

RESOLUTION NO. 2015-120

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING
CONDITIONAL AIRPORT USE PERMIT FOR KEMRON ENVIRONMENTAL
SERVICES, INC. FOR USE OF MIDDLE TARMAC AT MARINA MUNICIPAL
AIRPORT FOR AVIATION-RELATED ACTIVITIES AND AUTHORIZING CITY
MANAGER TO EXECUTE CONDITIONAL AIRPORT USE PERMIT ON BEHALF
OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, off-airport airborne fire suppression and ignition activities performed on former Fort Ord (now Monterey County) land have been approved in the past to operate at the Marina Municipal Airport with issuance of a Conditional Airport Use Permit, and;

WHEREAS, Kemron will be responsible for all permits, sanitary facilities, safety, medical personnel, and coordination of all safety issues with the Airport, Marina Police and Fire Departments as appropriate, and;

WHEREAS, Kemron has a contract to conduct fire suppression and ignition activities on former Fort Ord land through December 31, 2018. In that time, Kemron would likely conduct one event in 2015, two events in 2016, two events in 2017, and one event in 2018. Given that each event typically takes three days to complete, Kemron personnel would likely be at the Airport for approximately 18 days, and;

WHEREAS, Terms and Conditions in the proposed Conditional Airport Use Permit are the same as the previously approved Conditional Airport Use Permits for Fire Stop and ITSI Gilbane, except for a change in the Term and Charge amount (“**EXHIBIT A**”). The term of the permit is October 1, 2015 through December 31, 2018 and the charge amount is \$1,250 per event, and;

WHEREAS, Kemron typically conducts one or two fire suppression/ignition events a year, but does not schedule their events in advance, because their operation requires certain weather conditions. For this reason, Kemron is required to pay the Use Permit fee after the event has occurred, and;

WHEREAS, having Kemron at the Marina Municipal Airport conducting fire suppression and ignition activities for former Fort Ord land provides a benefit to the region and community, and;

WHEREAS, the City Council finds that the Conditional Airport Use Permit is consistent with the goals, policies and programs of the Marina General Plan, in that the Conditional Airport Use Permit is necessary to further economic development and activity at the Marina Municipal Airport and within the Marina community, and;

WHEREAS, the Conditional Airport Use Permit is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines, section 15301, Existing Facilities, and;

WHEREAS, the Airport Enterprise Fund 55, Airport Permits, Revenue Account No. 55.000.000.5200.010, is projected to receive revenues of ±\$7,500 for the thirty nine (39) month period of the Conditional Airport Use Permit.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve Conditional Airport Use Permit for Kemron Environmental Services, Inc. for use of the middle tarmac at the Marina Municipal Airport for aviation-related activities, and;
2. Authorize the City Manager to execute the Conditional Airport Use Permit on behalf of the City subject to final review and approval by the City Attorney.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Marina at a special meeting duly held on the 13th day of October 2015, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, O'Connell

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Morton, Delgado

ABSTAIN: COUNCIL MEMBERS: None

Frank O'Connell, Mayor Pro-Temp

ATTEST:

Anita Sharp, Deputy City Clerk

**MARINA MUNICIPAL AIRPORT
CONDITIONAL AIRPORT USE PERMIT
FOR THE USE OF THE MIDDLE TARMAC BY KEMRON**

THIS IS TO CERTIFY THAT, the City of Marina City Council at a special meeting held on October 13, 2015, considered the following request and approved this Conditional Airport Use Permit (“Permit) for the use of the middle tarmac at the Marina Municipal Airport (“Airport”) under authority provided by the Airport Operating Ordinance Number 96-01, dated March 7, 1996 and subject to the following conditions and restrictions.

REQUEST:

Request by Mr. Steve Crane, on behalf of **Kemron Environmental Services, Inc., a New York corporation**, and any other entities under which the business shall do business as (“Permittee”) for permission to use the middle tarmac at the Airport. Permittee would conduct activities in connection with off-Airport airborne fire suppression and ignition and utilize the middle tarmac, including staging of aircraft and equipment. The Permit shall go into effect on October 1, 2015, and remain in effect for a thirty-nine (39) month period ending on December 31, 2018.

