



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.14.

12/20/2022

Subject:

Approval, Re: Temporary Use and Right of Entry Agreement on Lands Managed by Brevard County Parks and Recreation Department (District 3)

Fiscal Impact:

None

Dept/Office:

Parks and Recreation

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the County Manager to execute the attached Temporary Use and Right of Entry Agreement on Lands Managed by Brevard County Parks and Recreation Department at 4100 Highway A1A, Melbourne Beach, Florida.

Summary Explanation and Background:

The County was approached by a citizen requesting temporary use and right of entry to a County-owned property in order to carryout falconry activities. Such activities are regulated by both the State and the Federal government. The County-owned property is located off A1A in District 3. This individual has previously been granted access on the South Beaches Wastewater Treatment Plant, which is located in District 3, without any negative feedback or issues. It is requested that the Board authorize the County Manager to execute this five (5) year agreement, subject to the individual providing appropriate insurance and evidence of licensure.

Clerk to the Board Instructions:

Upon execution, please contact Mary Ellen Donner at Maryellen.donner@brevardfl.gov or telephone 321-633-2046 to make arrangements to pick up the Temporary Use and Right of Entry Agreement

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: George Spence Wise, III		2. Amount: \$0
3. Fund/Account #: n/a	4. Department Name: Parks & Recreation	
5. Contract Description: Temporary Use and Right of Entry Agreement		
6. Contract Monitor: Patricia Strickland	8. Contract Type: USE AGREEMENT	
7. Dept/Office Director: Mary Ellen Donner		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Donner, Mary Ellen <small>Digitally signed by Donner, Mary Ellen Date: 2022.12.08 13:38:13 -05'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>George Spence Wise 12/8/22</i>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Shannon L. Wilson 12/8/22</i>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Mary Ellen Donner 12/9/22</i>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



December 21, 2022

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.14., Temporary Use and Right of Entry Agreement on Lands Managed by Brevard County Parks and Recreation Department

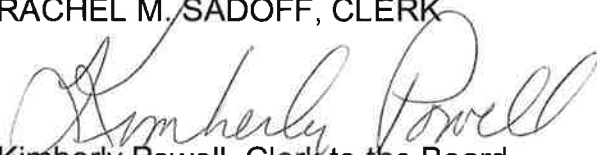
The Board of County Commissioners, in regular session on December 20, 2022, approved and authorized the County Manager to execute the Temporary Use and Right of Entry Agreement on lands managed by Brevard County Parks and Recreation Department at 4100 Highway A1A, Melbourne Beach. Enclosed is the executed Agreement.

Upon execution by Applicant, please return a fully-executed copy of the Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

cc: County Manager

**TEMPORARY USE AND RIGHT OF ENTRY AGREEMENT
LANDS MANAGED BY BREVARD COUNTY PARKS AND RECREATION
DEPARTMENT**

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 (the "County"), and George Spence Wise, III (the "Applicant"), whose mailing address is 410 Windtamer Way, Merritt Island, Florida 32952.

RECITALS

Whereas, the Brevard County Parks and Recreation Department (the "Department") manages County-owned property located in Melbourne Beach, Florida (the "Property"), which is more specifically identified in **Exhibit A** attached hereto and incorporated herein by this reference; and

Whereas, the Florida Fish and Wildlife Conservation Commission (the "FWC") has issued to Applicant a Master Falconry Permit (the "Permit"), a copy of which is attached hereto and incorporated herein by this reference as **Exhibit B**; and

Whereas, the Permit constitutes a falconry agreement between the FWC, the United States Fish and Wildlife Service (the "USFWS"), and the Applicant, and allows the Applicant to engage in certain falconry activities in accordance with State and Federal law; and

Whereas, the Applicant desires to use a portion of the Property in accordance with the laws, rules, and regulations that govern 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 for purposes which do not conflict with the interests of the public and the County has determined that such use pursuant to this Agreement and the applicable laws governing the Permit promote a public purpose.

Now, therefore, in consideration of the covenants and promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually agreed between the parties as follows:

1. Recitals.

The above recitals are true and correct and are 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 may use the area identified and highlighted in **Exhibit A** for the sole purpose of obtaining certain permitted raptor species pursuant to the terms and conditions of this Agreement, the Applicant's Permit, and State and federal law. This Agreement does not permit hunting to take place on the Property, nor does it allow for on-site training of raptor species on the Property. On each visit to the Property, the Applicant may be accompanied by up to five (5) additional individuals. The Applicant shall be responsible for ensuring that all his guests and/or invitees comply with all terms of this Agreement and comply with any permitting and licensing requirements under State and/or federal law, as applicable. It is hereby mutually agreed and understood that Applicant shall utilize the area identified in **Exhibit A**. 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 the 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 those authorized by the Permit and outlined in this Agreement. Applicant shall not use or enter any unauthorized area(s). Failure of the Applicant to comply with this provision shall be considered a material breach of this Agreement.

