



Brevard County
Tourism Development Department



Property Access

License Contract

Keep Brevard Beautiful, Inc.

1620 Adamson Road
Cocoa, FL 32926

Lori Wilson Park
1500 N. Atlantic Ave.
Cocoa Beach, FL 32931

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Property Access License Contract



This Contract, made by and between the **Brevard County Board of Commissioners**, a political subdivision of the State of Florida, hereinafter referred to as “County”, and **Keep Brevard Beautiful, Inc.**, a Florida Profit Corporation whose address is 1620 Adamson Road, Cocoa, Florida 32926, hereinafter referred to as “Licensee”.

Witnesseth

Whereas, the County is the owner, or authorized administrator of certain real property located in Brevard County, Florida, commonly known as **Lori Wilson Park** located at 1500 N. Atlantic Ave., Cocoa Beach, Florida 32931 and

Whereas, the Licensee has expressed a need for access to the Park to house equipment used to clean the beaches; and

Now, Therefore, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

Recitals. The foregoing recitals are true and are incorporated herein by reference.

Section 1. License.

The County hereby grants a temporary, non-exclusive, personal and revocable License to the Licensee at the Park solely for the purpose of housing its equipment used to clean the beaches. Said permission shall include but not be limited to the right to have a semi-permanent storage shed (size - 53 ft. long, 9ft. 6 in. tall, and 8 ft. 8 in. wide) on site at the Park; bring personnel, equipment and property onto the premises to clean the beaches, and the right to remove personnel, equipment, and property from the premises throughout the term of and at the end of this authorization. The undersigned expressly authorized the Licensee to erect a storage shed which may remain in place as long as this agreement exists, but can be removed if there is a termination to this agreement.

The County expressly represents that granting the Licensee such authorization to use the Park shall not result in any compensation to or from the County.

This License shall not be interpreted or construed as granting the right to the Park by any other person, third party, or property owner other than Licensee, except for subcontractors of the Licensee. Licensee shall be present at any and at all times subcontractors are accessing the Park. This License shall not be construed or interpreted as granting or attempting to grant the Licensee access to property owned by any other person or legal entity. This Contract does not operate or confer on, or vest in, the Licensee any title, interest or estate in the Park. This

License may be revoked at any time.

Section 2. Term.

This Contract shall be effective from the date of the last signature for a term of three (3) years. At the end of the initial term, this license shall automatically renew for additional one (1) year terms until terminated by either Party.

Section 3. Americans with Disabilities Act Compliance.

The County and Licensee shall conform to current requirements of the Americans with Disabilities Act in the performance of this Contract, and shall not cause or place on the Park any condition causing the County to become non-compliant. The parties shall work together to remedy any known violations of the Americans with Disabilities Act that may occur.

Section 4. Alterations, Changes, and Additions.

No structural changes, alteration or additions shall be made by the Licensee to the Park without the prior written consent of the county.

Section 5. Assignment.

This Contract may not be assigned, transferred, conveyed or devised to any other person, corporation, partnership or other entity.

Section 6. Attorney's Fees.

In the event of any legal action to enforce the terms of this Contract each party shall bear its own attorney's fees and costs.

Section 7. Construction of Contract.

The parties hereby acknowledge that they have fully reviewed this Contract and its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.

Section 8. Counterparts.

This Contract may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may be transmitted by e-mail and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original Contract bearing actual original signatures and initials within a reasonable period of time following the execution of this contract.

Section 9. Entire Contract.

This Contract shall constitute the entire Contract between the Parties with respect to the matters addressed herein and supersedes any prior Contracts or understandings. Any prior understanding or representation of any kind, relating to the matters addressed herein, preceding the date of this Contract shall not be binding upon either party and is expressly terminated by the execution of this Contract.

Section 10. E-Verify.

- A.** In accordance with Chapter 448.095, Florida Statutes, the contractor shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract; and
- B.** The Licensee shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and
- C.** The Contractor agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.
- D.** The Contractor must meet this requirement, unless:
 - 1) The contract is solely for goods-based procurement where no services are provided; or where the requirement is waived by the Board of County Commissioners;
 - 2) The contract is being executed with a Sole Proprietor who does not hire employees and, therefore, not required to file a Department of Homeland Security Form I-9 (which is the necessary document used for performing an E-Verify search); or
 - 3) The contract is being executed with a company based outside the United States of America and does not have a corporation or office located within the United States of America and does not employ any United States of American citizens.
- E.** Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.
- F.** A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the contractor hires or employs a person who is not eligible for employment.

Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 11. Florida Public Records Law.

Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Licensee of the request and the Licensee shall provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends or legal holidays) of the request so the County can comply with the requirements of Chapter 119, Florida Statutes, Florida Public Records Law. The Licensee may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the County's public records custodian designated below.

