

LICENSE AGREEMENT

This LICENSE AGREEMENT (the "Agreement") is made as of _____, 2021, by and between the City of Fort Lauderdale, a Florida municipal corporation ("LICENSOR" or "CITY"), having its principal place of business at 100 North Andrews Avenue, Fort Lauderdale, FL 33301, **David Mancini & Sons**, Inc. a Florida for profit corporation ("LICENSEE" or "CONTRACTOR"), having its principal place of business at 2601 Wiles Road, Pompano Beach, FL 33073. Hereinafter, the Licensor and Licensee collectively shall be referred to as Parties or individually as Party.

RECITALS

WHEREAS, Licensee will be installing new stormwater infrastructure within the Edgewood Neighborhood to address recurring flooding throughout the neighborhood (the "Project") and in connection with its construction, the Licensee has requested the use of City-owned property located at 3110 SW 8 Avenue, Fort Lauderdale, FL 33315 (the "Premises") owned by Licensor for the purpose of storing and staging certain materials and equipment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS

The foregoing recitals are true and correct and incorporated herein by this reference.

2. LICENSE

A. Grant of License:

Licensor hereby grants Licensee an exclusive license to use 50,000 SF of the Premises located at 3110 SW 8 Avenue, Fort Lauderdale, FL 33315 and legally described as follows:

PARCEL "A", "3110" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 182 PAGE 171 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

for the purpose of storing and staging materials, office container and construction equipment related to development of the Project. Notwithstanding, Licensee shall not be permitted to store any hazardous waste, contamination, substances or materials on the Premises.

B. License Fee:

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Licensee shall pay to Licensor the annual base rent of Eighteen Thousand and No/100 dollars

(\$18,000) commencing with the Commencement Date of this Agreement, and each anniversary date thereafter, due and payable to the City of Fort Lauderdale and delivered to the City of Fort Lauderdale – City Manager’s Office, Real Estate ,100 N. Andrews Avenue, Fort Lauderdale, FL 33301. In the event of an early termination, the base rent shall be prorated through the date of termination and the unearned portion of the base rent shall be refunded to Licensee.

c. Improvements:

The Licensee agrees to restore the Premises , prior to the date the Premises are returned to the Licensor, to its condition existing prior to the date Licensee took possession. (the “Improved Condition”). The Licensee shall submit a proposal (the “Proposal”) to Licensor no more than sixty (60) days prior to the date the Premises are returned to the Licensor, setting forth the details of the Improved Condition. The Parties agree to work in good faith to agree to the Improved Condition within Fifteen days (15) from the date the Licensee submit the Proposal to the Licensor. If the Parties cannot agree to the restoration work, then the Licensee shall pay \$10,000 to the City upon demand in lieu of restoring the Premises.

C. Licensee’s Obligations:

During the Term, Licensee shall be responsible for the following:

- (i) Properly secure the Premises with site fencing around the perimeter of the Premises; and
- (ii) Keep the Premises clean from any and all debris and trash.
- (iii) Preserve and protect the trees surrounding the premises

D. Insurance:

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor’s insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor’s liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City’s Risk Manager.

The coverages, limits, and/or endorsements required herein shall protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of

coverage to protect the Contractor against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Pollution and Remediation Legal Liability (Hazardous Materials)

For the purpose of this section, the term "hazardous materials" includes all materials and substances that are designated or defined as hazardous by Florida or federal law or by the rules or regulations of Florida or any federal agency. If work being performed involves hazardous materials, the Contractor shall procure and maintain any or all of the following coverage, which will be specifically addressed upon review of exposure.

Contractors Pollution Liability Coverage

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of this Agreement, including but not limited to, all hazardous materials identified under the Agreement.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing

work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of

such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Contractor that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Contractor's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

E. No Possessory Rights:

Notwithstanding anything contained herein to the contrary, the parties acknowledge and agree that no provision of the Agreement shall in any way be construed as creating: (i) any property rights of any kind for Licensee in the Premises; or (ii) any landlord-tenant relationship or leasehold interest of any kind or any possessory rights for Licensee with respect to the Premises. Licensee specifically acknowledge and agree that the Agreement grants them only a license to use the Premises and they specifically waive any and all claims to a possessory interest in the Premises.

