

AN ORDINANCE 2014 - 11 - 13 - 0 9 2 8

AUTHORIZING A STANDARD NON-EXCLUSIVE MARSHALLING SERVICES PERMIT FOR GENERAL AVIATION AIRCRAFT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, there is a need for a standard non-exclusive marshalling services permit agreement for providing guiding, signaling, and passenger escort services for General Aviation aircraft arriving at or departing from the United States Customs and Border Protection General Aviation Federal Inspection Station to be constructed at San Antonio International Airport; and

WHEREAS, this Ordinance authorizes a standard non-exclusive marshalling permit and authorizes the Aviation Director to execute the standard permit authorizing permittees to provide such services; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Aviation Director is hereby authorized to execute non-exclusive marshalling permits for General Aviation aircraft at San Antonio International Airport in a form substantially the same as the document set out in **Attachment 1**.

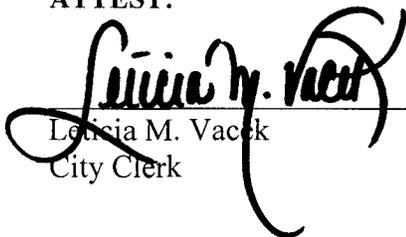
SECTION 2. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 13th day of November, 2014.



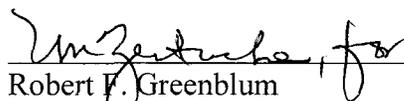
M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:



Robert F. Greenblum
City Attorney

Agenda Item:	37D (in consent vote: 5, 6, 8, 9, 10, 11, 13, 15A, 15B, 16, 17, 18, 19A, 19B, 22, 23, 24, 25, 26, 27, 28, 30, 31, 33, 37A, 37B, 37C, 37D, 37E)						
Date:	11/13/2014						
Time:	09:45:37 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Marshalling Permit for non-exclusive marshalling services for GA aircraft at the Airport.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				x
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

Attachment 1

SAN ANTONIO INTERNATIONAL AIRPORT
MARSHALLING SERVICES PERMIT

WHEREAS, the City of San Antonio, Texas (hereinafter called "City") owns and operates San Antonio International Airport (hereinafter called "Airport"), and _____ (hereinafter called "Permittee") wishes to conduct certain commercial activities on said Airport; and

WHEREAS, applicable provisions of the City Code of the City of San Antonio prohibit engaging in any business or commercial activity of any nature whatsoever on the Airport except with the approval of the Aviation Director and under such terms and conditions as may be set forth in a permit or contract covering such activity; and

WHEREAS, Permittee does not have a contract or agreement with the City covering this commercial enterprise; **NOW THEREFORE:**

The aforesaid Permittee is hereby granted a permit by the City of San Antonio, acting by and through its Aviation Director pursuant to Ordinance _____ to conduct certain business or commercial activities at San Antonio International Airport, under the terms and conditions as specified in this Marshalling Services Permit (hereinafter called "Permit"):

1. BUSINESS TO BE CONDUCTED

1.1 The Permittee, on a non-exclusive basis, will conduct the following business pursuant to the authority granted hereunder and no other, unless prior written approval is obtained from the City's Director of Aviation:

Permittee may enter upon and provide marshalling of aircraft by directing pilots upon one-on-one visual, chocking and un-chocking of aircraft, aircraft towing, pushing back of aircraft, and passenger escort services for General Aviation traffic in the area designated in **Exhibit 1**, Permit Area, for aircraft arriving at or departing from the United States Customs and Border Protection General Aviation (GA) Federal Inspection Station at the Airport.

1.2 Permittee shall furnish the services set out in Article 1.1 in a good, prompt and efficient manner, adequate to meet demand for same at Airport, on a non-discriminatory basis to all users thereof. The Permittee shall have the equipment required in order to provide such services readily available at all times, including without limitation the following specialized equipment required for certain GA aircraft: (i) aircraft tug with towing/aircraft attachment features, and (ii) mobile diesel ground power unit designed for airport usage.

1.3 Permittee may charge the owners or operators of the aircrafts utilizing the services set out in Article 1.1 a fair and equitable fee on a non-discriminatory basis to all users. Permittee shall not advertise or apply any discounts to the marshalling services fee(s) at the time the marshalling services are provided by Permittee. Permittee shall provide City with a list of all marshalling services Permittee will perform pursuant to this Permit and the fees with such services. City reserves the right to require Permittee to adjust any of its fees if City, in its sole discretion, determines any of the fees to be onerous. If an aircraft owner or operator fails or refuses to pay the marshalling services fee in full, Permittee may decline to provide the services set out in Article 1.1 with respect to the aircraft.

1.4 This commercial permit is not exclusive in nature and City specifically reserves the right to issue commercial permits for the same or similar services to other entities.

1.5 The right to conduct the commercial services set out in this commercial permit shall be subordinate to the provisions and requirements of any existing or future agreements between City and the United States relative to the development, operations, or maintenance of Airport.

2. TERM

The term of this Permit shall begin on the later of _____, 20__ or the date the Aviation Director executes this Permit, and shall terminate at midnight on December 31 of the same year. This permit shall automatically renew on a year-to-year basis unless 1) terminated by either party upon written notice to the other party at least thirty (30) days prior to December 31st or 2) otherwise terminated by either party in accordance with the provisions herein.

3. INDEMNIFICATION

3.1 PERMITTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from, or related to Permittee's activities under this Permit, including any acts or omissions of Permittee, any agent, officer, director, representative, employee, consultant or subcontractor of Permittee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Permit. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PERMITTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

3.2 The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Permittee shall advise the City in writing within 24 hours of any claim or demand against the City or Permittee known to Permittee related to or arising out of Permittee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Permittee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Permittee of any of its obligations under this paragraph.

4. INSURANCE

4.1 Prior to the commencement of any work under this Agreement, Permittee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "*Marshalling Services Permit*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and

be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

4.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

4.3 A Permittee's financial integrity is of interest to the City; therefore, subject to Permittee's right to maintain reasonable deductibles in such amounts as are approved by the City, Permittee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Permittee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence; \$10,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence

4.4 Permittee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Permittee herein, and provide a certificate of insurance and endorsement that names the Permittee and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

4.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Permittee shall be required to comply with any

such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Permittee shall pay any costs incurred resulting from said changes.

City of San Antonio
Aviation Department
9800 Airport Boulevard
San Antonio, Texas 78216

4.6 Permittee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

4.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Permittee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Permittee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

4.8 In addition to any other remedies the City may have upon Permittee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Permittee to stop work hereunder, and/or withhold any payment(s) which become due to Permittee hereunder until Permittee demonstrates compliance with the requirements hereof.

4.9 Nothing herein contained shall be construed as limiting in any way the extent to which Permittee may be held responsible for payments of damages to persons or property resulting from Permittee's or its subcontractors' performance of the work covered under this Agreement.

4.10 It is agreed that Permittee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

4.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

4.12 Permittee and any Subcontractors are responsible for all damage to their own equipment and/or property.

5. SECURITY

5.1 Permittee shall provide for the security of the Air Operations Area (hereinafter "A.O.A.") and/or Security Identification Display Area (hereinafter "S.I.D.A.") to prevent entry or movement of unauthorized persons thereupon, in accordance with Chapter 3, Article II, Division 8 - Security of the San Antonio, Texas Code of Ordinances, as currently written, or as amended or replaced in future. In appropriate cases, physical barriers to prevent access to the A.O.A. and/or the S.I.D.A. must be placed and supervised by Permittee during construction upon the Leased Premises.

5.2 Permittee shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States, the State of Texas, and/or the City of San Antonio or City's Aviation Department regarding Airport security requirements or measures.

5.3 Permittee shall comply with all current and future mandates of the Transportation Security Administration, or successor agency, for background investigations of its personnel.

5.4 Permittee shall indemnify and hold harmless City, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or State of Texas, by reason of Permittee's failure to comply with any applicable security provision and/or requirement for compliance set forth herein.

6. RESTRICTIONS AND REGULATIONS

Permittee agrees to abide by any and all: 1) applicable rules regulations, orders and restrictions which are now in force or which may be hereafter adopted by City with respect to the operations of Airport to include the Airport Rules & Regulations codified in Chapter 3, Article II of the San Antonio, Texas Code of Ordinances; 2) orders, directives, or conditions issued, given or imposed by City with respect to the use of ramps, aprons, taxiways or runways; 3) and applicable laws, ordinances, statutes, rules, regulations or orders of any governmental authority, federal, state or municipal, lawfully exercising jurisdiction over the Airport or Permittee's business or use of Airport.

7. ENVIRONMENTAL COMPLIANCE

7.1 Permittee agrees that it shall at its sole expense comply with all applicable federal, state and local statutes, laws, ordinances, rules and regulations concerning hazardous materials including, but not limited to regulations promulgated by the Environmental Protection Agency and the Texas Commission on Environmental Quality (TCEQ), including inspection, financial liability and inventory control recording requirements and shall provide Director with copies of any required certificates of registration from the TCEQ, together with copies of any required proof of financial responsibility and any other documentation reasonably required by the Director or applicable regulatory agency.

7.2 During the term of this Permit and any extensions thereof, should changes in applicable statutes, laws, rules or regulations regarding hazardous materials occur, then and in such event, such modification or change shall be timely undertaken and performed by Permittee at the sole cost and expense of Permittee. Further, the ownership of all hazardous materials shall at all times, remain in the Permittee and that if requested by Director, Permittee shall within ninety (90) days following the termination or expiration of this Permit and at the sole cost of Permittee remove any hazardous materials from Airport premises and perform any required soil or other investigations, and restore the premises to a condition reasonably acceptable to Director. Further, the performance guarantee required under the terms of this

Permit shall not be returned or restored to Permittee until such removal, if requested, is accomplished to the satisfaction of TCEQ.

7.3 Permittee shall remedy any release of hazardous substances and, whether resulting from such release or otherwise, shall remove any hazardous materials and special wastes and any other environmental contamination as are caused by Permittee on or under Airport Premises, as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring Airport Premises into compliance with all environmental laws and regulations. Such work shall be performed at Permittee's sole expense after Permittee submits to Director a written plan for completing such work. The City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice

7.4 Permittee agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents and employees from and against any and all loss, claim, liability, damages, injunctive relief, injuries to person, property or natural resources, cost, expense, action or cause of action, arising as a result of action or inaction by the Permittee, its employees, agents or contractors in connection with the release, threatened release or presence of any hazardous material at, on, under, over or upon the Airport premises used by Permittee, whether foreseeable or unforeseeable, regardless of the source of such release or threatened release or when such release or threatened release or presence occurred or is discovered. The foregoing indemnity includes without limitation, all costs in law or in equity of removal, cleanup, remediation of any kind and disposal of such hazardous materials, all costs of determining whether the Airport is in compliance and causing the Airport to be in compliance with all applicable environmental laws and all costs associated with claims for damages to persons, property or natural resources. In the event that the City is named in any enforcement action or lawsuit by any party in connection with the environmental condition of Airport Premises used by Permittee and caused by the action or inaction of Permittee, Permittee shall defend City and indemnify and hold harmless the City from any costs, damages or fines resulting therefrom.

8. GENERAL PROVISIONS

8.1 City grants Permittee the right, in common with others, to use all appropriate roadways, terminal area and other space as is necessary to conduct its operations, provided that the Aviation Director may make reasonable rules as to exact location, times, and methods of conducting the business or commercial activity, based upon safety and convenience to the public. This permit does not cover any space leased for exclusive use of another nor does this permit cover the right to use areas reserved for administrative, parking, or storage areas on or about the Airport or any other space in which access to the general public is denied, unless specific authorization is obtained from the Aviation Director. Permittee shall not be entitled to construct or install equipment, improvements, or facilities in or on the airport without prior approval of the Aviation Director.

8.2 The Permittee, by accepting this permit, expressly agrees for itself, its successors and assigns that it will not make any use of the Airport or this Permit which might in any way interfere with the normal operation of the Airport or constitute a hazard of any kind. In the event this covenant is breached, the City reserves the right to abate said practice of interference at the expense of Permittee.

8.3 Permittee shall comply with all federal and state regulations and city ordinances, codes and regulations applicable to Permittee's operations under this Permit. Permittee shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon Permittee, its operations hereunder or its property used in connection therewith and shall maintain in force all federal, state and local licenses and permits required for the operation of the business conducted by Permittee.

8.4 This Permit may not be assigned or transferred.

8.5 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right; provided that the City shall not issue a permit for providing the same or similar services as those set out in Article 1 unless the permit contains all of the material terms and conditions of this Permit.

8.6 The invalidity of any provision of this permit shall not affect the other provisions of this permit and any court shall construe the remainder to achieve the intent of the parties as they are manifested hereby. Venue for all purposes is agreed and established to be in San Antonio, Bexar County, Texas.

8.7 Permittee shall obtain an escort for all Permittee's vehicles operating within the Air Operations Area (AOA) unless the requirement for said escort is waived by the Aviation Director or his duly authorized agent.

8.8 Notwithstanding any provision to the contrary contained herein, this Permit may be immediately cancelled by City should Permittee, no later than five (5) days following receipt of written notice from City, fail to keep, perform or observe any term, covenant or condition set forth in this Permit. Notwithstanding such termination, Permittee shall remain liable to City for all arrearages of fees and charges payable hereunder and for any preceding breach(es) of any term, covenant or condition herein contained.

8.9 The parties expressly agree that neither part shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law, or any other provision for payment of attorneys' fees. Both parties expressly waive any claim to attorneys' fees should litigation result from any dispute in this Permit.

8.10 Any election, notice or communication required or permitted to be given under this Permit shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or United Parcel Service) for expedited delivery to be confirmed in writing by such courier.

If intended for City, to:

City of San Antonio
Aviation Department
Attn: Director
9800 Airport Boulevard
San Antonio, TX 78216

If intended for Permittee, to:

8.11 Permittee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. As part of said compliance, Permittee shall adhere to City's Non-Discrimination Policy in the solicitation, selection,

hiring or commercial treatment of vendors, suppliers or commercial customers; further, Permittee shall not retaliate against any person for reporting instances of such discrimination.

8.12 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of payment hereunder, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of Permitter and Permittee.

IN WITNESS WHEREOF, the City and Permittee, personally or by their duly authorized agents, have executed this instrument as of the dates below indicated.

PERMITEE:

CITY OF SAN ANTONIO

By: _____

By: _____

Frank R. Miller
Aviation Director

Print Name /Title

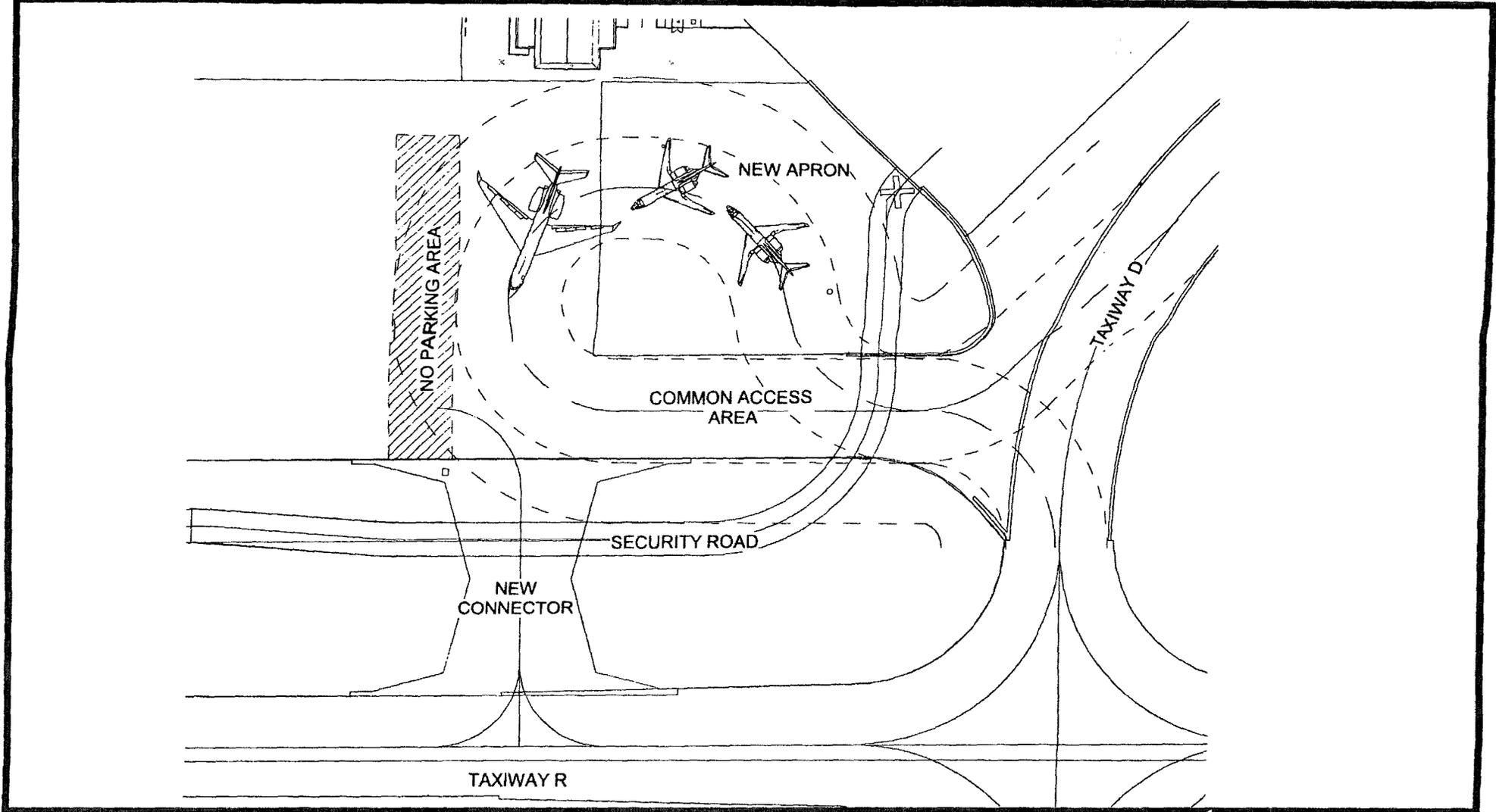
Mailing Address:

APPROVED AS TO FORM:

City Attorney

Date: _____

EXHIBIT 1
PERMIT AREA



RVK

Federal Inspection Station

1778 Skyplace Blvd. San Antonio, TX

project #: 2013-266
date: 10/30/14

scale : 1"= 100'-0"

EXHIBIT 1

Registered Architect
David Bomersbach
9708

PRELIMINARY

This design document is incomplete and may not be used for regulatory approval, permitting, or construction.