

**RESOLUTION NO. R-16-28**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LAND USE AGREEMENT WITH D.W. NEWCOMER'S AND SONS, INCORPORATED, TO RELOCATE A BUSINESS SIGN AS PART OF THE PLEASANT VALLEY ROAD IMPROVEMENTS PROJECT FROM NORTH INDIANA AVENUE TO NORTH BRIGHTON AVENUE; CITY PROJECT #TP1411; FEDERAL PROJECT #STP-3323(407).**

**WHEREAS**, D.W. Newcomer's & Sons, Incorporated, is a corporation providing funeral arrangement services located within the City of Gladstone, Missouri; and

**WHEREAS**, D.W. Newcomer's & Sons, Incorporated, owns and maintains an existing business sign at 6600 North Antioch Road, Gladstone, Missouri; and

**WHEREAS**, the City of Gladstone is scheduled to complete street improvements that will realign North Antioch Road in the vicinity of the property as part of the Pleasant Valley Road Improvements project from North Indiana to North Brighton; and

**WHEREAS**, D.W. Newcomer's & Sons, Incorporated, has requested that the existing business sign at 6600 North Antioch Road, Gladstone, Missouri, be relocated to a location closer to the new road location in City right-of-way; and

**WHEREAS**, D.W. Newcomer's & Sons, Incorporated, and the City of Gladstone desire to establish the rights and responsibilities of each of them with respect to relocation of the sign and maintenance of the right-of-way adjacent to 6600 North Antioch Road.


**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:**

**THAT**, the City Manager is authorized to execute the agreement with D.W. Newcomer's & Sons, Incorporated.

**INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 9<sup>TH</sup> DAY OF MAY, 2016.**

  
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Jean B. Moore, Mayor

Attest:

  
\_\_\_\_\_  
Ruth E. Bocchino, City Clerk



***Department of Public Works  
Memorandum***

Gladstone



**DATE:** May 3, 2016  
**TO:** Scott Wingerson, City Manager  
**FROM:** Timothy A. Nebergall, Director of Public Works *TAN*  
**RE:** Land Use Agreement with D.W. Newcomer's Sons, Inc. Pleasant Valley Road Improvements from N. Indiana Avenue to N. Brighton Avenue; City Project #TP1411; Federal Project #STP-3323(407)

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The City of Gladstone is scheduled to complete street improvements that will realign N. Antioch Road in the vicinity of 6600 N. Antioch Road as part of the Pleasant Valley Road Improvements project from N. Indiana to N. Brighton.

D.W. Newcomer's Sons, Inc. owns and maintains a business sign in this area and has requested that the sign be relocated so that it is closer to the new road location in City right-of-way. Staff has reviewed the request and recommends that the City enter into a Land Use Agreement with D.W. Newcomer's Sons, Inc. The agreement specifies that the City will relocate the existing sign and provide D.W. Newcomer's Sons, Inc. with access to the sign as need to perform repairs and maintenance.

Further, the agreement states that D.W. Newcomer's Sons, Inc. will operate and maintain the sign as well as maintain and mow the grass adjacent to the property in the vicinity of the new sign.

If you have any questions, please contact me at your convenience.

