

RESOLUTION R-16-17

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A REIMBURSEMENT AGREEMENT WITH GLADSTONE CAP, LLC FOR UNDERGROUNDING OF UTILITIES ADJACENT TO THE NORTHLAND INNOVATION CENTER PROJECT.

WHEREAS, on October 14, 2014, the City and Gladstone CAP, LLC ("GCAP") entered into a Development Agreement relating to the development of the Northland Innovation Center; and

WHEREAS, pursuant to the terms of the Development Agreement, the Northland Innovation Center is currently being constructed; and

WHEREAS, the parties have determined that it would be beneficial and appropriate for aesthetic reasons and public safety purposes due to the location of power lines above parking areas to underground the existing above-ground utilities adjacent to the Northland Innovation Center site along 69th Street and Locust Street; and

WHEREAS, GCAP is willing to cause such work to be performed during the construction of the Northland Innovation Center by KCPL and GCAP's contractors; and

WHEREAS, the City has sufficient funds available for said work from the proceeds of the lease-purchase financing transaction associated with The Heights project to reimburse GCAP for the costs incurred for said work; and

WHEREAS, the parties desire to enter into a Reimbursement Agreement to address the undergrounding of the utilities and reimbursement of the costs associated with said work.

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 is hereby authorized and directed to execute the Reimbursement Agreement in substantially the form attached hereto as Exhibit A and to take such other actions as may be necessary to effectuate the intent of this Resolution.

INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 14th DAY OF MARCH, 2016.

ATTEST:

Ruth E Bocchino

Ruth Bocchino, City Clerk



Mayor Bill Garnos

Exhibit A
Reimbursement Agreement

[see attached]

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is made this 25th day of March, 2016, between the City of Gladstone, Missouri, a municipal corporation (the "City") and Gladstone CAP, LLC, a Missouri limited liability company ("GCAP").

WITNESSETH:

WHEREAS, on October 14, 2014, the City and GCAP entered into a Development Agreement relating to the development of the Northland Innovation Center; and

WHEREAS, pursuant to the terms of the Development Agreement, the Northland Innovation Center is currently being constructed; and

WHEREAS, the parties have determined that it would be beneficial and appropriate to underground the existing above-ground utilities adjacent to the development site along 69th Street and Locust Street; and

WHEREAS, GCAP is willing to cause such work to be performed during the construction of the Northland Innovation Center by KCPL and GCAP's contractors; and

WHEREAS, the City is willing to reimburse the costs incurred for said work pursuant to the terms of this Agreement; and

WHEREAS, the parties desire to enter into this Agreement to address the undergrounding of utilities and reimbursement of the costs associated with said work.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Scope of Work. GCAP shall enter into agreements with and cause KCPL and GCAP's contractors to perform all work necessary to underground the existing above-ground utilities adjacent to the Northland Innovation Center project site along 69th Street and Locust Street pursuant to plans reviewed and approved by the City (the "Work").

Section 2. Payment and Reimbursement for the Work. GCAP shall be responsible for making all payments to KCPL and GCAP's contractors pursuant to invoices for the Work. The City shall incrementally reimburse GCAP for said payments of invoices on 14-day intervals with full reimbursement occurring no later than 90 days following first reimbursement request from GCAP. The amounts of the incremental reimbursement payments and schedule of payments are set forth below. The total costs for the Work are currently estimated at \$500,000. No costs in excess of \$500,000 will be reimbursed

by the City to GCAP unless first approved by action of the City Council prior to the commencement of said work.

Schedule of payments and reimbursements:

- **March 21:** Down payment of \$177,429 to KCPL at execution of this Agreement paid by GCAP and reimbursement request submitted to City simultaneously. This scope of work consists of:
 - o Cost to pull wire on 69th Street - \$165,455
 - o Cost to pull wire on Locust Street – \$11,974
- **April 4:** \$177,429 reimbursement made by City to GCAP; First progress payment invoice from Fleshman of \$142,765 received and paid by GCAP and reimbursement request submitted to City. This scope of work consists of:
 - o Cost for Fleshman Site Work - \$285,530
- **April 18:** First \$142,765 reimbursement received by GCAP from City. Second progress payment invoice from Fleshman of \$142,765 received and paid by GCAP and reimbursement request submitted to City.
- **May 2:** Second \$142,765 reimbursement received by GCAP from City.

