

Mayor's Office: Council Agenda Item Request Form
*This form and supporting documents (if applicable) are due the Wednesday
before the COW meeting by noon.*

Date Received (office use)	
--------------------------------------	--

Date of Request	01/24/2018
Requesting Staff Member	Derrick Sorensen 80341
Requested Council Date	01/30/2018
Topic/Discussion Title	REL: 708 Hawkwatch International Inc.
Description	Hawkwatch International a non-profit organization works to protect raptors through scientific research and public education. They are requesting a continuation of their previous license allowing them to access and erect nesting boxes on Salt Lake County properties.
Requested Action¹	Consent
Presenter(s)	Derrick Sorensen
Time Needed²	<5
Time Sensitive³	No
Specific Time(s)⁴	No
Please attach the supporting documentation you plan to provide for the packets to this form. While not ideal, if supporting documents are not yet ready, you can still submit them by 10 am the Friday morning prior to the COW agenda. Items without documentation may be taken off for consideration at that COW meeting.	

Mayor or Designee approval: _____

Eun Sitvack

¹ What you will ask the Council to do (e.g., discussion only, appropriate money, adopt policy/ordinance) – in specific terms.

² Assumed to be 10 minutes unless otherwise specified.

³ Urgency that the topic to scheduled on the requested date.

⁴ If important to schedule at a specific time, list a few preferred times.

LICENSE TO USE PROPERTY

THIS LICENSE, made effective the _____ day of _____, 2018 between SALT LAKE COUNTY, a body corporate and politic of the State of Utah, hereinafter "Licensor" or "County" and HAWKWATCH INTERNATIONAL, INC., a New Mexico non-profit corporation, with its Utah headquarters at 2240 South 900 East, Salt Lake City, Utah 84106, hereinafter "Licensee."

RECITALS

- A. Licensee is a non-profit organization that works to protect raptors through scientific research and public education.
- B. Licensee is conducting a Citizen Science based nest box program to better understand how American Kestrel reproduction, survival, and movement patterns vary in different landscapes by placing nest boxes throughout Salt Lake County, and seeks to add additional boxes, particularly in greenspaces owned by County set within the urban matrix of Salt Lake City and surrounding areas.
- C. County recognizes Licensee's contribution to the community through its ecological research and education programs.
- D. The benefit afforded the County and general public from Licensee's operations are deemed fair and adequate consideration for the County's grant of license to Licensee.

WITNESSETH

1. Licensor hereby grants to Licensee non-exclusive permission to access properties owned by Licensor and identified in "Exhibit A," attached hereto and made a part hereof (the "Properties"). This License is granted for the purpose of allowing Licensee and Licensee's invitees' access to the Properties to place, monitor, repair, and maintain nesting boxes (hereinafter "Permitted Activities"). The Parties acknowledge that the Properties shall be used for no other purpose by Licensee.

2. The term of this License shall be for a period of five (5) years ("Term"), which term shall commence on the date written above, and shall terminate five (5) years later, unless terminated sooner upon Licensee's default of its obligations or otherwise terminated as provided herein. This License may be renewed for two (2) additional one (1) year terms. Renewals will be initiated at the sole discretion of Licensor and completed in writing with mutual agreement by both Parties.

3. Pursuant to Salt Lake County Council Resolution No. _____, and as provided in Utah Code Ann. § 17-50-303(3) (2014), the Salt Lake County Council has determined that, as a non-profit entity whose activities contribute to the health, prosperity, and moral well-being of County inhabitants, Licensee shall not pay Licensor a fee or other monetary

consideration for this License. Licensee agrees to continue to protect raptors through scientific research and public education as consideration for this License.