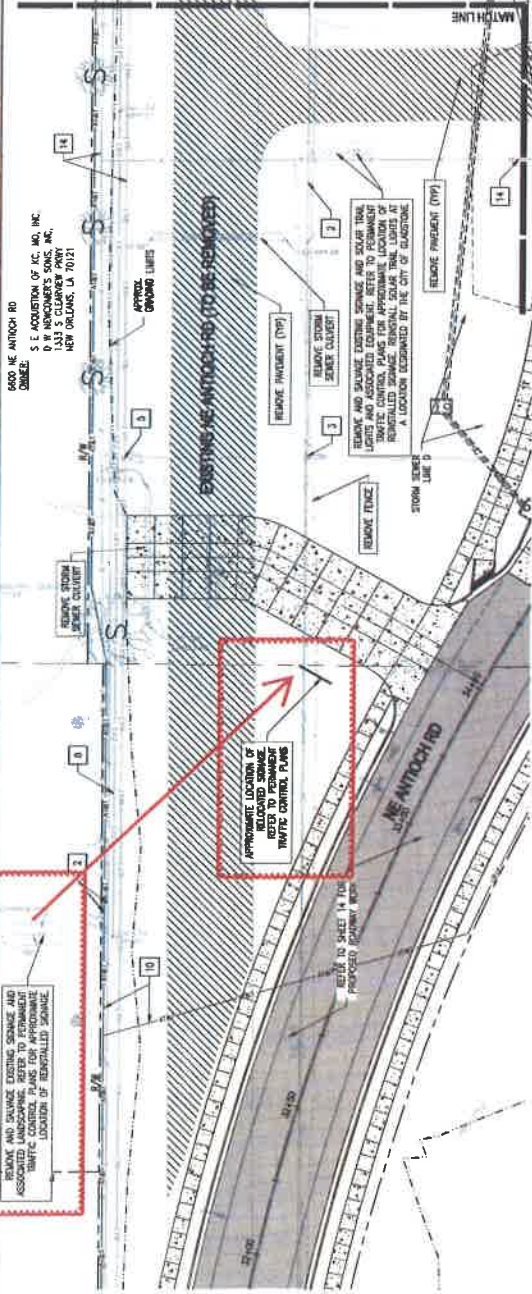
**WALTER P MOORE**

REGISTERED PROFESSIONAL ENGINEER  
 STATE OF MISSOURI, LICENSE NO. 10000  
 WALTER P. MOORE AND ASSOCIATES, INC.  
 1615 W. 11TH STREET, SUITE 100  
 KANSAS CITY, MISSOURI 64108  
 PHONE: 816-231-1100 FAX: 816-231-1000



**PLEASANT VALLEY ROAD IMPROVEMENTS - N. INDIANA TO N. BRIGHTON GLADSTONE AND KANSAS CITY, MISSOURI**  
 FEDERAL PROJECT NO. STP-332(467)

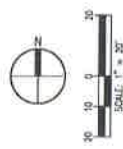
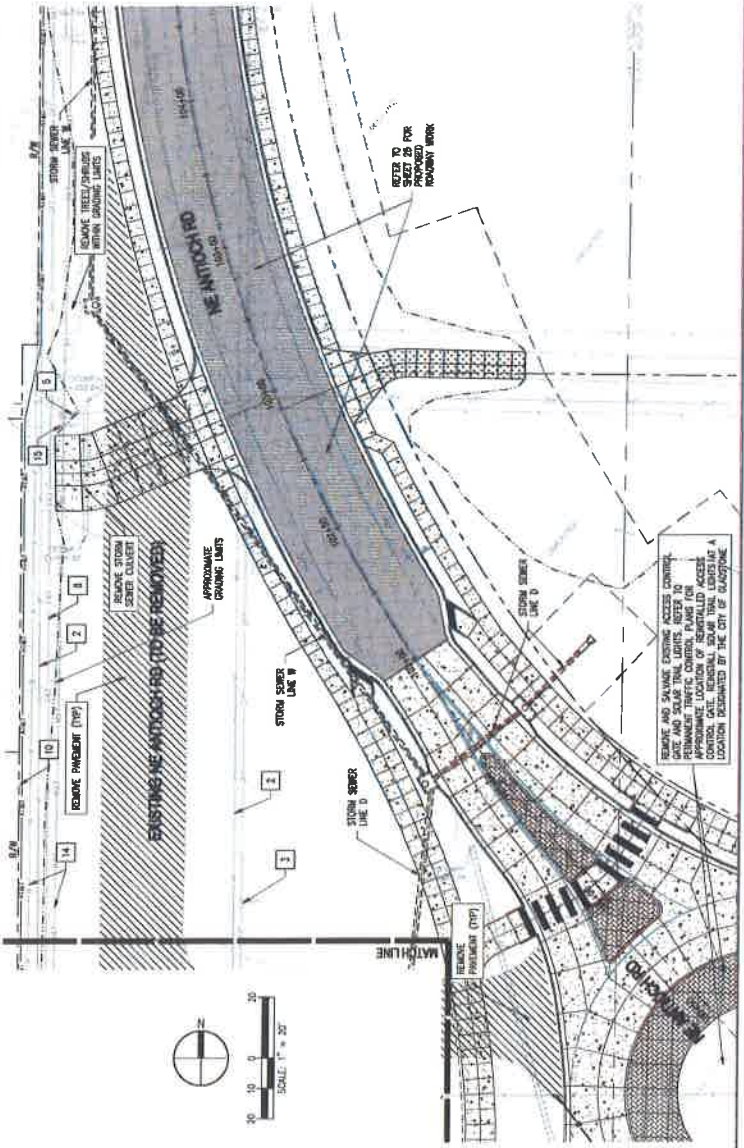
**FINAL PLANS (FOR REVIEW)**



**NOTES:**  
 REMOVAL AND UTILITY INFORMATION IS SHOWN ON SHEETS 14 THROUGH 16 AND IS TO BE USED IN CONJUNCTION WITH THE UTILITY INFORMATION ON SHEETS 17 THROUGH 19. REFER TO MOU AND UTILITY INFORMATION SHEETS FOR ADDITIONAL, REGIONAL, AND UTILITY INFORMATION.

