditions or requirements shall be in accordance with federal, state, and local laws.

1.1.2 Temporary Construction. The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

1.1.3 Construction Schedule. If requested by the City, at least then (10) days prior to the installation of the Facilities, JMZ shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all JMZ agents and contractors authorized to access the City ROW and City owned property on JMZ's behalf.

1.1.4 Coordination of Work. JMZ shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the City's ROW. JMZ shall be the City's point of contact and all communications shall be through

JMZ. JMZ shall be solely responsible for communication with Kansas One-Call.

1.1.5 Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by JMZ during the installation, maintenance and/or repairs of the Facilities.

1.1.6 Other Utility Providers. When necessary, JMZ shall coordinate with other utility providers for other needed utility services. JMZ and the City will reasonably cooperate with the other utilities providers regarding the location of any meter, pole, and other apparatuses required for each Site.

1.1.7 Existing Utility Poles. JMZ may attach its Facilities to an existing City utility pole, or to a third-party utility pole, pursuant to an agreement with the utility pole owner, provided, however that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers, and in no instance shall JMZ erect a new pole within an existing aerial pole line absent the City's prior authorization. There shall be no charge to JMZ associated with its use of an existing City utility pole.

1.1.8 Compliance with Law. This Agreement is subject to the terms and conditions of all applicable federal, state and local laws, regulations and ordinances ("Laws").

1.2.1 Zoning Regulations. Zoning regulations shall not apply to installations within the City ROW.

1.2.3 Permits. JMZ shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, as required by the Code or State Law at K.S.A. 17-1902(N), as amended.

1.3 Compliance with Permits. All work within the City's ROW or other real property of the City shall be performed in strict compliance with all applicable permits and all applicable regulatory requirements.

1.4 Placement of JMZ Facilities. JMZ shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.5 New Streetlight Poles and Existing Streetlight Poles. JMZ may build new streetlight poles or other such facilities required for the installation of the Facilities which would comply with all encroachment and building permits, applicable City, state and federal specifications, and Laws ("New Poles"). In areas where there are existing poles, JMZ will work with the owner of that existing pole to collocate the Facility, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

1.5.1 City Use of New Poles. The City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere

with JMZ's use of its Network or Facilities. JMZ shall reasonably cooperate with the City when using the New Poles.

1.5.2 City-Owned Lights. Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, JMZ shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

1.5.3 Damage to New Poles. If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the City may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the right of such imminent threat or harm to persons or property. JMZ shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City's written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by JMZ; provided, however, that if the New Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that JMZ seeks reimbursement from a third party either directly or through applicable insurance, the City shall assign JMZ any rights the City may have against such third party for such claims.

1.6 Franchise Fee; Audit. During the term of this Agreement, JMZ agrees to pay the City a franchise fee each month for each JMZ fiber optic Customer who receives services within the City limits of Neodesha, Kansas (no franchise fee is due when the point of service is outside the City limits of Neodesha; mailing address alone does not determine City residency); during the first year the franchise fee is \$0.75 (*seventy-five cents*), and during the second year and each year thereafter the franchise fee is \$1.00 (*one dollar zero cents*). The franchise fee will be based on who is shown on JMZ books as a City resident fiber optic Customer on the last day of each calendar month, with no pro-rate for a partial month Customer or adjustment for uncollectable accounts, and shall be paid to the City by the 15th day of the second month thereafter. Any payment not timely paid shall accrue interest at ten percent (10%) per annum until paid. JMZ agrees to keep accurate books for the purpose of determining the franchise fee, and no more than once per year, the City may, at the cost of the City and during regular business hours on thirty (30) days notice, inspect JMZ's books relative to calculation of the franchise fees, but only to the extent necessary to confirm the accuracy of payments due. The City agrees to hold in confidence any non-public information it learns from JMZ to the fullest extent permitted by Law.

1.7 Access to the Facilities. The City shall allow JMZ reasonable access to each of the Facilities in the City ROW or City owned property for purposes of installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, JMZ shall provide the City with a minimum of three (3) days prior notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services. JMZ shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

SECTION 2 – TERM AND TERMINATION

2.1 **Term.** This Agreement shall be effective for an initial term of five (5) years from the effective date of this ordinance. This Agreement will automatically renew for additional five (5) year terms thereafter unless either party notifies the other party of its intent to non-renew at least ninety (90) days prior to termination of the then current term. The additional term(s) shall be deemed a continuation of this ordinance and not as a new ordinance or amendment. Under no circumstances shall this ordinance exceed twenty (20) years from the effective date of the franchise ordinance. At the conclusion of the twenty (20) year period the parties agree to negotiate a new franchise in good faith in the event JMZ is still providing services hereunder.

2.2 **90 Day Remedy Period.** If the Agreement is breached by JMZ, then the provisions of Section 8 (Default) shall govern the parties hereto.

2.3 **Termination of Use.** Notwithstanding Section 2.1 above, JMZ may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice, and in such event, JMZ's payment obligations to the City shall terminate simultaneously with the termination of use.

SECTION 3 – REMOVAL AND RELOCATION

3.1 **Removal due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, JMZ, at its sole cost and expense, shall remove and relocate any part of the Network constructed, installed, used and/or maintained by JMZ under this Agreement, whenever the City reasonably determines that removal and/or relocation is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with JMZ in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows JMZ to continue providing service to Customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

3.2 **Removal Due to Termination.** No later than one-hundred and eighty (180) days after termination of this Agreement, JMZ shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including City ROW, City facilities added under Section 1.4.1, or City real property), restore each Facility and its adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic

improvements made by JMZ to the Facility or adjacent property, or as otherwise required by the City. For New Poles, JMZ shall install a new streetlight or facility as directed by City's Public Works Director, or his or her designee. Alternatively, JMZ shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or JMZ elects to do so.

3.3 **Abandonment.** In the event JMZ ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, then JMZ shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including City ROW, City facilities added under Section 1.4.1 or City real property), JMZ shall also, at its sole cost and expense, restore the Facility or adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by JMZ to the Facility or adjacent property. Alternatively, JMZ shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or JMZ elects to do so.

3.4 **No Relocation Compensation.** The City and JMZ are not entitled to compensation for any relocation of its Network that may be required under Section 3.1. JMZ is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

SECTION 4 - MAINTENANCE AND REPAIR

4.1 **Electricity Use.** JMZ shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

4.2 **Maintenance and Repair.** JMZ shall, at JMZ's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, then JMZ shall, at JMZ's sole cost and expense, replace the irreparable part of the Network. JMZ shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garbage or debris to accumulate on or around any enclosed areas around the Facilities. If the City gives JMZ written notice of a failure by JMZ to maintain the Facilities, JMZ shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

4.3 **Appearance.** JMZ shall cooperate with the City on all issues of aesthetics and appearance. JMZ shall follow all legally binding City policies, state and local ordinances with respect to aesthetics, including but not limited to, historic site and/or locations of significant importance. All locations of systems must be aesthetically approved by the City Engineering Department in a manner consistent with other approvals within these Restrictions.

4.4 **Repair of ROW.** JMZ shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks,

landscaping, and all other public or private facilities, to the extent caused by JMZ's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. JMZ shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards. JMZ's obligations under this Section 4.4 shall survive for one (1) year past the completion of such repair and restoration work and return of the affected part of the City's ROW by JMZ to the City.

SECTION 5 – TAXES

5.1 **Taxes.** JMZ is responsible for payment of any taxes, fees and assessments levied on its ownership, use and maintenance of the Network. Pursuant to K.S.A. 79-5a01 *et. seq* of the Kansas Revenue and Taxation Code, the City hereby advises, and JMZ recognizes and understands, that JMZ's use of the City's ROW, the New Poles, and/or other non-ROW City property and facilities may create a possessory interest subject to real property taxation and that JMZ may be subject to, and responsible for, the payment of real property taxes levied on such interest. JMZ will cooperate with the Wilson County Assessor in providing any information necessary for the Assessor to make a property tax determination. JMZ reserves the right to challenge any such assessment, and the City agrees to cooperate with JMZ in connection with any such challenge.

SECTION 6- INDEMNIFICATION

6.1 **Indemnity.** JMZ shall indemnify, defend, and hold harmless the City, its council members, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by JMZ pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council members, officers, employees, agents or contractors. The City shall promptly notify JMZ of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** JMZ waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network, resulting from any event or occurrence except for any loss, damage, or injury resulting from the gross negligence or willful misconduct of the City, its council members, officers, employees, agents or contractors.

6.3 **Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct of City, its employees, agents, or contractors. The City, its council members, officers, employees, agents or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct

of City, its council members, officers, employees, agents or contractors. The City will in no event be liable for indirect or consequential damages.

6.4 **Limitation of JMZ's Liability.** In no event shall JMZ be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

SECTION 7 – INSURANCE

7.1 **Minimum Insurance Requirements.** JMZ shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

- a. Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined per occurrence for bodily injury, personal injury, death, loss and property damage resulting from JMZ's wrongful or negligent acts.
- b. Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per accident for bodily injury and property damage covering any vehicle utilized by JMZ in performing the work covered by this Agreement.
- c. Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

7.2 **Other Insurance Provisions.** The insurance policies shall contain, or be endorsed to contain, the following provisions:

- a. General Liability and Automobile Liability Coverage.
 - (1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employers' Liability policies.
 - (2) JMZ's insurance coverage shall be primary insurance with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of JMZ's insurance and shall not contribute with it.
 - (3) Any failure of JMZ to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.
 - (4) JMZ's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made

against them to the insurance carrier.