4. Licensee shall maintain the premises in conformance with all applicable federal, state and local laws, rules and regulations, including but not limited to all environmental and public health related laws, rules and regulations. If any hazardous waste is discovered, released, or deposited on the Properties by any act of Licensee or Licensee's invitees, Licensee shall remove the hazardous or toxic waste at its own cost and expense in accordance with federal and state laws and regulations. Licensee shall not store, use, manufacture or bring on or about the premises any toxic material, hazardous waste, hazardous substance regulated by any city, county, state or federal government authority as well as agricultural waste, solid waste, pollutants or sewage. Licensee agrees to promptly clean up and remove any such toxic material, hazardous waste, hazardous substance, agricultural waste, solid waste, pollutants or sewage so as not to create a hazard or nuisance on the premises. Licensee shall be solely responsible for and shall defend, indemnify, and hold Licensor harmless from and against all claims, actions, proceedings, costs, liabilities, attorney's fees and judgments arising out of or in conjunction with the removal, cleanup or restoration of the premises. Licensee's obligation under this provision shall survive the termination or expiration of this License.

5. Except as provided in Paragraph 10 of this License, and as noted otherwise in Exhibit A, within 10 calendar days of placing a nesting box on Licensor's Properties, Licensee shall provide Licensor a map of the Properties clearly marking the location of the nesting box.

6. Licensee shall not modify or alter the landscape of the Properties, including but not limited to cutting down trees, removing brush or other plant life.

7. Licensee shall be solely responsible for safely installing, maintaining, repairing, and removing all kestrel boxes. Except for the nesting boxes, Licensee shall not install or construct equipment or structures on Licensor's Properties.

8. Licensee's use of this license is restricted to regular park hours as posted, or if not posted, from dawn to dusk.

9. Licensor is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904 (2017). The parties agree that Licensor shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this License shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

10. Licensee acknowledges that other entities may hold conservation easements ("Conservation Easement Holder") on the Properties as identified in Exhibit A. Applicable conservation easements are identified in Exhibit B and incorporated herein by reference (the "Conservation Easements"). Licensee understands that its presence and activities on the Properties must be consistent with the conservation values defined in the applicable Conservation Easements ("Conservation Values"). Prior to placing kestrel boxes on those properties with conservation easements, Licensee shall meet with Licensor and the applicable

conservation easement holder to answer questions to assure conformity to the Conservation Values.

11. Licensee hereby indemnifies and agrees to hold Licensor and any Conservation Easement Holder, their officials, officers, employees, and representatives (“Indemnified Parties”) harmless from and against any and all claims, damages, injuries, liabilities, losses, suits, judgments, causes of action, fines, penalties, costs and expenses including, but not limited to court costs and attorney’s fees and cost of investigation, of any nature, kind or description which may be incurred by the Indemnified Parties, or any of them, at any time as a result of any damage to any property or persons in connection with or arising out of Licensee’s kestrel boxes, Licensee’s use of the Properties, whether before or after Licensor acquired the Properties, or otherwise from the performance of this License, however allegedly caused.

Licensee hereby releases and forever discharges Licensor and any Conservation Easement Holder, their trustees, officers, employees, representatives, agents and assigns of and from any and all manner of claims, causes of action, suits at law, and/or equity, demands, liabilities and damages of whatsoever kind or nature which Licensee may have or claim based upon or growing out of or in connection with Licensee’s kestrel boxes on Licensor’s Properties.

Licensee’s obligations to indemnify the Indemnified Parties includes any actions, claims, or orders, and resulting court costs, attorney’s fees, and costs of investigations, to remove the kestrel boxes, and restore the land to a state consistent with the Conservation Values found in the Conservation Easements, if applicable.

12. Licensee represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in state statute or Salt Lake County’s Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in state statute or Salt Lake County ordinances.