**UTILITY NOTE:**  
 THE LOCATION, DEPTH AND SIZE OF EXISTING AND PROPOSED UTILITY STRUCTURES AND LINES ARE SHOWN ON SHEETS 17 THROUGH 19 AND MAY NOT BE ACCURATE. THE CONTRACTOR SHALL FIELD VERIFY EXISTING AND PROPOSED UTILITY STRUCTURES AND NOTIFY THE ENGINEER AND UTILITY COMPANY IN THE EVENT THERE IS A CONFLICT.

- REVISIONS:**
1. AMT TO ADJUST TOP OF UTILITY STRUCTURE TO PROPOSED GRADE.
  2. AMT TO REMOVE AND/OR RELOCATE UNDERGROUND UTILITIES.
  3. AMT TO REMOVE AND/OR RELOCATE POWER POLE.
  4. AMT TO REMOVE AND/OR RELOCATE UNDERGROUND UTILITIES.
  5. AMT TO REMOVE AND/OR RELOCATE UNDERGROUND UTILITIES.
  6. REFER TO STREET LAYOUTS PLANS.
  7. TIME WARNER CABLE TO REMOVE AND/OR RELOCATE UNDERGROUND UTILITIES.
  8. AMT TO REMOVE AND/OR RELOCATE GAS LINE.
  9. REMOVE POWER POLE AND/OR RELOCATE UNDERGROUND UTILITIES OR UTILITY STRUCTURE.
  10. APPROXIMATE LOCATION OF PROPOSED AT&T UNDERGROUND UTILITY STRUCTURE.
  11. APPROX. LOCATION OF PROPOSED OPTICAL POWER POLE.
  12. APPROX. LOCATION OF PROPOSED AME UNDERGROUND UTILITY STRUCTURE.
  13. EXISTING ACID WATER MAIN SYSTEM INCLUDING WATER LINE, VALVES, FIRE HYDRANTS, ETC. TO BE REMOVED. (SEE SHEET 60)
  14. EXISTING CLAYSTONE WATER MAIN SYSTEM INCLUDING WATER LINE, VALVES, FIRE HYDRANTS, ETC. TO REMAIN UNDISTURBED.
  15. EXISTING ACID WATER MAIN SYSTEM INCLUDING WATER LINE, VALVES, FIRE HYDRANTS, ETC. TO REMAIN UNDISTURBED.
  16. REFER TO STORM SEWER PLAN & PROFILES FOR STORM SEWER INFORMATION.
  17. REFER TO PERMANENT TRAFFIC CONTROL PLAN.
  18. EXISTING CLAYSTONE WATER MAIN SYSTEM INCLUDING WATER LINE, VALVES, FIRE HYDRANTS, ETC. TO BE RELOCATED. (SEE SHEETS 58-60)
  19. CONTRACTOR TO ADJUST TOP OF MANHOLE OR UTILITY STRUCTURE TO PROPOSED GRADE.



**NOTES:**  
 REMOVE AND SALVAGE EXISTING ACCESS CONTROL PLAN AND PERMANENT TRAFFIC CONTROL PLANS FOR APPROXIMATE LOCATION OF REINSTALLLED ACCESS CONTROL PLAN. APPROXIMATE LOCATION OF REINSTALLLED ACCESS CONTROL PLAN IS SHOWN ON THIS SHEET. REFER TO SHEET 14 FOR PROPOSED SIGNAGE.

**LAND USE AGREEMENT  
BETWEEN  
D.W. NEWCOMER'S SONS, INC.  
AND  
THE CITY OF GLADSTONE, MISSOURI**

**WHEREAS**, D.W. Newcomer's Sons, Inc. is a corporation providing funeral arrangement services located within the City of Gladstone, Missouri; and

**WHEREAS**, D.W. Newcomer's Sons, Inc. owns and maintains an existing business sign at 6600 N. Antioch Road, Gladstone, MO; and

**WHEREAS**, the City of Gladstone is scheduled to complete street improvements that will realign N. Antioch Road in the vicinity of the property as part of the Pleasant Valley Road Improvements project from N. Indiana to N. Brighton; and

**WHEREAS**, D.W. Newcomer's Sons, Inc. has requested that the existing business sign at 6600 N. Antioch Road, Gladstone, MO be relocated to a location closer to the new road location in City right of way; and

**WHEREAS**, D.W. Newcomer's Sons, Inc. and the City of Gladstone desire to establish the rights and responsibilities of each of them with respect to relocation of the sign and maintenance of the right of way adjacent to 6600 N. Antioch Road.