F. Condition of Premises, Alterations and Maintenance:

Licensee shall have no right whatsoever to make any permanent alterations, additions or improvements to all or any portion of the Premises without Licensor's prior written approval, in its sole discretion. Notwithstanding, Licensee shall have the right to install

temporary fencing and project signage, install temporary site lighting, Licensee shall maintain the Premises in good and clean condition, and Licensee shall promptly remove all waste from the Premises that was placed or brought to the Premises by Licensee, its employees, or business invitees (collectively, the "Licensee Parties"). Licensee specifically agrees to remove, at its sole cost and expense, any toxic, hazardous or petroleum products that may be discharged or deposited onto the Premises in connection with Licensee's activities hereunder, however Licensee shall not be liable or responsible for existing hazardous conditions. In the event any hazardous conditions are discovered on the premises, Licensee may, at its sole option, terminate this agreement immediately upon discovery thereof without penalty whatsoever.

Licensor makes no representation or warranties that the Premises are zoned for the proposed use, is fit for a particular purpose or regarding the condition of the Premises. Licensee have performed the necessary inspections of the Premises and have determined whether they are suitable for the purposes intended. Further, Licensee accept the Premises "as-is" "where-is" and "with all faults" unless otherwise stated herein.

3. TERM

A. Term & Termination:

The initial term of this Agreement shall commence upon the date the last Party executes this Agreement (the "Commencement Date") and continue for twenty-four (24) months thereafter unless sooner terminated as provided for herein (the "Term"). Either party may terminate this Agreement at any time during the Term or at any time thereafter upon Sixty (60) days written notice to the other Party prior to the desired date of termination, without cause or penalty whatsoever. In the event that emergency conditions arise within the City that present an imminent threat to the health, safety or welfare of persons or property, the City Manager, in his sole discretion, may temporarily or permanent suspend this Agreement. In such a circumstance, notice shall be provided to Licensee at the addresses noted in the preamble.

B. Survivals:

Any provision of this Agreement that by its context or nature is to survive the Term or any other termination of the Agreement, shall survive the Term or such other termination.

4. MISCELLANEOUS

A. No Offer:

This Agreement shall not be effective and shall not be relied upon by the Parties unless and until such time as it has been executed by Licensee, and Licensor, and a copy of the Agreement, which has been fully executed by the Parties, has been delivered to every Party.

B. Notice:

All notices required or provided for under this Agreement shall be in writing and (i) delivered by Federal Express or other nationally recognized overnight air courier; or (ii) sent by registered or certified mail return receipt requested, to the addresses set forth above or such other persons or places as either Party may from time to time designate by written notice; or (iii) by email. Notices given in such manner shall be deemed effective upon receipt or refusal.

C. Successors and Assigns:

The Agreement shall be binding and inure to the benefit of the Parties hereto, their heirs, personal representatives, successors and assigns.

D. Indemnity:

Licensee shall protect, defend, indemnify and hold harmless the Licensors, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Licensee under this License, conditions contained therein, the location, maintenance, use or occupancy of the Premises, or the breach or default by Licensee of any covenant or provision of this License, the use, storage or release of hazardous substances on the Premises and any and all claims made by contractors, subcontractors, materialman or laborers related to any alterations, repairs or other improvements made to the Premises, except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the Licensors, its officers, agents and employees acting within the course and scope of their employment. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation, operation, maintenance, repair or restoration of the Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

Licensee further agree to investigate, handle, respond to, provide defense for, and defend any such claims arising out of this License at its expense and agree to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the Licensors, Licensee shall assume and defend not only themselves but also the Licensors in connection with any claims arising out of this License and any such defense thereof shall be at no cost or expense whatsoever to Licensors, provided that the Licensors shall retain the right to select counsel of its own choosing. The indemnification obligations set forth herein shall survive termination of this License for a period coincident with the statute of limitations period applicable to the offending act, omission or default.

E. Liability Disclaimer and Waiver:

Licensors disclaims any liability for damage to any Licensee's vehicle, equipment, containers, signage, employee, agent, or property, except in the event that such damage

is caused or contributed to by the negligence or willful misconduct of Licensor, its agents, or affiliates acting within the course and scope of their employment.

F. Force Majeure:

No Party shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such Party (a "Force Majeure" event), including, without limitation, acts of God, nature, strikes, lockouts, riots, acts of war, epidemics, fire, earthquakes, catastrophic equipment failures, or other disasters. The Party whose performance is impaired because of the occurrence of an event of Force Majeure must notify the other Parties of the situation in writing as soon as reasonably practical. Without penalty to any Party, the time for performance under the Agreement shall then be extended for a period equal to the delay; provided, that if the Force Majeure event lasts longer than 30 consecutive days or 60 days in total, any Party shall have the right to terminate the Agreement.