13. Licensee acknowledges the prohibition of campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances, 2001. Licensee also acknowledges and understands this prohibition means that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with the County is prohibited from making campaign contributions to County candidates. Licensee further acknowledges that violation of this prohibition may result in criminal sanctions as well as termination of this License. Licensee represents, by executing this License, that Licensee has not made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

14. Licensee shall have no claim against Licensor for the condition of the subject Properties and takes same as is. Licensor shall have no obligation to Licensee to maintain said Properties in any prescribed condition. Licensee represents that it has examined the Properties and has not relied upon any statements, representations or agreements whatsoever as to the condition of the Properties, and Licensee accepts the same with the understanding Licensor does not warrant or represent that the Properties are safe, healthful, or suitable for the purposes for which it is permitted to be used under the terms of this License. Licensor shall not be liable for damage to or the destruction of the kestrel boxes under any circumstances.

15. Licensor reserves the right to terminate this License at any time during the Term whenever Licensor determines, in its sole discretion, that it is in Licensor's interest to do so. If Licensor elects to exercise this right, Licensor shall provide written notice to Licensee at least 15 (fifteen) days prior to the date of termination. Licensee agrees that Licensor's termination will not entitle Licensee to any rights or remedies provided by law or this License for breach of contract by Licensor or any other claim or cause of action.

16. Licensee agrees to quit and surrender peaceable possession of the Properties to Licensor when this License is terminated. Upon termination of this License, Licensee shall leave the Properties in a clean condition, reasonably free of weeds, trash and debris. Upon termination of this License, Licensee shall repair or restore any damage Licensor reasonable believes was caused by the kestrel boxes or Licensee's use of the Properties. Where applicable, restorations and repairs must be completed consistent with the Conservation Values found in the Deed of Conservation Easement. Additionally, upon written request by Licensor, Licensee shall completely remove the kestrel boxes.

17. If breach of contract is alleged by either party against the other party, fifteen-(15)-days prior written notice of default shall be given to the other party before any legal action is taken.

18. This License may not be assigned without prior written consent of Licensor. Licensee shall not commit, or permit others to commit, waste on the Properties or commit any other act that could disturb the quiet enjoyment of Licensor or of neighbors on reserved or adjacent property.

19. Licensee shall, at its sole cost and expense, secure and maintain during the term of this License, including all renewal or additional terms, the following minimum insurance coverage:

19.1 GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES.

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this License, and (ii) be maintained for a period of at least three (3) years following the end of the term of this License or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to Licensor.

B. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

(1) Currently rated A- or better by A.M. Best Company;

—OR—

(2) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

C. Licensee shall furnish certificates of insurance, acceptable to Licensor, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

D. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Licensee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by Licensor, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to Licensor.

E. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing thirty (30) days prior written notice to Licensor in a manner approved by the Salt Lake County District Attorney.

F. In the event Licensee fails to maintain and keep in force any insurance policies as required herein, Licensor shall have the right at its sole discretion to obtain such coverage and charge payments to Licensee for the costs of said insurance, or to terminate this License.

19.2 REQUIRED INSURANCE POLICIES.

Licensee agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

A. Commercial general liability insurance on an occurrence form with Licensor as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy. The policy shall protect Licensor, Licensee, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Licensee's operations under this License, whether performed by Licensee itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

20. Licensee does hereby acknowledge the legal title of Licensor to the Properties and agrees not to assail, resist, or deny such title. Licensee agrees that it does not and shall not claim at any time any interest of any kind or extent whatsoever in the Properties by virtue of this

License or of its occupancy or use hereunder. Licensee shall exercise the privilege granted herein at Licensee's own risk.

21. The Parties hereto each acknowledge that the language in this License has been jointly negotiated and drafted and agree that this License shall be construed as a whole according to the fair meaning of such language and not in favor of or against either of the parties.

22. This License contains the entire agreement and understanding of the parties with respect to the subject matter hereof and no prior representations, warranties or promises pertaining to the subject matter hereof shall be of any force or effect.

23. Each person executing this License on behalf of any party expressly represents and warrants that such executing person has full authority to execute and deliver this License and to bind the party on behalf of which the executing person has executed this License to the terms of this License.

24. If any portion of this License shall be or become illegal, invalid, or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this License.

25. This License shall inure to the benefit of, be binding upon, the parties hereto and their respective officers, employees, successors and assigns.