If Licensee fails to provide the requested public records to the County within a reasonable time, the Licensee may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties pursuant to Section 119.10, Florida Statutes. Licensee's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If Licensee claims certain information is exempt and/or confidential, it must cite to specific statutory provisions or case law in order to justify removal or redaction of said information.

Should the County face any legal action to enforce inspection or production of the records within the Licensee's possession and control, the Licensee agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Licensee shall hire and compensate attorneys to represent the Licensee and County in defending such action. The Licensee shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

If the Licensee has questions regarding the application of Chapter 119, Florida Statutes, to the Licensee's duty to provide Public Records relating to this contract, contact the custodian of Public Records: Peter Cranis, Director, Tourism Development Office, 150 Cocoa Isles Blvd., St. 401, Cocoa Beach, FL 32931; peter.cranis@visitspacecoast.com, 321-338-0002.

Section 12. Governing Law.

This Contract shall be deemed to have been executed and entered into within the State of Florida and this Contract, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

Section 13. Illegal, Unlawful or Improper Use.

The following shall specifically apply to the Licensee's use of the Parks.

- a) Access to the property shall be in accordance with the all applicable local, municipal, state and federal policies, codes, ordinances and laws including any necessary permits to construct the storage shed.
- b) Site security and equipment safety protocol shall be continuously maintained at the site for the duration of this Authorization. Under no circumstances will the County's personnel be responsible to escort or monitor use of the site. This responsibility falls directly upon the Licensee.
- c) Access by the Licensee and its employees shall be limited to the normal business hours of Sunday through Saturday, dawn to dusk.
- d) The duration of this Authorization shall not exceed 30 years, unless specifically agreed to in writing by the County.
- e) Licensee personnel shall take all reasonable measures to ensure vehicles are maintained in an appropriate manner.
- f) The County is not liable for any damage which may be caused to vehicles, equipment or structures at the site. .
- g) The Licensee will remove the storage shed and vehicles and restore the site to its prior condition upon the termination of this Agreement.

The Licensee shall not make any unlawful, immoral, improper, or offensive use of the Parks nor allow said Parks to be utilized for any purpose other than that hereinabove set forth. Failure of the Licensee to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Parks and terminate this Contract.

Section 14. Indemnification and Insurance.

Licensee agrees that it will indemnify and hold harmless the County, its officers, employees, and agents, against any and all claims, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance, failure in the performance of, or defect in the products or services outlined in this Property Access License Contract. Licensee shall indemnify and hold harmless the County when such claim, damage, loss, or expense is: (1) attributable to bodily injury, sickness, disease, death, or personal injury, or to property damage, including loss of use resulting therefrom, and (2) caused in whole or in part by any negligent, reckless, or intentional act or omission of the Licensee, or its contractors or subcontractors, or any of its officers, employees, or agents, or arises from a job-related injury. The Parties acknowledge specific consideration has been exchanged for this provision.

The County's liability obligations hereunder shall be subject to the right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Property Access License Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity.

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. The Licensee accepts all risks arising from construction or operation of the Project.

The Licensee shall acquire and maintain, and shall require its contractors and subcontractors to acquire and maintain, such liability, workers' compensation, and automobile insurance as required by their current rules and regulations.

At its own expense, the Licensee shall keep in force and at all times maintain during the duration of this contract the following minimum levels of insurance including, but not limited to:

- (a) Automobile Liability Insurance: Commercial Automobile Liability Insurance issued by responsible insurance companies as outlined in subsection (d) below, with combined single limits of not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
 - (b) General Liability Insurance: General Liability Insurance issued by responsible insurance companies as outlined in subsection (e) below, with combined single limits of not less than one million dollars (\$1,000,000.00) per occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability Covering this Contract, and "X-C-U" hazards.
 - (c) Workers' Compensation Coverage and Employer's Liability Insurance providing statutory benefits as required in the State of Florida. The Licensee shall require any subcontractor to provide evidence of this coverage. Additionally, if the Licensee requires working on or around a navigable waterway, the Licensee shall provide evidence of United States Longshoremen's and Harbor Workers (US&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes, or proof of exemption. The Licensee shall be responsible for compliance with these requirements by each subcontractor, vendor or supplier when applicable.
 - (d) Insurance Certificates: The Licensee shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in an industry standard Acord form. Said Commercial Automobile Policy, General Liability Policy and Pollution Liability Insurance shall provide that the County be included as an additional insured via endorsement.
- The Workers' Compensation Policy shall include a waiver of subrogation. The COI shall specify the County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are licensed and authorized under the laws of the State of Florida.
- (e) Contractors and Subcontractors: The Licensee shall require its contractors and subcontractor to obtain and maintain these minimum coverages and limits.

