



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Community Services Group

J.3.

10/22/2024

Subject:

Approval Re: Agreement between Brevard County and DAD 1300 N Atlantic Cocoa LLC (DAD 1300) (Westin Cocoa Beach Resort) and assign oversight for the operations and maintenance of Lori Wilson Park to the Parks and Recreation Department (District 2)

Fiscal Impact:

Fiscal Year 24-25 budgeted operation and maintenance costs for Lori Wilson Park are \$232,700, paid by the Tourist Development Tax Beach Fund. In Fiscal Year 24-25, Lori Wilson's rental revenue was \$55,240.

Dept/Office:

District 2 Commission Office

Requested Action:

It is requested that the Board of County Commissioners:

- Approve and authorize the Chair to execute the utilization Agreement with DAD 1300 N. Atlantic Cocoa LLC for the use of Lori Wilson Park;
- Transfer oversight of the operations and maintenance of Lori Wilson Park to the Parks and Recreation Department; and
- Authorize the County Manager to approve all necessary budget amendments.

Summary Explanation and Background:

DAD 1300 N Atlantic Cocoa LLC (DAD 1300) is building the Westin Cocoa Beach Resort project and wishes to reserve certain portions of Lori Wilson Park in advance to provide temporary, exclusive use of events, programs, and services related to hotel guests and groups on a recurring basis.

The attached agreement will allow for the Westin to reserve park space for events with the following restrictions:

- Reservations made by third parties prior to the execution of this Agreement and reservations historically reserved on specific dates/weekends shall have priority over any future DAD 1300 events. The Agreement outlines blackout dates when DAD 1300 shall not be permitted to rent the Park.
- DAD 1300, shall, at their sole expense, relocate the existing dog park in the south portion of the park to the north area of the Park. The north area dog park must be constructed before the current south area dog park is closed. DAD 1300, at their sole expense, shall rehabilitate the existing south area dog park space to an open grass field.

- DAD 1300 shall pay the County fee as approved and published in the Parks and Recreation Fixed Fee Schedule.
- DAD 1300, at its sole expense, has the option to construct a golf cart path extending from the north border to the south border of the Park.
- DAD 1300 may rent the Park up to three (3) years in advance and all rentals of the Park shall be directly related and ancillary to the use of the hotel and convention center. DAD 1300 shall be permitted to rent the south area of the Park for a maximum of 100 days and shall not exceed eleven (11) days per month between November 1 and April 30 and shall not exceed two (2) weekends in any one month. Twelve (12) days per year, DAD 1300 may rent Lori Wilson Park in its entirety, north and south areas, but these rentals will count towards their 100-day maximum.

The Board of County Commissioners, in regular session on August 22, 2017, assigned oversight of Lori Wilson Park's operation and maintenance to the Tourist Development Office (TDO) and authorized TDO to create a special revenue account for Lori Wilson Park. On October 3, 2017, TDO entered into a Memorandum of Understanding, in which it provided funding to the Parks and Recreation Department to operate and maintain Lori Wilson Park.

It is requested that oversight for operations and maintenance of Lori Wilson Park be transferred to the Parks and Recreation Department. It is further recommended that the Park funding mechanism continue, whereby the TDO provides \$232,700 annually (plus CPI) for the operation and maintenance of Lori Wilson to the Parks and Recreation Department.

Clerk to the Board Instructions:

Please return the executed Agreement to Mary Ellen Donner, Director, Parks and Recreation Department.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

October 23, 2024

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

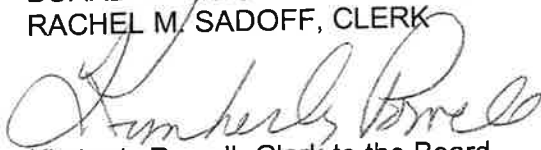
RE: Item J.3., Agreement between Brevard County and DAD 1300 N Atlantic Cocoa LLC (DAD 1300) (Westin Cocoa Beach Resort) and Assign Oversight for the Operations and Maintenance of Lori Wilson Park to the Parks and Recreation Department