BACKGROUND:

The members of the City Council serve as members of the Airport Commission. The Airport Commission is authorized to enact policies and regulations governing operations and the conduct of business on the Airport subject to the approval of the City Council. In order to keep the administrative record of the Airport Commission separate from the action of the City Council, the Commission’s role is to recommend to the Council approval or disapproval of a request.

COUNCIL ACTION:

The City Council adopted the following findings in justification of granting this Permit and granted the Permit as described herein subject to each of its Conditions of Approval and authorized the City Manager to execute same as described herein.

FINDINGS:

The City Council finds that, under strict conditions of approval:

1. Permittee’s activities in connection with off-Airport airborne fire suppression and ignition, including staging of aircraft and equipment and Permittee’s use of the middle tarmac will not be detrimental to the environment or to the health, safety, peace or general welfare of the City, the Airport, the surrounding properties or the community-at-large.
2. Permittee’s activities constitute an aeronautical use and will not be detrimental or injurious to the efficiency and utility of the Airport or to Airport property and improvements.
3. Permittee’s activities, if conducted in accordance with the Conditions of this Permit, will be consistent with the Environmental Guidelines, the General Plan, the Airport Master Plan, the Airport Layout Plan, the Airport Operating Ordinance and the Zoning Ordinance of the City. The long-term use of the property is designated for aviation-related development in the Airport Master Plan and Airport Layout Plan.

4. Permittee's activities and the use of the middle tarmac will not present or create a safety hazard to the normal operations of aircraft arriving or departing from the Airport.
5. The charge established for the proposed use of the middle tarmac is reasonable.
7. The form and amount of liability insurance required herein, naming the City and the Airport as additional insured parties to be obtained from the Permittee are reasonably related to the Airport's liability exposure and are not unjustly discriminatory. Any previous editions of these forms shall be modified to indicate the business name of the Permittee: Kemron Environmental Services, Inc.
8. The form and amount of liability insurance required herein, naming the City and the Airport as additional insured parties to be obtained from the Permittee are reasonably related to the Airport's liability exposure and are not unjustly discriminatory. Any previous editions of these forms shall be modified to indicate the business name of the Permittee: Kemron Environmental Services, Inc., a New York corporation. It is further found that, because these insurance requirements are appropriate under the unique characteristics of the proposed use, this finding shall not be construed to indicate a precedent for insurance requirements for any other use.

TERM OF PERMIT:

Thirty-nine (39) months, **October 1, 2015 through December 31, 2018.**

CHARGE:

The Permittee shall pay to the City a charge for the use of the middle tarmac in the amount of \$1,250 per activity. The "activity" includes the consecutive days of Permittee's intermittent use for each time they are using the Airport for their fire activities. This amount shall be paid in full within seven days of the use of the middle tarmac. Payment shall be made to the "City of Marina", 211 Hillcrest Avenue, Marina, California 93933, attention: Layne Long, City Manager.

BUSINESS LICENSE:

Permittee shall obtain and keep current a business license issued by the City's Finance Department. Permit does not go into effect until the business license is obtained.

CONDITIONS OF APPROVAL:

This Permit is issued by the City and is accepted by Permittee upon the following terms, covenants and conditions, and the breach of any said terms, covenants or conditions may be deemed sufficient cause for the suspension or termination of the Permit. Such suspension of the Permit shall be by the City Manager.

I. Operational

- A. The ground activities for Permittee shall be confined to the middle tarmac, as designated by the City and shown in "**Exhibit A**". Permittee, by its acceptance of this Permit, acknowledges and understands the area to be used on the middle tarmac, as established by the City, is a temporary designation and that this Permit does not contain, and may not be construed to convey, any vested right in

Permittee to use another area of the Airport in connection with Permittee's activities. The middle tarmac is to be maintained by Permittee to Airport standards, and at all times free of any structures, vehicles (except for the Permittee related vehicles), debris, trash, fencing, etc. Prior to conducting any operations, Permittee must examine the condition of the middle tarmac to determine if it is in a safe condition to use as a ground site. Permittee shall at all times cooperate and coordinate with the City prior to and in the possible maintenance of the middle tarmac.

