

AN ORDINANCE APPROVING A COOPERATIVE AGREEMENT WITH THE CITY OF KANSAS CITY, MISSOURI (“KCMO”) FOR TRANSPORTATION RELATED IMPROVEMENTS TO PORTIONS OF PLEASANT VALLEY ROAD LOCATED IN THE CITIES OF KANSAS CITY, MISSOURI AND GLADSTONE, MISSOURI (“GLADSTONE”).

Legislative Findings

1. The “Pleasant Valley Road Improvements Study” was completed in 2004 and recommended improvements to Pleasant Valley Road within both Gladstone and Kansas City; and
2. Gladstone and Kansas City were awarded \$3.825-million from the Federal Surface Transportation Program for the construction of improvements to Pleasant Valley Road from North Indiana Avenue in Gladstone to North Brighton Avenue in Kansas City; and
3. KCMO will assist in financing the design of the improvements by contributing PIAC and Impact Fee funds; and
4. Gladstone will manage the design of the improvements since the relocation of Pleasant Valley Road within Gladstone city limits impacts the alignment of the street in KCMO; and
5. The improvements would not be realized absent a cooperative effort between KCMO and Gladstone.

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


THAT, the City Manager of the City of Gladstone, Missouri, is hereby authorized to execute the proposed Cooperative Agreement with the City of Kansas City, Missouri for transportation related improvements to Pleasant Valley Road ; and

FURTHER, THAT the City Manager is authorized to take such other action as may be necessary to fulfill the purpose of this Ordinance.

INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 13TH DAY OF JANUARY 2014.


Jean B. Moore, Mayor

ATTEST:


Cathy Swenson, City Clerk



**Department of Public Works
Memorandum**



DATE: January 5, 2014
TO: Kirk L. Davis, City Manager
FROM: Timothy A. Nebergall, Director of Public Works *TAN*
RE: Cooperative Agreement with Kansas City, MO
Pleasant Valley Road Design – N. Indiana Avenue to N. Brighton Avenue

Gladstone and Kansas City, MO were awarded \$3.825-million from the Federal Surface Transportation Program to construct improvements to Pleasant Valley Road from N. Indiana Avenue to N. Brighton Avenue. Federal funding for construction will be available in Federal Fiscal Year 2016; which begins on October 1, 2015. Gladstone was identified as the lead agency in the funding application and will manage the design of the project.

Over the past year, City staff has been working with Kansas City, MO on a cooperative agreement that will secure funding for the design of improvements located within Kansas City. Per the agreement, Kansas City has agreed to fund \$263,847 for the design of improvements within their City limits.

City staff has completed contract negotiations with the consulting firm of Walter P. Moore and Associates, Incorporated to provide design and construction administration services on the project. The proposed contract breakdown is as follows:

- Design Services (Gladstone): \$315,733 (Time and Materials)
- Design Services (Kansas City): \$263,847 (Time and Materials)
- Construction Administration (Combined): \$50,260 (Time and Materials)
\$629,840

The current estimated construction cost for each City is summarized below.

- Gladstone \$3,500,000
- Kansas City \$2,500,000
\$6,000,000

Staff is recommending approval of this agreement with Kansas City. A separate agreement will be required to fund Kansas City's portion of the construction costs. Funding for the design and construction of the improvements located within Gladstone is budgeted in the TST fund.

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

**COOPERATIVE AGREEMENT FOR TRANSFER OF FUNDS FROM CITY OF
KANSAS CITY, MISSOURI TO GLADSTONE, MISSOURI FOR THE PURPOSE OF
COOPERATING IN THE DESIGN OF CERTAIN TRANSPORTATION RELATED
IMPROVEMENTS**

This Cooperative Agreement for transportation related improvements is made by and between the City of Kansas City, Missouri, a municipal corporation, (hereinafter referred to as "KCMO"), and City of Gladstone, Missouri, a municipal corporation, (hereinafter referred to as "GLADSTONE").

