

RESOLUTION NO. 2017-110

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A CONDITIONAL AIRPORT USE PERMIT FOR MARINA MOTORSPORTS, INC. TO CONDUCT NON-AERONAUTICAL ACTIVITIES ON THE SOUTH TARMAC AT THE MARINA MUNICIPAL AIRPORT AND AUTHORIZE CITY MANAGER TO EXECUTE THE CONDITIONAL AIRPORT USE PERMIT ON BEHALF OF CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

WHEREAS, Marina Motorsports, Inc., (MMS), a California 501(c)(3) nonprofit corporation, has utilized the south tarmac at the Marina Municipal Airport since 1995 for non-aviation motorsport events under terms and conditions of Conditional Airport Use Permits (CAUP) approved by the City Council; and

WHEREAS, the area used for the MMS events is planned for aviation development in the 2008 Airport Layout Plan Map and is zoned Airport District (A-1); and

WHEREAS, the Airport realizes significant revenue generation through permitting non-aeronautical (non-aviation) activities on the tarmac areas via City Council approval of annual CAUPs. The City recognizes motorsports activities as positive recreational activity, supports their use within the City, values the contribution these activities and organizations provide to the community and region and the revenue generated to benefit and support the Airport; and

WHEREAS, in 2012 and 2013 letters, FAA made requests of the City to discontinue and relocate the non-aeronautical (motorsport) activities at the north and south tarmacs because the activities are considered contrary to the use of Airport infrastructure and do not advance the public's investment in civil aviation; and

WHEREAS, FAA approved the CAUPs for conducting non-aeronautical activities on the tarmacs for 2013 and 2014; and

WHEREAS, in a January 2015 letter, FAA, in approving the CAUPs for 2015 non-aeronautical activities, determined that the City provide a corrective action plan to discontinue the non-aeronautical (motorsport) activities by the year ending December 31, 2015; and

WHEREAS, in May 2015, staff submitted the FAA required Corrective Action Plan regarding non-aeronautical (motorsport) use of the south and north tarmac areas. The Corrective Action Plan: 1) acknowledged FAA's ongoing requests to discontinue and relocate the motorsport non-aeronautical activities; 2) affirmed the commitment to transition the south and north tarmac areas to aviation use with future demand by aeronautical users; 3) detailed the efforts and progress of the motorsport users to identify alternate off airport locations for their respective activities beyond December 31, 2015 and 4) provided reasoning for and requested FAA consideration of an up to three (3) year extension for non-aeronautical (motorsport) activities at the north and south tarmacs; and

WHEREAS, at the September 2015, Association of California Airports conference, the Airport Services Manager met with FAA San Francisco Airport District Office Management to discuss the Corrective Action Plan and request for extension of non-aeronautical use of the south and north tarmacs. Based on this meeting, FAA indicated that consideration of a three (3) year extension would be reasonable but there needed to be further follow up internally within FAA before an official determination would be provided; and

WHEREAS, in a January 2016 letter, FAA approved the continuance of permitting non-aeronautical (non-aviation) activities on the tarmacs areas subject to the CAUPs for one year expiring on December 31, 2016 and committed to providing the City/Airport a response to the Corrective Action Plan in December 2016; and

WHEREAS, at the October 2016 FAA Airport Capital Improvement Program meeting, there was further discussion of the request for an up to three (3) year extension for conducting non-aviation related activities on the tarmac areas for the purpose of revenue generation. In this discussion, FAA responded positively to further consideration of approving the request based on revenue generation, the ability of the Airport to be self-sustainable and that the tarmacs are not currently in demand for aviation use; and

WHEREAS, at the regular meeting of December 20, 2016, the City Council adopted Resolution No. 2016-161, approving a CAUP for Marina Motorsports, Inc. to conduct non-aviation related motorsport activity on the south tarmac at the Marina Municipal Airport. The term of the one (1) year permit ends December 31, 2017; and

WHEREAS, in a letter dated February 3, 2017, FAA reviewed the three CAUPs for use of the North and South Tarmacs for the South Bay Regional Public Safety Training Consortium, South Tarmac for Marina Motorsports, Inc. and the North Tarmac for the Monterey Bay Karters for 2017 (“**EXHIBIT A**”); and

WHEREAS, in the February 3, 2017 letter, FAA states: 1) FAA does not generally support the use of airport facilities for motorized vehicular racing and training purposes; 2) FAA realize that aeronautical demand for the use of the North and South Tarmacs has not existed since the United States Army conveyed the airport to the City in 1995 and 3) FAA understands the City’s decision to generate revenue from utilizing these areas for other than aeronautical activities in order to benefit and support the Airport; and