The Board of County Commissioners, in regular session on October 22, 2024, authorized pulling the agreement between Brevard County and DAD 1300 N Atlantic Cocoa LLC for DAD 1300 Westin Cocoa Beach Resort developers to meet with the people for a better understanding of assigning oversight for the operations and maintenance of Lori Wilson Park to the Parks and Recreation Department.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ds

cc: Each Commissioner
County Manager
County Attorney

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AGREEMENT BETWEEN BREVARD COUNTY AND DAD 1300 N ATLANTIC COCOA
LLC

This Agreement made and entered into this ____ day of _____, 2024, by and between the Brevard County Board of County Commissioners, a political subdivision of the State of Florida ("COUNTY"), and DAD 1300 N Atlantic Cocoa, LLC, a Delaware Limited Partnership ("DAD 1300")

WHEREAS, the COUNTY owns real property which comprises Lori Wilson Park ("Park"); and

WHEREAS, DAD 1300 desires to utilize certain Park buildings, structures, grounds, and facilities to provide additional events, programs and services to hotel guests and groups on a recurring basis; and

WHEREAS, the COUNTY agrees to allow DAD 1300 to reserve certain portions of the Park in advance to provide in accordance with this Agreement.

WHEREAS, due to the proximity of DAD 1300 to the Park and likelihood of recurring reservations ancillary to the use of the hotel and convention center, the Parties have agreed to enter into this Agreement for clarity and consistency; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the parties agree as follows:

1. LORI WILSON PARK.

The Park, located at 1500 N Atlantic Avenue, Cocoa Beach, FL 32931, is depicted on Exhibit "A".

2. EFFECTIVE DATE AND TERM.

This Agreement shall become effective upon signature of both parties and shall continue for a term of fifteen (15) years. Upon expiration of the current term, DAD 1300 may request renewal of this Agreement for two (2) additional fifteen-year terms unless terminated by either Party. DAD 1300 agrees it shall not be entitled to any renewal and agrees it shall not be entitled to any monies, damages, or lost income should the COUNTY decide not to renew this Agreement, or this Agreement is terminated.

3. USE OF PARK.

3.1 The COUNTY hereby agrees to allow DAD 1300 the ability to reserve the temporary, exclusive use of certain portions of the Park, for the purposes of providing events and services to DAD 1300's guests and groups utilizing hotel services up to three years in advance. All rentals of the Park, or portions of the Park shall be directly related and ancillary to the use of the hotel and convention center. DAD 1300 shall not rent the Park to individuals or groups that are not also renting portions of the hotel and convention center.

3.2 DAD 1300 shall be permitted to rent the south area of the Park for a maximum of one hundred (100) days per calendar year. Rental of the Park shall not exceed eleven (11) days per month between November 1st through April 30th and shall not exceed two (2) weekends, defined for this section as, Saturday and Sunday, or a portion thereof, in any month.

3.3 In the event DAD 1300 wishes to rent the entire Park, north and south, the number of rental days would be inclusive in the 100-day maximum annual rental. Rental of the entire Park shall not exceed twelve (12) days in any one calendar year.

3.4 DAD 1300 may reserve the exclusive use of the Park, or portions of the Park up to three (3) years in advance, on a rolling basis. Any reservations by third parties prior to the execution of this Agreement and any events that are historically reserved on the specific dates/weekends as set forth below shall have priority over any future DAD 1300 events.

Historically reserved events:

- Thunder on Cocoa Beach (I am a Freedom Fighter, Inc.)
- Easter Sunrise Service (Calvary Chapel)
- Cocoa Beach Air Show (National Air, Sea and Space Foundation, Inc.)

3.5 DAD 1300 shall not be entitled to rent the Park on dates the Park is already reserved.

3.6 In order to provide beach access to Brevard County residents during times of peak demand DAD 1300 shall not rent the Park or portions of the Park during the following dates and holidays:

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Christmas Eve through January 2

The week of Spring Break set by the Brevard County School Board and the weekend preceding and the weekend following said week.

Easter weekend

Memorial Day weekend

July Fourth, and if July Fourth should fall on a:

- Friday, DAD 1300 additionally shall not have access to the Park on Saturday and Sunday
- Saturday, DAD 1300 additionally shall not have access to the Park on Friday, or Sunday
- Sunday, DAD 1300 additionally shall not have access to the Park on Friday or Saturday
- Monday, DAD 1300 additionally shall not have access to the Park on Saturday or Sunday

Labor Day Weekend defined as Saturday, Sunday and Monday

Thanksgiving Day through the following Sunday of that week.