G. Waiver:

A failure of any Party to insist upon or enforce any term or provision or to exercise any right, option, or remedy of the Agreement, or to require at any time performance of any provision hereof, shall not be construed as a waiver of any such terms or provision. No waiver by any Party of any term or provision hereof shall be binding unless made in writing and signed by all Parties.

H. Severability:

If any provision of the Agreement or the application of a provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement and the application of the invalid or unenforceable provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected, and the remainder of the Agreement shall otherwise remain in full force and effect. Moreover, the invalid or unenforceable provision shall be reformed, if possible, so as to accomplish most closely the intent of the Parties consistent with applicable law.

I. Construction of Language:

The Agreement has been negotiated "at arm's length" by and between Parties, each having had the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Agreement. Therefore, the Agreement shall not be more strictly construed against any Party by reason of the fact that one Party may have drafted any or all of the provisions of the Agreement.

J. Entire Agreement and Amendments:

The Agreement contains the complete understanding of the Parties, superseding any prior agreements or writings (whether written or verbal) with respect to the subject matter hereof and may not be changed or modified other than by an agreement in writing signed

by the Parties. The Agreement may be executed in counterparts, each of which shall be deemed an original; and such counterparts when together shall constitute but one agreement. The Parties agree that facsimile, email and electronic signatures shall be deemed, and shall constitute, originals for all purposes.

K. Governing Law and Jurisdiction:

The Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of laws. If any dispute arises out of or relates to this Agreement or the breach hereof, and if any Party shall obtain legal counsel or bring an action against the other to enforce or interpret any provision of the Agreement, including the collection of past due monies owed hereunder, the non-prevailing Party(ies) shall pay to the prevailing Party all costs and expenses associated with therewith, including, without limitation, reasonable attorneys' fees and costs and those on any appeal, all of which shall be payable whether or not any action is prosecuted to judgment. Any sums owed by one Party to another, which are not paid within the period required under the Agreement, shall accrue interest at the maximum rate allowable under applicable law. The Parties agree that jurisdiction to adjudicate any case or controversy involving the Agreement shall exclusively be in the state courts located in Broward County, Florida.

L. Waiver of Jury Trial:

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE); THIS WAIVER BEING A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THE AGREEMENT.

M. Sovereign Immunity:

Nothing herein shall be construed as a waiver of Licensors' sovereign immunity.

N. Mechanic's Liens:

Licensee shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of Licensor in and to the Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the Licensee, or their agents, servants, employees, contractors or officers or on account of any act or omission of said Licensee as to Licensor's right, title or interest in and to the Premises. All persons contracting with the Licensee, or furnishing materials, labor or services to said Licensee, or to their agents or servants, as well as all persons shall be bound by this provision of this agreement. Should any such lien be filed,

Licensee shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. Licensee shall not be deemed to be the agent of Licensor, so as to confer upon a laborer bestowing labor upon or within the Premises or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the Licensee's right, title or interest in and to the Premises. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the Licensor.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

DAVID MANCINI & SONS, INC., a Florida for profit corporation

Type or print name

By: _____

Print Name: _____

Title: _____

Type or print name

STATE OF FLORIDA:

COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021, by (Signor) _____ as (Title) _____ of DAVID MANCINI & SONS, INC., a Florida for profit corporation on behalf of DAVID MANCINI & SONS, INC., a Florida profit corporation.

Notary Public signature

Name Typed, Printed or Stamped

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

**CITY OF FORT LAUDERDALE, A
MUNICIPAL CORPORATION OF THE STATE
OF FLORIDA**

WITNESSES:

[Witness type or print name]

[Witness type or print name]

By: _____
Dean J. Trantalis, Mayor

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

ATTEST:

Jeffery A. Modarelli,
City Clerk

Approved as to form:
Alain E. Boileau, City Attorney

By: _____
Lynn Solomon, Esq.
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online, this ____ day of _____, 2021, by DEAN J. TRANTALIS, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida on behalf of the City of Fort Lauderdale.

Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this by means of ☐ physical presence or ☐ online, this ____ day of _____, 2021, by CHRISTOPHER J. LAGERBLOOM, ICMA-CM, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida on behalf of the City of Fort Lauderdale.

Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____