

LICENSE AGREEMENT
FOR
CONSTRUCTION STAGING
709/717 W. CENTRAL BOULEVARD

This License Agreement is made and entered into to be effective as of the ___ day of _____, 2016, by and between **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (City) and **GARNEY COMPANIES, INC.** a Florida corporation (“Garney”).

RECITALS

A. City owns 709 and 717 W. Central Boulevard, Orlando, Florida more specifically described in **Exhibit “A”** attached and made a part hereof (“Premises”).

B. City and Garney have agreed to the terms and conditions of a license for the Premises for use as a construction staging area to be used in conjunction with the construction of the W. Central Blvd. Gravity Sewer, Roadway, Utility and Streetscape Project (“Project”).

C. City and Garney will enter into this license (“License”) of the Premises on the terms and conditions set forth herein.

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

1. Recitals. The foregoing Recitals are true, correct and are incorporated into and made a part of this License as if fully set forth herein.

2. Definitions. The following terms shall have the meanings provided when capitalized in this License, except where the context requires to the contrary:

A. “Commencement Date” shall mean the date on which the License commences as set forth in **Section 4**.

B. “City Event of Default” shall mean as set forth in **Section 16. C**.

C. “Expiration Date” shall mean the date the License is set to expire listed in **Section 4**.

D. “Intended Use” shall mean as set forth in **Section 6**.

E. “License” shall mean this License.

F. “Mutual Right to Terminate License for Convenience” shall mean the right of either party to terminate the License as provided in **Section 9** hereof.

G. “Premises” shall mean the real property described in **Section 3**.

H. “Term” shall mean as set forth in **Section 4**.

I. “Transfer” shall mean as set forth in **Section 24**.

J. “Garney Event of Default” shall mean as set forth in **Section 16.A**.

3. Premises. City hereby grants a license to the Premises to Garney for its use of the Premises as described in section 6 below. Garney agrees to abide by all terms and conditions of this License.

4. Term of License. The term of this License shall begin on February___, 2016 (“Commencement Date”) and end on _____, 2016 (“Expiration Date”). The time period between the Commencement Date and the Expiration Date is sometimes herein referred to as the “Term”. To the extent authorized in this License the Term may be extended or terminated by such things as the Mutual Right to Terminate License For Convenience described in **Section 9**.

5. Renewal of License. Provided Garney is not in breach or default of the License (beyond any applicable cure or grace period, Garney shall have the option of extending the Term for up to two (2) additional three (3) month terms, or any portion thereof, upon the same terms, covenants, conditions set forth herein, except as follows: Extension option to terminate at completion of the Project or when Garney’s portion of the Project is complete. Garney shall provide the City with written notice of any renewal of the License provided for herein.

6. Intended Use of Premises. Garney shall use the Premises solely as a construction staging and lay down area, primarily for storing materials, construction office and related parking (if applicable and permitted) which will be used in the construction of the Project. The foregoing described uses are sometimes herein collectively referred to as the “Intended Use”.

7. License Fee. No License Fee shall be due under this License.

8. Improvements & Equipment.

A. Prohibition Against Improvements. Garney will not construct any improvements to the Premises, except after the written approval of City, which may be withheld for any or no reason in its sole and absolute discretion.

B. No Liens Against City Property. Garney acknowledges that under Florida law, City property including but not limited to the Premises is not subject to Florida’s Construction Lien Law.

9. Right to Terminate License for Convenience. Notwithstanding anything to the contrary otherwise stated in this License, either party, for its convenience and any or no reason, may upon thirty (30) calendar days prior written notice to the other terminate this License, without liability, the same as if the termination date contained in the notice were the final Expiration Date of this License.

10. Taxes.

A. Real Estate Taxes. Garney shall pay to City any real estate or other taxes assessed against the Premises during the Term.

B. Florida State Sales Tax. Garney shall be responsible for the payment of any applicable sales and use taxes (or any excise taxes imposed in lieu thereof) which may now or hereafter be levied by the State of Florida or any other governmental unit on all payments due under this License that may be classified as rent by such taxing authorities. The current State of Florida sales tax in Orange County is 6.5%.