- b. **Workers' Compensation and Employers' Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by JMZ in the City's ROW.
- c. **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, JMZ shall within two (2) business days of receipt of notice from the Insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

7.3 Verification of Coverage. JMZ shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

7.4 Secondary Parties. In the event JMZ hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, JMZ shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

SECTION 8 – DEFAULT

8.1.1 Defined. A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 Remedies. Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

8.2 City Termination Right. In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a final 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 public right of way, or (ii) if any licenses that JMZ may be required to hold to perform its obligations under this Agreement are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to JMZ's right to just compensation, if any, for any taking of a protected property right.

8.3 **No waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

SECTION 9 – INTERFERENCE

9.1 **Non-Interference with Non-Public Safety Communications Systems.** JMZ shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications JMZ may make to the Network.

9.2 **Non-Interference with Public Safety Communications Systems.** JMZ's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

9.3 **Correction of Interference.** If interference with the Facilities described in Sections 9.1 and 9.2 should occur, JMZ shall, upon receipt of written notice thereof from the City, immediately commence commercially reasonable, diligent efforts to correct or eliminate such interference. If such interference cannot be corrected by JMZ to the reasonable satisfaction of City within the cure period set forth in the City's notice, which period shall not be less than ninety (90) days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of JMZ's Customers remain the responsibility of JMZ. If the interference is an emergency or a danger to public health and safety, the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

SECTION 10 – MISCELLANEOUS PROVISIONS

10.1 **Nonexclusive Use.** JMZ acknowledges that this Agreement does not provide JMZ with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. The parties specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

10.2 **Most Favored Nation.** All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached with any other franchisee during the term of this Agreement, which other agreement provides for benefits or terms more favorable than those contained herein, then this Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to

provide JMZ with those more favorable benefits and terms. The City shall notify JMZ promptly of the existence of such more favorable benefits and terms and JMZ shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by JMZ, the City shall amend this Agreement to contain the more favorable benefits, terms and conditions.

10.2 **Notices.** All notices pursuant to this Agreement shall be in writing and sent by E-mail and by mailing a copy first class postage prepaid or by personal delivery to the following address or such other address of which a party may give by written notice:

City: The City of Neodesha, Kansas
Attn: City Administrator
1407 N 8th
PO Box 336
Neodesha, Kansas 66757
Phone: 620-325-2828
Fax: 620-325-2481
Email: etruelove@neodeshaks.org

JMZ: JMZ Corporation
d/b/a KwiKom Communications
Attn: Zachery D. Peres
800 W Miller Rd
Topeka, Kansas 66749
Phone: 1-620-380-0068
Email: zperes@kwikom.com

with a copy to Kurt F Kluin
Attorney at Law
P.O. Box G
Chanute, Kansas 66720
Phone: 1-620-431-1601
Email: kurtk@kluinlaw.com

Notice sent as provided herein shall be deemed given on the date of the E-mail. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10.4 **Sublease/Assignment.** If JMZ assigns, sublets, enters into a franchise license or concession agreement, or changes ownership of the Network, then JMZ will provide notice of a transfer within a reasonable time.

10.5 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

10.6 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.7 Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.8 Governing Law. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by the law of the State of Kansas or applicable federal law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement, shall occur in the District Court of Wilson County, Kansas.

10.9 Survival of Terms. All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Agreement.

10.10 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only and shall not be used in construing this Agreement.

10.11 Drafting. This Agreement is the project of joint draftsmanship and nothing herein shall be construed against a drafting party.

10.12 Execution in Counterparts. This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.13 Authority to Execute This Agreement. Each person executing this Agreement on behalf of a party warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has authority to bind such party to the performance of its obligations under this Agreement without further approval or consent of any other person or entity.

10.14 No Warranty by the City. The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the new Poles or Facilities.

10.15 **No Abrogation of Legal Responsibilities.** The City's execution of this Agreement shall not abrogate, in any way, JMZ's responsibility to comply with all permitting requirements or to comply with all Laws respect to its performance of the activities permitted under this Agreement.

10.16 **Contractual Interpretation.** In the interpretation and application of its rights under this Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

10.18 **Effective Date of Ordinance.** This Ordinance shall be effective upon its final passage and publication as required by law.

ADOPTED AND PASSED by the Governing body of the City of Neodesha, Kansas, on this 27th day of May, 2020.

CITY OF NEODESHA, KANSAS

by: _____
Mayor
DRAFT
ATTEST: _____
City Clerk
AGREEMENT 1
JMZ CORPORATION, doing business as
KwiKom Communications

by: _____
Zachery Peres
Vice President

ORDINANCE NO. 1730

AN ORDINANCE OF THE CITY OF NEODESHA, KANSAS, GRANTING JMZ CORPORATION, DOING BUSINESS AS KWIKOM COMMUNICATIONS, A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A TELECOMMUNICATIONS FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

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

This Franchise Agreement (the "Agreement") is entered into as of the 27th day of May, 2020 ("Effective Date") by and between the CITY OF NEODESHA, KANSAS, a municipal corporation ("City"), and JMZ CORPORATION, doing business as KwiKom Communications ("JMZ").

RECITALS

A. JMZ owns, maintains, operates and/or controls, in accordance with any applicable regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission, telecommunications networks serving JMZ's customers through advanced fiber facilities and other wireless carrier customers through fiber-fed facilities.

B. JMZ seeks to enter the City's right-of-way ("ROW"), and other real property of the City, to install, maintain and operate a fiber optic and/or coaxial network (the "Network"), so that JMZ and/or its customers (the "Customers") may provide data, telecommunications and other services to the enterprises, residents and visitors of the City and others (the "Services").

C. Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process ("Facility" or "Facilities").

D. Certain systems of JMZ which are specific parts or types of the Facilities may be located on streetlights, stand-alone poles, thirty party utility poles, and other structures located on or within the Public ROW or City owned property as permitted under this Agreement.

E. JMZ desires to obtain from City as permitted by law, City is willing to grant JMZ as required by law, the right to access the Public ROW to locate, place, attach, install, bury underground, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1 – INSTALLATION OF THE NETWORK

1.1 Permitted Installation. JMZ may at JMZ's sole cost and expense and during the term of the Agreement, locate, construct, place, attach, install, bury underground, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. JMZ shall undertake and perform work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 Installation Specifications. The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the City and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the City's use of its property. For each installation of Facilities, JMZ shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction time frames for the installation of Facilities no later than forty-five (45) days prior to the planned start of the installation. JMZ shall, at the written request of the City, attend a planning session regarding any installation proposed by JMZ. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at the specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the City shall not release JMZ from the responsibility for, or the correction of, any errors or omissions that may be contained in the plans, specifications or permits. JMZ shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such errors or omissions and obtaining any amendments for corrected City-approved permits as may be necessary. JMZ shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditioned or delayed by the City and any conditions or requirements shall be in accordance with federal, state, and local laws.

1.1.2 Temporary Construction. The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

1.1.3 Construction Schedule. If requested by the City, at least then (10) days prior to the installation of the Facilities, JMZ shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all JMZ agents and contractors authorized to access the City ROW and City owned property on JMZ's behalf.

1.1.4 Coordination of Work. JMZ shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the City's ROW. JMZ shall be the City's point of contact and all communications shall be through

JMZ. JMZ shall be solely responsible for communication with Kansas One-Call.

1.1.5 Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by JMZ during the installation, maintenance and/or repairs of the Facilities.

1.1.6 Other Utility Providers. When necessary, JMZ shall coordinate with other utility providers for other needed utility services. JMZ and the City will reasonably cooperate with the other utilities providers regarding the location of any meter, pole, and other apparatuses required for each Site.

1.1.7 Existing Utility Poles. JMZ may attach its Facilities to an existing City utility pole, or to a third-party utility pole, pursuant to an agreement with the utility pole owner, provided, however that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers, and in no instance shall JMZ erect a new pole within an existing aerial pole line absent the City's prior authorization. There shall be no charge to JMZ associated with its use of an existing City utility pole.

1.1.8 Compliance with Law. This Agreement is subject to the terms and conditions of all applicable federal, state and local laws, regulations and ordinances ("Laws").

1.2.1 Zoning Regulations. Zoning regulations shall not apply to installations within the City ROW.

1.2.3 Permits. JMZ shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, as required by the Code or State Law at K.S.A. 17-1902(N), as amended.

1.3 Compliance with Permits. All work within the City's ROW or other real property of the City shall be performed in strict compliance with all applicable permits and all applicable regulatory requirements.

1.4 Placement of JMZ Facilities. JMZ shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.5 New Streetlight Poles and Existing Streetlight Poles. JMZ may build new streetlight poles or other such facilities required for the installation of the Facilities which would comply with all encroachment and building permits, applicable City, state and federal specifications, and Laws ("New Poles"). In areas where there are existing poles, JMZ will work with the owner of that existing pole to collocate the Facility, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

1.5.1 City Use of New Poles. The City may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere

with JMZ's use of its Network or Facilities. JMZ shall reasonably cooperate with the City when using the New Poles.

1.5.2 City-Owned Lights. Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, JMZ shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

1.5.3 Damage to New Poles. If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the City may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the right of such imminent threat or harm to persons or property. JMZ shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City's written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by JMZ; provided, however, that if the New Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that JMZ seeks reimbursement from a third party either directly or through applicable insurance, the City shall assign JMZ any rights the City may have against such third party for such claims.

1.6 Franchise Fee; Audit. During the term of this Agreement, JMZ agrees to pay the City a franchise fee of five percent (5%) of Gross Revenues ("Franchise Fee"). "Gross Revenues" mean revenues derived from recurring services to JMZ's fiber optic customers provided within the City Limits of Neodesha, Kansas (no franchise fee is due when the point of service is outside the City limits of Neodesha; mailing address alone does not determine City residency). Gross revenues shall be reduced by bad debt expenses. Uncollectable and late charges shall not be included within gross revenue. JMZ shall pay its franchise fee on the 15th day of the second month following the month in which the gross revenue is received. JMZ agrees to keep accurate books for the purpose of determining the franchise fee, and no more than once per year, the City may, at the cost of the City and during regular business hours on thirty (30) days notice, inspect JMZ's books relative to calculation of the franchise fees, but only to the extent necessary to confirm the accuracy of payments due. The City agrees to hold in confidence any non-public information it learns from JMZ to the fullest extent permitted by Law.