3.7 Events will be held within authorized Parks operation policies and will comply with all applicable federal, state, county and municipal ordinances regarding hours of operation noise, venue ingress/egress, crowd control and local government department coordination such as with fire rescue and law enforcement.

4. FACILITY USE FEE.

DAD 1300 shall pay the COUNTY a fee as approved and published in the Parks and Recreation Fixed Fee Schedule. Deposit fees are due according to the Parks and Recreation Fixed Fee Schedule. Fees for Lori Wilson Park will be identical to those charged to similar-sized events and similar-situated parks in the Brevard County Park system.

5. DOG PARK.

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a. DAD 1300 shall partner with COUNTY and meet with dog park patrons to hear and address their concerns as to what amenities will be constructed in the dog park.

b. DAD 1300 shall fund the mutually agreed upon cost of building a new dog park in the north area of Park. Dog Park location is specified in Exhibit "B". Amenities to be provided in the new dog park are outlined in "Exhibit C".

c. The north area dog park must be constructed prior to the current south area dog park being closed.

6. GOLF CART PATH.

Pursuant to Section 23 of this Agreement and at its sole expense, DAD 1300 shall have the option to construct a golf cart path extending from the northern border of the Park to the southern border of the Park. Prior to construction, DAD 1300 shall provide COUNTY with the location and site plan for the improvement and all applicable permits.

7. GREEN SPACE AND PARKING SOUTH SIDE.

a. DAD 1300, at its sole expense, agrees to fund the cost of rehabilitating the existing south area dog park space to an open grass field space.

b. Pursuant to Sections 5 and 23 of this Agreement and at its sole expense, DAD 1300 shall have the option to re-configure the south area parking lot with prior approval. Should DAD 1300 exercise this option, DAD 1300 agrees that the number of parking spaces in the south area of Park will not decrease.

8. OBLIGATIONS OF DAD 1300.

When the Park, or portions of the Park are rented by DAD 1300, DAD 1300 shall:

8.1 Provide and administer adequate personnel to supervise all activities and events at the Park.

8.2 Keep the Park clean and free of litter, rubbish, or any obstacles that are at the Park. When the Park or portions of the Park is rented by DAD 1300, DAD 1300

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shall be responsible for the emptying of waste receptacles at the portions of the park being used and shall ensure restroom facilities are cleaned and restocked to appropriate levels immediately following the rental.

8.3 Additional trash receptacles and dumpsters are the responsibility and at the sole expense of DAD 1300.

8.4 Be responsible and pay for any damage arising out of or connected with use of the Park.

8.5 Be responsible for obtaining and paying for any City, County or State permits for DAD 1300 construction or events at the Park.

8.6 Within 24 hours of occurrence, notify the Central Area Manager of any accidents or incidents that occur at the Park.

8.7 DAD 1300 agrees not to charge or restrict access to the dog park.

8.8 If DAD 1300 wishes enhanced Park maintenance, DAD 1300 shall pay for said maintenance. Prior to beginning any improved maintenance DAD 1300 shall obtain the written consent of COUNTY.

8.9 Comply with all applicable state, county and municipal ordinances regarding noise, venue ingress/egress, crowd control and local government department coordination such as with fire rescue and law enforcement.

8.10 Under no circumstance shall DAD 1300 damage, trim, mutilate, mow, remove any vegetation, natural area, or animal species on the site protected by local, state, or federal law including but not limited to sea grapes, sea oats, and mangroves and gopher tortoises.

8.11 Return the park in the same condition it was prior to the rental. This includes removing any temporary structures, stages, tents, canopies and similar items. No storage of such items at the Park will be permitted between rentals.

8.12 Should portable toilets be required for an event; DAD 1300 shall be solely responsible for the costs of such and shall ensure their removal from the Property prior to dawn the morning after the rental period ends.

9. TRANSFER OF PARK TO CITY OF COCOA BEACH

If the Park is leased or transferred to the City of Cocoa Beach, the COUNTY'S obligations under this Agreement shall be assigned to the City of Cocoa Beach and incorporated as a lease or deed restriction.

10. TERMINATION.

Either Party may terminate this Agreement for cause upon ninety (90) days written notice to the other party. Should this Agreement be terminated, the COUNTY shall honor any current and paid existing reservations. No additional reservations will be accepted within the ninety (90) day termination period.