At the conclusion of the payment and reimbursement schedule set forth above, \$285,530 will have been paid to Fleshman by GCAP and reimbursed to GCAP by City. In addition to the \$177,429 paid and reimbursed at execution of the Agreement to KCPL, for a total of \$462,959 will have been paid and reimbursed for the Work.

Additional expenses that may be incurred to be reimbursed to GCAP by the City include \$9,500 in mark-up costs from McCown Gordon subcontractors, as well as approximately \$5,000 in expenses from BHC Rhodes for the creation of a comprehensive plan on behalf of the parties.

Section 3. General Design and Construction Requirements. The Work shall be designed and constructed in accordance with all applicable adopted rules, requirements and standards.

Section 4. Prevailing Wage. GCAP shall ensure that its contractors comply with all laws regarding the payment of prevailing wages to employees of the contractor or subcontractor, if applicable. GCAP shall indemnify the City for any damage resulting to the City from failure of either its contractors or any subcontractor to pay prevailing wages pursuant to applicable laws.

Section 5. Construction Safety Training.

- A. GCAP shall ensure its contractors performing construction portions of the Work provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- B. If any on-site employees of GCAP's contractors performing construction portions of the Work have not previously completed a construction safety program, GCAP shall ensure said contractors require those on-site employees to complete a construction safety program within sixty (60) days after the date the Work commences.
- C. GCAP acknowledges and agrees that any of GCAP's contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- D. GCAP shall ensure its contractors require all of its subcontractors comply with the requirements of this Section and Section 292.675, RSMo.

Section 6. Notice of Penalty Provisions.

- A. Pursuant to Section 292.675, RSMo, GCAP and/or its contractors shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each on-site employee employed by the contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 5 above.
- B. The penalty described in Subsection A of this Section shall not begin to accrue until the time periods described in Sections 5.B. and 5.C. above have elapsed.
- C. Violations of Section 5 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

Section 7. Control of Project. Except as otherwise provided in this Agreement, GCAP shall have complete and exclusive control over the Work.

Section 8. Insurance. During the term of this Agreement, GCAP shall maintain insurance applicable to the Work in accordance with the insurance requirements of Section 8.06 of the Development Agreement dated October 14, 2014 between the parties related to the Northland Innovation Center project.

Section 9. Liability. GCAP shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all

liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement and the Work including, but not limited to, claims for personal injuries, death, or property damage, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

Section 10. Compliance with Laws. GCAP shall comply with and shall require its contractors to comply with all federal, state, and local laws, ordinances, and regulations applicable to the Work.

Section 11. Unauthorized Aliens. Pursuant to Section 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Exhibit A and incorporated herein, GCAP hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. Furthermore, GCAP affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the Work.

Section 12. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement.


Section 13. Applicable Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of Missouri. Should any part of this Agreement be adjudicated, jurisdiction and venue shall be proper only in the Circuit Court of Clay County, Missouri.

Section 14. Non-Waiver. No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 15. Binding Effect. This Agreement, including all of its covenants, terms, provisions, and conditions, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date mentioned above.

CITY OF GLADSTONE, MISSOURI



Kirk L. Davis, City Manager

ATTEST:

Ruth Bocchino 3/29/16
Ruth Bocchino, City Clerk

Gladstone CAP, LLC

By: [Signature]

Printed name: Kevin T. Kelly

Title: Manager

ATTEST:

[Signature]

EXHIBIT A

CITY OF GLADSTONE, MISSOURI
WORK AUTHORIZATION AFFIDAVIT
PURSUANT TO SECTION 285.530, RSMo.
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)

STATE OF MISSOURI

COUNTY OF

)
ss.
Jackson

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared Kevin T. Kelly, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is Kevin T. Kelly and I am currently the Manager of Gladstone CAP, LLC (hereinafter "Contractor"), whose business address is 4700 Broadway, Ste 240, and I am authorized to make this Affidavit. VC, mo

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the power line and conduit underground relocation project related to the Northland Innovation Center project contracted between Contractor and the City of Gladstone, Missouri.

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

[Signature]
Affiant

Kevin T. Kelly
Printed Name

Subscribed and sworn to before me this 29th day of March, 2016.

[Signature]
Notary Public

SEAL



KRISTI STUEDLE
My Commission Expires
November 4, 2017
Clay County
Commission #13473833

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is made this ____ day of March, 2016, between the City of Gladstone, Missouri, a municipal corporation (the "City") and Gladstone CAP, LLC, a Missouri limited liability company ("GCAP").

WITNESSETH:

WHEREAS, on _____, October 14, 2014, the City and GCAP entered into a Development Agreement relating to the development of the Northland Innovation Center; and

WHEREAS, pursuant to the terms of the Development Agreement, the Northland Innovation Center is currently being constructed; and

WHEREAS, the parties have determined that it would be beneficial and appropriate to underground the existing above-ground utilities adjacent to the development site along 69th Street and Locust Street; and

WHEREAS, GCAP is willing to cause such work to be performed during the construction of the Northland Innovation Center by KCPL and GCAP's contractors; and

WHEREAS, the City is willing to reimburse the costs incurred for said work pursuant to the terms of this Agreement; and

WHEREAS, the parties desire to enter into this Agreement to address the undergrounding of utilities and reimbursement of the costs associated with said work.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Scope of Work. GCAP shall enter into agreements with and cause KCPL and GCAP's contractors to perform all work necessary to underground the existing above-ground utilities adjacent to the Northland Innovation Center project site along 69th Street and Locust Street pursuant to plans reviewed and approved by the City (the "Work").

Section 2. Payment and Reimbursement for the Work. GCAP shall be responsible for making all payments to KCPL and GCAP's contractors pursuant to invoices for the Work. The City shall incrementally reimburse GCAP for said payments of invoices on 14-day intervals with full reimbursement occurring no later than 90 days following first reimbursement request from GCAP. The amounts of the incremental reimbursement payments and schedule of payments are set forth below. ~~In no event shall t~~The total costs for the Work ~~exceed~~ are currently estimated at \$500,000. No costs in excess of

\$500,000 will be reimbursed by the City to GCAP unless first approved by action of the City Council prior to the commencement of said work.

Schedule of payments and reimbursements:

- **March 4²¹**: Down payment of \$220,000 to KCPL at execution of this Agreement paid by GCAP and reimbursement request submitted to City simultaneously. This scope of work consists of:
 - o Cost to pull wire on 69th Street - \$207,000
 - o Cost to pull wire on Locust Street – \$11,974
- **March 15~~April~~ 4**: \$220,000 reimbursement made by City to GCAP; First progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **April 12~~18~~**: First \$66,669 reimbursement received by GCAP from City. Second progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **April 26~~May~~ 2**: Second \$66,669 reimbursement received by GCAP from City. Third progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **May 10~~16~~**: Third \$66,669 reimbursement received by GCAP from City. Fourth progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **May 24~~30~~**: Fourth and final \$66,669 reimbursement received by GCAP from City.

At the conclusion of the payment and reimbursement schedule set forth above, \$266,676 will have been paid to Fleshman by GCAP and reimbursed to GCAP by City. In addition to the \$220,000 paid and reimbursed at execution of the Agreement to KCPL, a total of \$486,676 will have been paid and reimbursed for the Work.

Additional expenses that may be incurred to be reimbursed to GCAP by the City include \$9,500 in mark-up costs from McCown Gordon subcontractors, as well as approximately \$5,000 in expenses from BHC Rhodes for the creation of a comprehensive plan on behalf of the parties.

Section 3. General Design and Construction Requirements. The Work shall be designed and constructed in accordance with all applicable adopted rules, requirements and standards.

Section 4. Prevailing Wage. GCAP shall ensure that its contractors comply with all laws regarding the payment of prevailing wages to employees of the contractor or subcontractor, if applicable. GCAP shall indemnify the City for any damage resulting to the City from failure of either its contractors or any subcontractor to pay prevailing wages pursuant to applicable laws.

Section 5. Construction Safety Training.

- A. GCAP shall ensure its contractors performing construction portions of the Work provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- B. If any on-site employees of GCAP's contractors performing construction portions of the Work have not previously completed a construction safety program, GCAP shall ensure said contractors require those on-site employees to complete a construction safety program within sixty (60) days after the date the Work commences.
- C. GCAP acknowledges and agrees that any of GCAP's contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- D. GCAP shall ensure its contractors require all of its subcontractors comply with the requirements of this Section and Section 292.675, RSMo.

Section 6. Notice of Penalty Provisions.

- A. Pursuant to Section 292.675, RSMo, GCAP and/or its contractors shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each on-site employee employed by the contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 5 above.
- B. The penalty described in Subsection A of this Section shall not begin to accrue until the time periods described in Sections 5.B. and 5.C. above have elapsed.
- C. Violations of Section 5 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

Section 7. Control of Project. Except as otherwise provided in this Agreement, GCAP shall have complete and exclusive control over the Work.

Section 8. Insurance. During the term of this Agreement, GCAP shall maintain insurance applicable to the Work in accordance with the insurance requirements of Section 8.06 of the Development Agreement dated _____, October 14, 2014 between the parties related to the Northland Innovation Center project.

Section 9. Liability. GCAP shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement and the Work including, but not limited to, claims for personal injuries, death, or property damage, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

Section 10. Compliance with Laws. GCAP shall comply with and shall require its contractors to comply with all federal, state, and local laws, ordinances, and regulations applicable to the Work.

Section 11. Unauthorized Aliens. Pursuant to Section 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Exhibit A and incorporated herein, GCAP hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. Furthermore, GCAP affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the Work.

Section 12. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement.

Section 13. Applicable Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of Missouri. Should any part of this Agreement be adjudicated, jurisdiction and venue shall be proper only in the Circuit Court of Clay County, Missouri.

Section 14. Non-Waiver. No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 15. Binding Effect. This Agreement, including all of its covenants, terms, provisions, and conditions, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date mentioned above.

CITY OF GLADSTONE, MISSOURI

Kirk L. Davis, City Manager

ATTEST:

Ruth Bocchino, City Clerk

Gladstone CAP, LLC

By: _____

Printed name: _____

Title: _____

ATTEST:

**CITY OF GLADSTONE, MISSOURI
WORK AUTHORIZATION AFFIDAVIT
PURSUANT TO SECTION 285.530, RSMo.
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)**

6

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

Affiant

Printed Name

Subscribed and sworn to before me this ____ day of _____, 2016.

Notary Public

SEAL

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is made this ____ day of March, 2016, between the City of Gladstone, Missouri, a municipal corporation (the "City") and Gladstone CAP, LLC, a Missouri limited liability company ("GCAP").

WITNESSETH:

WHEREAS, on October 14, 2014, the City and GCAP entered into a Development Agreement relating to the development of the Northland Innovation Center; and

WHEREAS, pursuant to the terms of the Development Agreement, the Northland Innovation Center is currently being constructed; and

WHEREAS, the parties have determined that it would be beneficial and appropriate to underground the existing above-ground utilities adjacent to the development site along 69th Street and Locust Street; and

WHEREAS, GCAP is willing to cause such work to be performed during the construction of the Northland Innovation Center by KCPL and GCAP's contractors; and

WHEREAS, the City is willing to reimburse the costs incurred for said work pursuant to the terms of this Agreement; and

WHEREAS, the parties desire to enter into this Agreement to address the undergrounding of utilities and reimbursement of the costs associated with said work.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Scope of Work. GCAP shall enter into agreements with and cause KCPL and GCAP's contractors to perform all work necessary to underground the existing above-ground utilities adjacent to the Northland Innovation Center project site along 69th Street and Locust Street pursuant to plans reviewed and approved by the City (the "Work").

Section 2. Payment and Reimbursement for the Work. GCAP shall be responsible for making all payments to KCPL and GCAP's contractors pursuant to invoices for the Work. The City shall incrementally reimburse GCAP for said payments of invoices on 14-day intervals with full reimbursement occurring no later than 90 days following first reimbursement request from GCAP. The amounts of the incremental reimbursement payments and schedule of payments are set forth below. The total costs for the Work are currently estimated at \$500,000. No costs in excess of \$500,000 will be reimbursed

by the City to GCAP unless first approved by action of the City Council prior to the commencement of said work.

Schedule of payments and reimbursements:

- **March 21:** Down payment of \$220,000 to KCPL at execution of this Agreement paid by GCAP and reimbursement request submitted to City simultaneously. This scope of work consists of:
 - o Cost to pull wire on 69th Street - \$207,000
 - o Cost to pull wire on Locust Street – \$11,974
- **April 4:** \$220,000 reimbursement made by City to GCAP; First progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **April 18:** First \$66,669 reimbursement received by GCAP from City. Second progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **May 2:** Second \$66,669 reimbursement received by GCAP from City. Third progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **May 16:** Third \$66,669 reimbursement received by GCAP from City. Fourth progress payment invoice from Fleshman of \$66,669 received and paid by GCAP and reimbursement request submitted to City.
- **May 30:** Fourth and final \$66,669 reimbursement received by GCAP from City.

At the conclusion of the payment and reimbursement schedule set forth above, \$266,676 will have been paid to Fleshman by GCAP and reimbursed to GCAP by City. In addition to the \$220,000 paid and reimbursed at execution of the Agreement to KCPL, a total of \$486,676 will have been paid and reimbursed for the Work.

Additional expenses that may be incurred to be reimbursed to GCAP by the City include \$9,500 in mark-up costs from McCown Gordon subcontractors, as well as approximately \$5,000 in expenses from BHC Rhodes for the creation of a comprehensive plan on behalf of the parties.

Section 3. General Design and Construction Requirements. The Work shall be designed and constructed in accordance with all applicable adopted rules, requirements and standards.

Section 4. Prevailing Wage. GCAP shall ensure that its contractors comply with all laws regarding the payment of prevailing wages to employees of the contractor or subcontractor, if applicable. GCAP shall indemnify the City for any damage resulting to the City from failure of either its contractors or any subcontractor to pay prevailing wages pursuant to applicable laws.

Section 5. Construction Safety Training.

- A. GCAP shall ensure its contractors performing construction portions of the Work provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- B. If any on-site employees of GCAP's contractors performing construction portions of the Work have not previously completed a construction safety program, GCAP shall ensure said contractors require those on-site employees to complete a construction safety program within sixty (60) days after the date the Work commences.
- C. GCAP acknowledges and agrees that any of GCAP's contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- D. GCAP shall ensure its contractors require all of its subcontractors comply with the requirements of this Section and Section 292.675, RSMo.

Section 6. Notice of Penalty Provisions.

- A. Pursuant to Section 292.675, RSMo, GCAP and/or its contractors shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each on-site employee employed by the contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 5 above.
- B. The penalty described in Subsection A of this Section shall not begin to accrue until the time periods described in Sections 5.B. and 5.C. above have elapsed.
- C. Violations of Section 5 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

Section 7. Control of Project. Except as otherwise provided in this Agreement, GCAP shall have complete and exclusive control over the Work.

Section 8. Insurance. During the term of this Agreement, GCAP shall maintain insurance applicable to the Work in accordance with the insurance requirements of Section 8.06 of the Development Agreement dated October 14, 2014 between the parties related to the Northland Innovation Center project.

Section 9. Liability. GCAP shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement and the Work including, but not limited to, claims for personal injuries, death, or property damage, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

Section 10. Compliance with Laws. GCAP shall comply with and shall require its contractors to comply with all federal, state, and local laws, ordinances, and regulations applicable to the Work.

Section 11. Unauthorized Aliens. Pursuant to Section 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Exhibit A and incorporated herein, GCAP hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. Furthermore, GCAP affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the Work.

Section 12. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement.

Section 13. Applicable Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of Missouri. Should any part of this Agreement be adjudicated, jurisdiction and venue shall be proper only in the Circuit Court of Clay County, Missouri.

Section 14. Non-Waiver. No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 15. Binding Effect. This Agreement, including all of its covenants, terms, provisions, and conditions, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date mentioned above.

CITY OF GLADSTONE, MISSOURI

Kirk L. Davis, City Manager

ATTEST:

Ruth Bocchino, City Clerk

Gladstone CAP, LLC

By: _____

Printed name: _____

Title: _____

ATTEST:

**CITY OF GLADSTONE, MISSOURI
WORK AUTHORIZATION AFFIDAVIT
PURSUANT TO SECTION 285.530, RSMo.
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)**

As used in this Affidavit, the following terms shall have the following meanings:

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared _____, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is _____ and I am currently the _____ of Gladstone CAP, LLC (hereinafter "Contractor"), whose business address is _____, and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the power line and conduit underground relocation project related to the Northland Innovation Center project contracted between Contractor and the City of Gladstone, Missouri.

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

Affiant

Printed Name

Subscribed and sworn to before me this _____ day of _____, 2016.

Notary Public

SEAL