1.7 Access to the Facilities. The City shall allow JMZ reasonable access to each of the Facilities in the City ROW or City owned property for purposes of installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, JMZ shall provide the City with a minimum of three (3) days prior notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services. JMZ shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

SECTION 2 – TERM AND TERMINATION

2.1 **Term.** This Agreement shall be effective for an initial term of five (5) years from the effective date of this ordinance. This Agreement will automatically renew for additional five (5) year terms thereafter unless either party notifies the other party of its intent to non-renew at least ninety (90) days prior to termination of the then current term. The additional term(s) shall be deemed a continuation of this ordinance and not as a new ordinance or amendment. Under no circumstances shall this ordinance exceed twenty (20) years from the effective date of the franchise ordinance. At the conclusion of the twenty (20) year period the parties agree to negotiate a new franchise in good faith in the event JMZ is still providing services hereunder.

2.2 **90 Day Remedy Period.** If the Agreement is breached by JMZ, then the provisions of Section 8 (Default) shall govern the parties hereto.

2.3 **Termination of Use.** Notwithstanding Section 2.1 above, JMZ may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice, and in such event, JMZ's payment obligations to the City shall terminate simultaneously with the termination of use.

SECTION 3 – REMOVAL AND RELOCATION

3.1 **Removal due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, JMZ, at its sole cost and expense, shall remove and relocate any part of the Network constructed, installed, used and/or maintained by JMZ under this Agreement, whenever the City reasonably determines that removal and/or relocation is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with JMZ in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows JMZ to continue providing service to Customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

3.2 **Removal Due to Termination.** No later than one-hundred and eighty (180) days after termination of this Agreement, JMZ shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including City ROW, City facilities added under Section 1.4.1, or City real property), restore each Facility and its adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by JMZ to the Facility or adjacent property, or as otherwise required by the City. For New Poles, JMZ shall install a new streetlight or facility as directed by City's Public

Works Director, or his or her designee. Alternatively, JMZ shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or JMZ elects to do so.

3.3 Abandonment. In the event JMZ ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, then JMZ shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including City ROW, City facilities added under Section 1.4.1 or City real property), JMZ shall also, at its sole cost and expense, restore the Facility or adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by JMZ to the Facility or adjacent property. Alternatively, JMZ shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or JMZ elects to do so.

3.4 No Relocation Compensation. The City and JMZ are not entitled to compensation for any relocation of its Network that may be required under Section 3.1. JMZ is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

SECTION 4 – MAINTENANCE AND REPAIR

4.1 Electricity Use. JMZ shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the serving utility company.

4.2 Maintenance and Repair. JMZ shall, at JMZ's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, then JMZ shall, at JMZ's sole cost and expense, replace the irreparable part of the Network. JMZ shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garbage or debris to accumulate on or around any enclosed areas around the Facilities. If the City gives JMZ written notice of a failure by JMZ to maintain the Facilities, JMZ shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

4.3 Appearance. JMZ shall cooperate with the City on all issues of aesthetics and appearance. JMZ shall follow all legally binding City policies, state and local ordinances with respect to aesthetics, including but not limited to, historic site and/or locations of significant importance. All locations of systems must be aesthetically approved by the City Engineering Department in a manner consistent with other approvals within these Restrictions.

4.4 Repair of ROW. JMZ shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by JMZ's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network

in the City's ROW. JMZ shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards. JMZ's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by JMZ to the City.

SECTION 5 – TAXES

5.1 **Taxes.** JMZ is responsible for payment of any taxes, fees and assessments levied on its ownership, use and maintenance of the Network. Pursuant to K.S.A. 79-5a01 *et. seq* of the Kansas Revenue and Taxation Code, the City hereby advises, and JMZ recognizes and understands, that JMZ's use of the City's ROW, the New Poles, and/or other non-ROW City property and facilities may create a possessory interest subject to real property taxation and that JMZ may be subject to, and responsible for, the payment of real property taxes levied on such interest. JMZ will cooperate with the Wilson County Assessor in providing any information necessary for the Assessor to make a property tax determination. JMZ reserves the right to challenge any such assessment, and the City agrees to cooperate with JMZ in connection with any such challenge.

SECTION 6- INDEMNIFICATION

6.1 **Indemnity.** JMZ shall indemnify, defend, and hold harmless the City, its council members, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by JMZ pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council members, officers, employees, agents or contractors. The City shall promptly notify JMZ of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** JMZ waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network, resulting from any event or occurrence except for any loss, damage, or injury resulting from the gross negligence or willful misconduct of the City, its council members, officers, employees, agents or contractors.

6.3 **Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct of City, its employees, agents, or contractors. The City, its council members, officers, employees, agents or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct of City, its council members, officers, employees, agents or contractors. The City will in no event be liable for indirect or consequential damages.

6.4 **Limitation of JMZ's Liability.** In no event shall JMZ be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

SECTION 7 – INSURANCE

7.1 **Minimum Insurance Requirements.** JMZ shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

- a. Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined per occurrence for bodily injury, personal injury, death, loss and property damage resulting from JMZ's wrongful or negligent acts.
- b. Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per accident for bodily injury and property damage covering any vehicle utilized by JMZ in performing the work covered by this Agreement.
- c. Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

7.2 **Other Insurance Provisions.** The insurance policies shall contain, or be endorsed to contain, the following provisions:

- a. General Liability and Automobile Liability Coverage.
 - (1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employers' Liability policies.
 - (2) JMZ's insurance coverage shall be primary insurance with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of JMZ's insurance and shall not contribute with it.
 - (3) Any failure of JMZ to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.
 - (4) JMZ's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

- b. **Workers' Compensation and Employers' Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by JMZ in the City's ROW.
- c. **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, JMZ shall within two (2) business days of receipt of notice from the Insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

7.3 Verification of Coverage. JMZ shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

7.4 Secondary Parties. On the event JMZ hire any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, JMZ shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

SECTION 8.1 DEFAULT

8.1.1 Defined. A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 Remedies. Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

8.2 City Termination Right. In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a final 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 public right of way, or (ii) if any licenses that JMZ may be required to hold to perform its obligations under this Agreement are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to JMZ's right to just compensation, if any, for any taking of a protected property right.

8.3 No waiver. A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

SECTION 9 – INTERFERENCE

9.1 Non-Interference with Non-Public Safety Communications Systems. JMZ shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications JMZ may make to the Network.

9.2 Non-Interference with Public Safety Communications Systems. JMZ's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

9.3 Correction of Interference. If interference with the Facilities described in Sections 9.1 and 9.2 should occur, JMZ shall, upon receipt of written notice thereof from the City, immediately commence commercially reasonable, diligent efforts to correct or eliminate such interference. If such interference cannot be corrected by JMZ to the reasonable satisfaction of City within the cure period set forth in the City's notice, which period shall not be less than ninety (90) days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of JMZ's Customers remain the responsibility of JMZ. If the interference is an emergency or a danger to public health and safety, the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

SECTION 10 – MISCELLANEOUS PROVISIONS

10.1 Nonexclusive Use. JMZ acknowledges that this Agreement does not provide JMZ with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. The parties specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

10.2 Most Favored Nation. All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached with any other franchisee during the term of this Agreement, which other agreement provides for benefits or terms more favorable than those contained herein, then this Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to

provide JMZ with those more favorable benefits and terms. The City shall notify JMZ promptly of the existence of such more favorable benefits and terms and JMZ shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by JMZ, the City shall amend this Agreement to contain the more favorable benefits, terms and conditions.

10.2 Notices. All notices pursuant to this Agreement shall be in writing and sent by E-mail and by mailing a copy first class postage prepaid or by personal delivery to the following address or such other address of which a party may give by written notice:

City: The City of Neodesha, Kansas
Attn: City Administrator
1407 N 8th
PO Box 336
Neodesha, Kansas 66757
Phone: 620-325-2828
Fax: 620-325-2481
Email: etruelove@neodeshaks.org

JMZ: JMZ Corporation
d/b/a KwiKom Communications
Attn: Zachery D Peres
800 W Miller Rd
Tola, Kansas 66749
Phone: 1-620-380-0068
Email: zperes@kwikom.com

DRAFT AGREEMENT 2

with a copy to

Kurt F Kluin
Attorney at Law
P.O. Box G
Chanute, Kansas 66720
Phone: 1-620-431-1601
Email: kurtk@kluinlaw.com

Notice sent as provided herein shall be deemed given on the date of the E-mail. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10.4 Sublease/Assignment. If JMZ assigns, sublets, enters into a franchise license or concession agreement, or changes ownership of the Network, then JMZ will provide notice of a transfer within a reasonable time.

10.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

10.6 Entire Agreement; Modification; Waiver. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.7 Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.8 Governing Law. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by the law of the State of Kansas or applicable federal law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement, shall occur in the District Court of Wilson County, Kansas.

10.9 Survival of Terms. All of the terms and conditions in this Agreement related to payment, removal, due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Agreement.

10.10 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only and shall not be used in construing this Agreement.

10.11 Drafting. This Agreement is the project of joint draftsmanship and nothing herein shall be construed against a drafting party.

10.12 Execution in Counterparts. This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.13 Authority to Execute This Agreement. Each person executing this Agreement on behalf of a party warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has authority to bind such party to the performance of its obligations under this Agreement without further approval or consent of any other person or entity.