DAD 1300 shall not cause or permit unlawful, immoral, improper, or offensive use of the Park nor allow said Park to be utilized for any purpose other than that hereinabove set forth on dates that the Park is rented by DAD 1300. Upon written notification from the COUNTY of a violation under this section, DAD 1300 shall have 30 days to cure said violation. Failure of DAD 1300 to comply with this provision shall be considered a material breach of this Agreement.

11. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

DAD 1300 shall conform to all requirements of the Americans with Disabilities Act in performance of this Agreement and shall not cause or place at the Park any condition causing the Park to become non-compliant.

12. ATTORNEY'S FEES.

In connection with any litigation, including appellate proceedings, arising out of or under this Agreement, each party in such litigation shall be responsible for its own costs and attorney's fees.

13. COMPLIANCE WITH LAWS AND POLICIES.

DAD 1300 shall comply with all applicable federal laws, state laws, administrative rules and regulations and local ordinances. Brevard County shall ensure that the Park remains fully eligible for beach renourishment funding in compliance with State and Federal requirements. Nothing in this Agreement shall adversely effect or jeopardize beach renourishment funding.

14. CONSTRUCTION OF THE AGREEMENT.

The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be construed either in favor of or against such party.

15. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed and original and all of which together shall constitute one and the same instrument.

16. CONVENANT AGAINST LIENS.

DAD 1300 shall do all things necessary to prevent the filing of any mechanics' or other liens against any and all property subject to this Agreement or any other interest for any work, labor, services, or materials performed or supplied or claimed to have been performed or supplied at the Park or to COUNTY. If any such lien shall at any time be filed, DAD 1300 shall either cause the same to be vacated and cancelled or record within twenty (20) days after the date of the filing thereof or if DAD 1300 in good faith determines that such lien should be contested, DAD 1300 shall furnish such security, by surety bond or otherwise, as may be necessary or be prescribed by law to release the same as a lien against the real property or any interest therein, and to prevent any foreclosure of such lien during the pendency of such contest. If the DAD 1300 fails to vacate or release such lien in the manner and within the time period aforesaid, then, in addition to any other right or remedy of COUNTY resulting from the DAD 1300S 's said default, COUNTY may, but shall not be obligated to, vacate or release the same either by paying the amount claimed to be due or by procuring the release of such lien by giving security or in such other manner as may be prescribed by law. The DAD 1300 shall repay to COUNTY, on demand, all sums disbursed or deposited by COUNTY pursuant to the foregoing provision of this Paragraph. However, nothing contained herein shall imply any consent or agreement on the part of COUNTY to subject its estates or interests to liability under any mechanics' or other lien law, whether or not the performance or the furnishing of such work, labor, services or materials to the COUNTY shall have been consented to by the COUNTY.

17. EFFECTIVE DATE.

As used herein, the term Effective Date shall mean the date the last party executes this Agreement.

18. EMERGENCIES.

In the case of a declared state of emergency in Brevard County by the Board of County Commissioners or the State of Florida, the County retains the right, but not obligation, to immediately resume occupation of the Park, to terminate reservations occurring during said State of Emergency, and to use the Park to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.

19. ENTIRE AGREEMENT.

This Agreement (and all exhibits hereto) constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes and all prior or contemporaneous agreement, whether written or oral. No covenants, agreement, terms, provisions. Undertakings, statement, representations or warranties, whether written or oral, made of executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in the agreement.

20. E-VERIFY.

19.1 In accordance with Chapter 448.095, Florida Statutes, for any events associated with Park, DAD 1300 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 DAD 1300 during the term of this Agreement.

19.2 DAD 1300 shall, for any events associated with Park, 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.

19.3 For any events associated with Park, DAD 1300 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 DAD 1300's

enrollment in the program. This includes maintaining a copy of proof of DAD 1300's and subcontractor's enrollment in the E-Verify Program.

19.4 DAD 1300 must meet this requirement, unless:

1. The contract is solely for goods-based procurement where no services are provided; or
2. Where the requirements is waived by the Board of County Commissioners; or
3. 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; or
4. The contract is being executed with a company based outside of the United States of America and does not employ any United States of American citizens.

19.5 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, DAD 1300 hires or employs a person who is not eligible for employment.