County does hereby covenant with Licensee that it is lawfully seized and possessed of the lands above described and that it has a good and lawful right to convey it or any part thereof.

This License is granted upon the condition that the property will be restored to a condition as nearly as possible to its original condition that existed prior to the use intended by this easement.

Section 15. Interest in the Property.

This Contract is the grant of a personal right to the Licensee. This Contract shall not be construed to create any real property interest in the County's Property.

Section 16. Maintenance.

The County represents that it has the right to grant the License herein described. Licensee shall not undertake any maintenance or improvement of the Park without the expressed written permission of the County, which permission may be withheld at the County's sole discretion.

Section 17. Modification.

No modification of this Contract shall be binding on the County or the Licensee unless reduced to writing and signed by a duly authorized representative of County and the Licensee.

Section 18. Notice.

Notice under this Contract shall be given to the County by mailing written notice postage prepaid, to: Peter Cranis, Director, Tourism Development Office, 150 Cocoa Isles Blvd., St. 401, Cocoa Beach, FL 32931 and notice shall be given to the Licensee by mailing written notice; postage prepaid, to KBB, Bryan Bobbitt, Executive Director, 1620 Adamson Road, Cocoa, FL 32926.

Section 19. Recording.

This Contract shall not be recorded in the official records of Brevard County, Florida, by either party.

Section 20. Revocation.

This Contract may be revoked or terminated by the County upon fifteen days written notice to the Licensee, upon one or more of the following occurrences:

- A. Licensee transfers ownership of all or any part of the Licensees' Property. In the event of transfer of ownership of all or any part of the Licensee's Property, Licensee agrees to make a condition of the sale that the new owner applies thirty days prior to the transfer of title to the County for a Property Access License Contract, which shall not be unreasonably withheld by the County. In the event the County has reason not to enter into a contract with the new owner, the County will notify Licensee within this thirty-day period of the reasons why a Property Access License Contract should not be issued to the prospective new owner.
- B. Licensee obtains alternate vehicle and equipment location area.
- C. Licensee violates any law, rule, regulation, or management plan applicable to the County's

Property, as promulgated by the State of Florida, or any of its agencies; the County; or any other governmental agency with jurisdiction.

- D. Licensee discharges any firearms on or across any portion of the Park.
- E. Licensee conducts any illegal or unauthorized activity at the Parks.
- F. Licensee enters upon or conducts activity at the Parks for uses other than vehicle and equipment location for the purpose of cleaning the beaches during the term of this Contract.
- G. Licensee violates any term, provision, or condition of this License Agreement.
- H. Licensee loses contract with City of Cocoa Beach for beach clean up.

If, in the sole discretion of the County, Licensee's continued use of the Parks for the specific purposes outlined herein interfere with the County's management of the Parks; the County has the discretion to provide alternate access for ingress and/or egress if possible.

Section 21. Responsibility.

The Licensee shall be responsible for abiding by the terms of this Contract. The Department Director shall be responsible for assuring the terms of this Contract are enforced.

Section 22. Right of Entry by County.

The County or its agents may at any time enter in and on the referenced Parks for the purpose of inspection of same and performing such other duties as are required by the terms of this Contract and the rules, regulations, ordinances and laws of any government body.

Section 23. Right to Audit Records.

In the performance of this Contract, the Licensee shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Licensee in conjunction with this Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The Licensee shall retain all documents, books and records for a period of five years after termination of this Contract, unless such records are exempt from section 24(a) of Article I of the State Constitution and chapter 119, Florida Statutes. All records or documents created by or provided to the Licensee by the County in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County.

The Licensee shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Contract and following termination of the Contract if the Licensee does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the Licensee may transfer, at no cost to the County, all public records in possession of the Licensee. If the Licensee transfers all public records to the County upon termination of the Contract, the Licensee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Section 24. Severability.

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 25. Statutes, Laws, Rules and Regulations.

The Licensee's use of the Parks will be in accordance with all applicable laws, rules, regulations, policies and procedures approved by the Tourism Office and Parks and Recreation Department and/or the County.

It shall be the Licensee's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.

Section 26. Termination.

This Contract may be terminated by either party with or without cause upon thirty days written notice to the other party. Upon termination of this Contract, the Licensee shall have thirty days from the date of termination within which to remove any personal property or equipment from any Parks. Any personal property or equipment not removed within said thirty-day period shall become the property of the County.

Section 27. Venue.

Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in court of competent jurisdiction in and for Brevard County, Florida, and **any trial shall be non-jury.**

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In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

Reviewed for legal form and content:



Justin Caron
Assistant County Attorney

**Board of County Commissioners
of Brevard County, Florida**

By: _____
Peter Cranis, Date
Tourism Development Department Director

Licensee:

By:  2/14/23
Brian Robbitt, Executive Director Date
Keep Brevard Beautiful, Inc.