10.14 No Warranty by the City. The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the new Poles or Facilities.

10.15 **No Abrogation of Legal Responsibilities.** The City's execution of this Agreement shall not abrogate, in any way, JMZ's responsibility to comply with all permitting requirements or to comply with all Laws respect to its performance of the activities permitted under this Agreement.

10.16 **Contractual Interpretation.** In the interpretation and application of its rights under this Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

10.18 **Effective Date of Ordinance.** This Ordinance shall be effective upon its final passage and publication as required by law.

ADOPTED AND PASSED by the Governing body of the City of Neodesha, Kansas, on this 27th day of May, 2020.

CITY OF NEODESHA, KANSAS

ATTEST: _____
City Clerk

DRAFT
by: _____
Mayor

AGREEMENT 2
JMZ CORPORATION, doing business as
KwiKom Communications

by: _____
Zachery Peres
Vice President

POLE ATTACHMENT LICENSE AGREEMENT

(JMZ Corporation - Neodesha, Kansas)

This Pole Attachment License Agreement (the "Agreement") dated this 27th day of May, 2020 is made by and between City of Neodesha, a municipal corporation (hereinafter referred to as "Utility"), and JMZ Corporation, a Kansas corporation, doing business as KwiKom Communications (hereinafter referred to as "JMZ").

RECITALS

A. JMZ proposes to install and maintain Network Facilities and associated communications equipment on Utility's Poles to provide Communications Services to the public.

B. Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of JMZ's Attachments on Utility's Poles, provided that Utility may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Standard.

C. Utility's lease of Utility Facilities is a commercial transaction involving the rental of property and the Utility's intention to act in a non-discriminatory manner notwithstanding, such commitment shall only apply to this Agreement when viewed as a whole and nothing herein shall be construed as a requirement that any other license agreements be identical. Nor shall it be construed as an obligation to proactively ensure competitive neutrality or prevent the Utility from obtaining and considering in instances where it is mutually agreeable to the parties.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1 - DEFINITIONS. For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Section or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1.1. **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities.

1.2. **Assigned Space:** means space on Utility's Poles that can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service or electric service. The neutral zone or safety space is not considered Assigned Space.

1.3. **Attaching Entity:** means any public or private entity, other than Utility or JMZ, who, pursuant to a license agreement with Utility, places an Attachment on Utility's Pole to provide Communications Service.

1.4. **Attachment(s):** means JMZ's Network Facilities that is placed directly on Utility's Poles. For billing purposes an Attachment is counted for each of JMZ's cables/wires on each Pole together with any associated equipment as to each cable/wire, including any Riser or service drop attached to a single Pole where JMZ has an existing Attachment on such Pole.

1.5. **Capacity:** means the ability of a Pole segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.6. **Network Facilities:** means wireline or wireless equipment including but not limited to fiber optic, copper and/or coaxial cables, wireless antennas, receivers or transceivers, mounting hardware, power supplies, grounding or bonding wires, and other equipment utilized to provide Communications Services including any and all associated equipment comprising JMZ's system located within the public right-of-way, and to the extent permitted under any applicable laws, statutes and/or regulations (including, but not limited to those relating to the construction and use of the public right-of-way or other public or private property) or JMZ's contract franchise, that are designed and constructed for the purpose of producing, receiving, amplifying, or distributing Communications Services.

1.7. **Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Network Facilities.

1.8. **Make-Ready Work:** means all work, as reasonably determined by Utility, required to accommodate JMZ's Network Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction.

1.9. **Permit:** means written or electronic authorization of Utility for JMZ to make or maintain Attachments to specific Utility Poles pursuant to the requirements of this Agreement.

1.10. **Pole:** means a pole owned by Utility used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Network Facilities.

1.11. **Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or Utility to determine the potential Make-Ready Work necessary to accommodate JMZ's Network Facilities on a Pole. Such work includes, but is not limited to,

field inspection and administrative processing. The Pre-Construction Survey shall be coordinated with Utility.

1.12. **Reserved Capacity:** means capacity or space on a Pole that Utility has identified and reserved for its own electric utility requirements, including the installation of communications circuits for operation of Utility's electric system, pursuant to a reasonable projected need or business plan.

1.13. **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.

1.14. **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by Utility and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (e.g., cable TV, telephone, highspeed broadband data, public safety) and its owner.

1.15. **Utility Facilities:** means all personal property and real property owned or controlled by Utility, including Poles.

SECTION 2 - SCOPE OF AGREEMENT

2.1. **Grant of License.** Subject to the provisions of this Agreement, Utility hereby grants JMZ a revocable, nonexclusive license authorizing JMZ to install and maintain Permitted Attachments to Utility's Poles.

2.2. **Permit Issuance Conditions.** Utility will issue a Permit(s) to JMZ only when Utility determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) JMZ meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.

2.3. **Reserved Capacity.** Access to Assigned Space on Utility Poles will be made available to JMZ with the understanding that such access is to Utility's Reserved Capacity only. On giving JMZ at least one-hundred and eighty (180) calendar days prior notice, Utility may reclaim such Reserved Capacity anytime during the period following the installation of JMZ's Attachment in which this Agreement is effective if required for Utility's future electric service use, including the attachment of communications lines for internal Utility operational or governmental communications requirements. Utility shall give JMZ the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that JMZ can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Section 7.

2.4. **No Interest in Property.** No use, however lengthy, of any Utility Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in JMZ any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall

constitute an assignment of any of Utility's rights to Utility Facilities. Notwithstanding anything in this Agreement to the contrary, JMZ shall, at all times, be and remain a licensee only.

2.5. **JMZ's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Section 6, shall be construed as granting JMZ any right to attach JMZ's Network Facilities to any specific Pole.

2.6. **Utility's Rights over Poles.** The parties agree that this Agreement does not in any way limit Utility's right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.

2.7. **Expansion of Capacity.** Utility will take reasonable steps to expand Pole Capacity when necessary to accommodate JMZ's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require Utility to install, retain, extend or maintain any Pole for use when such Pole is not needed for Utility's service requirements.

2.8. **Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit Utility from fulfilling any agreement or arrangement regarding Poles into which Utility has previously entered, or may enter in the future, with others not party to this Agreement.

2.9. **Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without Utility's express written consent to such use. Nothing in this Agreement shall be construed to require Utility to allow JMZ to use Utility's Poles after the termination of this Agreement.

SECTION 3 - FEES AND CHARGES

3.1. **Fees.** JMZ's payments shall comply with the terms and conditions specified herein. JMZ shall pay to Utility the fees that will consist of the following:

a. **Annual Attachment Fee.** \$1.00 per attachment/per year.

b. **Unauthorized Attachment Penalty Fee.** 3x annual attachment fee, per occurrence.

3.2. **Payment Period.** Unless otherwise expressly provided, JMZ shall pay any invoice it receives from Utility pursuant to this Agreement within thirty (30) calendar days after Utility issues the invoice.

3.3. **Billing of Attachment Fees.** JMZ shall pay all applicable Annual Attachment Fees without requirement for invoice or reminder from the Utility by January 31 of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on December 31 of this year, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of the subsequent year.

The invoice shall set forth the total number of Utility's Poles on which JMZ was issued and/or holds a Permit(s) for Attachments during such annual rental period.

3.4. **Refunds.** No fees and charges specified shall be refunded on account of any surrender of a Permit granted hereunder.

3.5. **Inventory.** The Utility shall have the right to require a joint inventory of all Attachments no more frequently than once every five (5) years by the Utility and JMZ, unless both parties agree to a new inventory schedule. The cost of the inventory shall be shared equally between the Utility, JMZ and any other participating Attaching Entities, subject to the terms of any agreement with said Attaching Entities.

3.6. **Late Charge.** If Utility does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, JMZ, upon receipt of fifteen (15) calendar days written notice, shall pay interest to Utility, at the rate of 1.5 % per month, on the amount due; provided, however, under no circumstance shall interest under this Agreement exceed the maximum interest allowable under applicable Kansas law.

3.7. **Payment for Work.** JMZ will be responsible for payment to Utility for all work Utility or Utility's contractors perform pursuant to this Agreement to accommodate JMZ's Network Facilities.

3.8. **Advance Payment.** At the discretion of Utility, JMZ may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of JMZ's Network Facilities pursuant to the procedures set forth in Sections 6 and 7 below. If the Utility does not exercise this option, the Make-Ready Work Estimate will be paid as set forth in Paragraph 7.2.

3.9. **True Up.** Wherever Utility, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of JMZ and the actual cost of activity exceeds the advance payment of estimated expenses, JMZ agrees to pay Utility for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, Utility agrees to refund to JMZ the difference in cost.

3.10. **Determination of Charges.** Wherever this Agreement requires JMZ to pay for work done or contracted by Utility, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If JMZ was required to perform work and fails to perform such work necessitating its completion by Utility, Utility may charge an additional ten percent (10%) to its costs.

3.11. **Work Performed by Utility.** Wherever this Agreement requires Utility to perform any work, JMZ acknowledges and agrees that Utility, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.

3.12. **Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

3.13. **Incremental Property Taxes.** If the personal property, real property or ad valorem taxes payable by the Utility with respect to Utility Facilities increase following installation of the Attachment, JMZ shall reimburse the Utility for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. JMZ is responsible for payment of any taxes, fees and assessments levied on its ownership, use and maintenance of the Network Facilities. JMZ will cooperate with the Wilson County Assessor in providing any information necessary for the Assessor to make a property tax determination. JMZ reserves the right to challenge any such assessment, and the Utility agrees to cooperate with JMZ in connection with any such challenge.

SECTION 4 - SPECIFICATION

4.1. **Installation/Maintenance of Attachment.** Upon execution of a Permit pursuant to this Agreement, JMZ's Attachment(s) shall be installed and maintained in accordance with the Utility's applicable requirements and specifications and all applicable federal, State and local laws, rules and regulations. All of JMZ's Attachments must comply with all Applicable Standards. JMZ shall be responsible for the installation and maintenance of its Attachments. JMZ shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards, and JMZ shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the Utility in writing).