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

21. GOVERNING LAW.

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

22. ILLEGAL, UNLAWFUL OR IMPROPER USE.

DAD 1300 shall not cause or permit unlawful, immoral, improper, or offensive use of the Park nor allow said Park to be utilized for any purpose other than that hereinabove set forth on dates that the Park is rented by DAD 1300. Upon written notification from the COUNTY of a violation under this section, DAD 1300 shall have 30 days to cure said violation. Failure of DAD 1300 to comply with this provision shall be considered a material breach of this Agreement and subject to same to immediate termination by the COUNTY, where upon the COUNTY shall

be entitled to immediately re-enter and retake possession of the Park and terminate this Agreement.

23. IMPROVEMENTS.

Any improvements or repairs, including but not limited to installation of any permanent fixture, structure, utilities, any landscaping, clearing, mowing, trimming of trees and vegetation, at the Park by DAD 1300 must be requested in writing to the COUNTY, and mutually agreed upon by the COUNTY and DAD 1300, with written permission granted by the Parks and Recreation Department Director ("Director"), prior to any actual work. Said request shall state the party responsible for funding such improvements. The plans, specification, and location for all improvements, structures, landscaping, and facilities made by DAD 1300 to the Park shall be submitted in writing to and approved by the Director prior to the construction or installation of such improvement, structure, landscaping, or facility. It is hereby mutually agreed and understood that any building, structure, or facility located thereon and permanently attached thereto shall become the property of COUNTY. The Parties agree that unless a cost sharing or payment has been agreed to in writing by COUNTY for the specific improvement, DAD 1300 shall not be entitled to any compensation for said improvements.

24. INDEMNIFICATION AND INSURANCE.

23.1 DAD 1300 shall hold COUNTY harmless against any and all claims for and related in any way to bodily injury, sickness, disease, death, personal injury, damages to property of any kind (including but not limited to loss of use of any property or assets resulting therefrom), fines, penalties, schedule delay claims of any kind, including but not limited to loss of efficiency or productivity, arising out of or resulting from this Agreement, to the extent caused by the negligent acts, recklessness, or intentional wrongful conduct of DAD 1300, OR ANY OF ITS AGENTS OR EMPLOYEES, INCLUDING SUBCONTRACTORS. .

23.2 DAD 1300 agrees to fully indemnify COUNTY and pay the cost of COUNTY's legal defenses, including fees of attorneys as may be selected by COUNTY, for all claims described in the hold harmless clause above. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY's exclusive remedy. It is agreed by the Parties hereto that specific consideration has been received by DAD 1300 under this Contract for this hold harmless/indemnification provision.

This hold harmless and indemnification shall not apply to any claim solely arising out of the COUNTY'S negligent acts, recklessness, or intentional wrongful conduct.

23.3 Notwithstanding any other provisions of this Contract, this indemnification section applies to both COUNTY and third-party claims and shall survive the termination of this Contract. Nothing in this section is intended to nor shall it constitute a waiver of the sovereign immunity protection of Brevard COUNTY as set forth in Section 768.28 Florida Statutes.

23.4 DAD 1300 shall procure and maintain, at their own expense and without cost to COUNTY, the following types of insurance described below. DAD 1300 shall be liable and responsible for errors and omissions in the performance of any and all Contract responsibilities and shall carry professional liability insurance and indemnify the COUNTY against errors and omissions as specified hereinbelow. Notwithstanding any other provisions of this Contract, this indemnification section applies to both County and third-party claims and shall survive the termination of this Contract. Nothing in this section is intended to nor shall it constitute a waiver of the sovereign immunity of Brevard County. Further, the County's liability hereunder shall be subject to the County's common law 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.

23.5 The Contractor shall procure and maintain, at their own expense and without cost to County, the following types of insurance described below.

- General Liability Insurance policy with a \$1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this Contract, and Errors & Omissions
- Auto Liability Insurance policy which includes coverage for all owned, non-owned and hired vehicles with a \$1,000,000 combined single limit for each occurrence.
- Workers' Compensation and Employer's Liability Insurance providing statutory benefits as required in the State of Florida. DAD 1300 shall require any subcontractor to provide evidence of this coverage. Additionally, if the contract required working on or around a navigable waterway, DAD 1300 and all subcontractors shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes, or proof of exemption. DAD 1300 shall

be responsible for compliance with these requirements by each subcontractor, vendor or supplier when applicable.