26. It is understood and agreed by the parties hereto that this License shall be governed by the laws of the State of Utah and the ordinances of Salt Lake County, both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

27. This License may be amended only in writing signed by the Parties hereto.

28. Where applicable, the Conservation Easement Holder has reviewed this License and agrees that the provisions herein do not violate the applicable Conservation Easement.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto sign and cause this License to be executed.

LICENSOR
SALT LAKE COUNTY

LICENSEE
Hawkwatch International, Inc.

By: _____
Mayor or Designee

By: 

Date: _____

Printed Name: Paul Parker


Title: Executive Director

APPROVED BY:
Salt Lake County Parks & Recreation

Date: 1/24/2018

By: 
Martin Jensen, Division Director

APPROVED AS TO FORM:


R. Christopher Preston
Deputy District Attorney
Date: 1/18/2018

License to Use Property between Salt Lake County and Hawkwatch International, Inc.

Exhibit A

Properties Owned by Salt Lake County

Killyon Canyon Open Space*, 1649 North Canyon Park Rd.
Perkins Flat Open Space, 4700 Emigration Canyon Rd
Owl Meadow*, 4340 Emigration Canyon Rd.
Grandeur Peak/ Parley's Crossing Open Space*, 3900 East and I-80 East Freeway
Olympus Hills Park, 4500 South 3131 East
Dimple Dell Regional Park**, 10000 South to 10600 South 300 East to 3000 East
County owned land along the Jordan River Parkway including:
Redwood Nature area, 2660 South 1160 West
Little Confluence, 4800 South Murray Taylorsville Road
Arrowhead, 13800 South 1300 West
Jordan Narrows, 17000 South 1200 West
Springview Farms, 14123 south 1300 west
Canyon Rim Park, 3100 South 2900 East
Tanner Park, 2760 South (Heritage Way) 2695 East
Big Cottonwood Regional (Big Cottonwood, Creekside, Hillview, Holladay Lions), 4300 South 1300 East
Valley Regional, 5100 South 2700 West
Autumn Meadows, 5400 South 2280 West
South Cottonwood/Wheeler Farm**, 6351 South 900 East
Crestwood/Little Cottonwood Park, 7485 South (Siesta Drive) 1700 East
Oquirrh Highlands Basin, 6810 South (Denman Avenue) 6220 West
Lodestone Park, 5980 South 6300 West
Oquirrh Park, 5800 South 4800 West (Cougar Lane)
Rose/Yellow Fork Canyon, 9201 West Butterfield Canyon Road
Vista Park, 4950 South 1950 West
Southridge Park, 5051 South 4015 West
ATK Hercules, 4000 South 7200 West

*These properties have conservation easements held by another party.

**These parcels will require additional approval from other county staff and/or boards, which will be facilitated by Open Space staff.

License to Use Property between Salt Lake County and Hawkwatch International, Inc.

Exhibit B

Conservation Easements

Killyon Canyon Open Space, 1649 North Canyon Park Rd.

Deed of Conservation Easement dated December 21, 2010, recorded in the office of the Salt Lake County Recorder on December 22, 2010, as Entry No. 11102166 in Book 9891 at Page 3469.

And

Deed of Conservation Easement dated December 21, 2010, recorded in the office of the Salt Lake County Recorder on December 22, 2010, as Entry No. 11102142 in Book 9891 at Page 3301.

Owl Meadow, 4340 Emigration Canyon Rd.

Owl Meadow Deed of Conservation Easement dated June 27, 2017, recorded in the office of the Salt Lake County Recorder on June 29, 2017, as Entry No. 12566371 in Book 10573 at Page 507.

Grandeur Peak/ Parley's Crossing Open Space, 3900 East and I-80 East Freeway

Grandeur Peak Natural Area Preservation Easement Agreement dated July 19, 2005, recorded in the office of the Salt Lake County Recorder on August 30, 2005, as Entry No. 9476017 in Book 9180 at Page 9709.