

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF GLADSTONE AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR THE CITY MONUMENT LOCATED ON THE WEST SIDE OF MISSOURI STATE ROUTE 1 AT THE NORTH CITY LIMITS.**

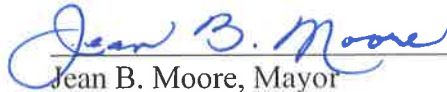
**Legislative Findings**

1. The Commission is an entity of the State of Missouri created by state law and owns and maintains Missouri State Route 1 as part of the State Highway System in Clay County, Missouri; and
2. The City of Gladstone constructed a monument located on the west side of Missouri State Route 1 at the north City limits; and
3. The Commission has requested that the City execute a license agreement outlining the roles and responsibilities of both parties; and
4. It is in the best interest of the citizens of Gladstone to execute this agreement with the Missouri Highways and Transportation Commission.

**NOW, THEREFORE, BE IT RESOLVED 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 license agreement with the Missouri Highways and Transportation Commission for the City monument located on the west side of Missouri State Route 1 at the North City limits.

**INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 28<sup>th</sup> DAY OF NOVEMBER, 2016.**

  
Jean B. Moore, Mayor

Attest:

  
Ruth E. Bocchino, City Clerk

1<sup>st</sup> Reading: November 28, 2016

2<sup>nd</sup> Reading: November 28, 2016



***Department of Public Works  
Memorandum***

**DATE:** November 22, 2016

**TO:** Scott Wingerson, City Manager

**FROM:** Timothy A. Nebergall, Director of Public Works *TAN*

**RE:** Missouri Highways and Transportation Commission License Agreement for City Monument

The Missouri Highways and Transportation Commission has requested that the City execute a License Agreement for the "Welcome to Gladstone" monument located on the west side of Missouri State Route 1 at the north City limits. Highlights of the agreement include:

- The term of the agreement is ten (10) years with a mutual option to renew for another ten (10) years.
- The City is responsible for the maintenance of the monument.
- The Commission reserves the right to charge the City for removal of the monument in the event that it is abandoned.
- The City is responsible for relocation costs in the event the location of the monument impedes roadway improvements.
- Prior to performing any type of maintenance to the structure, the City agrees to obtain a construction permit.
- The City agrees to take out and maintain liability insurance with a company licensed and authorized to do business in the state of Missouri in the amounts sufficient to cover the sovereign immunity limits for Missouri public entities.

City staff has reviewed the agreement and recommends its approval. Please note that the agreement does not include the monument located at the south City limits near the intersection of Missouri State Route 1 and NE Englewood Road as it is located on private property.

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

CCO Form: RW 51  
Approved: 12/12 (ASB)  
Revised: 08/16 (ASB)  
Modified:

CLAY COUNTY  
ROUTE 1

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
LICENSE AGREEMENT FOR CITY MONUMENT**

THIS AGREEMENT is entered into by the **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION** (hereinafter, "Commission") and the **City of Gladstone** (hereinafter, "City").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains State Route 1 (hereinafter, "Highway") as part of the State Highway System in Clay County, Missouri;

WHEREAS, the City constructed a Monument on Commission property and desires to use that portion of the Commission property described in Exhibit "A," attached hereto and incorporated by reference, to maintain a Monument;

WHEREAS, the Commission agrees to allow the City to use Commission property for the purposes, and subject to the terms and conditions, herein stated.

NOW, THEREFORE, in consideration of the promises, covenants and representations in this Agreement, the parties agree as follows:

(1) **LICENSE GRANTED:** The Commission hereby grants the City and its successors, a non-exclusive right to use that portion of the Commission property at the location described on Exhibit "A", a legal description of the property, for the purpose of maintaining a city Monument.

(2) **CONSIDERATION FOR THIS LICENSE:** The Commission grants this license freely and without charge, based on the City's express agreement to comply with the terms and conditions of this Agreement. This license is revocable by the Commission through its Missouri Department of Transportation (MoDOT) representatives at any time, with or without cause; and this license is automatically revoked by operation of law if the City violates any term or condition of this Agreement.

