

RESOLUTION NO. 2020-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A CONDITIONAL AIRPORT USE PERMIT WITH TOYOTA
RESEARCH INSTITUTE, INC. FOR USE OF THE UNLEASED PORTION OF
THE SOUTH TARMAC AT THE MARINA MUNICIPAL AIRPORT FOR
AUTONOMOUS VEHICLE TESTING AND AUTHORIZING CITY
MANAGER AND AIRPORT SERVICES MANAGER TO EXECUTE THE
CONDITIONAL AIRPORT USE PERMIT ON BEHALF OF THE CITY
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, Toyota Research Institute, Inc. (TRI), a California corporation, with offices located in Los Altos California, made a request through Joby Aviation to conduct autonomous vehicle testing on the unleased portion of the south tarmac, approximately 8 acres, at the Marina Municipal Airport; and

WHEREAS, due to the COVID-19 pandemic, TRI is seeking a short-term agreement to conduct autonomous vehicle testing at a site closer to Los Altos so employees conducting the testing may return home versus having to stay away overnight; and

WHEREAS, TRI anticipates conducting periodic testing of approximately 4 to 5 times a month and for a day or two at a time. Joby Aviation and TRI have walked the site and feel that there is more than sufficient space enabling safe operations to the east of the Joby Tent building on the unleased portion of the south tarmac; and

WHEREAS, the City has approved previous Conditional Airport Use Permits (CAUP) for automotive related activities on the south tarmac, including autonomous vehicle testing, generating revenue to the benefit and support of the Airport. FAA reviewed and approved those previous CAUPs; and

WHEREAS, the Conditional Airport Use Permit (CAUP) for TRI to utilize the unleased portion of the south tarmac, approximately 8 acres, for autonomous vehicle testing is presented for City Council consideration (“**EXHIBIT A**”). The CAUP lists Conditions of Approval which apply to conducting autonomous vehicle testing and the term of the permit is July 8, 2020 through December 31, 2020; and

WHEREAS, TRI will be responsible for all permits, safety, personnel, and coordination of all safety issues with the Airport Services Manager and Marina Police and Fire Departments, as set forth in the CAUP conditions; and

WHEREAS, staff has determined that the findings for approval of the CAUP can be made, in that the proposed activity as conditioned will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working at the Marina Municipal Airport or be detrimental or injurious to property and improvements near the Marina Municipal Airport or to the general welfare of the City or be detrimental to or interfere with aviation activity at the Marina Municipal Airport; and

WHEREAS, Toyota Research Institute, Inc. will pay \$400.00 per day for use of the unleased portion of the south tarmac and these revenues will be recorded in the Airport Enterprise Fund 555, Lic & Permits, Account No. 555.000.000.00-5200.010; and

WHEREAS, the Conditional Airport Use Permit is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15301 (Class 1 – operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses).

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

1. Approve a Conditional Airport Use Permit with Toyota Research Institute, Inc. for use of the unleased portion of the south tarmac at the Marina Municipal Airport for autonomous vehicle testing; and
2. Authorize City Manager and Airport Services 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 regular meeting duly held on the 7th day of July 2020, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, Urrutia, O’Connell, Morton, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

MARINA MUNICIPAL AIRPORT CONDITIONAL AIRPORT USE PERMIT FOR USE OF THE UNLEASED PORTION OF THE SOUTH TARMAC BY TOYOTA RESEARCH INSTITUTE, INC.

THIS IS TO CERTIFY THAT, the City of Marina City Council at a regular meeting held on July 7, 2020, considered the following request. The City Council at that meeting then approved this Conditional Airport Use Permit (“Permit”) for the use of the unleased portion of the south tarmac at the Marina Municipal Airport (“Airport”) under authority provided by Chapter 13.22 of the Marina Municipal Code, the Airport Operating Ordinance, and subject to the following conditions and restrictions.

REQUEST:

Request by Dan Coughlin of Joby Aviation on behalf of **TOYOTA RESEARCH INSTITUTE, INC., a California corporation**, and any other entities under which the business shall do business as (“Permittee”) for permission to use the unleased portion of the south tarmac, approximately 8 acres, at the Marina Municipal Airport for autonomous vehicle testing. Other permittees have previously operated automotive-related events and activities, including autonomous vehicle testing utilizing the south tarmac. The Permit shall go into effect on July 8, 2020 and remain in effect through December 31, 2020.

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 autonomous vehicle testing activities and Permittee’s use of the unleased portion of the south 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 autonomous vehicle testing activities will not be detrimental or injurious to the efficiency and utility of the Airport or to Airport property and improvements.
3. Permittee's autonomous vehicle testing activities, if conducted in accordance with the Conditions of this Permit, will be consistent with the California Environmental Quality Act Statutes and Guidelines, the General Plan, the Airport Master Plan, the Airport Layout Plan, the Airport Operating Ordinance (Municipal Code 13.22) of the City of Marina. 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 autonomous vehicle testing activities and the use of the unleased portion of the south tarmac will not present or create a safety hazard to the normal operations of aircraft arriving or departing from the Airport.
5. The unleased portion of the south tarmac of the Airport has not been in demand for aeronautical purposes and that the Permittee's non-aeronautical use generates revenue to benefit and support the Airport.
6. Reasonable time periods can be and are herein designated for Permittee's autonomous vehicle testing activities.
7. The charge established for the proposed use of the unleased portion of the south tarmac is reasonable.
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.
9. Pursuant to Government Code Section 831.7, the City is immune from any liability to its entity and employees resulting from the proposed use for autonomous vehicle testing and the insurance requirements set forth in this Permit are appropriate for this use. It is further found that, because those 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.

CONDITION PRECEDENT:

Approval of this proposed use of the Airport by the Federal Aviation Administration (FAA) shall be a condition precedent to the effectiveness of this Permit. City shall have sole discretion to determine the satisfaction of this condition, which discretion shall be exercised upon a reasonable basis after conferring in good faith with Permittee. The City is responsible for obtaining FAA approval and Permittee shall fully cooperate with the City's efforts related thereto.

TERM OF PERMIT:

July 8, 2020 through December 31, 2020.

CHARGE:

The Permittee shall pay to the City a charge for the use of the unleased portion of the south tarmac in the amount of \$400.00 per day. The “days” include the days of activities, as well as any set up and breakdown days. Airport to provide invoices to Permittee and payment shall be due thirty-five days from invoice date. Payment shall be made to “City of Marina”, and mailed to 781 Neeson Road, Marina, California 93933, attention: Airport Services Manager.

Permittee acknowledges that late payment of the fee will cause the City to incur costs not contemplated by this Permit; the exact amount will be extremely difficult to ascertain. Permittee’s autonomous vehicle testing activities must be suspended until such time as the entire payment due under this Permit is remitted to the City. Should any payment due under this Permit remain unpaid ten days after the due date of such payment, a penalty of ten percent shall be added to any payments past due and owing. City and Permittee agree that this late charge represents a fair and reasonable estimate of costs that the City will incur by reason of the late payment of the fee by the Permittee. Acceptance of any such late charge shall not constitute a waiver of Permittee’s default with respect to the overdue amount, nor prevent the City from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid fees, charges and any penalty shall accrue at the rate of one and one-half percent per month thereafter until paid.

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 shall be deemed sufficient cause for the suspension or termination of the Permit. Such suspension of the Permit shall be by the Airport Manager or his/her designee.

I. Operational

- A. Permittee’s autonomous vehicle testing activities shall be confined to the unleased portion of the south 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 south 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 any other area of the Airport in connection with Permittee’s activities.
- B. The unleased portion of the south tarmac and/or access route shall be maintained by Permittee to Airport standards to the satisfaction of the Airport Services Manager. When required, maintenance and any repairs of the unleased portion of the south tarmac and/or access route should be made in a timely manner and at the Permittee’s cost. Permittee shall at all times cooperate and coordinate with the City prior to and in the maintenance and repair of the middle tarmac.

- C. Prior to conducting any activity, Permittee should examine the condition of the unleased portion of the south tarmac to identify any existing damage. Upon examination, any preexisting damage should be documented and reported to the Airport Services Manager.
- D. In the event of any damages resulting from the Permittee's activities as determined by the City/Airport Services Manager, the responsible party(s) must pay for and repair all damages to Airport facilities in a timely manner
- E. At least 72 hours prior to conducting any autonomous vehicle testing activities, Permittee shall provide to and receive written approval of a written schedule of its activity dates from the Airport Services Manager and shall keep the Airport Services Manager 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.
- F. Prior to the conducting any autonomous vehicle testing activities, Permittee shall provide to the Airport Services Manager a current list of names and contact information, including cell phone number, for principal persons who are responsible for the conduct of the activities and who should be contacted in the event of an emergency.
- G. Permittee shall adhere to any applicable FAA regulations and conduct all test operations in accordance with the City of Marina Municipal Code Chapter 13.22 "Operating Ordinance for Marina Municipal Airport" and any FAA regulations that may be in force or promulgated during the period in which the Permit is in force.
- H. For approved activity dates, autonomous vehicle testing may be conducted on the unleased portion of the south tarmac from 7:30 am to 5:30 pm, subject to wind, weather conditions and/or darkness as determined by the Airport Services Manager. The City may require Permittee to temporarily cease its use of the unleased portion of the south 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.
- I. Traffic entering or leaving the unleased portion of the south tarmac shall avoid crossing Taxiway A by accessing the site through the gate at Alpha Street and following the traffic route shown on "**Exhibit A**". Permittee shall provide personnel, directional signs, security fencing, barricades, cones or other approved means of delineation to control access to and from the unleased portion of the south tarmac, as shown on "**Exhibit A**" or as directed by the Airport Services Manager. If necessary, said personnel shall control access through the Alpha Street Manual Access Gate and direct traffic across the southern extent of Taxiway A to the southern extent of the south tarmac to ensure vehicles do not inadvertently access Taxiway A.

- J. If required, Permittee shall coordinate with the City Airport staff to file a Notice to Airmen (NOTAM) with the FAA at least 72 hours prior to any autonomous vehicle testing. Permittee shall cooperate with the City/Airport in notifying pilots, users and tenants of the Airport about the Permittee's activities and explaining how these activities will affect the Airport and airport operations.
- K. Permittee shall be responsible for installing and securing any security fencing, traffic cones, signs, striping or tape used to delineate areas of the unleased portion of the south tarmac as determined by the Airport Services Manager and any trash cans, portable toilets, tents, structures or other materials, equipment or supplies brought onto the site for any autonomous vehicle testing activities.
- L. If, in the sole determination of the Airport Services Manager, the event site requires sweeping for residual debris or Foreign Object Debris (FOD) as a result of Permittee's activities, the Airport Services Manager will so notify Permittee who will have an option to sweep debris from the site to the satisfaction of the Airport Services Manager or to request the City to sweep debris. If City personnel are required to remove debris from the event site, a charge of \$150.00 per hour with a two-hour minimum shall be assessed to Permittee and Permittee shall pay said charge at the time the regular per day charge is required to be paid. All sweeping must be completed as soon as possible of the day following autonomous vehicle testing activities.
- M. All trash must be removed from the site. If City personnel are required to remove garbage or refuse from the site, a charge of \$100.00 per hour with a two-hour minimum shall be assessed to Permittee and Permittee shall pay said charge at the time the regular per day charge is required to be paid.
- N. Parking spaces for vehicles not associated with autonomous vehicle testing shall be located at the north half of the parking lot west of Building 507, 3200 Imjin Road (outside of airport perimeter fence). Only vehicles essential to conducting the autonomous testing shall be inside of the airport perimeter fence as determined by the Airport Services Manager. 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 parking lot described above. Any vehicles parked in non-approved areas may be removed.
- O. No persons shall possess or consume any alcoholic beverage or illegal drug in or around any areas when testing activities are taking place. No person employed by or providing services to Toyota Research Institute, Inc. shall posse, consume and/or have in his or her system any alcoholic beverage or illegal drug in or around any areas when testing activities are taking place. In addition, drivers/operators shall not posse or have in his or her systems any legal drug that impairs or could impair their ability to operate an autonomous or motor vehicle. This includes on the unleased portion of the south tarmac, in or around any associated vehicles, or anywhere on the Airport.

- P. Operational-related notifications of a non-emergency nature, which do not constitute reportable events (as set forth below), should be made to the Airport staff, either in person or by telephone (831-241-8628 and 831-212-5428). For occasions when the Airport staff may not be available and the matter requires immediate attention, the Police Department Watch Commander may be contacted (831-384-7575).
- Q. Any accident requiring medical attention must be reported in writing to the Airport Services Manager within 24 hours from the time of the accident.
- R. Permittee by 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 with all other 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 or an incident or reportable event which violates Airport Rules and Regulations or conditions of this Permit, provide a written report of the incident using the attached Incident Report Form, as shown in **“Exhibit B”** to the Airport Services Manager via email to jcrechriou@cityofmarina.org. The Airport Services Manager 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 Services Manager may also 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 Services Manager within 72 hours of receipt.
- B. Operations of vehicles, including the autonomous test vehicle(s), for purposes other than accessing or conducting testing activities on the unleased portion of the south tarmac as designated in **“Exhibit A”** and any incident, accident or conflict caused with aircraft or airport tenants 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 Services Manager (831-241-8628) or Police or Fire Department duty officers to report any accident as required by these provisions 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 the Airport Services Manager, as described above, by telephone or in person.

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. Cancellation, Reduction, Change. 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.
- C. Commercial General Liability/Umbrella Insurance. Primary insurance shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or a form approved in advance by the City's Risk Manager. Total limits shall be no less than one million dollars per occurrence for all coverage's and one million dollars general aggregate. The City, its Airport, Council, boards and commissions, officers, employees, agents and volunteers must be added as additional insured's using ISO additional insured endorsement form CG 20 1- 11 85. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion. Policies shall have concurrent starting and ending dates.
- D. Auto Insurance. Primary coverage must include all vehicles, including the truck with the stanchion mounted for the test, used in relation to the testing 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.

- E. 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.
- F. 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.
- E. Indemnification. 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 the testing 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 Services Manager. 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 Services Manager it will immediately cease and suspend its use of airfield facilities outside of the leasehold area(s).
- C. The Airport Services Manager 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 Services Manager, immediate verbal notice of Permit reinstatement followed within not more than 24-hours by a written notice of Permit reinstatement shall be given to Permittee.
- D. This Permit may be suspended by action of the Airport Services Manager or the Airport Manager and terminated by action of the City Council or the Airport Commission.

- E. 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.
- D. This Permit may be amended only by a writing signed by the authorized representatives of both the City and Permittee.

VI. Grant Agreement Covenants

Permittee acknowledges that City is subject to Federal grant agreement obligations as a condition precedent to granting of funds for the improvement of the Airport, and, accordingly agrees to, and agrees to be bound by, the following covenants provided by the FAA as they may apply to Permittee:

Permittee, by accepting this Permit expressly agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Marina Municipal Airport or otherwise constitutes a hazard. In the event this covenant is breached, City reserves the right to enter upon the premises and cause the abatement of such interference at the expense of Permittee. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right for the passage of aircraft in the airspace above the surface of the Premises. The public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking from, or operation on the Airport

Permittee for itself and its personal representatives, successors in interest, and assigns as

part of the consideration hereto, does hereby covenant and agree that: (1) 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 premises. (2) that in the construction of any improvement 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 participating in, denied the benefits of, or otherwise be subject to discrimination; (3) that the Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21 Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City (through the City Manager) shall have the right to terminate this Permit, and to re-enter and repossess the premises and hold the same as if this Permit had never been made or issued.

City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Permittee, and without interference of hindrance. The City 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 o-owned facilities of the Airport together with the right to direct and control all activities of Permittee in this regard, The 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 Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. This requires the submission of FAA Form 7460-1, Notice of Construction or Alteration to the FAA.

The Permittee by accepting this Permit expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77 or above 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 hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Permittee.

The Permittee will furnish services on a reasonable and not unjustly discriminatory basis to all users and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. In the event of breach of the above covenant, the City (through the City Manager) shall have the right to terminate this Permit, and to re-enter and repossess the premises and hold the same as if this Permit had never been made or issued.

The Permit will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the Airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered

or required by the Airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

This Permit is subordinate to the City's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the Airport.

This Permit shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation, or maintenance of the Airport. Failure of the Permittee to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Permittee's rights hereunder.

VII. Modifications for Granting FAA Funds

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Permit, Permittee agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Permit as may be reasonably required to enable the City to obtain FAA funds. A failure by Permittee to so consent shall constitute termination of this Permit.

VIII. Authority

The individual executing this Permit on behalf of Toyota Research Institute, 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.

IX. 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:

Airport Services Manager
City Hall
211 Hillcrest Avenue
Marina, CA 93933
Phone: 831-384-2901
Mobile: 831-241-8628
Facsimile: 831-582-0104
E-mail: jcrechriou@cityofmarina.org

With a copy to:

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

To Toyota Research Institute, Inc.:

Toyota Research Institute, Inc.
4440 El Camino Real
Los Altos, CA 94022
Phone: 650-673-2225
Facsimile:
E-mail: legal@tri.global

or to such other address as either party may from time to time specify as its address for the receipt of notices hereunder, in a notice to the other party. Notices given by an attorney shall be deemed to constitute notice from that party.

THIS CERTIFICATE IS TO NOTIFY TOYOTA RESEARCH INSTITUTE, 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, July 20, 2020. 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: July 7, 2020 at Marina, California

APPROVED/ATTEST

Layne Long
City Manager/Airport Manager
City of Marina

Jeff Crechriou
Airport Services Manager
City of Marina

Date: _____ 2020

Date: _____ 2020

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

Kelly Kay
Executive Vice President
Toyota Research Institute, Inc.

Date: _____ 2020

Attest: Pursuant to Resolution No. 2020-____

Anita Shepherd-Sharp, Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS:

EXHIBIT A Site Plan and Access Route
EXHIBIT B Incident Report Form
EXHIBIT C FAA Assurances

EXHIBIT A

Site Plan and Access Route



EXHIBIT B

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

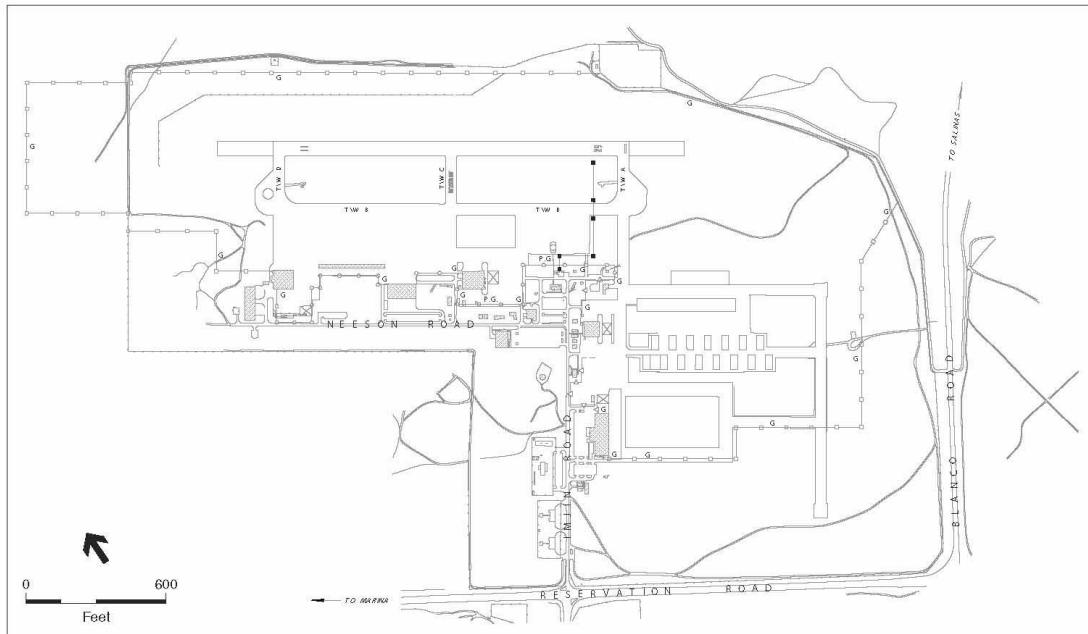


EXHIBIT C

FEDERAL AVIATION ADMINISTRATION ASSURANCES

A. COMPLIANCE WITH FEDERAL GRANT ASSURANCES: To the extent applicable, Permittee shall comply with all Federal Aviation Administration (FAA) assurances below:

1. The Permittee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agree 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 DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee 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. The Permittee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (in the case of leases add "as a covenant running with the land") that: (1) 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, (2) that 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, (3) that 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 the 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. The Permittee assures that it will undertake an affirmative action program as required by 14 CFR Part 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. The 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 the Permittee and without interference or hindrance.

9. The City of Marina reserves the right, but shall not be obligated to the 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 of future building or structure situated on the permitted premises.

13. The 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. The 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.

July 1, 2020

Item No. **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 7, 2020

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2020-,
APPROVING A CONDITIONAL AIRPORT USE PERMIT WITH
TOYOTA RESEARCH INSTITUTE, INC. FOR USE OF THE UNLEASED
PORTION OF THE SOUTH TARMAC AT THE MARINA MUNICIPAL
AIRPORT FOR AUTONOMOUS VEHICLE TESTING AND
AUTHORIZING CITY MANAGER AND AIRPORT SERVICES
MANAGER TO EXECUTE THE CONDITIONAL AIRPORT USE
PERMIT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2020-, approving a Conditional Airport Use Permit with Toyota Research Institute, Inc. for use of the unused portion of the south tarmac at the Marina Municipal Airport for autonomous vehicle testing; and
2. Authorizing City Manager and Airport Services Manager to execute the Conditional Airport Use Permit on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

In June, Toyota Research Institute, Inc. (TRI), a California corporation, with offices located in Los Altos California, made a request through Joby Aviation to conduct autonomous vehicle testing on the unused portion of the south tarmac, approximately 8 acres, at the Marina Municipal Airport. Due to the COVID-19 pandemic, TRI is seeking a short-term agreement to conduct autonomous vehicle testing at a site closer to Los Altos so employees conducting the testing may return home versus having to stay away overnight.

TRI anticipates conducting periodic testing of approximately 4 to 5 times a month and for a day or two at a time. Joby Aviation and TRI have walked the site and feel that there is more than sufficient space enabling safe operations to the east of the Joby Tent building on the unused portion of the south tarmac.

The City has approved previous Conditional Airport Use Permits (CAUP) for automotive related activities on the south tarmac, including autonomous vehicle testing, generating revenue to the benefit and support of the Airport. FAA reviewed and approved those previous CAUPs.

ANALYSIS:

The Conditional Airport Use Permit (CAUP) for TRI to utilize the unused portion of the south tarmac, approximately 8 acres, for autonomous vehicle testing is presented for City Council consideration (“**EXHIBIT A**”). The CAUP lists Conditions of Approval which apply to conducting autonomous vehicle testing and the term of the permit is July 8, 2020 through December 31, 2020.

TRI will be responsible for all permits, safety, personnel, and coordination of all safety issues with the Airport Services Manager and Marina Police and Fire Departments, as set forth in the CAUP conditions

The City/Airport, through approval of the past CAUPs, has established the precedence of FAA approval for the temporary non-aeronautical use of the tarmac areas for revenue generation when the tarmac areas are not in demand by an aeronautical use.

Staff has determined that the findings for approval of the CAUP can be made, in that the proposed activity as conditioned will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working at the Marina Municipal Airport or be detrimental or injurious to property and improvements near the Marina Municipal Airport or to the general welfare of the City or be detrimental to or interfere with aviation activity at the Marina Municipal Airport.

Further findings for approval of the CAUP include that aeronautical demand for use of the unleased portion of the south tarmac does not exist at this time and that the use of this area for non-aeronautical purposes generates revenue to benefit and support the Airport.

FISCAL IMPACT:

Should the City Council approve this request, Toyota Research Institute, Inc. will pay \$400.00 per day for use of the unleased portion of the south tarmac and these revenues will be recorded in the Airport Enterprise Fund 555, Lic & Permits, Account No. 555.000.000.00-5200.010.

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
City of Marina