10. Repairs and Maintenance. Garney shall be solely responsible for the cleaning, repair, and maintenance of the Premises. Garney shall secure the Premises with perimeter fencing and maintain the Premises in a good, safe and sanitary condition throughout the term of the License.

11. Surrender of Premises. Upon the expiration or termination of this License, Garney shall surrender the Premises to City, leveling the ground, removing all debris, including surface rocks and gravel, leaving at least six (6) inches of clean dirt fill on the surface, planting Bahia grass seed or sod and arranging for watering the ground (or sod) for at least six (6) months.

12. City Inspection. City may conduct inspections of the Premises as City determines, upon twenty-four (24) prior notice. Garney shall have thirty (30) days from its receipt of a list of any deficiencies within which to correct them. If Garney fails after thirty (30) days thereafter (or such shorter period as may be required in an emergency) to any maintenance or repairs required by City, City may elect to make any corrections or address any maintenance deficiencies and charge Garney. Any repairs, replacements or maintenance shall be performed in a good and workmanlike manner.

13. Utilities. Garney shall arrange and pay for the installation and cost of all needed utilities for the Premises.

14. Signage. Garney shall not install signage within the Premises without the prior, written consent of the City. All signage is subject to the sign regulations of City and the Downtown Development Board (DDB) (if applicable). Since the Premises is public property owned by City, political campaign signs are prohibited on the Premises pursuant to Section 64.252 of the Code.

15. Hazardous Materials. Garney shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials. Garney shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought onto the Premises, any such materials or substances except to use in the ordinary course of Garney's business, and then only after written notice is given to City of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local laws and the regulations adopted under these acts. If any governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Garney to City upon demand as additional charges if such requirement applies to the Premises. In addition, Garney shall execute affidavits, representations and the like from time to time at City's request concerning Garney's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Garney shall indemnify Landlord in the manner elsewhere provided in this License from any release of hazardous materials on the Premises occurring while Garney is in possession, or elsewhere if caused by Garney or persons acting under Garney. This provision shall survive the expiration or earlier termination of the License.

16. Default.

A. Garney Events of Default. The occurrence of one or more of the following by Garney shall constitute a Garney Event of Default under this License:

- (1) Failure to make any payment required of Garney hereunder, within fifteen (15) days after written notice that it is due; or
- (2) Failure to perform any other covenant contained herein on its part to be observed, for fifteen (15) days after receipt of written notice from City to Garney of such breach; provided, however, that if the nature of Garney's noncompliance is such that more than fifteen (15) days are reasonably required for its cure, Garney shall not be deemed to be in default if Garney commenced such cure within the fifteen (15) day period and thereafter diligently pursued such cure to completion within forty-five (45) days after transmittal of the notice of default;

B. Default Remedies Against Garney. In the event Garney fails to cure a Garney Event of Default within any applicable time period, without further notice City may elect to take any one or more of the following actions:

- (1) Terminate this License and enter into the Premises, or any part thereof, pursuant to and in accordance with applicable law and expel Garney, or any person occupying the same, and repossess and enjoy the Premises;

- (2) Declare the entire balance of sums due and payable forthwith and maintain any applicable proceeding for the recovery of such sums due, with or without notice, or seek such other remedies as may be necessary to secure the relief sought; and
- (3) Exercise in addition to the foregoing, any and all other rights and remedies available according to the laws of the State of Florida.

C. City Events of Default. It shall be a “City Event Of Default” should City fail to perform any material covenant contained herein on its part to be observed, for fifteen (15) days after receipt of written notice from Garney of such breach; provided, however, if the nature of City’s noncompliance is such that more than fifteen (15) days are reasonably required for its cure, City shall not be deemed to be in default if City commenced such cure immediately and thereafter diligently pursues such cure to completion within forty-five (45) days after transmittal of the notice of default.