4.2. **Tagging.** JMZ shall Tag all of its Network Facilities in accordance with any applicable federal, State and local regulations upon installation of such Attachment(s).

4.3. **Interference.** JMZ shall not allow its Attachment(s) to impair the ability of the Utility or any third party to use Utilities Facilities, nor shall JMZ allow its Attachment(s) to interfere with the operation of any Utility Poles

a. JMZ shall comply with all Federal Communications Commission ("FCC") and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of JMZ's Attachments.

b. In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of JMZ's applicable FCC licenses, creates any interference with the operation of the Utility's or any other governmental entity's communication or other equipment, JMZ shall immediately, at JMZ's sole cost and expense, take such reasonable steps as may be necessary or recommended by the Utility or regulatory agencies to eliminate such

interference. In the event that the installation, operation or maintenance of the Attachment(s) creates any interference with the operation of the pre-existing equipment of third parties using the Pole pursuant to an agreement with the Utility or any other pre-existing uses of electronic equipment, JMZ shall immediately, at JMZ's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. If JMZ is unable or refuses to eliminate such interference, the Utility may require JMZ to power down its equipment to eliminate the interference. In the event JMZ is thereafter unable to take necessary action to eliminate such interference within a period of ninety (90) days or such period as the Parties otherwise agree to in writing, the Utility may terminate JMZ's use of or right to use the Pole upon which such interfering Attachment is located, and JMZ shall promptly remove the Attachment from the Pole.

c. Notwithstanding the foregoing, if equipment installed on a Pole by any third party using the Pole pursuant to an agreement with the Utility subsequent to the installation of the JMZ's Attachment on the Pole causes interference, either electronically or physically, with JMZ's previously installed Attachments, JMZ shall immediately notify such third party and ensure that the third party takes such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. Alternatively, JMZ may upon thirty (30) days written notice to the Utility terminate the affected Permit.

4.4. **Protective Equipment.** JMZ, and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

4.5. **Restoration of Utility Service.** The Utility's service restoration requirements shall take precedence over any and all work operations of JMZ on Utilities Facilities.

SECTION 5 - PRIVATE AND REGULATORY COMPLIANCE

5.1. **Necessary Authorizations.** JMZ shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Network Facilities on public and/or private property before it occupies any portion of Utility's Poles. Utility retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to JMZ. JMZ's obligations under this Section 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. JMZ shall defend, indemnify and reimburse Utility for all loss and expense, including reasonable attorney's fees, that Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that JMZ does not have sufficient rights or authority to attach JMZ's Network Facilities on Utility's Poles.

5.2. **Lawful Purpose and Use.** JMZ's Network Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws

5.3. **Forfeiture of Utility's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of JMZ's Network Facilities would result in a forfeiture of Utility's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of Utility's rights, is invalid.

SECTION 6 - PERMIT APPLICATION PROCEDURES

6.1. **Permit Required.** JMZ shall not install any Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of Utility. Attachments to or rights to occupy Utility Facilities not covered by this Agreement must be separately negotiated.

6.2. **Utility Review of Permit Application.** Upon receipt of a properly executed Application for Permit, which shall include the Pre-Construction Survey and plans for the proposed Attachments, Utility will review the Permit Application within fifteen (15) days of receipt; provided, the Parties agree and acknowledge that the grant or denial of JMZ's request may take longer than fifteen (15) days if the Parties are communicating and mutually proceeding diligently with the Application in good faith. The Utility's response will either provide a written explanation as to why the Application is being denied, or provide an approval including engineering or Make-Ready Work requirements associated with the Permit Application.

6.3. **Permit as Authorization to Attach.** After receipt of payment for any necessary Make-Ready Work, Utility will sign and return the Permit Application, which shall serve as authorization for JMZ to make its Attachment(s).

SECTION 7 - MAKE READY WORK/INSTALLATION

7.1. **Make Ready Survey.** When the Utility receives an attachment or placement request from JMZ, a make-ready survey (the "Make-Ready Survey") may be necessary, at JMZ's cost, to determine the adequacy or the capacity of the Utility Facilities to accommodate JMZ's Communications Equipment without jeopardizing the safety of the Utility Facilities or placing the Utility in violation of generally applicable zoning or other restrictions. JMZ shall be responsible for performing and paying all actual costs associated with the Make-Ready Survey. The Utility may perform a field inspection and structural analysis as part of the Make-Ready Survey. The Utility shall provide reasonable advance notice of such a field inspection and a representative of JMZ has the right to be present for the inspection.

7.2. **Make-Ready Work.**

a. Except where the Utility denies the request, whenever any Utility Facility to which JMZ seeks attachment or occupancy requires modification or replacement to accommodate both JMZ's Attachment and the existing attachments or equipment of the Utility and other Attaching Entities, the Utility, at JMZ's cost, will provide JMZ with a detailed, good faith estimate of Make-Ready Work (the "Make-Ready Estimate") the Utility believes to be necessary to prepare the Utility Facilities for

JMZ's Attachment. All actual costs for Make-Ready Work will be performed at the sole cost and expense of JMZ. The Utility will use its best efforts to provide JMZ with the Make-Ready Estimate within fifteen (15) days of JMZ's request. The Make-Ready Estimate shall include itemized estimates of the cost of each component of the Make-Ready Work. Any reference to costs or expenses borne by JMZ within Paragraphs 7.1 and 7.2 shall include all third-party out of pocket expenses incurred by the Utility and may also include expenses that third-party Attaching Entities are obligated to bear under pre-existing agreements.

b. After receiving the Make-Ready Estimate, if JMZ still desires to make the Attachment, JMZ may within ninety (90) days of receiving the Make-Ready Estimate elect by written notice to the Utility any of the following alternatives:

i. Offer the Utility the option to perform such Make-Ready Work as called for in the Make-Ready Estimate (the "Option"), and if the Utility, in its sole and absolute discretion, agrees to perform such Make-Ready Work pursuant to the Option, JMZ will pay to the Utility fifty percent (50%) of the fees for Make-Ready Work specified by the Make-Ready Estimate (the "Down Payment"). JMZ shall pay the remaining fifty percent (50%) of the Make-Ready Estimate upon the Utility's completion of the Make-Ready Work. Notwithstanding this Subparagraph, the Utility, at its option, may require advanced payment of the entire Make-Ready Estimate per Paragraph 3.8.

ii. JMZ or JMZ's contractors may perform all the Make-Ready Work. The contractors shall be approved by the Utility to work on or in Utility Facilities. Approval shall be based upon reasonable and customary criteria employed by the Utility in the selection of its own contract labor.

iii. JMZ may retain its own contractors to perform part of the Make-Ready Work and utilize the Utility to perform part of the Make-Ready Work, but only where the Utility has, in its sole and absolute discretion, agreed to such Option described in Subparagraph 7.2(b)(i). The parties shall reasonably agree what portion of the Make-Ready Work each party will perform through this joint-build option. In the event JMZ retains contractors to perform part of the Make-Ready Work and utilizes the Utility to perform part of the Make-Ready Work, JMZ shall adjust the payments described in Subparagraph 7.2(b)(i) to include only the costs of the itemized components of the Make-Ready Estimate to be performed by the Utility.

c. If the Utility, in its sole and absolute discretion, exercises its Option to perform any Make-Ready Work as described in Subparagraph 7.2.2 (i), the Utility shall use its best efforts to make sure that necessary Make-Ready Work, including the work necessary to rearrange the Attachments and equipment of other Attaching Entities, is completed within thirty (30) days from JMZ's remittal of the Down

Payment. If Make-Ready Work is not completed by the Utility within the thirty (30) day period, any fees payable by JMZ for Make-Ready Work shall be waived and any Down Payment in connection with such Make-Ready Work shall be refunded promptly to JMZ, and JMZ may retain its own contractors perform the Make-Ready Work.

d. If JMZ submits a request that affects existing Attaching Entities, the Utility will use commercially reasonable efforts to notify the existing Attaching Entities and coordinate the rearrangements of their Attachments. To the extent third-party equipment is affected by JMZ's request, the Utility will follow the procedure as described in Paragraphs 7.2.1, 7.2.2 and 7.2.3, but only to the extent such existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange Attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

7.2. **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate JMZ's Network Facilities, Utility will endeavor to include such work in its normal work schedule. In the event JMZ requests that the Make-Ready Work be performed on a priority basis or outside of Utility's normal work hours, JMZ agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of JMZ's work before other scheduled work or Utility service restoration.

7.3. **JMZ's Installation/Removal/Maintenance Work.**

a. All of JMZ's installation, removal and maintenance work shall be performed at JMZ's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Utility's Poles or other Facilities or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Section 16.

b. All of JMZ's installation, removal and maintenance work performed on Utility's Poles or in the vicinity of other Utility Facilities, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. JMZ shall assure that any person installing, maintaining, or removing its Network Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Section 16, and the Specifications required by Section 4.

SECTION 8 - TRANSFERS If Utility reasonably determines that a transfer of JMZ's Network Facilities is necessary, JMZ agrees to allow such transfer. In such instances, Utility will, at its option, either perform the transfer using its personnel, and/or contractors and/or require JMZ to perform such transfer at its own expense within 60 calendar days after receiving notice from Utility. If JMZ fails to transfer its Facilities within 60 calendar days after receiving such notice from Utility, Utility shall have the right to transfer JMZ's Facilities using its personnel and/or contractors at JMZ's expense. Utility shall not be liable for damage to JMZ's Facilities except to the extent provided in Paragraph 14.3. The written advance notification requirement of this Section 8 shall not apply to emergency situations, in which case Utility shall provide such

advance notice as is practical given the urgency of the particular situation. Utility shall then provide written notice of any such actions taken within ten (10) days of the occurrence.

