

## **AGREEMENT**

This **AGREEMENT** ("Agreement") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS a political subdivision of the State of Florida, hereinafter referred to as the "County" and KEEP BREVARD BEAUTIFUL, INC., a Florida Not For Profit Corporation hereinafter referred to as "KBB".

### **RECITALS:**

**WHEREAS**, the County owns certain roads, parks and parklands; and

**WHEREAS**, the County has responsibility for maintenance of said roads, parks and parklands; and

**WHEREAS**, the County is authorized to enter into Agreements with KBB for local organizations and groups to participate in an Adopt-An-Area program and individual /special event cleanups to assist with litter removal projects, in accordance with Section 403.4131 Florida statutes.

**NOW, THEREFORE**, in consideration of the covenants herein contained, it is mutually agreed between the County and KBB as follows:

#### **1.0 RECITALS.**

The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference.

#### **2.0 TERM AND OPTION TO RENEW.**

- 2.1 The term of this Agreement begins on the execution date and ends in five years unless extended or sooner terminated in accordance with this Agreement.
- 2.2 It is hereby mutually agreed and understood that KBB may request one additional two-year renewal of the Agreement upon written notice to the County, received at least thirty days prior to the termination of this Agreement. The Agreement, if renewed, shall be renewed under the same terms and conditions as found herein unless modified and agreed to in writing. The parties agree and understand that the County is under no obligation to renew this Agreement.

### 3.0 RECORDS.

#### Florida Public Records Law.

A. Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify KBB of the request and KBB must provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends or holidays) of the request so the County can comply with the requirements of Sections 119.07. KBB 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.

B. If KBB fails to provide the requested public records to the County within a reasonable time, KBB 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. KBB's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination. If KBB 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. KBB shall require any contractors with which it contracts for services to abide by the requirements of Florida's public records laws and all provisions of this Agreement.

C. **If KBB has questions regarding the application of Chapter 119, Florida Statutes, to KBB's duty to provide Public Records relating to this Agreement, contact the Custodian of Public Records: Patricia Strickland, 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940; [To Email the Custodian of Public Records](mailto:patricia.strickland@brevard.net) (321)633-2046.**

### 4.0 OBLIGATIONS OF KBB.

KBB will:

A. Coordinate with the County's Public Works or Parks and Recreation Director which areas will be adopted by an organization/group.

- B. Ensure the adopting organization/group commits to a one-year period of adoption.
- C. Ensure the adopting agency adopts a minimum of a one-mile section or a one-mile radius of a park or parkland for the purpose of performing litter removal at least four times per year.
- D. Provide safety training for the participants.
- E. Provide the participants safety gear, bags, and equipment as required.
- F. Contact the Public Works or Parks and Recreation liaison to arrange an appropriate litter removal schedule that will not conflict with the County mowing or maintenance schedule.
- G. Adults and youth can participate in the program but there must be a minimum of one adult supervisor for every five children.
- H. Arrange for safety training with the KBB Adopt-An-Area Coordinator.
- I. Ensure debris is properly disposed of in public dumpsters.

## **5.0 OBLIGATIONS OF ADOPTING ORGANIZATION/GROUP.**

KBB will ensure adopting volunteer organizations/groups will:

- A. Ensure all participants wear safety vests at all times during the litter removal activity.
- B. Perform litter removal in accordance with safety recommendations.
- C. Remove litter during daylight hours only.
- D. Remove litter during good weather conditions only.
- E. Ensure that all participants wear clothing that will not hinder vision.
- F. Not pick up litter at construction or maintenance sites, bridges, overpasses or on medians.

## **6.0 OBLIGATIONS OF THE COUNTY.**

The County's Director of Public Works or Parks and Recreation shall screen and select the Areas to be adopted.

## **7.0 RULES AND REGULATIONS.**

KBB shall comply with all applicable Federal, State, and County rules, laws, and ordinances.