D. Default Remedies against City. Should City fail to cure a City Event of Default within any applicable time period, without further notice Garney may elect to take either of the following actions:

- (1) Terminate this License and vacate the Premises, which shall be completed in the same manner as if the Term had expired on the date of Garney’s notice of termination provided to City; or
- (2) File an action for specific performance of this License

No other remedies shall be available against City for a City Event of Default or termination of this License.

17. Indemnification. Garney shall indemnify, defend, save and hold harmless City, its elected and appointed officials, officers, agents, councils, departments, boards, employees, successors and assigns (herein referred to as “Indemnified Parties”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (herein referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Garney or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Garney’s occupancy and use of the Premises. It is the specific intention of the parties that the Indemnified Parties shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnified Parties, be indemnified by Garney from and against any and all claims.

18. Insurance

A. Garney, at its own expense, shall keep in force and at all times maintain during the term of this License the following types and amounts of insurance:

1. Commercial General Liability Insurance:

Commercial General Liability, including Fire Legal Liability Insurance with limits of not less than Two (2) Million Dollars (\$2,000,000.00) combined single limit per occurrence, for Bodily Injury (BI) and Property Damage (PD).

2. Workers' Compensation/Employer Liability Insurance:

Full and complete Workers' Compensation Coverage as required by State of Florida law.

B. City shall be named as an additional insured on each policy required hereunder, except worker's compensation.

C. Garney shall provide City with Certificate(s) of Insurance on all the policies of insurance and renewals thereof on an annual basis in a form(s) reasonably acceptable to City.

D. City reserves the right to modify any aspect of the insurance requirements, including the addition of new types of coverage, as the result of reasonable and prudent risk management review of the activities upon or associated with the Premises.

E. City shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of such action.

F. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, who are licensed and authorized to do business under the laws of the State of Florida.

G. City may waive or amend the insurance coverage requirements contained herein.

H. City is a Florida municipal corporation whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the liabilities of City beyond that provided in Section 768.28, Florida Statutes. Further, nothing herein is intended as a waiver of City's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to, anything which might allow claims otherwise barred by sovereign immunity or operation of law. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall City be liable to Garney (or any person or entity claiming under or through Garney) under any contract, negligence, strict liability, or other legal or equitable theory for any amounts in excess of those limits set forth in Section 768.28 of the Florida Statutes which limits shall be applicable to all manner of claims against City related to this Agreement.

19. Compliance with Laws, Rules and Regulations

A. Garney shall comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations relating to the operation of its business on the Premises pursuant to this License, including, but not limited to, Health Department regulations, the Florida Building Code (FBC), the Americans With Disabilities Act (ADA), City Code, City Policies and Procedures. In addition, Garney shall, at its expense, obtain and maintain in its name all licenses and permits required for the operation of its business on the Premises. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with the foregoing shall be Garney's responsibility.

B. City shall comply with all applicable laws, rules and regulations imposed upon it as the owner of the Premises.

20. Condemnation. In the event the Premises is taken by eminent domain, this License shall automatically terminate as of the date title to the Premises vests in the condemning authority. In the event of any taking under the power of eminent domain, Garney shall not be entitled to any portion of the award paid for the taking by the governing authority and City shall receive the full amount of such award. Garney hereby expressly waives any right or claim to any portion thereof and all damages, whether awarded, as compensation for diminution in value of any improvements to the Premises or the Premises itself shall belong to City. City will inform Garney of the commencement of eminent domain proceedings by any governmental authority.

21. Advertising/Promotion/Marketing. Garney shall not use City's name or logo in advertising without City's prior, written consent.

22. Prohibition against Encumbrance. Garney shall not encumber by mortgage or otherwise Garney's interest in the Premises or this License.