Recitals

WHEREAS, it is in the best interest of all of the citizens of KCMO and GLADSTONE to cooperate in the design of transportation related improvements that are to be constructed within the municipal limits of KCMO and GLADSTONE on Pleasant Valley Road, including from the KCMO and GLADSTONE city limits to Searcy Creek Parkway; and

WHEREAS, KCMO wishes to assist in financing the design of the improvements by contributing PIAC and Impact Fee funds; and

WHEREAS, on April 18, 2012, the Impact Fee District D Advisory Committee allocated \$163,847.00 and in FY2013 Council District 1 allocated \$100,000.00 of PIAC funds for the planning and design for improvements to Pleasant Valley Road; and

WHEREAS, KCMO wishes to have GLADSTONE manage the design of the improvements since the relocation of Pleasant Valley Road within the GLADSTONE city limits impacts the alignment of the street in KCMO; and

WHEREAS, the improvements would not be realized absent a cooperative effort between KCMO and GLADSTONE; and

WHEREAS, KCMO and GLADSTONE wish to enter an Agreement regarding the financing and management of the improvements;

Agreement

NOW THEREFORE, in consideration of the mutual covenants and Agreements set forth herein, the parties hereby mutually agree as follows:

Part I : SPECIFIC TERMS AND CONDITIONS

1. **Scope of Agreement.** The purpose of this Agreement is to provide for a cooperative effort between KCMO and GLADSTONE for transportation related improvements to Pleasant

4.258/14.01

Valley Road in accordance with the terms and conditions set forth herein.

2. **Definitions.** Unless otherwise specified in this Agreement, the following words have the meanings indicated herein, which are applicable to both the singular and plural thereof:
 - A. **CONTRACTOR** means any person or entity, including Design Professional, retained by GLADSTONE to design, install, construct, deconstruct, reconstruct or maintain the Project and any subcontractor of the person or entity.
 - B. **DESIGN PROFESSIONAL** means any architect or engineer retained by GLADSTONE to perform design services for the Project.
 - C. **PROJECT** means the design of transportation improvements to Pleasant Valley Road consisting of a three lane street improvements on Pleasant Valley road designed to secondary arterial standards from the border from the KCMO and GLADSTONE city limits to Searcy Creek Parkway.
3. **License to use right-of-way.** KCMO hereby grants to GLADSTONE, its representatives, employees, engineers, consultants and CONTRACTORS a license to use that portion of public right-of-way in order to allow the performance of the Project in accordance with the terms of this Agreement. The term of the license shall run concurrently with the term of this Agreement and shall expire at the time the KCMO accepts the Project deliverables from GLADSTONE. The grant of license for use of right-of-way shall not constitute a conveyance of any interest in the public right-of-way.
4. **Obligations of KCMO.** KCMO agrees to:
 - A. **FINANCIAL.** KCMO shall remit to GLADSTONE, within 30 days of approval of this Agreement by KCMO's Director of Finance, the sum of \$263,847.00 (two hundred sixty-three thousand eight hundred forty-seven dollars), provided however that if GLADSTONE fails to fulfill its obligations as set forth or incorporated in this Agreement, KCMO shall be entitled to withhold in full, or recover in full if already remitted to GLADSTONE, KCMO's contribution.
 - B. **PLAN REVIEW.** The KCMO Public Works Department shall, within two weeks of receipt, review plans provided by GLADSTONE and make comments to GLADSTONE on the plans.
 - C. **KCMO FEES.** KCMO shall assess no plan review fees to GLADSTONE or any design professional or other contractor or contractor's representative employed by

GLADSTONE for any Project-related services performed pursuant to this Agreement.

D. **COOPERATION.** KCMO shall comply with all other requirements applicable to it as set forth in this Agreement.

5. **Obligations of GLADSTONE.** GLADSTONE agrees to:

A. **FINANCIAL.** GLADSTONE, upon approval of this Agreement shall:

- i. Agree to accept the sum of \$263,847.00 (two hundred sixty-three thousand eight hundred forty-seven dollars) from KCMO and maintain the same intact to be spent exclusively on the additional design and management of the Project set forth in this Agreement.
- ii. Negotiate an appropriate scope of services and fee with Design Professional and approve a contract for services, and use the sum contributed by KCMO to enter into an agreement with Design Professional for the Project.
- iii. The deliverables shall include the necessary construction documents for construction of the improvements for KCMO or GLADSTONE, if funds are available, to construct the improvements should the decision be made to proceed with the improvements.

B. **PLAN DEVELOPMENT.** GLADSTONE shall provide Project management over the design of the following specific phases of the improvements in priority order located within the corporate limits of KCMO:

- i. A three lane full street improvement on NW Pleasant Valley Road designed to secondary arterial standards from GLADSTONE east to North Brighton Avenue, which shall include preparing right of way plans and construction documents for bidding.
- ii. A two lane full street improvement with turn lanes as necessary on NW Pleasant Valley Road designed to secondary arterial standards from North Brighton Avenue to 1500 feet east of, which shall include preparing right of way plans and construction documents for bidding.
- iii. A two lane full street improvement with turn lanes as necessary on NW Pleasant Valley Road designed to secondary arterial standards from

1500 feet east of North Brighton Avenue to Searcy Creek Parkway, which shall include preparing right of way plans and construction documents for bidding.