- B. Prior to conducting any activities on the middle tarmac, Permittee shall provide and receive approval of a written schedule of its activity dates to the Airport Manager or his or her designee and shall keep the Airport Manager or his or her designee fully informed on a timely basis by providing prior written notice concerning any and all changes concerning usage dates. The "usage dates" include the activity dates, as well as any set up and breakdown dates. Prior to the effective date of this Permit, Permittee shall provide to the Airport Manager or his or her designee a current list of names and contact information for principal persons who are responsible for the conduct of the activities and who should be contacted in the event of an emergency.
- C. Permittee shall adhere to any applicable FAA regulations and conduct all operations in accordance with the following:
- Federal Aviation Regulation (FAR) Part 61 – *Certification: Pilots, Flight Instructors, and Ground Instructors*;
 - FAR Part 65 – *Certification: Airmen other than Flight Crewmembers*;
 - FAR Part 91 – *General Operating and Flight Rules*;
 - FAR Part 119 – *Certification: Air Carriers and Commercial Operators*; and
 - City of Marina Municipal Code Chapter 13.22 "Operating Ordinance for Marina Municipal Airport."
 - Permittee shall also adhere to any subsequent FAA regulations that may be promulgated during the period in which the Permit is in force.
- D. Permittee operations may be conducted from 0600 hours to 2400 hours, seven (7) or fewer days a week, subject to wind and weather conditions, except in emergency situations. The City may require Permittee to temporarily cease its use of the middle tarmac to accommodate special activities permitted by the City at the Airport. City will use its best efforts to notify Permittee within a reasonable time period prior to issuing such a requirement.
- E. Permittee shall not allow anyone to travel across the runway, taxiways or ramps without proper flag and radio equipment, powered up and tuned to frequency 122.7 or such frequency as the FAA or Airport Manager or his or her designee shall designate in writing.
- F. Radio equipment and use requirements shall be consistent with FAA Regulations.

- G. Parking spaces for Permittee-associated vehicles shall be located in the general public parking areas at the Airport. There shall be no overnight parking or camping in any vehicle on Airport property per Municipal Code 10.40.150. All vehicles associated with Permittee's activities including customers, visitors, employees, and owners shall be parked in the general public parking areas at the Airport. Any vehicles parked in non-approved areas may be removed.
- H. No persons shall possess or consume any alcoholic beverage or illegal drug in or around any areas when Permittee activities are taking place. No person employed by or providing services to Permittee shall possess, consume and/or have in their system any alcoholic beverage or illegal drug in or around any areas when activities are taking place. In addition, pilots and navigators shall not possess or have in their systems any legal drug that impairs or could impair their ability to operate or navigate the aircraft. This includes the middle tarmac, the aircraft boarding area, or on or around any associated vehicles
- I. Operational-related notifications of a non-emergency nature, which do not constitute reportable events (as set forth below), should be made to the Airport administrative staff, either in person or by telephone (831-582-0102). For occasions when the Airport administrative staff may not be available and the matter requires immediate attention, the Police Department Watch Commander may be contacted (831-384-7575).
- J. Permittee in accepting this Permit acknowledges that it has received and shall abide by the rules and regulations set forth in the Airport Operating Ordinance (Marina Municipal Code Chapter 13.22) and shall conduct its activities in accordance with applicable federal and state statutory and decisional laws, County of Monterey and City of Marina ordinances, rules and regulations and the requirements of any other duly authorized government agency.