23.6 DAD 1300 shall provide Certificates of Insurance and applicable endorsement pages to the COUNTY demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Contract. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. The Certificates of Insurance shall indicate that the policies (except professional liability) have been endorsed to cover the COUNTY as an additional insured (a waiver of subrogation in lieu of additional insured status on the Workers' Compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice being given by the insurer to the COUNTY.

23.7 The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of DAD 1300 under the terms of the Contract. Risk Management reserves the right to modify insurance requirement based on cost and severity of the project. Subcontractor's insurance shall be the responsibility of DAD 1300.

23.8 DAD 1300 shall maintain the insurance coverage requirement throughout the term of this Contract. DAD 1300 is also responsible for providing thirty (30) days advance written notice to the COUNTY of any changes or cancellation in coverage and replacement insurance.

25. INTERPRETATION. VENUE, AND WAIVER OF TRIAL BY JURY.

This Agreement shall be interpreted under the laws of the State of Florida and the terms, rights, and remedies provided for under this Agreement, and at law or equity shall be to those given under the laws of the State of Florida, or when the laws of the State of Florida are preempted by the laws of United States, the laws of the United States of America. The venue of any litigation arising out of the Agreement shall be in the Eighteenth Judicial Circuit Court in and for Brevard County, Florida and **ANY TRIAL SHALL BE NON-JURY.**

26. MODIFICATION.

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No modification of this Agreement shall be binding on the COUNTY or DAD 1300 unless reduced in writing and signed by a duly authorized representative of the COUNTY and DAD 1300.

27. MUSIC PERFORMANCE AND NOISE.

DAD 1300 shall not use, play, or perform copyrighted music at Park events without appropriate licensing or other permission. DAD 1300 shall be solely responsible for obtaining licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. DAD 1300 agrees to indemnify and hold harmless the COUNTY from damages for unauthorized use of performance of copyrighted music. DAD 1300 shall comply with all applicable noise ordinances or restrictions while renting the Park.

28. NO PARTNERSHIP OR JOINT VENTURE.

The covenants herein contained shall bind, and the benefits and advantages shall inure to the parties hereto. DAD 1300 may not assign its rights under this Agreement without the prior written consent of the COUNTY, which consent shall not be unreasonably withheld by the COUNTY. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have the authority to enter into any Contract of any kind on behalf of the other, or to bind or obligate the other to any third party.

29. NOTICES.

Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified mail, return receipt requested, postage prepaid, address to the respective party and the addresses set forth below.

To COUNTY:
BREVARD COUNTY, FLORIDA
Brevard County Parks & Recreation
2725 Judge Fran Jamieson Way
Building B, Suite 203
Viera, Florida 32940
Attn: Director

To DAD 1300:
DAD 1300 N ATLANTIC COCOA LLC
8225 N. Wickham Road
Melbourne, Florida 32940
Attn: President
Executive Director

30. PARAGRAPH HEADINGS.

The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement.

31. PERSONAL PROPERTY.

All personal property housed or placed at Park shall be at the risk of DAD 1300, and the COUNTY shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. DAD 1300 agrees and understands that the COUNTY does not carry liability, fire, or theft insurance on the operation of this Park to cover DAD 1300's interest therein.

DAD 1300 will retain title to all personal property purchased by DAD 1300 and placed at the Park, unless otherwise agreed to by the parties. DAD 1300 will obtain approval from the Director prior to permanently placing any personal property or equipment at the Park. All personal property belonging to DAD 1300 will be marked in a manner consistent with the character of the property. DAD 1300 shall provide an annual inventory of all personal property located at the Park by the Agreement's anniversary date.

Upon termination or expiration of this Contract, DAD 1300 shall have fifteen (15) days within which to remove any personal property from the Park. Any personal property not removed within said fifteen (15) day period shall become the property of the COUNTY.

32. PUBLIC RECORDS.

Florida Public Records Law.

For purposes of this Section, Contractor refers to DAD 1300. 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 Contractor of the request and the Contractor 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 Contractor may also provide a cost estimate to produce the

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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 Contractor fails to provide the requested public records to the COUNTY within a reasonable time, the Contractor 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. Contractor's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If Contractor 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 Contractor's possession and control, the Contractor agrees to indemnify the COUNTY for all damages and expenses, including attorney's fees and costs. The Contractor shall hire and compensate attorneys to represent the Contractor and COUNTY in defending such action.

