



August 26, 2020

M E M O R A N D U M

TO: John Tobia, Commissioner District 3

RE: Item L.5., Temporary Use and Right of Entry Agreement with George Spence Wise, III for the South Beaches Wastewater Treatment Plant, Melbourne Beach

The Board of County Commissioners, in regular session on August 25, 2020, directed the County Attorney's Office to draft a Temporary Use and Right of Entry Agreement with George Spence Wise, III, for the voluntary activities done within District 3 at the Wastewater Treatment Plant in Melbourne Beach, with the appropriate permitting and insurance in place; and authorized the County Manager to sign the Agreement.
Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/ds

cc: County Manager
County Attorney

L.5

TEMPORARY USE AND RIGHT OF ENTRY AGREEMENT Brevard County South Beaches Wastewater Treatment Plant

This Temporary Use and Right of Entry Agreement (this "Agreement"), is made by and between **Brevard County, Florida**, a political subdivision of the State of Florida ("County"), and **George Spence Wise, III** ("Applicant"), whose mailing address is 410 Windtamer Way, Merritt Island, Florida 32952.

RECITALS

Whereas, the Brevard County Utilities Department operates the South Beaches Wastewater Treatment Plant located in Melbourne Beach (the "Treatment Plant"); and

Whereas, the Florida Fish and Wildlife Conservation Commission has issued to Applicant a Master Falconry Permit (hereinafter "Permit"), a copy of which is attached hereto and incorporated by this reference as Exhibit A, which constitutes a falconry agreement between the Florida Fish and Wildlife Conservation Commission (FWC), the United States Fish and Wildlife Services (USFWS) and the Applicant and said permit allows the Applicant to possess no more than five (5) wild raptors with no more than three (3) of which may be golden eagles (*Aquila chrysaetos*) and to obtain no more than two (2) wild raptors for replacement birds during an twelve (1) month period; and

Whereas, the Applicant desires to use a portion of the Treatment Plant as outlined in yellow on the aerial attached hereto and incorporated by this reference as Exhibit B, in order to capture raptors as provided for in the Permit; and

Whereas, the County pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of County property purposes which do not conflict with the interests of the public or are in the interests of the public and the County has determined that use by the Applicant pursuant to this Agreement promotes the public interest.

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

1. Recitals

The above recitals are true and correct and incorporated into this Agreement by this reference.

2. Temporary Use and Right of Entry; Illegal, Unlawful or Improper Use Prohibited

During the term of this Agreement, the Applicant shall use a 40' by 40' portion of the area identified in yellow on Exhibit B for the capture of falcons and shall do so pursuant to the terms and conditions of this Agreement. It is hereby mutually agreed and understood that Applicant shall access the area outlined in yellow on Exhibit B by utilizing the access road identified in pink on Exhibit B. It is specifically agreed and understood that the use herein set forth for the Property shall be the only use consented to by the County, and that failure to comply with the

provisions of this Agreement shall be considered a material breach of this Agreement, whereupon the County shall be entitled to immediately terminate this Agreement. The Applicant shall make no unlawful, improper, immoral or offensive use of the Property, nor will the Applicant use the Property or allow use of the Property for any purposes other than that hereinabove set forth. Applicant shall not use or enter any of the Treatment Plant facilities or buildings during the term of this Agreement. Failure of the Applicant to comply with this provision shall be considered a material default under this Agreement.

3. Term

The term of this Agreement shall be for a maximum duration of ninety days from the Effective Date as defined hereinbelow, unless terminated by either party, in accordance with Paragraph 8 Termination herein.

4. Repairs; Maintenance; and Improvements

During the term of this Agreement, the Applicant shall maintain, at its own expense, the Property in good condition and repair. Any damage to the Property, County improvements or facilities caused by Applicant's use of the Property shall be remedied immediately at no cost to the County. Applicant shall not install permanent structures or improvements on the Property.

5. Indemnification and Insurance

Except where limited by law, the Applicant agrees that it will indemnify and save harmless the County from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the Property or any equipment or fixtures used in connection with the Property by the Applicant or its employees or independent contractors. The Applicant agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with the Applicant's use of the Property pursuant to this Agreement and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceedings. The parties acknowledge specific consideration has been exchanged for the provision. Nothing contained in this Agreement shall be construed as a waiver of County's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the County's potential liability under state or federal law.

The Applicant further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of General Liability Insurance insuring the Applicant against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the Property. Such policies of insurance shall insure the Applicant in an amount not less than one million dollars to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Brevard County Utilities Department, 2725 Judge Fran Jamieson Way, Bldg. A., Viera, Florida, 32940, within ten days of the date of execution of this Agreement by the Applicant and the County. The County's approval or failure to disapprove any policy/ies, coverage, or

ACORD Certificates shall not relieve or excuse any obligation to procure or maintain the insurance required herein, nor serve as a waiver of any rights or defenses the County may have. The County shall be named as an additional insured on the policy that the Applicant secures and endorsed with a provision that entitles the County to thirty days written notice from the insurer of any change or cancellation in said policies.