II. Reportable Events

- A. Permittee, within 24-hours from the time of an accident, incident or reportable event which violates the regulations identified in Section I of this Permit, shall provide a written report of the incident to the City using the attached Incident Report Form, as shown in "**Exhibit B**". The Airport Manager or his or her designee shall acknowledge receipt of the form including the date and time received and shall provide a response to Permittee within 72 hours of receipt. The Airport Manager or his or her designee shall provide written notice to Permittee of an accident or incident or reportable event. Permittee shall acknowledge receipt of the form including the date and time received and shall provide a response to the Airport Manager or his or her designee within 72 hours of receipt.
- B. Ground operations by Permittee outside of the middle tarmac are defined as a reportable event under this Permit.
- C. Permittee must immediately, and no later than one hour, by phone or in person, contact the Airport Manager or his or her designee or Police or Fire Department duty officers to report any accident as required by these provisions or an incident requiring medical attention and a copy of any written report shall be provided to the City. Any situation observed that might constitute a hazard to aircraft or is not

in the interest of good safety practice at the Airport must be reported immediately to a City official or officer, as described above, by telephone, in person, or using the Incident Report Form.

III. Insurance and Indemnification Required.

- A. Insurance. Permittee agrees to provide insurance in accordance with the requirements set forth herein. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2) provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Permittee's insurance is not expected to respond to claims that may arise from the acts or omissions of the City. Proof of insurance coverage shall be provided to the City upon request. If Permittee uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein,

Permittee agrees to amend, supplement or endorse the existing coverage to do so. The following coverage's shall be provided by Permittee and any other entities under which the corporation shall do business, shown as having been issued the policies of insurance required herein and which must be maintained on behalf of the City in accordance with the requirements set forth herein.

- B. Aircraft/Premises Liability. For any aircraft owned, used, leased to or under the control of Permittee and used in connection with the middle tarmac activities and to and from the Airport, Permittee shall provide evidence of insurance coverage, satisfactory to the Risk Manager of the City and consistent with the requirements of the Monterey Bay Area Self Insurance Authority, in the minimum amount of one million dollars, single limit, bodily injury and property damage. Insurance shall be written on an occurrence basis. The City of Marina shall be added as an additional insured using an additional insured endorsement form approved by the City.
- C. Auto Insurance. Primary coverage must include vehicles used in relation to Permittee activities on the Airport and shall be written on a commercial or business auto coverage form approved by the City including hired auto liability for bodily injury and property damage. Limits shall be no less than one million dollars per accident. Starting and ending dates shall be concurrent. The City of Marina shall be added as an additional insured using an additional insured endorsement form approved by the City.
- D. Workers' Compensation/Employers' Liability. This shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars per accident or disease and shall add the City of Marina as an additional insured employer. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its Airport, Council, boards and commissions, officers, employees, agents and volunteers.
- E. Cancellation. In the event of cancellation, reduction of or change in coverage, or a substantial premium increase (in excess of \$500.00) of the City's airport liability insurance as a result, in whole or in part, of the operations allowed by this

Permit, this Permit shall be suspended effective as of the date of any such change. Upon receipt of notice of any such change in coverage City shall promptly notify Permittee.

- F. City Protection. Permittee and City agree that City, its Airport, Council, boards and commissions, officers, employees, agents, and volunteers, should to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the activities permitted by this Permit (whether directly, indirectly or arising out of or connected in any way with Permittee activities provided for herein). Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Permittee acknowledges that City would not grant this Permit in the absence of the commitment from Permittee to indemnify and protect City as set forth here.

To the full extent permitted by law, Permittee shall defend, indemnify and hold harmless City, its Airport, Council, boards and commissions, officers, employees, agents, and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to the activities governed by this Permit. All obligations under this provision are to be paid by Permittee as they are incurred by the City.

Without affecting the rights of the City under any provision of law, this Permit or this section, Permittee shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by written agreement of the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where Permittee are solely or partially at fault or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of Permittee shall be all inclusive and City shall be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Permittee acknowledges that its obligation pursuant to this section extends to liability attributable to the City, if that liability is less than the Sole fault of City. Permittee shall have no obligation under this Permit for liability proven in a court of competent jurisdiction or by written agreement between the parties to be the sole fault of the City.