SECTION 9 - POLE MODIFICATIONS AND/OR REPLACEMENTS

9.1. **JMZ's Action Requiring Modification/Replacement.** In the event that any Pole to which JMZ desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, Utility will notify JMZ of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or transfer of Utility's Facilities. JMZ shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If JMZ elects to go forward with the necessary changes, JMZ shall pay to Utility the actual cost of the Make-Ready Work, performed by Utility, per Paragraph 3.10. Utility, at its discretion, may require advance payment. JMZ shall also be responsible for obtaining, and furnishing to Utility before the commencement of any MakeReady Work, agreements between JMZ and the other Attaching Entities concerning the relocation or rearrangement of their Attachments and the costs involved.

9.2. **Guying.** The use of guying to accommodate JMZ's Attachments shall be provided by and at the expense of JMZ and to the satisfaction of Utility. JMZ shall not attach its guy wires to Utility's anchors without prior written permission of Utility.

9.3. **Allocation of Costs.** The costs for any rearrangement or transfer of JMZ's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Utility's cables or wires) shall be allocated to Utility and/or JMZ and/or other Attaching Entity on the following basis:

a. If Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. JMZ, however, shall be responsible for all costs associated with the rearrangement or transfer of JMZ's Communications Facilities. Prior to making any such modification or replacement Utility shall provide JMZ written notification of its intent in order to allow JMZ a reasonable opportunity to elect to modify or add to its existing Attachment. Should JMZ so elect, it must seek Utility's written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If JMZ elects to add to or modify its Communications Facilities, JMZ shall bear the total incremental costs incurred by Utility in making the space on the Poles accessible to JMZ.

b. If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than Utility or JMZ, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring JMZ's Communications Facilities. JMZ shall cooperate with such third-party Attaching Entity to determine the costs of moving JMZ's facilities.

c. If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), Utility shall pay the costs of such modification or replacement; provided, however, that JMZ shall be responsible for the costs of rearranging or transferring its Communications Facilities.

d. If the modification or replacement of a Pole is necessitated by the requirements of JMZ, JMZ shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. JMZ shall submit to Utility evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Facilities at the time JMZ submits a Permit Application to Utility. Utility shall not be obligated in any way to enforce or administer JMZ's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Facilities pursuant to this Paragraph.

9.4. **Utility Not Required to Relocate.** No provision of this Agreement shall be construed to require Utility to relocate its Attachments or modify/replace its Poles for the benefit of JMZ, provided, however, any denial by Utility for modification of the pole is based on nondiscriminatory standards of general applicability.

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SECTION 10 - ABANDONMENT OR REMOVAL OF UTILITY FACILITIES If Utility desires at any time to abandon, remove or underground any Utility Facilities to which JMZ's Network Facilities are attached, it shall give JMZ notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such Utility's Facilities. Notice may be limited to thirty (30) calendar days if Utility is required to remove or abandon its Utility Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether Utility is offering JMZ an option to purchase the Pole(s). If, following the expiration of the thirty-day period, JMZ has not yet removed and/or transferred all of its Network Facilities therefrom and has not entered into an agreement to purchase Utility's Facilities pursuant. Utility shall have the right, subject to any applicable laws and regulations, to have JMZ's Network Facilities removed and/or transferred from the Pole at JMZ's expense. Utility shall give JMZ prior written notice of any such removal or transfer of JMZ's Facilities.

SECTION 11 - REMOVAL OF JMZS FACILITIES At the expiration or other termination of this Agreement or individual Permit(s), JMZ shall remove its Network Facilities from the affected Poles at its own expense. If JMZ fails to remove such facilities within sixty (60) calendar days of expiration or termination or some greater period as allowed by Utility, Utility shall have the right to have such facilities removed at JMZ's expense

SECTION 12 - TERMINATION OF PERMIT

12.1. **Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when JMZ ceases to have authority to construct and operate its Network Facilities on public or private property at the location of the particular Pole(s) covered by the Permit.

12.2. **Surrender of Permit.** JMZ may at any time surrender any Permit for Attachment and remove its Network Facilities from the affected Pole(s). If JMZ surrenders such Permit pursuant to the provisions of this Section 12, but fails to remove its Attachments from Utility's Facilities within thirty (30) calendar days thereafter, Utility shall have the right to remove JMZ's Attachments at JMZ's expense.

SECTION 13 - INSPECTION OF JMZ'S FACILITIES

13.1. **Inspections.** Utility may conduct an inspection of Attachments at any time. JMZ shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that JMZ has made an Attachment without a Permit, JMZ shall pay a Unauthorized Access Penalty Fee as specified in Section 3 in addition to applicable Permit and Make-Ready charges.

13.2. **Notice.** Utility will give JMZ reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

13.3. **No Liability.** Inspections performed under this Section 13, or the failure to do so, shall not operate to impose upon Utility any liability of any kind whatsoever or relieve JMZ of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

13.4. **Attachment Records.** Notwithstanding the above inspection provisions, JMZ is obligated to furnish Utility on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format.

SECTION 14 - LIABILITY AND INDEMNIFICATION

14.1. **Indemnity.** JMZ shall indemnify, defend, and hold harmless the Utility, its council members, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by JMZ pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the Utility, its council members, officers, employees, agents or contractors. The Utility shall promptly notify JMZ of any claim, action or proceeding covered by this Paragraph.

14.2. **Waiver of Claims.** JMZ waives all claims, demands, causes of action, and rights it

may assert against the Utility on account of any loss, damage, or injury to any portion of the Communication Facilities, or any loss or degradation of the services provided by the Communication Facilities, resulting from any event or occurrence except for any loss, damage, or injury resulting from the gross negligence or willful misconduct of the Utility, its council members, officers, employees, agents or contractors.

14.3. Limitation of Utility's Liability. Utility reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its service requirements. The Utility will be liable, if at all, only for the cost of repair to damaged portions of the Communication Facilities arising from the negligence or willful misconduct of Utility, its employees, agents, or contractors. The Utility, its council members, officers, employees, agents or contractors, shall not be liable for any damage from any cause whatsoever to the Communication Facilities, specifically including, without limitation, damage, if any, resulting from the Utility's maintenance operations adjacent to the Communication Facilities or from vandalism or unauthorized use of the Communication Facilities, except to the extent such damage is caused by the negligence or willful misconduct of Utility, its council members, officers, employees, agents or contractors. The Utility will in no event be liable for indirect or consequential damages.

14.4. Limitation of JMZ's Liability. In no event shall JMZ be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Communication Facilities, Poles and other Utility real property.

SECTION 15 - DUTIES, RESPONSIBILITIES, AND EXPULSION

15.1. Duty to Inspect. JMZ acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Facilities, or the premises surrounding the Facilities, and JMZ further acknowledges and agrees that it has an obligation to inspect Utility's Poles and/or premises surrounding the Poles, prior to commencing any work on Utility's Poles or entering the premises surrounding such Pole.

15.2. Knowledge of Work Conditions. By executing this Agreement, JMZ warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that JMZ will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.

15.3. DISCLAIMER. UTILITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO UTILITY'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND UTILITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. UTILITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15.4. Duty of Competent Supervision and Performance. JMZ shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill,

knowledge, training and experience to protect themselves, their fellow employees, employees of the Utility and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, JMZ 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.

SECTION 16 - INSURANCE

16.1. Minimum Insurance Requirements. JMZ shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section 16.

- a. Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined per occurrence for bodily injury, personal injury, death, loss and property damage resulting from JMZ's wrongful or negligent acts.
- b. Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per accident for bodily injury and property damage covering any vehicle utilized by JMZ in performing the work covered by this Agreement.
- c. Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

16.2. Other Insurance Provisions. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- a. General Liability and Automobile Liability Coverage
 - i. The Utility, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employers' Liability policies.
 - ii. JMZ's insurance coverage shall be primary insurance with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of JMZ's insurance and shall not contribute with it.
 - iii. Any failure of JMZ to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.
 - iv. JMZ's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

b. **Workers' Compensation and Employers' Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by JMZ.

c. **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the Utility. If for any reason insurance coverage is canceled or reduced in coverage or in limits, JMZ shall within two (2) business days of receipt of notice from the Insurer, notify the Utility by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

d. JMZ 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

16.3. **Verification of Coverage.** JMZ shall furnish the Utility with certificates of insurance required by this Section 16. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the Utility before work commences.

16.4. **Secondary Parties.** In the event JMZ hires any subcontractors, independent contractors, or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Communication Facilities, JMZ shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

SECTION 17 - ASSIGNMENT

17.1. **Limitations on Assignment.** JMZ shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of Utility, which consent shall not be unreasonably withheld. It shall be unreasonable for Utility to withhold consent without cause to an assignment of all of JMZ's interests in this Agreement.

17.2. **Sub-licensing.** Without Utility's prior written consent, JMZ shall not sublicense or lease to any third party, including but not limited to allowing third parties to place Attachments on Utility's Facilities, or to place Attachments for the benefit of such third parties on Utility's Poles. Any such action shall constitute a material breach of this Agreement. The use of JMZ's Network Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment is not subject to this Paragraph.

SECTION 18 - FAILURE TO ENFORCE Failure of Utility or JMZ to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

SECTION 19 - TERM AND TERMINATION

19.1. This Agreement shall become effective upon its execution and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the initial five (5) year term by giving to the other party written notice of an intention to terminate this Agreement at least ninety (90) calendar days prior to the end of the term. If no such notice is given, this Agreement shall automatically renew for an additional five (5) year term. The additional term(s) shall be deemed a continuation of this Agreement and not as a new Agreement or amendment. Under no circumstances shall this Agreement exceed twenty (20) years from the effective date of the Agreement. At the conclusion of the twenty (20) year period the parties agree to negotiate a new Agreement in good faith in the event JMZ is still providing services hereunder.

19.2. Notwithstanding Paragraph 19.1 above, JMZ may terminate its use of any or all of the Communication Facilities by providing the Utility with ninety (90) days prior written notice, and in such event, JMZ's payment obligations to the Utility shall terminate simultaneously with the termination of use.

SECTION 20 - MISCELLANEOUS PROVISIONS

20.1. **Nonexclusive Use** Utility shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use Utility Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to JMZ by the specific Permits issued pursuant to this Agreement

20.2. **Notices.** All notices pursuant to this Agreement shall be in writing and sent by E-mail and by mailing a copy first class postage prepaid or by personal delivery to the following address or such other address of which a party may give by written notice:

Utility: City of Neodesha
Attn: City Administrator
1407 N 8th
PO Box 336
Neodesha, KS 66757
Phone: 620-325-2828
Fax: 620-325-2481
Email: etruelove@neodeshaks.org

JMZ: JMZ Corporation,
d/b/a KwiKom Communications
Attn: Zachery D Peres
800 W Miller Rd
Iola, Kansas 66749
Phone: 1-620-380-0068
Email: zperes@kwikom.com

with a copy to Kurt F Kluin
Attorney at Law
P.O. Box G
Chanute, Kansas 66720
Phone: 1-620-431-1601
Email: kurtk@kluinlaw.com

Notice sent as provided herein shall be deemed given on the date of the E-mail. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

20.3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

20.4. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

20.5. Severability. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

20.6. Governing Law. This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by the law of the State of Kansas or applicable federal law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement, shall occur in the District Court of Wilson County, Kansas.

20.7. **Relationship of Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

20.8. **Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of Utility's liability, attorneys' fees and waiver shall survive termination of this Agreement.

20.9. **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and shall not be used in construing this Agreement.

20.10. **Drafting.** This Agreement is the project of joint draftsmanship and nothing herein shall be construed against a drafting party.

20.11. **Execution in Counterparts.** This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

20.12. **Authority to Execute This Agreement.** Each person executing this Agreement on behalf of a party warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has authority to bind such party to the performance of its obligations under this Agreement without further approval or consent of any other person or entity.

20.13. **No Abrogation of Legal Remedies.** The Utility's execution of this Agreement shall not abrogate, in any way, JMZ's responsibility to comply with all permitting requirements or to comply with all Laws respect to its performance of the activities permitted under this Agreement.

20.14. **Contractual Interpretation.** In the interpretation and application of its rights under this Agreement, the Utility will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

SECTION 21 - FORCE MAJEURE

21.1. In the event that either Utility or JMZ is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, 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, 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 required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and

any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

21.2. Utility shall not impose any charges on JMZ stemming solely from JMZ's inability to perform required acts during a period of unavoidable delay as described in Paragraph 21.1, provided that JMZ present Utility with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse JMZ from the timely payment of any fees or charges due Utility under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written, May 27, 2020.

NEODESHA , KANSAS

by: _____
name: Devin Johnson
title: Mayor

DRAFT
JMZ CORPORATION, doing business as
Kwikom Communications
POLE AGREEMENT

by: _____
Zachery Peres
Vice President

CITY OF NEODESHA

RESOLUTION 20-07

A RESOLUTION ESTABLISHING A UTILITY BILL PAYMENT PLAN FOR UTILITIES PAID TO THE CITY OF NEODESHA, KANSAS, FOR UTILITY CUSTOMERS NEGATIVELY EFFECTED BY THE COVID-19 PANDEMIC.

WHEREAS, the United States of America and the State of Kansas have declared states of emergency in their respective jurisdictions resulting from the worldwide pandemic of COVID-19; and

WHEREAS, Executive Order No. 20-05, signed by Governor Kelly on March 17, 2020, temporarily prohibits utility and internet disconnects; and

WHEREAS, the City of Neodesha Governing Body has determined that the COVID-19 pandemic has caused a negative local impact on employment, such as employee workshare, furloughs, lay-offs, and other employment income hardships during the months of March to May, 2020; and

WHEREAS, the City of Neodesha Governing Body desires to establish an extended utility bill payment period for utility customers negatively impacted by the COVID-19 pandemic;

THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NEODESHA:

That any utility customer experiencing financial hardship due to the COVID-19 pandemic may be offered three additional months to pay all past-due utility bills. The payment plan shall include three equal installment payments for past-due amounts.

Upon entering into a utility bill payment plan, the utility customer must keep all new utility bills paid in full when due.

Only the person listed on the utility account may sign the payment plan. If said customer cannot come into the office, a form can be mailed or picked up by someone else, but the customer's signature must be notarized.

If the remainder of the bill is not paid in full at the end of the payment plan period, utilities will be disconnected without further notice. A reconnection fee must be paid in addition to all amounts owed prior to the account being turned back on.

This payment plan shall remain in effect during calendar year 2020.

ADOPTED AND APPROVED by the governing body of the City of Neodesha, Kansas this 27th day of May, 2020.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk



1311 E 25th Street, Suite B, Lawrence, KS 66046
lydia@larsenenvironmental.com

785-841-8707 | office
785-865-4282 | fax

5/15/20

City Administrator
C/O 1419 N. 8th Street
Neodesha, KS 66757

Re: Kerr-Mcgee #6465 903 Main Street Neodesha, Kansas
KDHE ID: U3-103-00198`

Dear Property Owner:

The Kansas Department of Health and Environment (KDHE) has contracted our firm to conduct an environmental investigation in the vicinity of an under ground petroleum storage tank that was on the referenced property. As part of the investigation, it will be necessary to install soil borings and/or monitoring wells on the referenced property and surrounding properties. This letter is in regard to our request for permission to drill on property that you own at **ROW located on Wisconsin Street between 9th & 10th street Neodesha, Kansas.** An access agreement is enclosed for your review and signature.

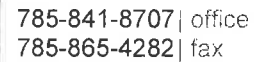
This work is required by the KDHE and is being paid for by funding from the Kansas Petroleum Storage Tank Release Trust Fund.

We will follow all standards required for drilling, including procedures for soil borings and monitoring well installation. Typically, soil borings are 7.25-inch diameter and are drilled to groundwater. Wells (2-inch diameter PVC pipe) are installed in the borings if needed. All wells are completed flush with the ground and secured with metal covers that are safe to walk and drive over. All drill cuttings and waste will be handled in accordance with State regulations. To minimize the risk of encountering underground utility lines, we will request line locations through the Kansas DigSafe system and city officials. The average monitoring well takes 2-3 hours to complete. Soil and groundwater samples collected from soil borings and will assist in determining whether petroleum related products have migrated from the site property. The entire drilling project should be completed within a one week time frame. Groundwater monitoring wells will be left in place and sampled one to four times per year until KDHE no longer requires monitoring and the well can be abandoned and removed.

Your cooperation and attention to this matter is greatly appreciated. Please sign and return the attached agreement by 5/28/20. If you have any questions please call me at 785-841-8707.

Respectfully,

Lydia Penturf
Access Manager



Environmental consultants providing professional services since 1992.

NOTE: Figures exhibited within this report are only to be used within the context of this report. Placement of property lines, wells, structures, and roads is based on the available information from county appraiser maps, surveys, site visits, and/or previous vendor reports and should be considered approximate.