The Applicant shall notify the County promptly in writing of any hazardous condition existing on or about the Property. All personal property placed on or about the Property by the Applicant or its employees or independent contractors shall be at the risk of the Applicant, and the County shall not be liable for any damage or loss to any personal property located thereon for any cause whatsoever. The Applicant agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover the Applicant's interests therein

6. Right of Entry by County

It is expressly stipulated that this Agreement is a license for permissive use only and that the use of public property by the Applicant pursuant to this Agreement shall not operate to create or vest any property right in said holder. The County or its agents may enter in and on the Property at any time for any purpose, including inspecting such Property or performing other duties of the County as are required by law or by the terms of this Agreement. Nothing in this Agreement shall limit the County's ability to take necessary and appropriate action to protect property, preserve life, or ensure safety of citizens in any emergency situation.

7. Binding Effect; Assignability; Independent Contractor

This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. The Applicant shall not assign this Agreement or any portion thereof of the Applicant's rights, obligations, or duties hereunder to any party without the prior written consent of the County. The Applicant shall perform the services under this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to make the Applicant or any of its agents or employees to be the agent, employee or representative of the County.

8. Termination

This Agreement may be terminated with or without cause by either party upon fifteen days' written notice thereof to the other party

9. Notice; Notice of Breach

Notice under this Agreement shall be given to the County at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. , Viera, Florida 32940 with a copy to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A. 201, Viera, Florida 32940. Notice under this Agreement shall be given to the Applicant at 410 Windtamer Way, Merritt Island, , FL 32952.

In the event the County determines the Applicant has breached any term or provision of this Agreement, the County shall provide written notice of such breach to breaching party and the breaching party shall have thirty days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot reasonable be cured within such thirty day period, then the breaching party shall have such longer period to cure the breach as is reasonably necessary provided, however, that if the breaching party commences reasonable action to remedy the breach within such thirty day period and diligently and continuously prosecutes such remedy to completion so that such breach is cured in a timely manner.

10. Right to Audit Records

In the performance of this Agreement, the Applicant and any assignee shall respectively keep books, records and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related only to the performance of this Agreement (and no other books, records, and accounts of the Applicant or any assignee) shall be open to inspection during regular business hours by an authorized representative of the County upon written notice to the Applicant or any assignee not less than five business days advance notice and shall be respectively retained by the Applicant and each assignee for a period of five years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by the Applicant or any assignee or provided to the Applicant or any assignee under the terms of this Agreement, are public records and the Applicant and any assignee agree to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

11. Entirety; Modifications; Waiver and Severability

This Agreement represents the understanding between the parties in its entirety as to the subject matter of this Agreement and no other agreements, either oral or written, exist between the County and the Applicant as to the subject matter of this Agreement. This Agreement may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto, except as otherwise provided herein. This Agreement is solely for the benefit of the formal parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. The waiver by the County of any of the Applicant's or any assignee's respective obligations or duties under this Agreement shall not constitute a waiver of any other respective obligation or duty of the Applicant or any assignee under this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

12. Attorney's Fees; Venue and Compliance with Statutes

In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. The

Applicant shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Property for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Property during the term of the Agreement.

13. Effective Date; Construction of Agreement

This Agreement shall be effective on the last signature date required set forth below.

The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

[The remainder of this page left intentionally blank.]

In witness whereof, County and the Applicant caused this Agreement to be duly executed in their respective names as of the day and year written below.

Attest:

Board of County Commissioners
of Brevard County, Florida

Scott Ellis, Clerk

Frank Abbate, County Manager
As approved by the Board on _____

Approved as to legal form and content:

Assistant County Attorney

George Spence Wise, III

Printed name: _____

Name: _____

Title: _____

Printed name: _____

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of [] physical presence or []online notarization this ____ day of _____, 2020, by _____, as _____ of _____, a Florida corporation, on behalf of the corporation, who is personally known to me.

Notary Public

Printed Name



Master Falconry Permit
 FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
 DIVISION OF LAW ENFORCEMENT, CAPTIVE WILDLIFE OFFICE
 620 SOUTH MERIDIAN STREET
 TALLAHASSEE, FLORIDA 32399-1600

Permittee Name: George Spence Wise III
 Permittee Address: 410 Windtamer Way
 City, State, Zip Code: Merritt Island, Florida 32952

Permit #: FAL-20-0044
 Effective Date: 1/1/2020
 Expiration Date: 12/31/2022

AUTHORIZED LOCATION:

410 Windtamer Way, Merritt Island, Florida 32952

Permittee Signature _____

Date 12/30/19

Not valid unless signed. Your signature confirms that all information provided to issue the permit is accurate and complete, and indicates acceptance and understanding of the provisions and conditions listed below. **Any false statements or misrepresentations when applying for this permit may result in felony charges and will result in revocation of this permit.**

Authorized by: Lieutenant John Conlin, Division of Law Enforcement

Authorizing Signature _____

Date 12/30/19

PERMIT CONDITIONS AND PROVISIONS:

1. Section 379.1025, Florida Statute, and Rule 68A-9.005, Florida Administrative Code (F.A.C.), are hereby made a part of this permit.
2. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted.
3. Continued validity, or renewal, of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
4. The validity of this permit is also conditioned upon strict observance of all applicable foreign, state, local or other federal laws.
5. **This permit is valid for use by permittee named above ONLY.**
6. Carry and display this permit upon request when conducting activity authorized herein.
7. This document constitutes a falconry agreement between the Florida Fish and Wildlife Conservation Commission (FWC), the United States Fish and Wildlife Service (USFWS) and the named permittee as follows: Not more than five (5) wild raptors may be possessed (no more than three (3) of which may be golden eagles (*Aquila chrysaetos*)), nor more than two (2) wild raptors be obtained for replacement birds during any twelve (12) month period.