- C. **KCMO PARTICIPATION.** Gladstone shall provide KCMO plans for review at the following stages of completion:
- i. Preliminary
 - ii. Draft
 - iii. Draft Final
 - iv. Final for Construction
 - v. GLADSTONE shall allow KCMO two weeks from receipt to make comments on each set of plans.
- D. **DESIGN STANDARDS.** Ensure that all plans, drawings and specifications conform to KCMO'S standards for storm sewers and street and utility design, subject to KCMO'S right to issue variances to these standards as it deems necessary with regard to the improvements. GLADSTONE shall require Design Professional to address any design concerns raised by KCMO to KCMO'S satisfaction.
- E. **DESIGN APPROVAL.** Allow KCMO the final determination as to whether to approve or deny the plans, drawings and specifications for any portions within the KCMO city limits.
- F. **PROJECT ACCOUNTING.** Within thirty days of completion of the Project, GLADSTONE shall provide to KCMO an accounting identifying that the funds contributed by KCMO herein were spent in accordance with the terms of this Agreement, and provide such additional supporting documentation as may be required by KCMO to establish GLADSTONE'S compliance with all other terms and conditions of this Agreement.
- G. **COOPERATION.** GLADSTONE shall comply with all other requirements applicable to it as set forth in this Agreement.

Part 2 GENERAL TERMS AND CONDITIONS

1. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Missouri. The parties submit to the jurisdiction of the courts of

the State of Missouri and waive venue and shall not raise forum non conveniens as an objection to the location of any litigation.

2. **Waiver.** No consent or waiver, express or implied, by any party to this Agreement or of any breach or default by any other party in the performance by such other party of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any of the other parties or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. KCMO and the GLADSTONE reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of its rights and remedies under this Agreement irrespective of any waiver granted.
3. **Modification.** This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.
4. **Headings; Construction of Agreement.** The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.
5. **Severability of Provisions.** Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are

incapable of being performed in accordance with the intentions of the parties.

6. **Audit.** KCMO and GLADSTONE shall have the right to audit this Agreement and all books, documents and records relating thereto. KCMO and GLADSTONE shall maintain all their respective books, documents and records relating to this Agreement during the contract period and for three (3) years after the date of final payment. The books, documents and records shall be made available to the KCMO or GLADSTONE within ten (10) days after the written request is made. GLADSTONE shall require its CONTRACTOR to comply with this provision in connection with services performed on the Project.
7. **Assignment.** Neither KCMO nor GLADSTONE shall sell, assign, transfer, or otherwise convey any of their rights under this Agreement without the prior and expressed written consent of the other party. Each party may, at its sole discretion, refuse to consent to any proposed sale, assignment, transfer, or other conveyance. Any attempted sale, assignment, transfer, or conveyance in violation of this paragraph shall be void and shall relieve the non-consenting party of any further liability under this Agreement, but shall not relieve the violating party of any liability. If a party consents in writing to a sale, assignment, transfer, or conveyance, unless specifically stated to the contrary in the consent, it shall not release or discharge the party receiving consent from any duty or responsibility set forth in the Agreement.
8. **Conflicts of Interest.** KCMO, GLADSTONE, and any CONTRACTOR to the GLADSTONE shall certify that no officer or employee has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of KCMO or GLADSTONE or its design professional and CONTRACTOR in this Agreement.
9. **No Partnership.** It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.
10. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their

assigns, transferees and successors in interest, provided neither party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other party.

11. **Representations.** KCMO and GLADSTONE certify that they have the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

12. **Notices.** All notices required by this Cooperative Agreement shall be in writing sent by regular U.S. mail, postage prepaid, or delivered by courier to the following:

KCMO: Director of Public Works
 20th Floor, KCMO Hall
 414 E. 12th Street
 Kansas CITY, MO 64106

GLADSTONE: Director of Public Works
 4000 NE 76th Street
 Gladstone, MO 64117

All notices are effective on the date mailed or, if delivered by a courier, upon receipt. Either party may provide the other party a change of address which change shall be effective ten (10) days after delivery.

