ORDINANCE NO. 4208

AN ORDINANCE OF THE CITY OF GARNETT, 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 GARNETT, KANSAS:

This Franchise Agreement (the "Agreement") is entered into as of the 11TH day of FEBRUARY, 2020 ("Effective Date") by and between the CITY OF GARNETT, 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 street lights, 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 unreasonable 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 thirty party for such claims.

1.6 **Franchise Fee; Audit.** In consideration of this Agreement, JMZ agrees to pay the City a franchise fee of five percent (5%) of Gross Revenues ("Franchise Fee"). "Gross Revenues" means revenues derived from recurring services to JMZ's fiber optic customers provided within the City Limits of Garnett, Kansas (no franchise fee is due when the point of service is outside the City limits of Garnett; 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 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 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 Anderson 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 in such event the City agrees to provide JMZ, upon request, with any information in connection with 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 Garnett, Kansas
131 West 5th Avenue
Garnett, Kansas 66032
Phone: 785-448-5496

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.

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 of 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 Allen 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 Garnett, Kansas, on this 11TH day of FEBRUARY, 2020.

CITY OF GARNETT, KANSAS

by: Brigitte Brecheisen Huss

ATTEST: Louis W. Wilson
City Clerk

CITY OF GARNETT CORPORATE SEAL KANSAS INCORPORATED 1861

JMZ CORPORATION, doing business as KwiKom Communications

by: _____
Zachery Peres
Vice President

(Published in Garnett Review on _____.

ORDINANCE NO. 420 9

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN GARNETT, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.

WHEREAS, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the Safe Drinking Water Act (the "Federal Act") established the Drinking Water Loan Fund to assist public water supply systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the "EPA") to administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Public Water Supply Loan Act, K.S.A. 65-163d *et seq.*, as amended (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Public Water Supply Loan Fund (the "Revolving Fund") for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Kansas Development Finance Authority (the "Authority") and KDHE have entered into a Master Indenture (the "Master Indenture") pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public water supply projects (the "Projects") and to pledge the Loan Repayments (as defined in the Master Indenture) received pursuant to such Loan Agreements to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

WHEREAS, Garnett, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a water system (the "System"); and

ORDINANCE NO. 4211

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AN ORDINANCE SUPPLEMENTING THE RATE STRUCTURE FOR CERTAIN CLASSES OF ELECTRIC UTILITY CUSTOMERS OWNING A QUALIFYING GENERATION FACILITY AND WHO DESIRE TO RECEIVE A BILLING CREDIT FOR ELECTRICAL ENERGY SUPPLIED TO THE UTILITY SYSTEM.

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

SECTION 1: ELECTRIC SERVICE; RENEWABLE PARALLEL GENERATION PERMITTED FOR CERTAIN CUSTOMERS; FEES AND RATE CREDIT FOR THE SAME: (A) Renewable Parallel Generation shall be available to all customers of the Garnett Municipal Electric Utility ("Utility") classified as Residential, Small General and Large General customers (respectively defined under Title 4, Chapter 4, Sections 3(A), 3(C) and 3(D) of the Garnett Municipal Code), up to and within the limitations hereinafter set out.

(1) It shall be available only to a customer receiving retail service and shall not be available to any class of customer permitted to re-sell electrical energy.

(2) The energy supplied shall be single-phase, 60 Hertz alternating current at standard voltages, as available through one transformer.

(B) Service under this Renewable Parallel Generation Rate Schedule is available only to those permitted classes of electric utility customers in good standing with a Customer-owned Renewable Electric Generation Facility 25 kWac or less for Residential and Small General Customers and 200kWac or less for Large General customers who wish to receive a billing credit for surplus electrical energy supplied to the Utility, subject to the terms and conditions of this section. Customer-owned renewable generation and associated equipment are collectively referred to as a "Generation Facility".

(1) The Generation Facility shall be installed and operated in accordance with the requirements of the Standards for Installation and Parallel Operation of Customer-owned Renewable Electric Generation Facilities ("Interconnection Standards"). All terms used herein shall have the same meaning as set out in said Interconnection Standards. Such Interconnections Standards may from time to time be amended by the City of Garnett, and a current copy thereof shall be maintained by the City Clerk.

(2) The Utility, at its discretion, may refuse interconnection of any Generation Facility with a rated generating capacity greater than that customer's annual peak electric load.