3. Term.

The term of this Agreement shall be for a period of five (5) years from the date of last signature below (the "Effective Date"), unless terminated by either party in accordance with this Agreement. During the term of this Agreement, Applicant may only use and enter the area identified in **Exhibit A** during normal park hours pursuant to the terms and conditions of this Agreement, and as may be restricted by State and federal law.

4. Repairs; Maintenance; Improvements.

During the term of this Agreement, the Applicant shall maintain, at his own expense, the Property in good condition and repair. Any damage to the Property, County improvements, or County facilities caused by the 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. Any temporary

structure or personal property brought onto the Property must not be left unattended and shall be removed upon leaving the Property.

5. Permit and Licensure.

Applicant shall provide the County proof of insurance and a valid State and/or federal permit on an annual basis. Applicant shall obtain and maintain any other required license(s), permit(s), or certification(s) required under State and/or federal law at all times. Failure to provide proof of insurance, valid permit, or any other required documentation may result in the termination of this Agreement. Applicant shall comply with all local, State, federal, multinational, and international agreements related to activities conducted on the Property.

6. Indemnification and Insurance.

The Applicant, including, but not limited to, his invitees, guests, or other agents, 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 in connection with the use, occupation, management, activities, or control of the Property or any equipment or fixtures used in connection with the Property by the Applicant, or his invitees, guests, or other agents. The Applicant agrees that he will, at his 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 this provision. Nothing contained in this Agreement shall be construed as a waiver of the 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 of not less than one million dollars to cover any and all claims arising in connections with any one particular accident or occurrence. A certificate of such insurance policies

shall be filed with the Brevard County Parks and Recreation Department, 2725 Judge Fran Jamieson Way, Bldg. B, Viera, Florida 32940, within ten (10) days of the date of execution of this Agreement by the Applicant and Applicant shall submit proof of current insurance to the County on an annual basis to the address above. 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 (30) 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, his invitees, guests, or other agents, 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.

7. Right of Entry by County and the Public.

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, but not limited to, inspecting such Property or performing other duties of the County as are required by law or by the terms of this Agreement. Applicant shall not interfere with the access or use of the Property by the public or other governmental entities. 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.

8. Binding Effect; Assignability; Independent Contractor.

This Agreement will inure to the benefit of and will be binding upon the parties hereto. 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 not be considered to be an agent, employee, or representative of the County.

9. Termination.

Unless otherwise provided for in this Agreement, this Agreement may be terminated with or without cause by either party upon fifteen (15) days' written notice thereof to the other party.

10. 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. C, Viera, Florida 32940, with a copy to Parks and Recreation Department, 2725 Judge Fran Jamieson Way, Bldg. B, Viera, Florida 32940. Notice under this Agreement shall be given to the Applicant at 410 Windtamer Way, Merritt Island, Florida 32952.

Notwithstanding the provisions of Paragraph 2 or requirements under State and federal law, in the event the County determines the Applicant has breached any term or provision of this Agreement that can be remedied, the County shall provide written notice of such breach to the Applicant and the Applicant shall have thirty (30) days after receipt of such notice to cure such breach. If such breach is of a nature that it cannot reasonably be cured within such time period, then this Agreement shall terminate unless otherwise agreed to by the County.

11. 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 any authorized representative of the County upon written notice to the Applicant, or any assignee, not less than five (5) 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 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 in accordance with Chapter 119, Florida Statutes.

12. Entirety; Modifications; Waiver; 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 of this Agreement shall nevertheless continue in full force to the extent allowable to fulfill the intent and purpose of this Agreement.

13. Attorney's Fees; Venue; 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. **ANY TRIAL SHALL BE NON-JURY.** The Applicant shall promptly execute and comply with all statutes, ordinances, rules, and regulations required by federal, State, and/or local law.

14. Effective Date; Construction of Agreement.

The Agreement shall be effective on the date of last signature below ("Effective Date"). 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the County and Applicant have caused this Agreement to be signed and duly executed as of the day and year last written below.

County

Applicant

Frank Abbate
Signature Date

Signature Date

Frank Abbate, County Manager

Name

As approved by the Board on: 12/20/2022

ATTEST:

Rachel M. Sadoff
RACHEL M. SADOFF, CLERK

State of Florida

County of Brevard

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2022, by _____, George Spence Wise, III.

Notary Public Signature

[Notary Stamp]

Printed Name

Exhibit A

Parks and Recreation Parcel – Tax Acct. # 2851285

4100 Highway A1A Melbourne Beach



EXHIBIT B
MASTER FALCONRY PERMIT

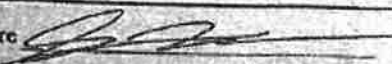


Master Falconry Permit
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT, CAPTIVE WILDLIFE OFFICE
620 SOUTH MERIDIAN STREET
TALLAHASSEE, FLORIDA 32399-1600

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

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

AUTHORIZED LOCATION:
410 Windtamer Way, Merritt Island, Florida 32952


Permittee Signature 

Date

1/1/20

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

12/30/11

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.