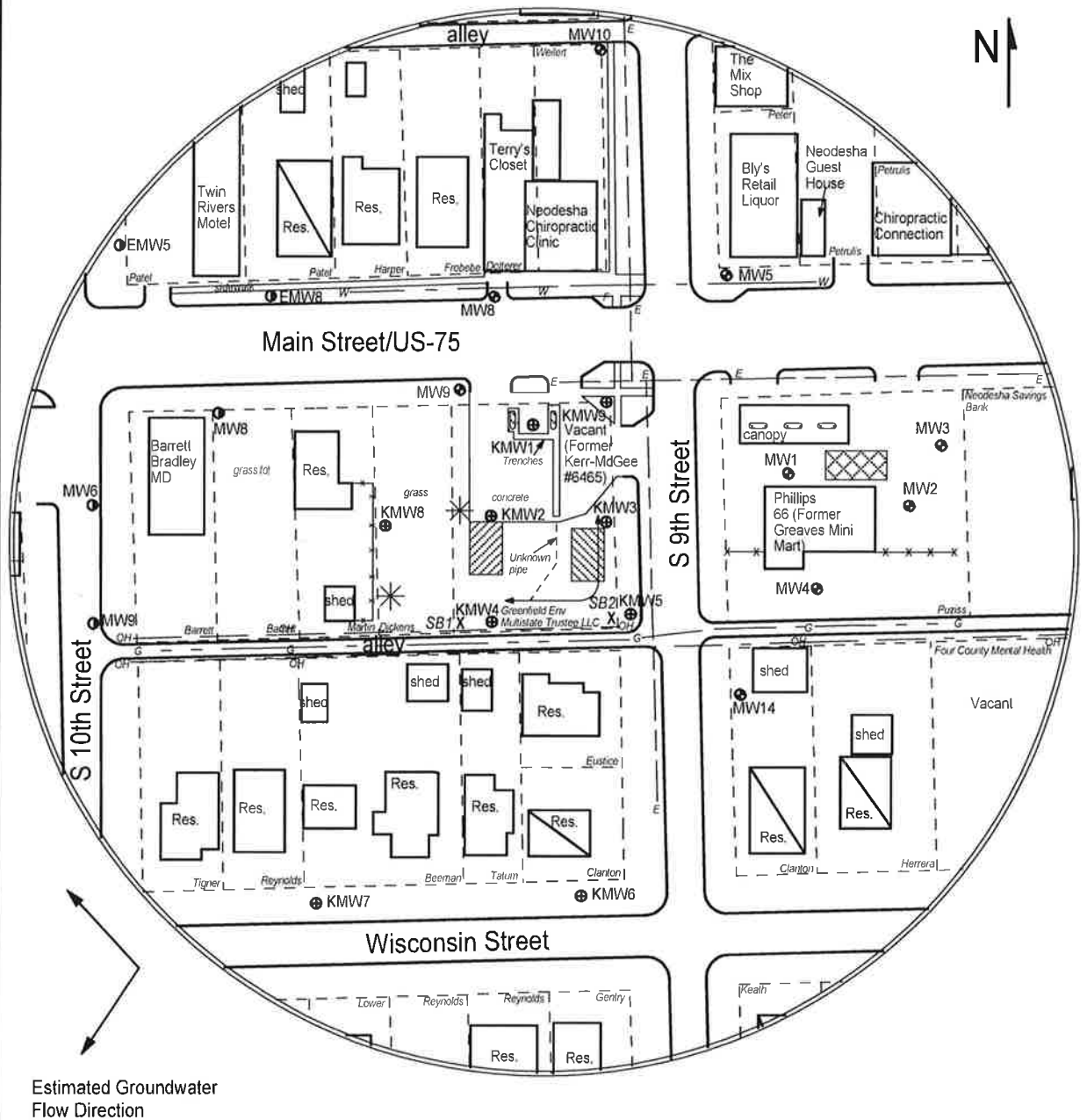


FIGURE 3 - 350 FT RADIUS AREA BASE MAP



1311 E 25th St, Suite B
Lawrence, KS 66046

785-841-8707 office
785-865-4282 fax

PROJECT:

Kerr-McGee #6465
903 Main Street
Neodesha, KS
KDHE ID: U3-103-00198
Date: 4/22/20

0 100 ft

LEGEND:

- Approximate Location of Former Hydraulic Lift Station & 300 Gallon Used Oil UST
 - Approximate Location of Former UST Basin, Product Lines & Pump Islands
 - Approximate Location of Active UST Basin & Pump Islands
 - Building with Basement
 - Approximate Location of Property Line
 - Monitoring Well (Greaves Mini Mart U3-103-10019)
 - Monitoring Well (May's Apco U3-103-00660)
 - Plugged Well
 - Proposed Monitoring Well
 - Proposed Soil Boring
 - Fire Hydrant
 - Gas Lines (1.5 - 3 ft bgs)
 - Electric Lines (2 - 6 ft bgs)
 - Overhead Lines (25'-40' high)
 - Water Lines (1.5 - 3 ft bgs)
- NOTE: SB1 & SB2 will be drilled to collect hydrologic samples.
NOTE: Utility depths, heights and locations are approximate.

LIMITED SITE ASSESSMENT SITE SPECIFIC INFORMATION

KDHE PROJECT NAME: Kerr-McGee #6465
KDHE PROJECT CODE: U3-103-00198
FACILITY I.D.: 00093
FACILITY ADDRESS, CITY: 903 Main Street, Neodesha
APPLICANT CONTACT: Austin Hofmeister
CONTACT TELEPHONE: 850-228-9421
KDHE PROJECT MANAGER: Lacey Laird
KDHE TELEPHONE: 785-296-8987

SITE HISTORY: The site is owned by Greenfield Environmental Multistate Trust LLC, Trustee of the Multistate Environmental Response Trust. On December 28, 1989, petroleum contaminated soil was encountered during the removal of three Underground Storage Tanks (USTs) (1-300 gallon used oil, 1-6,000 gallon & 1-10,000 gallon gasoline) were removed. In December 2016 a Limited Subsurface Investigation Report was conducted. The report indicated groundwater contamination. No known tanks remain onsite.

Laboratory analysis of a soil sample from SB8 revealed a Naphthalene concentration of 7.01 ppm. Groundwater sample from TW3 revealed a Naphthalene concentration of 94.6 ppb. Depth to groundwater is estimated to be 8' bgs. Included within EXHIBIT 1 is the Buried Tank Leak Assessment form completed by the KDHE district staff pursuant to their initial assessment. The report from the nearby Trust Fund site (May's Apco, U3-103-00660) is available from the KDHE Project Manager upon request.

All work will be conducted in accordance with the requirements in the LSA RFP Rev 14, 04/2019. This document is available from the KDHE Project Manager upon request or at <http://www.kdheks.gov/tanks/rfp/index.html>. For preparing and submitting bid proposals, refer to the current Kansas Petroleum Storage Tank Release Trust Fund Policy and Procedure Manual at: http://www.kdheks.gov/tanks/trust_fund/index.html. The Limited Subsurface Investigation Report analytical data will need to be included into the LSA Report.

SITE WORK: The Site Specific Work Sheet below includes the amount of work to be conducted. Laboratory soil samples will only be collected from all wells. Two soil borings will be used to collect hydrologic data. Sampling criteria is outlined in Section 3.3.8 of the LSA RFP Rev 14, 04/2019. Surficial soil samples will be collected from all borings that meet the criteria stated in Section 3.3.7.5. As stated in Section 3.3.1, the Vendor will determine the extent of soil and groundwater contamination, and other goals of this investigation. KDHE must be contacted if any wells are dry or inaccessible prior to groundwater sampling. Contact the Project Manager, prior to completion of drilling activities, to determine if additional borings and/or wells are needed to define the extent of soil and/or groundwater contamination. The actual work conducted will be based on the site conditions encountered during drilling activities.

Flushmount Well Completion Pads: The Vendor will complete all well pads with 2' x 2' x 6" concrete or 2' diameter concrete at this site. This includes, but is not limited to, surface areas of grass, gravel, and dirt. For wells constructed within existing concrete or asphalt surface areas at this site, the concrete pad may be less than 2' x 2' x 6" or 2' diameter, but must be greater than 2 inches from the edge of the metal well vault.

SITE SPECIFIC WORK SHEET

Monitor Wells (Number)	Borings** Plugged (Number)	Lab Soil Samples (Number)	Water*** Samples (Number)	Product Samples (Number)	Screen* Length Per Well (Feet)	Total Well Footage (Feet)	Total Boring Plugging (Feet)
9	2	36	9	1	10	135	20

*Screen length is based on estimated groundwater depth. If actual groundwater depth is different, screen length should be adjusted based on the following groundwater depths: <25 feet-10 foot screens; 25-49 feet-15 foot screens; 50-74 feet-20 foot screens; 75-100 feet-25 foot screens; >100 feet-30 foot screens.

**Only hydrologic data will be collected from these borings.

Date of Issuance: 5/18/2020
 Owner: City of Neodesha
 Contractor: NPL Construction Co.
 Engineer: Professional Engineering Consultants, P.A.
 Project: Neodesha Gas Distribution System Improvements

Effective Date:
 Owner's Contract No.:
 Contractor's Project No.:
 Engineer's Project No.: 35-171291-000-2005
 Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description: Modification of total 6" and 4" Pipe due to quantity discrepancy on the bid form. Correct plan totals are 9,021 LF of 6" Pipe and 14,492 LF of 4" Pipe. Reduction of Gas Service Replacement unit price from \$2,300.00 each to \$2,207.76 each due to the City of Neodesha purchasing the gas service meters.

Attachments: Cost Summary

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES [note changes in Milestones if applicable]
Original Contract Price: \$ 1,699,401.00	Original Contract Times: Substantial Completion: 240 Ready for Final Payment: 270 days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ -	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: - Ready for Final Payment: - days
Contract Price prior to this Change Order: \$ 1,699,401.00	Contract Times prior to this Change Order: Substantial Completion: 240 Ready for Final Payment: 270 days or dates
Decrease of this Change Order: \$ 51,165.27	[Increase] [Decrease] of this Change Order: Substantial Completion: No Change Ready for Final Payment: No Change days or dates
Contract Price incorporating this Change Order: \$ 1,648,235.73	Contract Times with all approved Change Orders: Substantial Completion: 240 Ready for Final Payment: 270 days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: <u>Trenor Kaufman</u>	By: _____	By: <u>[Signature]</u>	By: _____	By: <u>[Signature]</u>	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)			
Title: <u>Project Engineer</u>	Title: <u>City Administrator</u>	Title: <u>Supervisor</u>			
Date: <u>5/21/2020</u>	Date: <u>05/27/2020</u>	Date: <u>5/18/2020</u>			

Approved by Funding Agency (if applicable)

By: _____ Date: _____
 Title: _____

[illegible]

FORT DEM ENTERPRISES

INVOICE

316-351-1771

Nikad36@yahoo.com

250 West Douglas #2407
Wichita, KS 67202

Attention: ED TRUELOVE
Company CITY OF NEODESHA, KS

Date: 5/19/20

Project Title: POOL PAINTING
Project Description: concrete repair and logo
P.O. Number: NA
Invoice Number: 67891
Terms: IMMEDIATELY

Description	Quantity	Unit Price	Cost
repair 2 spots of concrete apply logo as approved by JR, and Michael	1	\$ 1,000	\$ 1,000
		Subtotal	\$ 1,000
	Tax	0.00%	\$ 0
		Total	\$ 1,000

Thank you for your business. It's a pleasure to work with you on your project.

Sincerely yours,

Hamza Smajlovic

2020 CMB LICENSE APPLICANTS

May 27, 2020

LITTLE BEAR TRADING COMPANY, INC

Robert Tinsley, Micah Songer

<u>NEODESHA HOUSING AUTHORITY</u>			
<u>POSITION</u>	<u>NAME</u>	<u>LENGTH OF TERM</u>	<u>TERM ENDS</u>
Chairman	Danny Thayer	4 years	05/31/2023
Vice-Chair	Barbara Shoop	4 years	05/31/2020 ✓
	Karolyn Schultz	4 years	05/31/2020 ✓
	Sharon Jackson	4 years	05/31/2022
	Jim West	4 years	05/31/2021