(C) Service shall be available under this Section to applicable customer-generators on a "first come, first served" basis until the total rated generating capability of a such interconnections equals or exceeds four percent (4%) of the City of Garnett's peak load for the previous calendar year. Upon reaching this limit, no additional service under this Section shall be available until the said capacity shall drop below four percent (4%). In no case shall the Utility be obligated to purchase an amount greater than four percent (4%) of the utility's peak power requirements. The Utility may at any time limit the number and size of customer-owned generation facilities to be connected to the utility system due to the capacity of the distribution line to which the same would be connected.

(D) Utility Customers desiring to participate in Renewable Parallel Generation shall first make application on a form supplied by the City of Garnett. Upon approval of such application, the customer shall execute an agreement supplied by the City of Garnett. No customer-owned generation facility shall be energized without a final permit from the City of Garnett.

(E) In addition to the rates otherwise applicable to each class of electrical utility service which is billed to the utility customer, all interconnection Parallel Generation shall be subject to additional charges and credits as herein provided. Such additional billings shall be effective for the first month the Customer-owned Renewable Electric Generation Facility shall become approved for operation and for each subsequent month thereafter.

(1) Metering for every Customer-owned Renewable Electric Generation Facility shall be accomplished by use of a meter or meters which are approved by the City of Garnett and which is or are capable of registering the flow of electricity in each direction. The City of Garnett may, at its own expense and with the written consent of the participating customer, install one or more additional meters to monitor the flow of electricity.

(2) Each participating customer shall be billed a monthly Capacity Charge based off the System Nameplate Capacity Rating. The Capacity Charge shall be calculated using the formula, namely: System Nameplate Capacity Rating in kW multiplied by $4.10, equals the Capacity Charge.

(3) The measurement of net electricity supplied by the Utility shall be calculated in the following manner: The utility shall measure the amount of electricity delivered by the Utility to the customer and the amount of electricity generated by the customer and delivered to the Utility during the billing period, in accordance with normal metering practices.

(a) The kWh delivered by the Utility to the customer shall be billed to the customer at the current rates for that class of service.
(b) The kWh generated by the customer and delivered to the Utility shall be credited to the customer's account.
(c) The billing credit for surplus energy generated by the customer's Generation Facility and delivered to the Utility that exceeds the customer's instantaneous load, but is not in excess of the appropriate generator size, shall be an amount equal to 150% of the Utility's actual cost of purchased energy for the billing period in which energy was delivered to the city. Provided, however, the calculated credit applied to the customer's bill shall not result in a total bill less than the Minimum Bill for the customer's class of service.

SECTION 2: The provisions of this ordinance shall be supplementary to the existing electric rates provided for each qualifying class of customer, including the Title 4, Chapter 4, Section 4A fuel adjustments. This ordinance shall be codified as Title 4, Chapter 4, Section 4B of the Garnett Municipal Code.

SECTION 3: This ordinance shall take effect and be in force from and after its passage and publication in an official newspaper of the City of Garnett, Kansas.

PASSED this 26 day of May, 2020.

Mayor Mayor Pro Tempore

ATTEST:

Laura Wilson
City Clerk

CITY OF GARNETT CORPORATE SEAL KANSAS INCORPORATED 1861

ORDINANCE NO. 4212

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AN ORDINANCE REGULATING THE SALE OF FOOD AND BEVERAGE FROM MOBILE UNITS; REQUIRING AN ANNUAL LICENSE; DECLARING ALL VIOLATIONS OF THIS ORDINANCE A MISDEMEANOR AND PROVIDING PENALTIES FOR SUCH VIOLATION.

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

SECTION 1: MOBILE FOOD VENDOR'S LICENSE REQUIRED. (A) "Mobile Food Unit" shall mean any self-contained vehicle, trailer, cart or other type of conveyance or vehicle from which there is offered for sale food, beverage or either.

(B) "Mobile Food Vendor" shall mean any person, corporation, association or other entity, however organized, who shall operate or oversee, manage or direct the operation of a "Mobile Food Unit".

(C) No Mobile Food Vendor shall operate a Mobile Food Unit within the City of Garnett, Kansas, unless such Mobile Food Vendor shall have possess a valid Mobile Food Vendor license issued by the City Clerk of Garnett, Kansas, for the current calendar year. Such license shall at all times be displayed in a prominent place on the Mobile Food Unit. Such license shall be personal to the applicant and shall not be transferable or subject to assignment.

