

RESOLUTION NO. R-23-77

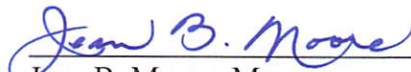
A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PARK DEVELOPMENT AND NAMING RIGHTS AGREEMENT WITH VARIETY OF GREATER KANSAS CITY – TENT 8.

WHEREAS, the City Council for the City of Gladstone, Missouri desires to enter into the agreement with Variety of Greater Kansas City – Tent 8.

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 the agreement with Variety of Greater Kansas City – Tent 8 in substantially the form attached hereto as Exhibit A.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 13TH DAY OF NOVEMBER 2023.


Jean B. Moore, Mayor


Kris Keller, City Clerk

PARK DEVELOPMENT AND NAMING RIGHTS AGREEMENT

This Agreement (the "Agreement") is between Variety of Greater Kansas City - Tent 8, a Missouri Nonprofit Corporation ("Variety KC") and the City of Gladstone, Missouri ("City").

RECITALS

WHEREAS, the City has plans to construct an inclusive park, located at Gladstone Park (hereinafter the Park), located at NW 60th Terrace and N. Flora (the "Park"); and

WHEREAS, the parties desire to enter into an agreement pursuant to which the City will grant Variety KC the naming rights with respect to the Park in return for certain benefits set forth below.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, the parties hereby agree as follows:

1. Park Design

- A. Variety KC will be responsible, at its cost, for the design of the Park. By a mutually agreed upon date, Variety KC will transmit to the City's Director of Parks, Recreation, and Cultural Arts a complete set of proposed Park design plans. City staff will provide its plan review comments to Variety KC. Upon resolution of City staff plan review comments, the proposed Park design plans will be presented to the City's Parks and Recreation Advisory Board for recommendation to the City Council. The City Council shall have final approval authority regarding the Park design plan, regardless of its initial proposed design.
- B. City approval of the Park design plans as provided herein shall vest in the City title to all Park designs, drawings, and specifications, produced by Variety KC to City. Variety KC agrees to limit its use of such designs, drawings, and specifications only in connection with this Agreement, and shall not disclose the same to any other persons, firms, corporations, or other government entity without obtaining the prior written consent of the City.

2. Park Construction

- A. After the City Council has approved the Park design plans, the City will be responsible for letting and administering all contracts related to construction of the Park improvements. The City Council agrees to consider a resolution waiving its purchasing policy requirements in order to purchase Park equipment from Variety KC and contract with it for installation and construction.

3. Park Funding

- A. The parties anticipate a total Park project budget of approximately \$750,000.00. Any previously approved Park design plans may be modified to fit within the total project budget.
- B. Variety KC agrees to contribute up to \$250,000.00 to be used towards Park construction and installation costs ("Costs").
- C. The City agrees to contribute up to \$500,000.00 towards the Costs. In no event shall the City be obligated to contribute more than this amount.
- D. Following the City Council's approval of the Park design plans and assuming the City Council adopts a resolution as contemplated in Section 2.A, the parties will enter into a separate agreement providing for the terms upon which Variety KC shall function as the contractor for the Park project and in light of its financial participation, as well as but not limited to, customary terms associated with a public improvement project such as contract amount, timing of payments, insurance requirements, performance and payment bonds, prevailing wage, safety, etc.

4. Naming Rights

- A. In exchange for and contingent on Variety KC's financial participation as referenced in Section 3, the City agrees to grant Park naming rights to Variety KC. Specifically, Variety KC and the City shall mutually agree upon the name of the Park (the "Name"). The Park will continue to be so named for the Term of this Agreement unless the parties agree otherwise. The City will make commercially reasonable efforts to ensure that the Park is referred to by its Name and shall cooperate with Variety KC's efforts to do the same.
- B. Signage containing the Name shall be placed and displayed as mutually agreed upon by Variety KC and the City. Any other Park funding source signage will not be recognized with more visibility than the Name signage, and instead will comprise a plaque, brick, or other similar type of less-visible marker.
- C. The parties will coordinate publicity efforts as it relates to the Park. Publicity efforts shall include, but are not limited to, media, newsletter, e-news, social media, speeches and pictures.
- D. If Variety KC or any of its officers, directors, or board members commits any act which, in the reasonable and good faith opinion of the City, would disparage or impair the reputation and integrity of the City (including, without limitation, being convicted of any felony or a crime involving moral turpitude, ethical violations, sexual allegations involving any minor, or any other act of moral