The obligations of Permittee under this or any other provision of this Permit shall not be limited by the provisions of any workers' compensation act or similar act. Permittee expressly waives its statutory immunity under such statutes or laws as to City, its Airport Council, boards and commissions, officers, employees, agents, and volunteers.

Permittee agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from any assignee, subcontractor or any other person or entity involved by, for, with or on behalf of Permittee in the performance of the subject matter of this Permit. In the event Permittee fails to obtain such indemnity obligations from others as required here, Permittee agrees to be fully responsible according to the terms of this section.

Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Permittee and shall survive the termination of this Permit or this section.

G. Other Agreements. Permittee and City further agree as follows:

1. Insurance provisions supersede all other sections and provisions of this Permit to the extent that any other section or provision conflicts with or impairs the provisions of those sections.
2. Nothing contained in the insurance provisions is to be construed as affecting or altering the legal status of the parties to this Permit. The insurance requirements set forth in this Permit are intended to be separate and distinct from any other provision in this Permit and shall be interpreted as such.
3. All insurance coverage and limits provided pursuant to this Permit shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Permit or any other Permit relating to the City or its operations limits the application of such insurance coverage.
4. Requirements of specific coverage features or limits contained in the insurance provisions are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
5. For purposes of insurance coverage only, this Permit shall be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Permit.
6. All general or auto liability insurance coverage provided pursuant to this Permit shall not prohibit Permittee, Permittee's employees, or agents from waiving the right of subrogation prior to a loss. Permittee hereby waives all rights of subrogation against the City.
7. Unless otherwise approved by City, Permittee's insurance shall be written by insurers authorized to do business in the State of California with a minimum "Best's" Insurance Guide Rating of "A:VII."

8. In the event any policy of insurance required under this Permit does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Permittee.
9. Permittee agrees to provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverage's required and an additional endorsement to Permittee's general liability and umbrella liability policies using ISO form CG 20 10 11 85 Certificate(s) are to reflect that the insurer shall provide 30 days notice of any cancellation of coverage. Permittee agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Permittee agrees to provide complete copies of policies to City upon request.
10. Permittee shall provide proof that policies of insurance required herein expiring during the term of this Permit have been renewed or replaced with other policies providing at least the same coverage. Such proof shall be furnished at least two weeks prior to the expiration of the coverage's.
11. Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Permit in no way waives any right or remedy of City or any additional insured, in this or any other regard.
12. Permittee agrees to require all subcontractors or other parties hired for this project to provide general liability insurance naming as additional insured's all parties to this Permit. Permittee agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Permittee agrees to require that no contract used by any subcontractor, or contracts Permittee enters into on behalf of City, shall reserve the right to charge back to City the cost of insurance required by this Permit. Failure of City to request copies of such contracts shall not impose any liability on City, its Airport, Council, boards and commissions, officers, employees, agents and volunteers.
13. If any of Permittee's dba entities are or should become lawfully constituted as a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insured's.
14. Permittee agrees to provide immediate notice to City of any claim or loss against Permittee that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

IV. Enforcement, Suspension, and Termination

- A. The conditions of this Permit may be enforced by any means and methods by which the City may secure compliance with the provisions of its Municipal Code. These include, but are not necessarily in order of or limited to the following: warning notices, administrative citations, civil or criminal enforcement or injunctive relief. Multiple enforcement remedies may be used to achieve compliance with respect to persons who commit continuing violations.
- B. In lieu of or in conjunction with enforcement remedies, this Permit may be immediately suspended at any time for a violation of any of the conditions of approval as set forth herein. Written notice of suspension shall be given to Permittee, or that person then in-charge of conducting Permittee activities on the Airport, by the Airport Manager or his or her designee. The notice shall set forth the specific violation for which the immediate suspension is imposed. Permittee agrees that, upon receipt of written notice of suspension from the Airport Manager or his or her designee it will immediately cease and suspend its use of the middle tarmac.
- C. The Airport Manager or his or her designee agrees to cooperate with Permittee in its efforts to remedy or to address a cited violation or notice of violation for which this Permit has been suspended. If and when such violation has been addressed to the satisfaction of the Airport Manager or his or her designee, a written notice of Permit reinstatement shall be given to Permittee.
- E. This Permit may be suspended by action of the City Manager and terminated by action of the City Council or the Airport Commission.
- F. In the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Permit by means of court action or administrative enforcement the laws of the State of California shall govern the interpretation of the terms and conditions of this Permit and such action shall be brought in a court of proper jurisdiction in Monterey County, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonable consulted by the attorneys for the prevailing party.
- G. In the event of a request or action by the Federal Aviation Administration (FAA) to cease or terminate the activities as set forth in this conditional use permit, such permit shall become immediately null and void without requirement of any further action by the City Council. To the extent applicable, Permittee shall comply with all FAA Assurances as shown on “**Exhibit C**” attached hereto and made a part hereof.