SECTION 2: MOBILE FOOD VENDOR APPLICATION FOR LICENSE; ANNUAL FEE REQUIRED. (A) Application for a Mobile Food Vendor license shall be made to the City Clerk on a form supplied by the City. All statements made by the applicant on such application form shall be made under penalty of perjury. Such application form shall include (but not limited to) the following information:

(1) Applicant's full, legal name, date and place of birth, and social security number.
(2) Applicant's permanent address, business mailing address, business (and if different, personal) telephone number, and e-mail address, if applicant has one.
(3) A copy of applicant's government-issued photo identification.
(4) Brief description of the nature of the business and the food or beverage to be offered for sale; applicant's Kansas retailer's sale tax number; and a copy of applicant's Kansas license for food service operation, if required.
(5) Evidence of general liability insurance covering applicant's operations of the Mobile Food Unit in the

amount of $500,000.00, or more.

(6) A statement indication whether or not applicant has had a Mobile Food Vendor's license, or any similar license, revoked within the preceding two years.

The fee for such license shall be $ 300.00 per year. All licenses shall be issued for the calendar year or the remainder thereof following application date, expiring on December 31st of each year. There shall be no pro-ration of such fee nor shall such fee be refunded for any reason, including denial of an application or revocation of such license.

(B) The application shall be granted and the City Clerk shall issue the required license, unless the City Clerk finds one of the following to exist:

1. The application is incomplete, including failure to pay the required application fee in full.
2. The application contains a material misrepresentation or materially false statement.
3. The applicant has had a Mobile Food Vendor's license revoked by the issuing authority thereof within two years immediately preceding the date of application.

Written notice of denial shall be mailed to applicant at the address on such application. The notice shall state the basis for the denial.

SECTION 3: MOBILE FOOD UNIT STANDARDS OF OPERATION AND RESTRICTIONS.

(A) All Mobile Food Units shall be maintained in good, operable and sanitary condition and shall at all times be capable of being moved.

(B) All Mobile Food Units, unless completely self-contained, shall be located in close proximity to and shall be connected safely to electricity and other necessary utilities, such that they do not pose a threat to the public, health, welfare and safety.

(C) Signage for all Mobile Food Units shall be limited to those that can be mounted or incorporated on the Mobile Food Unit itself. No sign shall exceed the dimensions of the Mobile Food Unit by more than one foot in any direction. No flashing signs shall be permitted. Illuminated signs are permitted, but only when the unit is stationary and when the unit is in operation. Any sign within 500 feet of any traffic signal shall not emit or display a green, amber or red light. When any sign is illuminated by a light or lights reflected upon it, direct rays of such light or lights shall not beam upon any residential building or into any residential neighborhood or street.

(D) Mobile Food Units' operations:

1. Shall be restricted to improved surfaces within Garnett Zones B-1 (Business-General District), B-2 (Business-Central District), O-I (Office-Institutional District) and I-1 (Light Industrial District).
2. Shall not operate from or offer for sale any merchandise while located upon a public right of way.
3. Shall operate from private property only with the express permission of the property owner and shall not operate from any unoccupied or vacant lot.
4. Shall be limited to two units at the same time on a single property and to three hours per day at any one location.

SECTION 4: MOBILE FOOD VENDOR LICENSE REVOCATION. (A) The City Clerk may revoke any Mobile Food Vendor's license for any one of the following reasons:

1. Fraud, misrepresentation or false statement in the application.
2. Any violation of the provisions of Kansas law or the provisions of this ordinance.
3. Conducting a licensed activity in an unlawful manner, in a manner that disturbs the peace, or in a manner that is injurious to the health, safety or welfare of the residents of the City of Garnett.
4. Unauthorized use of a public right of way or any other violation of the Municipal Code of Garnett.
5. Revocation of licensee's Kansas Food Service license or revocation of licensee's Kansas Sales Tax registration or failure to remit collected sales taxes to the Kansas Department of Revenue.

(B) Written notice of revocation shall be mailed to the licensee at the address on the application. The notice shall state the basis for the revocation.

SECTION 5: MOBILE FOOD VENDOR LICENSE EXCEPTIONS. The provisions of this ordinance shall not apply to vendors selling at the Garnett Farmer's Market or to vendors selling at a City approved event. Such events shall include those events sanctioned by written agreement of the City of Garnett. The sanctioning agreement may, but is not required to, address special conditions upon which Mobile Food Units may operate. Such special conditions may include limitations on operation including prohibiting all operations during the sanctioned event.