## **8.0 E-VERIFY.**

8.1 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 KBB during the term of this Agreement; and

8.2 KBB shall expressly require any subcontractors performing work or providing services pursuant to this Agreement 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 Agreement; and

8.3 KBB 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 KBB's enrollment in the program. This includes maintaining a copy of proof of KBB's and subcontractors' enrollment in the E-Verify program; and

8.4 Compliance with the terms of this section is made an express condition of this Agreement and the County may treat a failure to comply as a material breach of the Agreement; and

8.5 KBB, upon registration and participation 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, if KBB hires or employs a person who is not eligible for employment; and

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

8.7 Adopt-An-Area organizations/groups are not considered subcontractors.

## **9.0 INSURANCES.**

KBB, throughout the Term of this Agreement, shall obtain and maintain in full force and affect the following types and amounts of insurance coverage at KBB's expense:

- A. Commercial General Liability Insurance. A policy of Commercial General Liability Insurance, insuring KBB against liability for bodily injury, property damage (including loss of use of property) and personal injury, including contractual liability, and Errors and Omissions. The initial amount of such insurance shall be one million dollars per occurrence. The liability insurance obtained by KBB under this Section shall insure KBB's indemnification and other obligations to the County.
- B. Automobile Liability Insurance. Automobile Liability Insurance, on all owned, non-owned, and hired vehicles, with a combined single limit per occurrence of not less than one million dollars.
- C. Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.
- D. KBB shall provide certificates of insurance annually to the County demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Agreement. KBB shall provide the County with Certificate(s) of Insurance on all of the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County be an additional insured. 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 acceptable to the County and licensed and authorized under the laws of the State of Florida.

## **10.0 HOLD HARMLESS / INDEMINIFICATION.**

- A. KBB agrees and shall indemnify, defend and hold harmless the County from any and all liability, claims, proceedings or causes of action for bodily injury, sickness, disease, death, personal injury, damages to property or loss of use of any property or assets, penalties or fines resulting from or arising out of the performance or actions of KBB, its officers, agents or employees or contractors in connection with this Agreement.
- B. KBB agrees and shall indemnify, defend and hold the County harmless from any and all liability, claims costs, fines, fees, actions, or sanction arising from or in connection with KBB's use or misuse, handling or mishandling,

storage, spillage, discharge, seepage into water bodies or the groundwater supply or release into the atmosphere of any hazardous materials, toxic substances, pollutants or contaminants, whether solid, liquid or gas.

C. KBB agrees that such duty to indemnify, defend and hold the County harmless, includes the duty to either (at KBB's option) assume and conduct the defense of any claim with counsel reasonably acceptable to the County, in which case KBB shall not settle or compromise such claim without the prior written consent of the County, or to pay the cost of the County's legal defense(s) and related legal expenses and costs, including fees or attorneys as may be selected by the County, for all causes of action, claims, proceedings described in this paragraph.

D. This indemnification obligation shall survive the expiration or termination of this Agreement.

E. It is agreed by the parties hereto that specific consideration has been received by KBB under this Agreement for this hold harmless/indemnification provision.

## **11.0 REPORTING.**

11.1 On or before January 2 of each year, KBB shall submit a written report to the Parks and Recreation Director, listing signs that were installed in the previous twelve months. The report will identify the sponsoring organization/group, date the sign was installed, the location of the sign, indicate the length of time the sign has been paid for (one year, two years, etc.), any signs that were not paid for during the year and therefore removed, along with any pertinent notes regarding the Adopted Area.

11.2 On or before the 15<sup>th</sup> of each month, KBB will submit to the Parks and Recreation Director and the Public Works Director a report outlining organizations/groups cleanup statistics. The report to include name of organization/group, Adopted Area, dates of clean ups in the past month, amount of litter collected, types of litter collected along with any pertinent notes regarding the cleanups.

## **12.0 SIGNS.**

12.1 KBB will order, pay for and install all Adopt-An-Area signs that have been approved by the County at the beginning of the adopted section of road or in the area of the park that the organization/group has adopted.

12.2 Upon expiration or termination of this Agreement, KBB will, at their cost, remove all Adopt-An-Area signs from County property.

12.3 The KBB organization sign size shall not exceed 12" X 18" and the size of the adopting organization/group sign shall not exceed 6" X 12".