The Contractor 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 Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide Public Records relating to this contract, contact the:

Custodian of Public Records: Diana Marquardt, Administrative Assistant to the Parks and Recreation Director, 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940, Diana.Marquardt@brevardfl.gov; (321) 633-2046.

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33. TIME.

Time is of the essence of this Agreement and each and all of its provisions.

34. EXHIBITS

The following Exhibits are hereby incorporated by reference.

Exhibit A

Exhibit B

Exhibit C

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

Board of County Commissioners of
Brevard County, Florida

Attest:

By: _____

Rachel M. Sadoff, Clerk

Date: _____

By: _____

Jason, Steele, Chair

As approved by the Board on 10/22/2024

Witnesses:

DAD 1300 N ATLANTIC COCOA LLC

Print Name

By: _____

Insert Name

Date

Signature

Date

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Print Name

Signature

Date

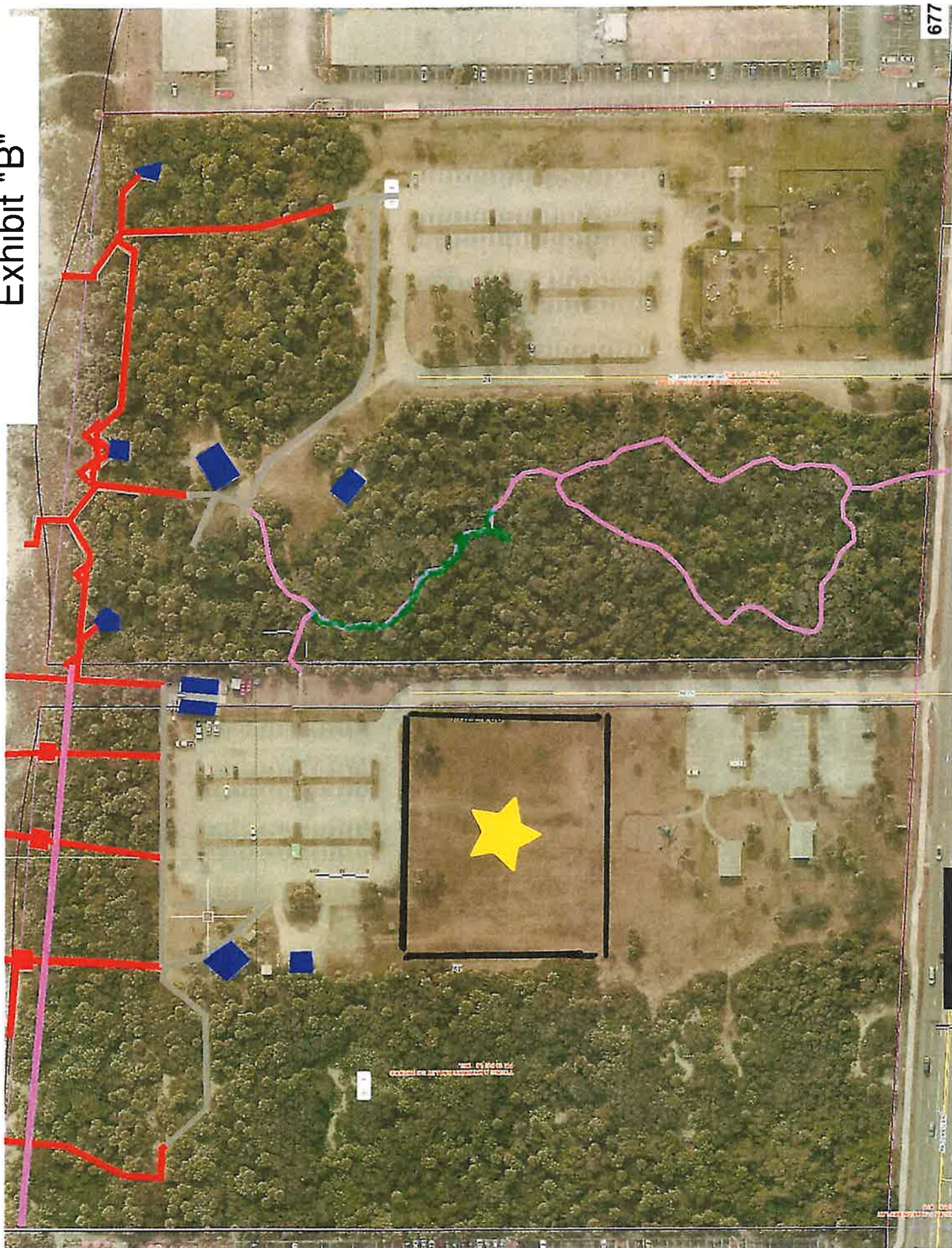
Lori Wilson Park

1500 N Atlantic Avenue
Cocoa Beach, FL 32931



- 32.43-acre regional beach park
- Includes three pavilions, 1,000' boardwalk, six dune crossovers, restrooms, outdoor showers, and parking lots.
- Two medium pavilions, grills, and playground on the north side.
- Off-leash dog park and picnic tables on the south side.

Exhibit "B"



Lori Wilson Dog Park Amenities

- Minimum 1-acre dog park to be located in Lori Wilson Park north – wheelchair accessible
- One small and one large dog park area
- Separate gated in-and-out system
- 8' fence around the entire enclosure
- Paspalum natural turf covering entire dog parks
- Irrigation system
- Agility course to include see saw, 1 ramp, pole course, tunnel

	<i>Entrance</i>	<i>Small Dog Park</i>	<i>Large Dog Park</i>
Dog bone shaped benches each with 8'X6' cantilever shade structure		3	3
Trash cans	1	2	2
Dog waste stations – bag dispenser plus waste can		2	2
Outdoor bottle filler and fountain with Pet Station		1	1
Dog Park spray hydrant		1	1
Dog wash station		1	1
Cabbage palms – skinned, no boots 8-12' height		7	7
Shade structure		1	1
Picnic tables		1	1
Buttonwood – silver tree, minimum 30 gallon		2	2
Buttonwood – green tree, minimum 30 gallon		1	1
Rule sign	1	1	1
Leash hitching posts	1	2	2

I would say Good Morning, however
it is not. I find myself sitting
in the back of the room waiting
time out of my work day to tell