turpitude)(collectively, "Negative Activity"), the City shall have the right to terminate this Agreement by providing thirty (30) days prior written notice to Variety KC outlining such Negative Activity and exercising the City's right to terminate the Agreement ("City Cure Notice"). In the event Variety KC fails to take any and all actions reasonably necessary to address, mitigate or disassociate from any such Negative Activity to the reasonable satisfaction of the City within thirty (30) days of receipt of the City Cure Notice or in the event no such action could reasonably be undertaken that would avoid disparaging or impairing the reputation and integrity of the City, the Agreement shall automatically terminate upon expiration of the City Cure Notice. If the Agreement terminates under this Section, then no termination fee pursuant to Section 6.B shall be due from the City.

5. Ownership of Marks

- A. Variety KC represents and warrants to the City that (a) Variety KC owns all right, title and interest in and to its trademarks, service marks, and trade names and all logos or commercial or advertising symbols used in connection with or associated with the Name (the "Marks") free and clear of any liens, claims or encumbrances, (b) Variety KC has the right and authority to license to the City the rights to use the Marks as expressly authorized in this Agreement, and (c) no Mark infringes the copyright, trademark or other rights of any third party.
- B. Variety KC shall indemnify, defend, and hold the City and its officers, employee's and agents harmless from and against all claims, liabilities, damages, demands, costs, fees, fines, penalties, other expenses, suits, proceedings, actions and causes of action of any and every kind and nature (including reasonable attorneys' fees) incurred or to be incurred by the indemnified party (collectively, "Claims") arising out of, in connection with or as a result of (a) a breach by Variety KC of its representations, warranties, or covenants under this Agreement or (b) the use by the City of the Variety KC Marks as authorized herein. The provisions set forth in this Section shall survive the expiration or termination of this Agreement.

6. Term and Termination

- A. The term ("Term") of this Agreement with respect to the naming rights and signage installation rights granted herein shall be twenty-five (25) years, commencing on the first day that the Park is open to the public following completion of construction of the Park improvements as determined by the City, unless otherwise terminated in accordance with the terms and provisions contained herein.
- B. The City may without reason or without cause terminate this Agreement at any time. The City shall notify Variety KC at least one (1) year prior to the termination date if it decides to terminate the Agreement pursuant to this Section.

In the event termination for convenience is effected by the City, the City shall pay to Variety KC a termination fee which shall be due and payable within three (3) business days after the termination date. The termination fee shall be equal to \$10,000 for each year that remains in the Term.

7. Default

- A. A default shall be deemed to have occurred hereunder if:
- i. Variety KC fails to make a payment required under this Agreement.
 - ii. The filing by or against Variety KC of any petitions in bankruptcy.
 - iii. The occurrence of any act or omission on the part of Variety KC that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of its business.
 - iv. Either party fails to perform or observe any material term, covenant, condition or provision of this Agreement; and such breach continues for a period of thirty (30) days after written notice to the defaulting party; or if such breach cannot be cured reasonably within such thirty (30) day period and the defaulting party fails to commence to cure such breach within thirty (30) days after written notice or fails to proceed diligently to cure such breach within a reasonable time period thereafter.
- B. In the event of a default by either party, the other party shall have the right to take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein and to enforce the performance and observance of any obligation, agreement or covenant of the allegedly defaulting party. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default of the other party.

8. Additional Provisions.

- A. No amendment of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.
- B. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability to perform and have access to the Park as provided for herein, such invalidity, illegality or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

- C. The rights and obligations created by this Agreement are unique to Variety KC and shall not be transferred or assigned by Variety KC except with written consent of the City.
- D. All notices required to be given under this Agreement shall be given by certified or registered mail or Overnight Courier, addressed to the proper party to the following addresses, or at such other address as may be subsequently given pursuant to this Section and shall be deemed given when deposited in the Mail, postage prepaid:

If to the City:	If to Variety KC:
City of Gladstone, Missouri Attn: City Manager 7010 N Holmes Street Gladstone, Missouri 64118	Variety of Greater Kansas City - Tent 8 Attn: Marc Harrell, Executive Director 4050 Pennsylvania Ave., Ste 115-77 Kansas City, MO 64111