(3) **DURATION OF LICENSE:** The Commission and the City agree that this license and all rights of entry granted hereunder shall terminate and no longer be in effect no later than sunset ten (10) years from the last date of execution of this Agreement. Upon approval of both parties, the terms and conditions of this Agreement are renewable for an additional ten (10) years from the date of the expiration of the

Agreement. Any extension shall be memorialized in an appropriate Supplemental Agreement and executed by the duly authorized representatives of the parties.

(4) WORK BY THE CITY: The City constructed a Monument on Commission property as indicated in Exhibit "A," attached hereto and incorporated by reference. This non-exclusive license prohibits conversion of the property to a 4f or 6f property as stated in the Code of Federal Regulations 23 CFR 771.135. It is expressly understood and agreed that the primary purpose of the property which is the subject matter of this agreement shall remain for use of the Commission. There will be no public park or recreational use or dedication of the Commission property for outdoor recreational use.

(5) CONSTRUCTION CONTRACTOR: The Commission acknowledges that the City may enter into a construction contract with an approved Contractor (hereinafter, "Contractor") to maintain the Monument. The Contractor will look solely to the City for payments pursuant to the construction contract, including, but not limited to payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof, and confirming that Contractor shall have no claim rights against the Commission, its employees, agents, successors, or assigns.

(6) RIGHTS UPON DEFAULT: If the City defaults and abandons the Monument construction project, the Commission has the right, at its discretion, to demolish the structure. The Commission shall have the right to charge all payments associated with and costs of demolition to the City.

(7) MAINTENANCE AND REPAIR: At all times during the maintenance of the Monument, the site of the Monument and all related structures and landscaping will be maintained by and at the expense of the City so as to assure that these structures and the area within, above and beside Commission's property will be kept in accordance with Commission standards and in good condition as to safety, use and appearance and such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the use of or access to the Commission's state highway system. At all times during the maintenance of the Monument, the City and Contractor shall maintain the Monument in a manner that will not injure or damage the paved highway facility area or any of Commission property adjacent thereto, unless as specified herein. The City will keep the property described in Exhibit "A" in a neat, clean, orderly and presentable condition, free of trash, debris and unsightly objects.

(8) PERMITS: Before beginning work, any maintenance performed on the infrastructure of the Monument or Accompanying Structures shall require a permit to be issued by the District Engineer. Issuance of the permit is within the sole discretion of the Commission's District Engineer. The City shall make every effort to obtain access to the Monument and any accompanying structures through access other than Commission property.

(9) THE COMMISSION ACTION IF THERE IS FAILURE TO MAINTAIN PROPOSED STRUCTURE: In the event the City fails to meet its maintenance

obligations set forth in this Agreement, the Commission or its contractors, agents and employees shall have the authority, but not a duty or obligation, to maintain the facility as the Commission deems necessary. If the City fails to begin making repairs within thirty (30) days of receiving written notice or fails to continue with the repairs in a diligent manner, the maintenance work may be performed by the Commission, unless the District Engineer or his/her authorized representative determines that an actual or potential emergency exists requiring immediate repairs. Any expenses incurred by or on behalf of the Commission in performing the maintenance work described in this section shall be the debt of and shall be chargeable to the City.

(10) REVOCATION OF AGREEMENT: This license granted in this Agreement is at the pleasure or discretion of the Commission. The occurrence of any one of the following, but not limited to the following, shall constitute a default by the City under the terms of this Agreement and, at Commission discretion, may result in revocation of this Agreement.