V. Non-Transferability, No Exclusive Right, No Right to Lease

- A. This Permit is non-transferable.
- B. This permit shall not be construed or interpreted as an “exclusive right” within the provisions of section 308a of the FAA Act of 1958, as amended.

- C. This Permit is not, and may not be, construed as a lease of any City property, nor does it convey any right to such a lease.

VI. Authority

The individual executing this Permit on behalf of Kemron Environmental Services, Inc. represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of the corporation and that this Permit is binding upon the corporation in accordance with its terms.

VII. Notice

All notices and other communications required to be given under this Permit shall be in writing, and shall be delivered at the addresses set out herein. Notice may be given by personal delivery, recognized overnight courier, by United States mail, by facsimile transmission, or by e-mail, in the manner set forth below. Notice shall be deemed to have been duly given: (a) if by personal delivery, on the first to occur of the date of actual receipt or refusal of delivery by any person at the intended address; (b) if by overnight courier, on the first business day after being delivered to a recognized overnight courier; (c) if by mail, on the third business day after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid; (d) if by facsimile transmission, the next business day after being transmitted, as evidenced by the confirmation slip generated by the sender's facsimile machine; or (e) if by e-mail, the business day after being transmitted, as evidenced by the confirmation generated by the sender's e-mail, addressed as follows (or to such other address as either party may from time to time specify as its address for the receipt of notices hereunder):

To the City of Marina:

City Manger's Office
City Hall
211 Hillcrest Avenue
Marina, California 93933
Phone: 831-884-1224
Facsimile: 831-884-9654
E-mail: llong@ci.marina.ca.us

With a copy to:

City Attorney – City of Marina
Wellington Law Offices
857 Cass Street, Suite D
Monterey, California 93940
Phone: 831-373-8733
Facsimile: 831-373-7106
E-mail: attys@wellingtonlaw.com

To ITSI Gilbane Company on behalf of Kemron Environmental Services, Inc.:

Mr. Kevin Siemann, Task Manager
ITSI Gilbane Company
P.O. Box 2283
Marina, California 93933
Phone: 916-212-4443
Facsimile: 925-256-8998
E-mail: KSiemann@gilbaneco.com

THIS CERTIFICATE IS TO NOTIFY Kemron Environmental Services, Inc., that the above described Conditional Airport Use Permit was approved by the City of Marina City Council with their action and to become effective as specified in the Permit. However, requesters are notified that should any aggrieved party wish to appeal the decision of the City Council, a written appeal must be filed with the City Clerk no later than the end of the first work day which is at least ten calendar (10) days from the issuance of this Certificate, no later than 5:00 P.M. on Monday, October 23, 2015. Such appeal must set forth specifically the points at issue, the reasons for the appeal and describe why the person appealing the decision believes there was an error or abuse of discretion by the City Council. Should no appeal be filed within this time limit, this Certificate shall be valid as written. Any action for judicial review of this decision must be brought within the time limits specified in the California Code of Civil Procedure Section 1094.6.