23. Notices. Any notice required or permitted to be given under this License shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as Federal Express) or by United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed to have been delivered and received on the earlier of the date actually received (by whatever means sent, including means not authorized by this article) or on the date of transmittal by telecopier, or the first (1st) business day after having been delivered to a nationally recognized overnight air courier service for "next business day" delivery, or on the third (3rd) business day after having been deposited with the United States Postal Service registered or certified mail, return receipt requested. If any communication is returned to the addressor because it is refused, unclaimed, or the addressee has moved, or is otherwise not delivered or deliverable through no fault of the addressor, effective notice shall still be deemed to have been given. Addresses for delivery of notice shall be as follows:

If to City, to: Real Estate Division Manager
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
Phone No. 407-246-2655
Fax No. 407-246-3129

With a copy to: City Clerk
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

If to Garney, to: Garney Companies, Inc.
370 East Crown Point Road
Winter Garden, FL 34787
Attn: Ethan Tramp
Phone No. 407-877-5903

24. Transfer Prohibited. Neither Garney nor Garney's legal representatives successors in interest by operation of law or otherwise may effectuate a Transfer of this License, without City's prior, written consent. For purposes of this License, "Transfer" shall mean assign in whole or in part this License or allow to occur a change of control of Garney including but limited to how it is operated.

City's prior written consent is required should Garney desire to transfer or assign this License and/or transfer up to one hundred percent (100%) of the membership interests of Garney including but not limited to any of the following: (i) any subsidiary, parent, affiliate, or corporation controlled by or under common control with Garney; or (ii) any legal entity that is the successor, by merger, consolidation, sale of membership interests, liquidation or otherwise, to all or substantially all of the assets of the Garney, Garney's parent company and/or Garney's affiliates. City's consent shall be based upon the City's determination that the proposed transferee has the financial ability to meet Garney's obligations and responsibilities under this License.

City's consent to a Transfer shall not relieve Garney from the obligation to obtain City's consent to any subsequent Transfer. Further, in no event shall any entity which became a transferee with the City's permission, be permitted to make what amounts to a Transfer thereafter without City's consent. The joint and several liability of Garney and any successor in interest of Garney (by assignment or otherwise) under this License shall not in any way be affected by any agreement that modifies the rights or obligations of the parties under this License or any waiver of, or failure to enforce, any obligation under this License. If Garney requests City to consent to a Transfer, Garney shall pay to City, simultaneously with such request (which request must be in writing and provide complete information detailing the proposed transferee and the terms of the proposed Transfer), an administrative fee of Seven Hundred Fifty and

No/100 Dollars (\$750.00). Garney shall also reimburse City for City's reasonable attorneys' fees and costs associated with City's consideration of the Transfer. The administrative fee plus attorneys' fees and costs shall be due and owing whether or not the request to approve the transaction is finally granted. Any Transfer in violation of this Section shall be void.

25. Transfer of City's Interest. In the event of any transfer of City's interest in the Premises, City shall be automatically relieved of any and all obligations and liabilities on the part of City accruing from and after the date of such transfer.

26. Liens. Garney shall insure that no liens or claims of liens are recorded against either the Premises or Garney's Licensehold interest therein, and the recording of a lien or claim of lien, unless removed within thirty (30) days of filing by payment or transfer to a bond, shall be a default by Garney of this License, at City's election.

27. Radon. Radon is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit.

28. Unlawful Discrimination. Garney, for itself, its successors and assigns, covenants and agrees: (a) no person on the grounds of race, color, national origin, age or any other legally protected class shall be excluded from the furnishing or receipt of services, participation in, denial of benefits or be otherwise subject to discrimination in the use of the Premises. In the construction of any improvements on, over or under the Premises, no person on the grounds of race, color, national origin or any other legally protected class shall be excluded from participation therein.

29. Relationship of the Parties. The relationship between the parties hereto is solely that of landlord and tenant and nothing contained herein shall constitute or be construed as establishing any other relationship between the parties, including, without limitation, the relationship of principal and agent, employer and employee or parties engaged in a partnership or joint venture. Without limiting the foregoing, it is specifically understood that neither party is the agent of the other and neither is in any way empowered to bind the other to use the name of the other in connection with the construction, maintenance or operation of the Premises, except as otherwise specifically provided herein.