(A) Nonuse or Abandonment of Monument: The Monument ceases to be used for the purposes stated herein, or is abandoned;

(B) Damage or Disrepair: The Monument or Accompanying Structures are damaged or fall into disrepair, and it cannot be repaired or the City will not repair the Monument to a condition satisfactory to the Commission and the FHWA;

(C) Violation of Agreement: The City violates any term of this Agreement;

(D) Change in Use: The City changes or attempts to change the use or purpose of the Monument, without prior written approval of the Commission and the concurrence of the FHWA;

(E) Violation of Laws: The City operates, uses or maintains the Monument or any other structure within the Commission's property in violation of any state or federal laws or regulations which are applicable at that time, but only after notice is given by the Commission specifying the violation and giving a reasonable opportunity to cure, not to exceed thirty (30) days, and which is not cured by the City within the applicable time;

(F) Failure to Pay Debts: The City fails to pay its debts or liabilities to the Commission under this Agreement;

(G) Failure to Maintain Insurance: The City fails to maintain insurance as required by this Agreement;

(H) Void or Invalid Agreement: This Agreement, or any material portion thereof, is deemed void or invalid by a court of competent jurisdiction.

(I) Unsafe Action: If the City acts in an unsafe manner, negligently, or refuses to follow safety instructions of MoDOT officials, or in any way breaches the terms of this license agreement.

(11) NO ASSIGNMENT: The City understands that it shall not assign or delegate any interest in this Agreement and shall not transfer any interest in or use of this license to another. This license is granted solely to the City and to no other person or entity.

(12) REDESIGN, RELOCATION, OR ALTERATION OF HIGHWAY: In the event that the Commission should find that it is necessary to redesign, relocate, or alter the highway at this location, the Commission, at its sole discretion, may suspend or revoke this license as needed.

(13) REMOVAL OF THE MONUMENT: In the event this Agreement is revoked and the Commission deems it necessary to request the removal of the Monument and/or Accompanying Structures, the removal shall be accomplished by the City or a responsible party, as determined by the Commission, in a manner prescribed by the Commission, with all costs and expenses associated with the removal paid by the City.

(14) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission and the City as partners in a partnership or joint venture for any purpose whatsoever.

(15) NO KNOWLEDGE OF HAZARDOUS OR TOXIC SUBSTANCES ON PROPERTY: The Commission states that to the best of its knowledge and belief, there has been no generation, transportation, storage, treatment, disposal, release, leakage, spillage or emission of any hazardous or toxic substance or material or any aboveground or underground petroleum product contamination on the subject property during the Commission's ownership of the property, and the Commission's representatives are not aware of the presence of any such hazardous or toxic substance or material, or petroleum product contamination, on the subject site. The Commission makes no warranty or representation concerning the possibility of or absence of, concealed property contamination by such substances or materials, and the City assumes the risk of their presence, unknown and undetected. If the City discovers actual or potential hazardous or toxic substances or materials, or petroleum contamination on the subject property, the City is requested to leave the property and notify the Commission's MoDOT representatives immediately.

(16) HUMAN REMAINS, SACRED OBJECTS AND ARTIFACTS: If human remains, or Native American or other sacred objects, artifacts or items of value are encountered during the maintenance of the Monument, their treatment will be handled in accordance with Sections 194.400 to 194.410, RSMo, as amended. There are no human remains, sacred objects, artifacts or other items of value known to be on the subject Monument, to the best knowledge of Commission's MoDOT representatives. However, if the City finds any human remains, sacred objects, artifacts, or other items of

value on the subject property, the City shall immediately contact the Commission's MoDOT representatives.

(17) INSURANCE: The City shall take out and maintain at the City's own expense liability insurance with a company licensed and authorized to do business in the state of Missouri in the amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. This insurance shall be for the payment of any property damages, personal injury or death to person(s) on the premises as licensees or invitees, expressed or implied, of the City. Evidence of the City's liability insurance shall be furnished to the Commission with upon application for a permit, and if the City fails, refuses or neglects to take out, extend or maintain said insurance this License Agreement shall be null and void.

(18) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer, or district engineer's authorized representative, prior to working on the Commission's property, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer, or district engineer's authorized representative, will not be required for work outside of the Commission's property; and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(19) ASSUMPTION OF RISK:

The City, by signing this license agreement, acknowledges that it has carefully read this legal document, and that it understands that the Commission property has vehicular traffic and other potential hazards on it that cannot reasonably be protected against, or warned of, in advance. By signing this license agreement, the City agrees to comply with the safety instructions it receives in this document and from MoDOT employees; the City acknowledges the existence of these and other risks on Commission property, and agrees to assume these risks by accepting this license, and using the Commission's property for the activity permitted herein.