all of you, I am tired of being
a watchdog for Brevard Public
Lands. Public in this case and most
cases, meaning paid for by the
taxpayers, your constituents. The
county's proposal to cozy up with
Westin Corp. to allow them to
privatize and steal Lori Wilson
Park is not only an egregious &
blatantly corrupt. Lori Wilson Park
and all publically owned and
paid for lands, including EELs lands
are for the use of Brevard County residents
not fortune 500 companies. So, Do NOT
approve/vote for this obvious special
interest deal. A word of advice
don't waste your money, watch back room
deals so conspicuous in the future.
Re: Lori Wilson Park William J. DeLuca
32993 + 32990

Good Morning

As a concerned citizen & advocate
for the protection of our public services
& natural spaces, I am here against
the agreement between Broward
County & CDO. The proposal at hand
seeks to give a private
corporation (CDO) exclusive rights
to our natural spaces, which is being
done for several reasons.

The first reason is that the
CDO is a private corporation
which is not subject to the same
transparency as the public agencies.

The second reason is that the
CDO is not a public agency, but also one of the
big reasons is that the CDO is not
publicly accountable. By granting a
private entity exclusive rights for
13 years of the year, we are
effectively taking away access from
the public. - especially from those

who rely on this space for recreation
relaxation, & community gathering.

This agreement sets a dangerous precedent,
one where the rights of private
enterprise are prioritized over the

well-being and civil rights of the
very people who contribute

most to any town's public spaces. We're
seeing public spaces like the parks
being turned into private revenue streams,
and this feels like a serious attempt

to erode the public access to cherished
natural spaces.

Moreover, Len Alden Park holds

historical & environmental significance

- including the marshed maritime

ecosystem. A corporation does not have

the right to take for the benefit of

white, public employment, to access to

the hard work of individuals like

protesters, municipal & former commissioners

Len Alden himself.

The park was intended to be a
open space in a busy, growing
community - a space for recreation.

I hope that you will support this
proposed city park and will
allow the park to be a space for
the community to enjoy and
use for many years to come.
Thank you for your support.

Respectfully,
John Smith
City Resident
City Council
City Council Supervisor