- E. Any failure of either party to comply with any provision of this Agreement may only be waived expressly in writing by the other party. The waiver by either party of any default or breach by the other party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Agreement.
- F. Nothing in this Agreement shall constitute or be construed to constitute a lease of the City's real property.
- G. No provision of this Agreement will be interpreted against any party solely because the party or its legal representation drafted the provision.
- H. Unless specifically designated herein, the parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes. Nothing contained in this Agreement shall be determined to create a partnership, joint venture, principal- agent, employer-employee or similar relationship between the City and Variety KC with respect to Variety KC's activities conducted at the Park pursuant to the terms of this Agreement.
- I. This Agreement and all matters or issues collateral hereto shall be governed and construed in accordance with the laws of the State of Missouri without respect to conflicts of law principles. Any actions concerning interpretation or enforcement of this Agreement shall be brought in Platte County, Missouri.
- J. No party shall be liable or responsible to the other party, nor be deemed to have

defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, as follows: (a) acts of God; (b) flood, fire, or earthquake; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; and (e) actions, embargoes or blockades in effect on or after the date of this Agreement. The party suffering a Force Majeure event shall give notice within 10 days of the Force Majeure event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure event are minimized,

- K. This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in this Agreement, and it may not be amended except by a writing signed by all parties. There are no oral or written representations, agreements, understandings or circumstances which modify any of the provisions hereof.
- L. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all counterparts together shall constitute but one and the same instrument.
- M. The persons signing this Agreement on behalf of Variety KC and the City, respectively, are authorized to do so.

[Remainder of page intentionally left blank]

Variety of Greater Kansas City - Tent 8:

By: _____

Name: Marc Harrell

Title: Executive Director

Dated: _____

City of Gladstone, Missouri:

By: _____

Name: Robert Baer

Title: City Manager

Dated: _____

Attest:

Kris Keller



Request for Council Action

RES ☒ # R-23-77

BILL ☐ # City Clerk Only

ORD ☐ # City Clerk Only

Date: 11/7/2023

Department: Parks & Recreation

Meeting Date Requested: 11/13/2023

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: VarietyKC/Flora Park Partnership

Background: During the annual City Council Goal Setting, a goal was set to renovate and create an all-inclusive play structure at Flora Park as well as renovate the park by replacing the shelter and constructing restrooms. As part of this process, VarietyKC, a non-profit organization providing resources to youth with disabilities, has expressed an interest in funding the project up to \$250,000.00.

Budget Discussion: Funds can be made available in the CIST plan; however, staff will be soliciting partners/donors to assist with funding the project. To receive the \$250,000.00, the city must match it with a \$500,000.00 commitment.

Public/Board/Staff Input: Staff met with members of VarietyKC at Flora Park and the organizations have worked with both legal teams to create a mutually agreeable Park Development and Naming Rights Agreement. Once signed by both parties, staff will begin working with the preferred playground vendor of VarietyKC to design the park and secure cost estimates.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor.

Justin Merkey
Department Director/Administrator

JM
City Attorney

BB
City Manager

PARK DEVELOPMENT AND NAMING RIGHTS AGREEMENT

This Agreement (the "Agreement") is between Variety of Greater Kansas City - Tent 8, a Missouri Nonprofit Corporation ("Variety KC") and the City of Gladstone, Missouri ("City").

RECITALS

WHEREAS, the City has plans to construct an inclusive park, located at Gladstone Park (hereinafter the Park), located at NW 60th Terrace and N. Flora (the "Park"); and

WHEREAS, the parties desire to enter into an agreement pursuant to which the City will grant Variety KC the naming rights with respect to the Park in return for certain benefits set forth below.

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, the parties hereby agree as follows:

1. Park Design

- A. Variety KC will be responsible, at its cost, for the design of the Park. By a mutually agreed upon date, Variety KC will transmit to the City's Director of Parks, Recreation, and Cultural Arts a complete set of proposed Park design plans. City staff will provide its plan review comments to Variety KC. Upon resolution of City staff plan review comments, the proposed Park design plans will be presented to the City's Parks and Recreation Advisory Board for recommendation to the City Council. The City Council shall have final approval authority regarding the Park design plan, regardless of its initial proposed design.
- B. City approval of the Park design plans as provided herein shall vest in the City title to all Park designs, drawings, and specifications, produced by Variety KC to City. Variety KC agrees to limit its use of such designs, drawings, and specifications only in connection with this Agreement, and shall not disclose the same to any other persons, firms, corporations, or other government entity without obtaining the prior written consent of the City.

2. Park Construction

- A. After the City Council has approved the Park design plans, the City will be responsible for letting and administering all contracts related to construction of the Park improvements. The City Council agrees to consider a resolution waiving its purchasing policy requirements in order to purchase Park equipment from Variety KC and contract with it for installation and construction.

3. Park Funding

- A. The parties anticipate a total Park project budget of approximately \$750,000.00. Any previously approved Park design plans may be modified to fit within the total project budget.
- B. Variety KC agrees to contribute up to \$250,000.00 to be used towards Park construction and installation costs ("Costs").
- C. The City agrees to contribute up to \$500,000.00 towards the Costs. In no event shall the City be obligated to contribute more than this amount.
- D. Following the City Council's approval of the Park design plans and assuming the City Council adopts a resolution as contemplated in Section 2.A, the parties will enter into a separate agreement providing for the terms upon which Variety KC shall function as the contractor for the Park project and in light of its financial participation, as well as but not limited to, customary terms associated with a public improvement project such as contract amount, timing of payments, insurance requirements, performance and payment bonds, prevailing wage, safety, etc.

4. Naming Rights

- A. In exchange for and contingent on Variety KC's financial participation as referenced in Section 3, the City agrees to grant Park naming rights to Variety KC. Specifically, Variety KC and the City shall mutually agree upon the name of the Park (the "Name"). The Park will continue to be so named for the Term of this Agreement unless the parties agree otherwise. The City will make commercially reasonable efforts to ensure that the Park is referred to by its Name and shall cooperate with Variety KC's efforts to do the same.
- B. Signage containing the Name shall be placed and displayed as mutually agreed upon by Variety KC and the City. Any other Park funding source signage will not be recognized with more visibility than the Name signage, and instead will comprise a plaque, brick, or other similar type of less-visible marker.
- C. The parties will coordinate publicity efforts as it relates to the Park. Publicity efforts shall include, but are not limited to, media, newsletter, e-news, social media, speeches and pictures.
- D. If Variety KC or any of its officers, directors, or board members commits any act which, in the reasonable and good faith opinion of the City, would disparage or impair the reputation and integrity of the City (including, without limitation, being convicted of any felony or a crime involving moral turpitude, ethical violations, sexual allegations involving any minor, or any other act of moral

turpitude)(collectively, "Negative Activity"), the City shall have the right to terminate this Agreement by providing thirty (30) days prior written notice to Variety KC outlining such Negative Activity and exercising the City's right to terminate the Agreement ("City Cure Notice"). In the event Variety KC fails to take any and all actions reasonably necessary to address, mitigate or disassociate from any such Negative Activity to the reasonable satisfaction of the City within thirty (30) days of receipt of the City Cure Notice or in the event no such action could reasonably be undertaken that would avoid disparaging or impairing the reputation and integrity of the City, the Agreement shall automatically terminate upon expiration of the City Cure Notice. If the Agreement terminates under this Section, then no termination fee pursuant to Section 6.B shall be due from the City.

5. Ownership of Marks

- A. Variety KC represents and warrants to the City that (a) Variety KC owns all right, title and interest in and to its trademarks, service marks, and trade names and all logos or commercial or advertising symbols used in connection with or associated with the Name (the "Marks") free and clear of any liens, claims or encumbrances, (b) Variety KC has the right and authority to license to the City the rights to use the Marks as expressly authorized in this Agreement, and (c) no Mark infringes the copyright, trademark or other rights of any third party.
- B. Variety KC shall indemnify, defend, and hold the City and its officers, employee's and agents harmless from and against all claims, liabilities, damages, demands, costs, fees, fines, penalties, other expenses, suits, proceedings, actions and causes of action of any and every kind and nature (including reasonable attorneys' fees) incurred or to be incurred by the indemnified party (collectively, "Claims") arising out of, in connection with or as a result of (a) a breach by Variety KC of its representations, warranties, or covenants under this Agreement or (b) the use by the City of the Variety KC Marks as authorized herein. The provisions set forth in this Section shall survive the expiration or termination of this Agreement.

6. Term and Termination

- A. The term ("Term") of this Agreement with respect to the naming rights and signage installation rights granted herein shall be twenty-five (25) years, commencing on the first day that the Park is open to the public following completion of construction of the Park improvements as determined by the City, unless otherwise terminated in accordance with the terms and provisions contained herein.
- B. The City may without reason or without cause terminate this Agreement at any time. The City shall notify Variety KC at least one (1) year prior to the termination date if it decides to terminate the Agreement pursuant to this Section.

In the event termination for convenience is effected~~ed~~affected by the City, the City shall pay to Variety KC a termination fee which shall be due and payable within three (3) business days after the termination date. The termination fee shall be equal to \$10,000 for each year that remains in the Term.

7. Default

- A. A default shall be deemed to have occurred hereunder if:
- i. Variety KC fails to make a payment required under this Agreement.
 - ii. The filing by or against Variety KC of any petitions in bankruptcy.
 - iii. The occurrence of any act or omission on the part of Variety KC that deprives it of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of its business.
 - iv. Either party fails to perform or observe any material term, covenant, condition or provision of this Agreement; and such breach continues for a period of thirty (30) days after written notice to the defaulting party; or if such breach cannot be cured reasonably within such thirty (30) day period and the defaulting party fails to commence to cure such breach within thirty (30) days after written notice or fails to proceed diligently to cure such breach within a reasonable time period thereafter.
- B. In the event of a default by either party, the other party shall have the right to take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein and to enforce the performance and observance of any obligation, agreement or covenant of the allegedly defaulting party. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default of the other party.

8. Additional Provisions.

- A. No amendment of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.
- B. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability to perform and have access to the Park as provided for herein, such invalidity, illegality or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

- C. The rights and obligations created by this Agreement are unique to Variety KC and shall not be transferred or assigned by Variety KC except with written consent of the City.
- D. All notices required to be given under this Agreement shall be given by certified or registered mail or Overnight Courier, addressed to the proper party to the following addresses, or at such other address as may be subsequently given pursuant to this Section and shall be deemed given when deposited in the Mail, postage prepaid:

If to the City:	If to Variety KC:
City of Gladstone, Missouri Attn: City Manager 7010 N Holmes Street Gladstone, Missouri 64118	Variety of Greater Kansas City - Tent 8 Attn: Marc Harrell, Executive Director 4050 Pennsylvania Ave., Ste 115-77 Kansas City, MO 64111

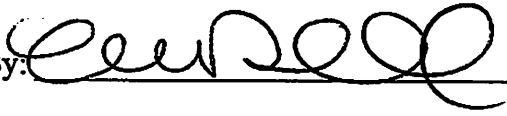
- E. Any failure of either party to comply with any provision of this Agreement may only be waived expressly in writing by the other party. The waiver by either party of any default or breach by the other party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Agreement.
- F. Nothing in this Agreement shall constitute or be construed to constitute a lease of the City's real property.
- G. No provision of this Agreement will be interpreted against any party solely because the party or its legal representation drafted the provision.
- H. Unless specifically designated herein, the parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes. Nothing contained in this Agreement shall be determined to create a partnership, joint venture, principal- agent, employer-employee or similar relationship between the City and Variety KC with respect to Variety KC's activities conducted at the Park pursuant to the terms of this Agreement.
- I. This Agreement and all matters or issues collateral hereto shall be governed and construed in accordance with the laws of the State of Missouri without respect to conflicts of law principles. Any actions concerning interpretation or enforcement of this Agreement shall be brought in Platte County, Missouri.
- J. No party shall be liable or responsible to the other party, nor be deemed to have

defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, as follows: (a) acts of God; (b) flood, fire, or earthquake; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; and (e) actions, embargoes or blockades in effect on or after the date of this Agreement. The party suffering a Force Majeure event shall give notice within 10 days of the Force Majeure event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure event are minimized,

- K. This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in this Agreement, and it may not be amended except by a writing signed by all parties. There are no oral or written representations, agreements, understandings or circumstances which modify any of the provisions hereof.
- L. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all counterparts together shall constitute but one and the same instrument.
- M. The persons signing this Agreement on behalf of Variety KC and the City, respectively, are authorized to do so.

[Remainder of page intentionally left blank]

Variety of Greater Kansas City - Tent 8:

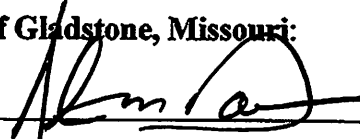
By: 

Name: Marc Harrell

Title: Executive Director

Dated: 11/20/23

City of Gladstone, Missouri:

By: 

Name: Robert Baer

Title: City Manager

Dated: 11/30/23

Attest:


Kris Keller