(20) ADVERTISING RESTRICTIONS: No billboards or advertising is to be placed on or over the Commission's property or airspace, either within, on, attached to or apart from the Monument. Only signs as approved by the Commission shall be allowed.

(21) OPPORTUNITY TO CURE: As to any default described in paragraph (14) above, same shall not be a basis of terminating or revoking this Agreement until written notice is delivered to the City specifying the default with particularity, giving a reasonable opportunity to cure, not to exceed thirty (30) days, and which is not cured by the City within the applicable time.

(22) UTILITY RELOCATION: With respect to any utility facilities requiring relocation or adjustment in connection with the herein contemplated construction, the City agrees that said relocation or adjustment shall be in accordance with the detailed plans as approved by the Commission with all costs and expenses associated with the utility relocation or adjustment paid by the City.

(23) NONDISCRIMINATION: The City, for itself, its representatives, and successors in interest, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, disability, sex or age shall be denied the benefits of or otherwise be subjected to discrimination in the maintenance of the Monument.

(24) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(25) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(26) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or district of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.



(27) SURVIVABILITY: The City's obligation to the Commission under this Agreement shall survive the completion of the terms of this Agreement.

(28) DEFENSE: This Agreement may be pleaded as a full and complete defense to any subsequent action or other proceeding arising out of, or relating to, or having anything to do with, any and all claims, counterclaims, issues, defenses or other matters released and discharged by this Agreement. This Agreement may also be used to abate any such action or other proceedings and as the basis of a counterclaim for damages.

(29) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(30) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(31) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(32) AUTHORITY TO GRANT LICENSE: The parties enter into this Agreement with full understanding that the Commission, to the best of its knowledge and belief, has the authority to grant this license. The Commission makes no representation that it has full fee simple title to the property which is the subject of this Agreement. In the event this Agreement is rendered null and void based upon a determination that the Commission did not have the authority to grant this license on the subject property, the Commission will not be responsible for any damages, costs or other expenses incurred by the City in connection with this Agreement.

(33) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

- (A) To the City of Gladstone, Missouri:  
7010 N. Holmes Street, Gladstone, MO 64118  
816-436-2200
- (B) To the Commission:  
600 NE Colbern Road, Lee's Summit, MO 64086  
816-607-2071

or to such other place as the parties may designate in accordance with this Agreement.

To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

~~(34) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.~~

(35) STATE WAGE LAWS: The City's contractor and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri. The City shall take those acts which may be required to fully inform itself of the terms of, and to comply with, any applicable state wage laws.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by \_\_\_\_\_ of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_

Title \_\_\_\_\_

Attest: (SEAL)

\_\_\_\_\_  
Secretary to the Commission

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

**THE CITY OF GLADSTON, MISSOURI**

By: \_\_\_\_\_

Scott Wingerson, City Manager

Attest: (SEAL)

By: \_\_\_\_\_

Ruth E. Bocchino, City Clerk

Approved as to Form:

By: \_\_\_\_\_

Chris Williams, City Counselor

Ordinance No. \_\_\_\_\_

**ACKNOWLEDGMENT BY THE CITY**

STATE OF \_\_\_\_\_ )

ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared Scott Wingerson, personally known to me, who being by me duly sworn, did say that he is the City Manager of the City of Gladstone, Missouri and that the foregoing instrument was signed and sealed on behalf of City of Gladstone, Missouri and that he acknowledged said instrument to be the free act and deed of City of Gladstone, Missouri and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT BY COMMISSION**

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared \_\_\_\_\_, personally known to me, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of the Missouri Highways and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed on behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

### **Exhibit "A"**

The monument sign is approximately located 1,670-linear feet north of the intersection of Missouri Route 1 and NE 73<sup>rd</sup> Terrace and 75-linear feet left of the centerline of Missouri Route 1 within the City limits of Gladstone, Missouri.