**NOW, THEREFORE**, the parties agree as follows:

1. **Parties:** The parties to this Agreement are D.W. Newcomer's Sons, Inc., a Missouri corporation, hereinafter "D.W. Newcomer's Sons", and the City of Gladstone, Missouri, a municipal corporation, hereinafter "City".
2. **Effective date:** The effective date of this Agreement shall be the date of execution.
3. **Term:** The term shall be from execution until such time as one or both parties decide to terminate said Agreement. A notice of termination shall be in writing via certified mail, return receipt requested or a nationally recognized overnight courier and effective sixty (60) days after mailing to the City of Gladstone at 7010 N. Holmes Street, Gladstone, Missouri 64118 or to D.W. Newcomer's Sons at 6600 N. Antioch Road, Gladstone,

MO 64119 with a copy to 1929 Allen Parkway, 7<sup>th</sup> Floor, Houston, TX 77019. In the event that only one party requests termination of this agreement, the removal or relocation of the sign to a mutually acceptable location shall be completed within thirty (30) days of the effective termination date at the initiating party's sole expense.

**4. Mutual covenants:** In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**A. City's obligations:**

- i. Will relocate the existing sign and related appurtenances to a mutually agreed upon location as part of the Pleasant Valley Road Improvements from N. Indiana to N. Brighton. The new sign location shall be located a minimum of 15-feet behind the proposed sidewalk and shall not impair site distance or conflict with existing utilities.
- ii. Will provide D.W. Newcomer's Sons with access to the sign as needed to perform repairs and maintenance.

**B. D.W. Newcomer's Sons:**

- i. Will operate and maintain the sign at the new location; and
- ii. Carry insurance naming the City of Gladstone as an additional insured providing liability and property damage coverage in the amount of \$10,000.00 on the sign, a copy of said insurance coverage shall be supplied to the City annually; and
- iii. Any damage, defacement or maintenance shall be addressed in a timely manner; and
- iv. Maintain and mow the grass adjacent to the property in the vicinity of the new sign and road improvements on NE 64<sup>th</sup> Street and N. Antioch Road.


**5. Maintenance:** Should the sign not be maintained in accordance with the conditions stated in 4.B above, the City shall, in writing, notify D.W. Newcomer's Sons. If within ninety (90) days of such written notification said sign is not maintained, the City may remove the sign at its discretion. Any notice to D.W. Newcomer's Sons shall be effective when mailed in accordance with Paragraph 3 above.

**6. Waiver:** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provisions, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by all parties; nor will the waiver of any defect under this Agreement be deemed a waiver of any subsequent default of the same type. Any parties' failure to exercise any right under this Agreement, will not constitute the approval of any wrongful act by any other.

7. **Amendment or modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument duly authorized.
8. **Scope:** This Agreement constitutes the entire Agreement between the parties and no statement, promises, or inducements that are not contained in this Agreement will be binding on the parties.
9. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the sovereign immunity of the City of Gladstone under any applicable state law.
10. **Severability:** If any part, term or provision of this Agreement is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Agreement.

**IN WITNESS WHEREOF**, all parties have executed this document this 19 day of May, 2016


**CITY OF GLADSTONE, MISSOURI**

By:   
Scott Wingerson, City Manager

Attest:

  
Ruth Bocchino, City Clerk

**D.W. NEWCOMER'S SONS, INC.**

By:   
Michael L. Decell, Vice President

Attest:

  
Janet S. Key, Secretary

STATE OF TEXAS  
COUNTY OF HARRIS ss.

On this 19TH day of APRIL, 2016, before me, the undersigned Notary Public, personally appeared MICHAEL L. DECELL to me personally known to be the person described herein and who executed the foregoing instrumentation on behalf of D.W. Newcomer's Sons, Inc., and acknowledged that he executed the same as the free act and deed of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed by Notarial Seal at my office in HARRIS County, TEXAS, the day and year last above written.



Notary Public Within Said County and State

My commission expires 12/18, 18.