Dated: October 13, 2015 at Marina, California

APPROVED

Layne Long
City Manager
City of Marina

Jeff Crechriou
Airport Services Manager
City of Marina

I HAVE READ, UNDERSTAND AND ACKNOWLEDGE AND AGREE TO THE CONDITIONS SET FORTH IN THIS PERMIT:

Steve Crane, Program Manager
Kemron Environmental Services, Inc., a Virginia corporation

Attest: Pursuant to Resolution No. 2015-__

Anita Sharp, Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS:

EXHIBIT A Site Plan of Middle tarmac
EXHIBIT B Incident Report Form
EXHIBIT C Federal Aviation Administration Assurances

“EXHIBIT B” TO THE USE PERMIT
Incident Report Form

INCIDENT REPORT FORM – FOR OFFICIAL USE ONLY

Date of Incident _____ Pilot in Command _____

Total Passengers _____ Name of Ground Observer _____

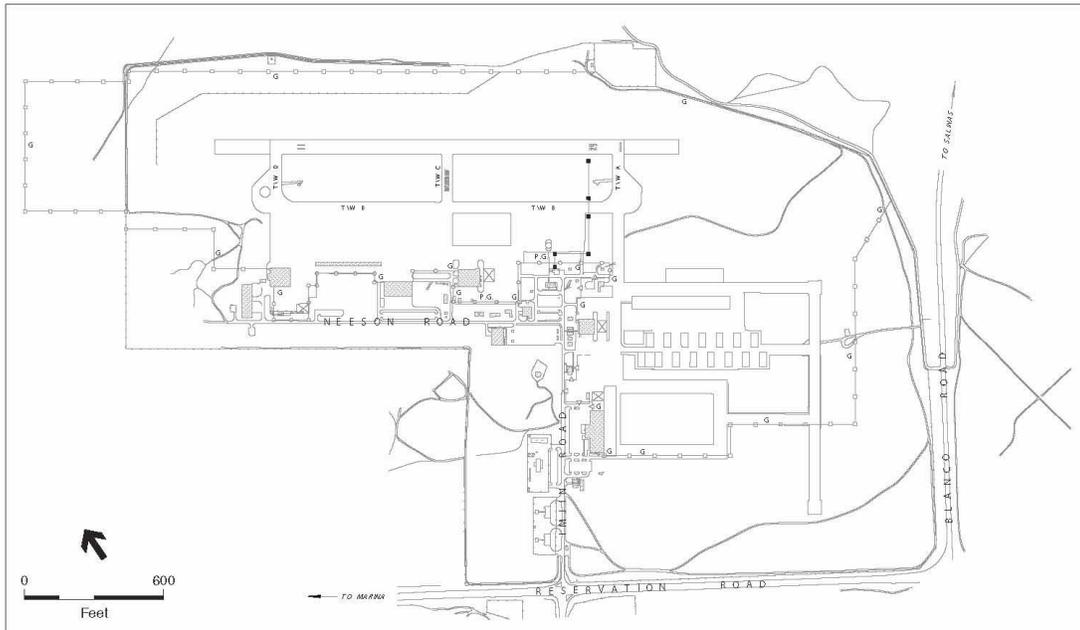
Name of Person(s) Involved: _____

Explanation: _____

Report Prepared by _____ Date _____

Received by _____ Date / Time _____

MARINA MUNICIPAL AIRPORT



COMPLIANCE WITH FEDERAL AVIATION ADMINISTRATION ASSURANCES

To the extent applicable, Permittee shall comply with all Federal Aviation Administration (FAA) assurances below:

1. Permittee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agrees that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, COT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
2. Permittee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agrees that (in the case of leases add "as a covenant running with the land") that: (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (c) the Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
3. That in the event of breach of any of the above nondiscrimination covenants, the City of Marina shall have the right to terminate the permit and to reenter and repossess said land and the facilities thereon, and hold the same as if said permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.
4. Permittee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the City of Marina shall have the right to terminate this permit and the estate hereby created without liability therefore or at the election of the City of Marina or the United States either or both said Governments shall have the right to judicially enforce Provisions.

6. Permittee agrees that it shall insert the above five provisions in any permit by which said Permittee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein permitted.
7. Permittee assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Permittee assures that it will require that its covered suborganizations provide assurances to the Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.
8. The City of Marina reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Permittee and without interference or hindrance.
9. The City of Marina reserves the right, but shall not be obligated to Permittee to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport together with the right to direct and control all activities of the Permittee in this regard.
10. This permit shall be subordinate to the provisions and requirements of any existing or future agreement between the City of Marina and the United States, relative to the development, operation or maintenance of the airport.
11. There is hereby reserved to the City of Marina, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein permitted. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Marina Municipal Airport.
12. Permittee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the permitted premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the permitted premises.
13. Permittee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object above the mean sea level elevation of 210 feet. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land permitted hereunder and to remove the offending structure or object, all of which shall be at the expense of the Permittee.
14. Permittee by accepting this permit agrees for itself, its successors and assigns that it will not make use of the permitted premises in any manner which might interfere with the landing and taking off of aircraft from the Marina Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves

the right to enter upon the premises hereby permitted and cause the abatement of such interference at the expense of the Permittee.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).
16. This permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

October 9, 2015

Item No. **4a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of October 13, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015- ,
APPROVING CONDITIONAL AIRPORT USE PERMIT FOR KEMRON
ENVIRONMENTAL SERVICES, INC. FOR USE OF MIDDLE TARMAC
AT MARINA MUNICIPAL AIRPORT FOR AVIATION-RELATED
ACTIVITIES AND AUTHORIZING CITY MANAGER TO EXECUTE
CONDITIONAL AIRPORT USE PERMIT ON BEHALF OF CITY
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2015-, approving Conditional Airport Use Permit for Kemron Environmental Services, Inc. for use of middle tarmac at Marina Municipal Airport for aviation-related activities, and;
2. Authorizing City Manager to execute Conditional Airport Use Permit on behalf of City subject to final review and approval by the City Attorney.

BACKGROUND:

Off-airport airborne fire suppression and ignition activities performed on former Fort Ord (now Monterey County) land have been approved in the past to operate at the Marina Municipal Airport with issuance of a Conditional Airport Use Permit.

For several years, Fire Stop conducted these activities at the Airport. Fire Stop's Use Permit expired on December 31, 2011 (Resolution No. 2009-182). Subsequently, the ITSI Gilbane Company was approved to conduct fire suppression activities from October 1, 2012 through September 31, 2015 (Resolution No. 2012-143).

In September, 2015, Kemron Environmental Services, Inc. (Kemron) requested use of the middle tarmac area at the Marina Municipal Airport in connection with airborne fire suppression and ignition activities to be performed on former Fort Ord land.

The middle tarmac is located between the north and south tarmacs. In addition to the use of the tarmac, Kemron will also have helicopters based at the airport during their events. The helicopters will be subject to a standard "tie down" agreement.

ANALYSIS:

Kemron has a contract to conduct fire suppression and ignition activities on former Fort Ord land through December 31, 2018. In that time, Kemron would likely conduct one event in 2015, two events in 2016, two events in 2017, and one event in 2018. Given that each event typically takes

three days to complete, Kemron personnel would likely be at the Airport for approximately 18 days.

Terms and Conditions in the proposed Conditional Airport Use Permit are the same as the previously approved Conditional Airport Use Permits for Fire Stop and ITSI Gilbane, except for a change in the Term and Charge amount (“**EXHIBIT A**”). The term of the permit is October 1, 2015 through December 31, 2018 and the charge amount is \$1,250 per event.

Kemron typically conducts one or two fire suppression/ignition events a year, but does not schedule their events in advance, because their operation requires certain weather conditions. For this reason, Kemron is required to pay the Use Permit fee after the event has occurred.

FISCAL IMPACT:

Should the City Council approve this request, the Airport Enterprise Fund 55, Airport Permits, Revenue Account No. 555.000.000.5200.010, is projected to receive revenues of approximately \$7,500 for the thirty-nine (39) month period of the Conditional Airport Use Permit.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Jeff Crechriou
Airport Services Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager/Airport Manager
City of Marina