12.4 The adopting organization/group sign may only contain the name of the adopting organization/group.

12.5 Upon the expiration and/or non-renewal of an organization/group Adopt-An-Area, KBB, will, at their cost, remove the sign from the area or park.

12.6 KBB will, at their cost, replace any damaged signs with fourteen days of notification.

### **13.0 NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing herein shall be construed as a waiver of the County's sovereign immunity, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations and claims. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim or cause of action which would otherwise be barred by sovereign immunity or by operation of law.

### **14.0 ASSIGNMENT AND SUBLETTING.**

KBB, may not, without the prior written consent of the County, which consent may be withheld in the County's sole discretion, assign, transfer, or sell this Agreement, or any interest therein.

### **15.0 ATTORNEY'S FEES.**

In the event of any litigation or arbitration between the parties relating to this Agreement, each party shall bear its own attorneys' fees and costs, including appellate fees and costs. The termination of this Agreement by KBB or the County by reason of default by another party shall not relieve the parties of any obligations theretofore accrued under this Agreement prior to the effective date of such termination.

### **16.0 NOTICES.**

All demands and notices that may be or are required to be given by either party to the other shall be in writing. All notices and demands to KBB shall be addressed to Bryan Bobbitt, Executive Director, 1620 Adamson Road, Cocoa, Florida 32926. All notices and demands to the County shall be addressed to the Parks and Recreation Director, 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940 with a

copy to Public Works Director, 2725 Judge Fran Jamieson Way, Building A, Suite 201, Viera, Florida 32940.

#### **17.0 SUCCESSORS AND ASSIGNS.**

The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heir's successors, executors, administrators and assigns of the parties hereto.

#### **18.0 SEVERABILITY.**

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws (the deletion of which would not adversely affect the receipt of any material benefit or substantially increase the burden of any part hereto) effective during this Term, then and that event, it is the intention of the parties that the remainder of this Agreement, and the Term covered thereby, shall not be affected. All rights, powers, and privileges conferred by this Agreement upon the parties shall be cumulative but not restricted to those given by law.

#### **19.0 APPLICABLE LAW.**

This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Florida.

#### **20.0 VENUE AND WAIVER OF JURY TRIAL.**

The venue of any suit or proceeding brought for the enforcement of or otherwise with respect to this Agreement shall always be lodged in the State Courts of the Eighteenth Judicial Circuit in and for Brevard County, Florida; To the extent permitted by the **COUNTY and KBB EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY.**

#### **21.0 NONDISCRIMINATION.**

KBB for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby, does hereby covenant and agree that:

A. That no person on the ground of race, color or national origin shall be excluded from participation or denied the benefits of or be subject to discrimination in the participation of the Adopt-An-Area program. KBB shall be in compliance with all other requirements imposed by or pursuant to Title 49. Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary Park 21, Non-discrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended. KBB shall operate in accordance with the requirements of Section 504 of the Rehabilitation Act of



1973 (29 u.s.c. 794) and will assure that no qualified handicapped person shall, solely by reason of such person's handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment.

B. That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination

C. That KBB shall use the area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

D. That in the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate the Agreement. The provisions shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

## **22.0 FINANCIAL RESPONSIBILITY.**

The County has no financial responsibility regarding KBB's Adopt-An-Area program. The County's participation in Adopt-An-Area program shall not be interpreted as the County's endorsement of the Sponsor and KBB shall not hold out as such.

## **23.0 TERMINATION.**

Either Party may terminate this Agreement with or without cause upon thirty days written notice to the other Party.

{Remainder of page intentionally left blank}

**WHEREFORE**, the County and KBB have caused this Agreement to be executed, sealed and delivered as of the day and year written below.

**ATTEST:**

**COUNTY:**

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_

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

Rita Pritchett, Chair

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

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

**WITNESSES:**

**KEEP BREVARD BEAUTIFUL, INC.**

\_\_\_\_\_

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

Print Name: \_\_\_\_\_

Bryan Bobbitt, Executive Director

Date: 2/18/23

Brenda S. Hallen

(CORPORATE SEAL)

Print Name: Brenda S. Hallen

**Review for legal form and Content:**

Justin Caron

Justin Caron, Assistant County Attorney