13. **General Indemnification.** To the extent allowed by law, GLADSTONE shall defend, indemnify, and hold harmless KCMO and any of its agencies, officials, officers, and employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the performance under this Agreement, caused in whole or in part by GLADSTONE, its employees, agents, or Contractor, or others for whom GLADSTONE is legally liable, regardless of whether or not caused in part by any act or omission of KCMO, its agencies, officials, officers, or employees.

C. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

D. GLADSTONE's contracts with GLADSTONE's Contractor in connection with

the Project shall require such Contractor to defend, indemnify, and hold harmless KCMO under the terms of this section. The obligations of GLADSTONE and its Contractor under this section with respect to indemnification for acts or omissions of KCMO, its agencies, officials, officers, or employees shall be limited to the coverage and limits of insurance that GLADSTONE and its Contractor are required to procure and maintain under this Agreement.

- 14. Indemnification for Professional Negligence.** GLADSTONE'S contracts with every Design Professional(s) shall cause such Design Professional(s) to indemnify and hold harmless KCMO and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such Design Professional (s), their employees, agents or others for whom such Design Professional (s) are legally liable, in the performance of professional services rendered in conjunction with the Project. Such Design Professional (s) are not obligated under this section to indemnify KCMO for the negligent acts of KCMO and any of its agencies, officials, officers, or employees.
- 15. Insurance.** GLADSTONE shall require every person or entity with whom it contracts and who will receive any portion of the funds provided by KCMO herein to procure and maintain, in effect throughout the duration of this Cooperative Agreement, insurance coverage not less than the types and amounts specified below. GLADSTONE shall further require, and shall ensure that, KCMO is named as an additional insured and shall provide to KCMO a certificate of insurance, or its equivalent, demonstrating the same.
- A. **Commercial General Liability Insurance:** with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
- i. Severability of Interests Coverage applying to Additional Insured's
- B. **Contractual Liability:**
- i. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - ii. No Contractual Liability Limitation Endorsement
 - iii. Additional Insured Endorsement, ISO form CG2010, current edition, or its

equivalent.

- C. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - i. Workers' Compensation: Statutory
 - ii. Employers' Liability with limits of:
 - (a) \$100,000 each accident
 - (b) 500,000 disease –policy limit
 - (c) \$100,000 disease each employee
- D. Commercial Automobile Liability Insurance: with a limit of \$2,000,000 per occurrence, covering owned, hired, and non owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Project by GLADSTONE or GLADSTONE'S Contractor.
- E. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$ 2,000,000.

Regardless of any approval by KCMO, it is the responsibility of GLADSTONE and every person or entity receiving any portion of the funds provided by KCMO herein to maintain the required insurance coverage in force at all times. The failure to ensure that the proper insurance is maintained in effect will not relieve GLADSTONE of any contractual obligation or responsibility. In the event GLADSTONE fails to ensure that the required insurance is maintained in effect, KCMO may order that the Project immediately stop and, upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

16. Compliance with Laws. GLADSTONE and all its Contractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

[SIGNATURES BEGIN ON NEXT PAGE]

CITY OF KANSAS CITY, MISSOURI

ATTEST TO:

By: _____
City Clerk

By: _____
Sherri K. McIntyre, P.E.
Director of Public Works

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this ____ day of _____, 2012 before me, the undersigned, a notary public in and for the county and state aforesaid, came Sherri K. McIntyre, P.E., Director of Public Works of Kansas City, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, _____, City Clerk, of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said municipal corporation, and such persons duly acknowledge the execution of the same to be the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My commission expires:

Approved as to form:

By: _____
Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, sufficient to meet the obligation hereby incurred, and that there is a balance, otherwise unencumbered, and a cash balance sufficient to meet the obligation hereby incurred from which payment is to be made.

By: _____
Director of Finance

CITY OF GLADSTONE, MISSOURI

ATTEST TO:

GLADSTONE, MISSOURI

By: Cathy Swenson
Cathy Swenson
City Clerk

By: Kirk L. Davis
Kirk L. Davis
City Manager



Approved as to form:

By: Randall Thompson
Randall Thompson
City Counselor

State of Missouri)
)ss
County of Clay)

BE IT REMEMBERED, that on this 19 day of February, ²⁰¹⁴~~2012~~ before me, the undersigned, a notary public in and for the county and state aforesaid, came Kirk L. Davis, City Manager of Gladstone, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, Cathy Swenson, City Clerk, of Gladstone, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said municipal corporation, and such persons duly acknowledge the execution of the same to be the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Pamela Smitka
Notary Public

My commission expires:

