

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH KANSAS CITY, MISSOURI FOR THE PERFORMANCE OF STREET MAINTENANCE ON MUTUAL ROADWAYS.

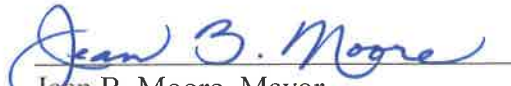
Legislative Findings

1. There are mutual roadways that are located in both Gladstone, Missouri and Kansas City, Missouri; and
2. The City limits of Gladstone, Missouri and Kansas City, Missouri do not meet at street intersections on many of these roadways and instead meet in the middle; and
3. The City of Gladstone, Missouri and the City of Kansas City, Missouri desire to perform street maintenance on mutual roadways at the same time when necessary; and
4. It is the desired interest of each City to carry said street maintenance to the closest intersection or mutual end-point with the approval of the other; and
5. Each City desires to reimburse the other for street maintenance work performed by the other within its municipal boundaries.


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

THAT, the City Manager of the City of Gladstone, Missouri, is hereby authorized to execute a Cooperative Agreement with Kansas City, Missouri, for the performance of street maintenance on mutual roadways.

INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 13th DAY OF JUNE 2016.


Jean B. Moore, Mayor

ATTEST:


Ruth E. Bocchino, City Clerk



Department of Public Works Memorandum



DATE: June 8, 2016
TO: Scott Wingerson, City Manager
FROM: Timothy A. Nebergall, Director of Public Works *TAN*
RE: KCMO Cooperative Agreement for Street Maintenance

The City of Gladstone and the Kansas City, Missouri share multiple roadways. Staff believes that it is in the best interest of both communities to enter into a cooperative agreement to perform street maintenance on mutual roadways when necessary.

Prior to performing work on mutual roadways, each City shall notify the other in writing of the estimated cost to extend the work into the other's City limits. Each City shall have the option to participate or decline. This agreement is intended to ensure that street maintenance on roadways such as NE Englewood Road is performed at the same time.

As a side note, once this agreement is executed, Kansas City has agreed to reimburse Gladstone for the removal and replacement of curb along the south side of NE Englewood Road in 2015. If you have any questions, please contact me at your convenience.

**COOPERATIVE AGREEMENT FOR STREET MAINTENANCE
BETWEEN
THE CITY OF GLADSTONE, MISSOURI, AND THE CITY OF KANSAS CITY, MISSOURI**

This agreement made and entered into this 22nd of July, 2016 by and between the City of Gladstone, Missouri ("Gladstone") and the City of Kansas City, Missouri ("Kansas City").

WHEREAS, there are roadways that are both in Gladstone and Kansas City ("mutual roadways"); and

WHEREAS, the City limits of Gladstone and Kansas City do not meet at street intersections on many of these roadways and instead meet in the middle of roadways; and

WHEREAS, Gladstone and Kansas City desire to perform street maintenance on mutual roadways which may include cold milling, resurfacing with asphalt, curb and gutter removal and replacement, and/or intermediate maintenance at their joint expense; and

WHEREAS, currently, street maintenance may be completed in different years by Gladstone and Kansas City; and

WHEREAS, in previous years, each City may have stopped street maintenance of mutual roadways at its own City limit line; and

WHEREAS, it is the desired interest of each City to complete street maintenance of mutual roadways to the closest intersection or mutual end-point, even if inside the other's City limits; and

WHEREAS, Gladstone and Kansas City desire to reimburse the other for the cost of work on mutual roadways within its own City limits;

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the Parties agree as follows:

1. **Purpose of the Agreement:** The Parties enter into this Agreement for the purpose of performing street maintenance on mutual roadways that extend into the other's City limits. Street maintenance may include cold milling, resurfacing with asphalt, curb and gutter removal and replacement, and/or intermediate maintenance. The cost of said work shall be borne by the City in which the work the work is performed.

2. **Responsibilities of Gladstone and Kansas City:** Gladstone and Kansas City will do the following:

a. Prior to soliciting bids on their respective street maintenance programs, each City

will advise the other of work to be performed on mutual roadways and the estimated cost of said work. The other City will notify the City soliciting bids of its intention to participate in any portion of the project or the entire project.

b. Within thirty (30) days after bids are received, the City soliciting bids will advise the other of the estimated cost of work to be performed on mutual roadways based on actual contract prices.

c. If the notified City approves the work to be done in writing within thirty (30) days, the City performing the work will cause the work to be done in under its contract.

d. Upon completion of the work, the City which has performed the work will notify the other in writing of such completion and will provide it a written statement of the cost of the work.

e. Within thirty (30) days after completion of the work and receipt of a statement of costs incurred, the notified City will pay the cost on the statement.

3. **Notice.** All notices required by this Agreement shall be in writing sent by regular United States mail, postage prepaid, or commercial overnight courier to the following:

Notice to Kansas City:
Director of Public Works
414 East 12th Street, 20th Floor
Kansas City, Missouri 64106

Notice to Gladstone:
Director of Public Works
4000 NE 76th Street
Gladstone, Missouri 64119

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.

4. **Option to Terminate.** Either Party may terminate this Agreement upon 30 days written notice to the other Party. Any outstanding invoices due survive termination of this Agreement, unless otherwise agreed upon in writing.

5. **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 or of any other snow removal activities.

6. Compliance with Laws. The parties shall comply with all federal, state and local laws, ordinances and regulations applicable to this Agreement.

7. Term. The parties agree that the term of this Agreement shall begin on the date of execution and shall not expire unless otherwise terminated by the Parties.

8. 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. The parties 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.

9. Modification. This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.

10. 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.

11. Conflicts of Interest. Gladstone and Kansas City shall certify that no officer or employee of Gladstone and Kansas City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of Gladstone and Kansas City, or

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 Gladstone and Kansas City in this Agreement.

12. Representations. Gladstone and Kansas City certify that they have the power and authority to execute and deliver this Agreement, to use any funds contemplated hereby and to perform this Agreement in accordance with its terms.

13. 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.

14. Audit. Gladstone and Kansas City shall have the right to audit this Agreement and all books, documents and records relating thereto. Gladstone and Kansas City 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 by either City within ten (10) days after the written request is made. Gladstone and Kansas City shall require any contractor hired to perform work related to this Agreement to comply with this provision in connection with services performed.

15. Assignment. Neither Gladstone nor Kansas City 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.

16. General Indemnification. Gladstone and Kansas City shall require any contractor hired to perform work related to this Agreement to defend, indemnify, and hold harmless the other Party 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 the contractor, its employees, agents, others for whom the contractor is legally liable, regardless of whether or not caused in part by any act or omission of the indemnified party, its agencies, officials, officers, or employees. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

17. Insurance. Gladstone and Kansas shall require every person or entity with whom it contracts and who will receive any portion of the funds provided by the other Party under this Agreement to procure and maintain, in effect throughout the duration of this Agreement, insurance coverage not less than the types and amounts specified below. Gladstone and Kansas shall further

require, and shall ensure that, the other Party is named as an additional insured and shall provide to the other Party a certificate of insurance, or its equivalent, demonstrating the same.

i. 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:

1. Severability of Interests Coverage applying to Additional Insured's

ii. Contractual Liability:

1. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
2. No Contractual Liability Limitation Endorsement
3. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.

iii. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

1. Workers' Compensation: Statutory
2. Employers' Liability with limits of:
 - a. \$100,000 each accident
 - b. 500,000 disease –policy limit
 - c. \$100,000 disease each employee

iv. 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's or Kansas City's contractor.

v. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$ 2,000,000.

Regardless of any approval by the other Party, it is the responsibility of Gladstone and Kansas City and every person or entity receiving any portion of the funds provided by the other Party 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 or Kansas City of any contractual obligation or responsibility. In the event Gladstone or Kansas City fails to ensure that the required insurance is maintained in effect, the other Party 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.

18. Prevailing Wage. Kansas City and Gladstone shall ensure their contractors comply in all respects with the Prevailing Wage Laws of the State of Missouri, Section 290.210 to 290.340, R.S.Mo., 2000, as amended, and any federal prevailing wage laws that apply to the work.


19. Future appropriations. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by any party.

20. Default and Remedies. If a party shall be in default or breach of any provision of this Agreement, the other party may terminate this Agreement, suspend its performance and invoke any other legal or equitable remedy after giving the other party thirty (30) days written notice and opportunity to correct such default or breach. All rights and remedies granted to each party herein and any other rights and remedies which either party may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that either party may have exercised any

remedy without terminating this Agreement shall not impair that party's rights thereafter to terminate or to exercise any other remedy herein granted or to which that party may be otherwise entitled.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers thereunto lawfully authorized and with their corporate seals affixed the day and year first above written.

CITY OF GLADSTONE, MISSOURI




Scott Wingerson, City Manager

Attest:

 7/11/16

Ruth E. Bocchino, City Clerk

Approved as to form:



Chris Williams, City Counselor

State of Missouri)
County of Clay)ss

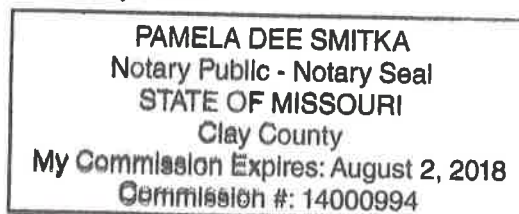
BE IT REMEMBERED, that on this 1 day of July, 2016 before me, the undersigned, a notary public in and for the county and state aforesaid, came **Scott Wingerson, City Manager** of Gladstone, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as an official, the within instrument on behalf of said municipal corporation, and such person duly acknowledges 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:
Aug. 2, 2018



CITY OF KANSAS CITY, MISSOURI

By: Sherri K. McIntyre

Print Name: Sherri K. McIntyre

Title: DIRECTOR OF PUBLIC WORKS

Attest:

[Signature]
City Clerk

[Signature]

Approved as to form:

[Signature]
~~City Counselor~~ Assistant City Attorney

State of Missouri)

)ss

County of Jackson)

BE IT REMEMBERED, that on this 15th day of July, 2016 before me, the undersigned, a notary public in and for the county and state aforesaid, came Sherri McIntyre of Kansas City, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as an official, the within instrument on behalf of said municipal corporation, and such person duly acknowledges 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.

[Signature]
Notary Public

My commission expires:

