

**City of South Daytona**  
**Office of the City Manager**

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



**MEMORANDUM**

To: James L. Gillis Jr., City Manager  
From: Becky Witte, Deputy City Clerk  
Re: Consideration of approving the Temporary License Agreement with 2900 Ridgewood Owner, LLC for a Temporary Debris Management Site in response to Hurricane Ian  
Date: October 5, 2022

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The City began collecting debris from the City rights-of-way following Hurricane Ian on Wednesday, October 5, 2022. Before collection could begin, the Department of Environmental Protection (DEP) required the City to permit a Disaster Debris Management Site. The Disaster Debris Management Site is used to bring, stage and grind the debris before sending it to the final disposal site (Volusia County Landfill).

Staff contacted the developers for 2900 S. Ridgewood Avenue (old Cemex site) to utilize their site temporarily for this purpose. In compliance with the City's Emergency Declaration via Resolution 2022-26, City Manager Gillis executed the agreement to expedite the Disaster Debris Management Site Permit from DEP.

In accordance with our emergency procurement procedures, staff is requesting the City Council formally approve the Temporary License Agreement for a Temporary Debris Management Site in response to Hurricane Ian with 2900 Ridgewood Owner, LLC. It is important to note that the property owner was generous enough to let the City utilize the property without cost.

## **TEMPORARY LICENSE AGREEMENT**

This Agreement (the "Agreement") dated as of October 1, 2022 (the "Effective Date"), between 2900 Ridgewood (Daytona) Owner, LLC, a Delaware limited liability company ("Licensor"), and the City of South Daytona, a Florida municipal corporation ("Licensee"), and for temporary license of a portion of Licensor's real property located at 2900 S. Ridgewood Avenue, South Daytona 32119, being parcel ID #s 5333-00-00-0100, 5333-11-00-0070, and 5333-11-00-0100 (the "Property"), as more particularly described hereinafter.

### **1. Property**

Subject to the terms and conditions of this Agreement, Licensor does hereby grant to Licensee a non-exclusive, revocable license across the area of the Property more specifically identified on Exhibit "A" attached hereto (the "License Area") for the sole purpose of the Use (as defined in Section 3.1 below). Such grant conveys no ownership, leasehold or easement interest to Licensee in the Property or any other property of Licensor and Licensee waives any right it may have to avail itself of any rights afforded to tenants under the laws of the state of Florida. This Agreement is a personal agreement between Licensor and Licensee, and shall not encumber or run with title to the Property. Licensee shall not (i) do or permit anything to be done, nor bring or keep anything in or around the Property that will increase the risk of fire or other loss, (ii) bring flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances onto the Property, (iii) do or permit anything to be done which may be a nuisance to owners of any adjacent property to the Property or any other occupants of the Property, or (iv) commit or suffer any waste upon or about the Property. Licensee shall cause all parties operating on behalf of Licensee to use all equipment in accordance with all applicable legal requirements.

### **2. Term**

The term of this Agreement (the "Term") shall commence on the Effective Date, and expire sixty (60) days thereafter; provided, however, that Licensee shall have the one-time right to extend the Term for an additional period of sixty (60) days by providing written notice of such election to Licensor no less than five (5) business days prior to the expiration of the initial Term.

### **3. Use of Property**

#### **3.1. Use Provision**

Licensee's use of the license granted herein shall be solely for use of the License Area as a temporary debris reduction site in response to Hurricane Ian (the "Use"), which shall permit Licensee and its contractors to bring, stage, grind, and load such debris to the final disposal site outside of the Property.

#### **3.2. "As Is" Acceptance of Property**

Licensee accepts the Property from Licensor in "as is" condition.

#### **3.3. Insurance**

Licensee shall keep in force throughout the Term a commercial general liability insurance policy or policies to protect Licensor and its agents, employees, parties, lender, officers, directors, partners, principals, members, property manager, parent, subsidiary and other affiliates (collectively, the "Licensor Parties") against any liability to the public or to Licensee or any party arising under Licensee in connection with or arising out of the use of, or resulting from any accident occurring in or upon, the Property, with a limit of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 in the aggregate, covering bodily injury and property damage liability.

#### **3.4 Indemnity**

Licensee agrees to indemnify and hold harmless Licensor and the Licensor Parties from and against any and all losses, costs, damages, liens, claims, liabilities or expenses (including, but not limited to, reasonable attorneys' fees, court costs and disbursements) incurred by Licensor and/or any of the Licensor Parties arising from or by reason of (a) the entry into and/or use of the Property by Licensee and/or any party acting on its behalf, (b) the License granted herein or (c) any breach or default by Licensee hereunder; provided, however, that the foregoing indemnity and hold harmless obligation shall not apply to any items directly

resulting from the gross negligence or intentional misconduct of Licensor or the Licensor Parties. The aforementioned indemnification and hold harmless obligations shall not be construed as a waiver of Licensee's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein.

#### **4. Surrender of Possession**

Upon the expiration of the Term or the sooner termination of this Agreement, Licensee shall surrender the Property and all keys thereto to Licensor in good order and repair (ordinary wear and tear excepted) and shall remove all of Licensee's property from the Property and repair any damage to the Property caused by such removal. If Licensee fails to remove within one (1) day after the expiration or earlier termination of this Agreement all of Licensee's property from the Property, the same may be deemed abandoned, and Licensor may, at Licensor's option, retain or remove and dispose of such property, at Licensee's expense and without accountability to Licensee. Any expenses incurred by Licensor to repair any damage to the Property and/or remove and dispose of Licensee's property shall be paid by Licensee within ten (10) days after receipt of an invoice therefor.

#### **5. Waiver of Trial by Jury**

LICENSOR AND LICENSEE EACH AGREE TO AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF LICENSOR AND LICENSEE, LICENSEE'S USE OR OCCUPANCY OF THE PROPERTY AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

#### **6. Governing Law, Venue and Attorney Fees**

This Agreement shall be construed and governed by the laws of the state of Florida. Venue for any litigation arising out of this Agreement shall be in State Court, Volusia County, Florida. The prevailing party to any litigation shall be entitled to be reimbursed reasonable attorney fees and costs.

Signature

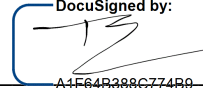
City of South Daytona

By: James L. Gillis, Jr.

Title: City Manager

Date: \_\_\_\_\_

DocuSigned by:



Signature

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2900 Ridgewood (Daytona) Owner, LLC  
Thomas Wagoner

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

Title: Owner

10/4/2022

Date: \_\_\_\_\_

Exhibit "A"

License Area

EXHIBIT TO LICENSE  
AGREEMENT