SECTION 6: VIOLATION OF THIS ORDINANCE A MISDEMEANOR. Operating as a Mobile Food Vendor without a license shall be a misdemeanor. Violation of any of the other provisions of this ordinance is a misdemeanor. Any person upon being found guilty of such violation shall be subject to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars

($1,000.00); and for a second or subsequent conviction in three years, in addition to such fine, 30 days confinement in the Anderson County jail.

SECTION 7: EFFECTIVE DATE. This ordinance shall take effect and be in force upon passage and publication in an official city newspaper.

PASSED this 9th day of June, 2020.

Brytte Buchanan Hess
Mayor

ATTEST:

Tairis Wilson
City Clerk

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ORDINANCE NO. 4213

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AN ORDINANCE AMENDING ORDINANCE NO. 4212, REGULATING THE SALE OF FOOD AND BEVERAGE FROM MOBILE UNITS; REQUIRING A LICENSE; DECLARING ALL VIOLATIONS OF THIS ORDINANCE A MISDEMEANOR AND PROVIDING PENALTIES FOR SUCH VIOLATION.

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

SECTION 1: MOBILE FOOD VENDOR'S LICENSE REQUIRED. (A) "Mobile Food Unit" shall mean any self-contained vehicle, trailer, cart or other type of conveyance or vehicle from which there is offered for sale food, beverage or either, cooked or otherwise prepared for immediate consumption and sold in a container or package intended for single servings.

(B) "Mobile Food Vendor" shall mean any person, corporation, association or other entity, however organized, who shall operate or oversee, manage or direct the operation of a "Mobile Food Unit".

(C) No Mobile Food Vendor shall operate a Mobile Food Unit within the City of Garnett, Kansas, unless such Mobile Food Vendor shall possess a valid Mobile Food Vendor license issued by the City Clerk of Garnett, Kansas, for the current calendar year or for a particular event. Such license shall at all times be displayed in a prominent place on the Mobile Food Unit. Such license shall be personal to the applicant and shall not be transferable or subject to assignment.

SECTION 2: MOBILE FOOD VENDOR APPLICATION FOR LICENSE; ANNUAL FEE REQUIRED. (A) Application for a Mobile Food Vendor license shall be made to the City Clerk on a form supplied by the City. All statements made by the applicant on such application form shall be made under penalty of perjury. Such application form shall include (but not limited to) the following information:

(1) Applicant's full, legal name, date and place of birth, and social security number.
(2) Applicant's permanent address, business mailing address, business (and if different, personal) telephone number, and e-mail address, if applicant has one.
(3) A copy of applicant's government-issued photo identification.
(4) Brief description of the nature of the business and the food or beverage to be offered for sale; applicant's Kansas retailer's sale tax number; and a copy of applicant's Kansas license for food service operation, if required.

(5) Evidence of general liability insurance covering applicant's operations of the Mobile Food Unit in the amount of $500,000.00, or more.
(6) A statement indicating whether or not applicant has had a Mobile Food Vendor's license, or any similar license, revoked within the preceding two years.

The fee for such license shall be $300.00 per year. All such licenses shall be issued for the calendar year or the remainder thereof following application date, expiring on December 31st of each year. There shall be no pro-ration of such fee nor shall such fee be refunded for any reason, including denial of an application or revocation of such license.

PROVIDED, HOWEVER, in the same manner an applicant may indicate that he or she is applying for an event license, which shall be valid for a period of 72 hours from issuance. The fee for an event license shall be $ 125.00 . There shall be no refund of fee for any reason, including denial of an application or revocation of such.

(B) The application shall be granted and the City Clerk shall issue the required license, unless the City Clerk finds one of the following to exist:

1. The application is incomplete, including failure to pay the required application fee in full.
2. The application contains a material misrepresentation or materially false statement.
3. The applicant has had a Mobile Food Vendor's license revoked by the issuing authority thereof within two years immediately preceding the date of application.

Written notice of denial shall be mailed to applicant at the address on such application. The notice shall state the basis for the denial.

SECTION 3: MOBILE FOOD UNIT STANDARDS OF OPERATION AND RESTRICTIONS.

(A) All Mobile Food Units shall be maintained in good, operable and sanitary condition and shall at all times be capable of being moved.

(B) All Mobile Food Units, unless completely self-contained, shall be located in close proximity to and shall be connected safely to electricity and other necessary utilities, such that they do not pose a threat to the public, health, welfare and safety.

(C) Signage for all Mobile Food Units shall be limited to those that can be mounted or incorporated on the Mobile Food Unit itself. No sign shall exceed the dimensions of the

Mobile Food Unit by more than one foot in any direction. No flashing signs shall be permitted. Illuminated signs are permitted, but only when the unit is stationary and when the unit is in operation. Any sign within 500 feet of any traffic signal shall not emit or display a green, amber or red light. When any sign is illuminated by a light or lights reflected upon it, direct rays of such light or lights shall not beam upon any residential building or into any residential neighborhood or street.

(D) Mobile Food Units' operations:

1. Shall be restricted to improved surfaces within Garnett Zones B-1 (Business-General District), B-2 (Business-Central District), O-I (Office-Institutional District) and I-1 (Light Industrial District).
2. Shall not operate from or offer for sale any merchandise while located upon a public right of way.
3. Shall operate from private property only with the express permission of the property owner and shall not operate from any unoccupied or vacant lot.
4. Shall be limited to two units at the same time on a single property and to 14 hours per day at any one location.

SECTION 4: MOBILE FOOD VENDOR LICENSE REVOCATION. (A) The City Clerk may revoke any Mobile Food Vendor's license for any one of the following reasons:

1. Fraud, misrepresentation or false statement in the application.
2. Any violation of the provisions of Kansas law or the provisions of this ordinance.
3. Conducting a licensed activity in an unlawful manner, in a manner that disturbs the peace, or in a manner that is injurious to the health, safety or welfare of the residents of the City of Garnett.
4. Unauthorized use of a public right of way or any other violation of the Municipal Code of Garnett.
5. Revocation of licensee's Kansas Food Service license or revocation of licensee's Kansas Sales Tax registration or failure to remit collected sales taxes to the Kansas Department of Revenue.

(B) Written notice of revocation shall be mailed to the licensee at the address on the application. The notice shall state the basis for the revocation.

SECTION 5: MOBILE FOOD VENDOR LICENSE EXCEPTIONS. The provisions of this ordinance shall not apply to vendors selling at the Garnett Farmer's Market or to vendors selling at a City approved event. Such events shall include those events sanctioned by written agreement of the City of Garnett. The sanctioning agreement may, but is not required to, address

special conditions upon which Mobile Food Units may operate. Such special conditions may include limitations on operation including prohibiting all operations during the sanctioned event.

SECTION 6: VIOLATION OF THIS ORDINANCE A MISDEMEANOR. Operating as a Mobile Food Vendor without a license shall be a misdemeanor. Violation of any of the other provisions of this ordinance is a misdemeanor. Any person upon being found guilty of such violation shall be subject to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00); and for a second or subsequent conviction in three years, in addition to such fine, 30 days confinement in the Anderson County jail.

SECTION 7: REPEAL. Ordinance No. 4212 is hereby repealed, but any annual license issued thereunder shall remain in force and effect until expiration or revocation, but otherwise shall be governed by this amendatory ordinance.

SECTION 8: EFFECTIVE DATE. This ordinance shall take effect and be in force upon passage and publication in an official city newspaper.

PASSED this 28 day of July, 2020.

Brigitte Brechéisen Hess
Mayor

ATTEST:

Lois Wilson
City Clerk

CITY OF GARNETT
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ORDINANCE 4214

INCORPORATING THE *UNIFORM PUBLIC OFFENSE CODE* BY REFERENCE

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF GARNETT, KANSAS; INCORPORATING BY REFERENCE THE *UNIFORM PUBLIC OFFENSE CODE* FOR KANSAS CITIES, 36th EDITION PUBLISHED IN 2020, WITH CERTAIN OMISSIONS; AND REPEALING EXISTING SECTIONS OF THE MUNICIPAL CODE HEREBY AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARNETT, KANSAS THAT,

SECTION 1. Title six (6), Chapter one (1), Section one (1) of the Municipal Code of the City of Garnett is hereby amended to read as follows:

6-1-1. Uniform Public Offense Code Incorporated

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Garnett, Kansas, that certain code known as the *Uniform Public Offense Code* for Kansas Cities, 36th Edition Published in 2020, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified, or changed. One copy of said *Uniform Public Offense Code* shall be marked or stamped "Official Copy as Adopted by Ordinance 4214," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

SECTION 2. Title six (6), Chapter one (1), Section two (2) of the Municipal Code of the City of Garnett is hereby amended to read as follows:

6-1-2. Omissions

Article six (6), Section sixteen (16); Article eleven (11), Section eleven (11); and Article ten (10), Section 10.29 of the Uniform Public Offense Code, 36th Edition published in 2020, are hereby omitted.