30. Authority. Each signatory to this License on behalf of the party for whom it is executing this License represents and warrants to all other signatories and parties executing this License that such signatory is duly authorized to execute and deliver this License on behalf of such entity and that no other person or organization is required to join in or sign this License, in order to bind the party on whose behalf such person(s) signs this document. If requested by any party, the requested party agrees to deliver to all others evidence of such authority satisfactory to all others. Each party represents and warrants to the other that the execution and performance of this License by each party has been duly authorized by all applicable laws and regulations and all

necessary corporate/company action, and this License constitutes the valid and binding obligation of such party, enforceable in accordance with its terms.

31. Construction of Agreement. Whenever the context of this License so requires or admits, words in the neuter gender include the masculine and the feminine; and singular; the word “person” includes a corporation, partnership, or unincorporated association as well as a natural person. The fact that a party may be deemed to have drafted or structured any provision hereof shall not be considered in construing the particular provision either in favor of or against such party.

32. Waiver. Failure on the part of either City or Garney to complain of any act or failure to act on the part of the other shall never be a waiver of any respective rights hereunder; however, the foregoing shall not apply to provisions of this License, where a right of Garney is dependent upon notice to be given within a specified period. Further, no waiver at any time of any of the provisions hereof by City or Garney shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. No payment by Garney or acceptance by City, of a lesser amount than shall be due from Garney to City shall be treated otherwise than as a payment on account. The acceptance by City of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and City may accept such check without prejudice to any other rights or remedies which City may have against Garney.

33. Severability. If any term or provision of this License, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforced to the fullest extent permitted by law.

34. Entire Agreement. This License constitutes the entire agreement between the parties relating to the matters set forth herein, and shall supersede all prior written or oral agreements or understandings between the parties.

35. Binding Effect. Except as otherwise expressly provided, the terms hereof shall be binding upon and inure to the benefit of the successors and assigns, respectively, of City and Garney. Reference to “successors and assigns” of Garney is not intended to constitute City's consent to a Transfer, but has reference only to those instances in which City may give consent to a Transfer.

36. Attorneys' Fees, Expenses and Other Costs. The prevailing party in any dispute arising out of or in any manner relating to this License shall be entitled to recover from the other party reasonable attorneys' fees and costs for all pre-litigation, trial, appellate and bankruptcy proceedings, which shall be enforceable whether or not such action is prosecuted to judgment.

37. Section Titles, Interpretation. The titles to the sections contained in this License are for convenience and reference only.

38. Recording. Garney agrees not to record this License or a memorandum thereof in the Public Records of Orange County, FL.

39. Venue. This License shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this License shall be Orange County, Florida.

40. Jury Waiver; Counterclaims. Garney and City waive trial by jury in any action, proceeding, or counterclaim involving any matter whatsoever arising out of or in any way connected with this License. Garney further waives the right to interpose any permissive counterclaim of any nature in any action to obtain possession of the Premises.

This License has been executed by the parties as of the dates set forth below.

CITY OF ORLANDO

By: _____

Mayor/Pro Tem

Print Name. _____

Executed on _____, 2016

Attest:

By: _____
Amy T. Iennaco, Interim City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando,
Florida, only.

_____, 2016.

Assistant City Attorney

GARNEY COMPANIES, INC., a Florida Corporation

By: _____

Title: _____

Print Name: _____

Executed: _____, 2016

Witnesses:

(1) Sign: _____

Print Name: _____

(2) Sign: _____

Print Name: _____

EXHIBIT A
Premises

The South 150 feet of Lots 2 and 3, of POYNTZ & PARRAMORE'S ADDITION TO THE CITY OF ORLANDO, according to the Plat thereof as recorded in Misc. Plat Book 4, Page 195, of the Public Records of Orange County, Florida, an unrecorded subdivision located in Section 26, Township 22S, Range 29E, Orange County, Florida.