SECTION 3. Title six (6), Chapter one (1), Sections one (1) and two (2), as the same presently exist, are hereby repealed; provided however, any case pending before the Municipal Court upon the effective date of this ordinance charging a violation under any section of the code or ordinance repealed herein shall stay the effectiveness of such repealer with respect to each

such case which shall be prosecuted to conclusion upon the same terms and provisions of law as if the original ordinances or code sections had not been repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and its publication in an official newspaper of the City of Garnett, Kansas.

PASSED AND APPROVED BY THE GOVERNING BODY OF GARNETT, KANSAS, this 11th day of August 2020.

Brigitte Brecheisen-Huss

Brigitte Brecheisen-Huss, Mayor

ATTEST:

Travis Wilson

Travis Wilson, City Clerk

CITY OF GARNETT CORPORATE SEAL KANSAS INCORPORATED 1861

WHEREAS, the System is a Public Water Supply System, as said term is defined in the Loan Act; and

WHEREAS, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following:

Construction of a new water treatment plant and addition of chemical feed at the raw water pump station.

(the "Project"); and

WHEREAS, the Municipality has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-15-50 through 28-15-65 (the "Regulations") applicable thereto necessary to qualify for the loan; and

WHEREAS, KDHE has informed the Municipality that it has been approved for a loan in amount not to exceed $13,696,835.00 (the "Loan") in order to finance the Project; and

WHEREAS, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

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

Section 1. Authorization of Loan Agreement. The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an effective date of February 11, 2020, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the Loan Agreement). The Mayor and Clerk are hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the Mayor and the Municipality's legal counsel, the Mayor's execution of the Loan Agreement being conclusive evidence of such approval.

Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan. Pursuant to the Loan Act, the Municipality hereby establishes a dedicated source of revenue for repayment of the Loan. In accordance therewith, the Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues (as defined in the Loan Agreement) sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, (c) pay all other amounts due at any time under the Loan Agreement, and (d) pay the principal of and interest on Additional Revenue Obligations (as defined in the Loan Agreement) as and when the same become due; provided, however, the pledge of the System Revenues contained herein and in the Loan Agreement (i) shall be subject to reasonable expenses of operation and maintenance of the System, and (ii) shall be junior and subordinate in all respects to the pledge of System Revenues to any Additional Revenue Obligations. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement. In accordance with the Loan Act, the obligations under the Loan and the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

Section 3. Further Authority. The Mayor, Clerk and other City officials and legal counsel are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 4. Governing Law. The Ordinance and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 5. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

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March 10, 2020

PASSED by the governing body of the City on [Ordinance Date] and [signed][and **APPROVED**] by the Mayor.

(SEAL)

Brigitte Buchheister Nuss
Mayor

ATTEST:

Davis Wilson
Clerk

[APPROVED AS TO FORM ONLY.

City Attorney
Terry J. Solander

CITY OF GARNETT
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ORDINANCE NO. 4210

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AN ORDINANCE SUSPENDING A PART OF TITLE 9, CHAPTER 5, SECTION 21(E)(2) OF THE MUNICIPAL CODE, TEMPORARILY SUSPENDING THE LIMITATION ON CONSECUTIVE CAMPING AND PROVIDING FOR OTHER AND SUBSTITUTE REGULATION THEREOF BY RESOLUTION DURING SUCH PERIOD OF SUSPENSION.

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BE IT ORDAINED BY THE CITY OF GARNETT, KANSAS:

Section 1. The provision set out in Title 9, Chapter 5, Section 21(E)(2) of the Municipal Code limiting periods of consecutive days of camping, to-wit: "No camping unit shall stay at the same campsite in any of the city's parks for more than seven (7) consecutive nights." is hereby suspended until December 31, 2021.

Section 2. During such period of suspension, other restrictions, limitations and special rules may be specified with respect to some or all of the campsites in any city park by resolution from time to time adopted by the City. Such restrictions, limitations and special rules shall be deemed a part of said sub-section and administered and enforced in the same manner as if set out in said sub-section.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication one time in an official newspaper of the City of Garnett, Kansas.

PASSED this 14th day of April, 2020.

Brigitt Brecheisen Huss
Mayor

ATTEST:

Lois Wilson
City Clerk

CITY OF GARNETT
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