WHEREAS, further in the February 3, 2017 letter, FAA states: 1) FAA does not object to the City’s request for the temporary use of the North and South tarmac areas for non-aeronautical purposes if the City enforces the permits and ensures that non-aeronautical activity ceases its operation in a timely manner, no more than 30 days, when an aeronautical demand for these areas exist; 2) when required, maintenance and any repairs of the tarmacs should be completed in a timely manner; 3) after event (use), the City must ensure that the tarmacs be swept clean of any residual debris or Foreign Object Debris (FOD) resulting from the non-aeronautical activity and 4) the three non-aeronautical activity sponsors must compensate the Airport for any required repair and maintenance of these areas; and

WHEREAS, the CAUP for MMS to conduct non-aeronautical (motorsport) activities on the south tarmac is presented for City Council consideration (“**EXHIBIT B**”); and

WHEREAS, the CAUP allows for MMS to utilize the south tarmac for the period of January 1, 2018 through December 31, 2018 subject to the condition precedent for FAA approval prior to conducting events for 2018. The fee per day for MMS’s use of the south tarmac is proposed at \$600 per day which is consistent with the fee paid for 2017 activity; and

WHEREAS, the 2018 CAUP has been modified to include FAA provisions as stated in the letter dated February 3, 2017. For the events, MMS will be responsible for all permits, sanitary facilities, safety, medical personnel, and coordination of all safety issues with the Marina Municipal Airport, Police Department and Fire Department; and

WHEREAS, staff has determined that the findings for approval of the CAUP can be made, in that the proposed project 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, further findings for approval of the CAUP include that aeronautical demand for the use of the North and South Tarmacs does not exist at this time and that the use of these areas for non-aeronautical purposes generates significant revenue to benefit and support the Airport; and

WHEREAS, revenue for the one (1) year period of the Conditional Airport Use Permit will be recorded in the Airport Enterprise Fund, Lic & Permits, Account No. 555.000.000.5200.010; 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 for Marina Motorsports, Inc. to conduct non-aeronautical activities on the south tarmac at the Marina Municipal Airport; 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 City Attorney.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 5th day of December 2017, by the following vote:

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

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
San Francisco Airports District Office

1000 Marina Boulevard, Suite 220
Brisbane, California 94005-1835

February 3, 2017

Jeff Crechriou
Airport Services Manager
Marina Municipal Airport
211 Hillcrest Avenue
Marina, CA 93933

Marina Municipal Airport
Non-aeronautical Permits and Activities Review

Dear Mr. Crechriou:

As requested, we have reviewed the City of Marina (City) Conditional Airport Special Activity Permit Certificates for the use of designated areas at the Marina Municipal Airport (Airport), specifically, the North and South Tarmacs for the South Bay Regional Public Safety Training Consortium, South Tarmac for Marina Motorsports, Inc., and the North Tarmac for the Monterey Bay Karters for the year 2017. It is the longstanding policy of the Federal Aviation Administration (FAA) that airport property be available for aeronautical use and not be available for non-aeronautical purposes unless that non-aeronautical use is approved by the FAA even for temporary use. The FAA does not generally support the use of airport facilities for motorized vehicular racing and training purposes. However, we realize that aeronautical demand for the use of the North and South Tarmacs has not existed since the United States Army conveyed the airport to the City in 1995. Therefore, we understand the City's decision to generate revenue from utilizing these areas for other than aeronautical purposes in order to benefit and support the Airport. We also understand the south end of Taxiway A may be temporarily closed for various automotive related and non-aeronautical activities and the schedule of activities dates will be provided to our office in advance. On evaluating the provisions in the permits, we do not object to the City's request for the temporary use of the North and South Tarmac areas for non-aeronautical purposes if the City enforces the permits and ensures that the non-aeronautical activity ceases its operation in a timely manner, no more than 30 days, when an aeronautical demand for these areas exists.

We stress the following points the City needs to adhere to regarding the operation of the non-aeronautical activities. The City must enforce the provisions in the conditional permits to protect aviation activity and preserve aviation infrastructure, including the pavement of the North and South tarmacs. When required, maintenance and any repairs of the tarmacs should be completed in a timely manner. Preserving the condition of the tarmacs would not

only reduce safety risks for the non-aeronautical users, but also for these areas to readily accommodate any aeronautical demand that may manifest during the operation of these non-aeronautical activities. After an event, the City must also ensure that the tarmacs be swept clean of any residual debris or Foreign Object Debris (FOD) resulting from the non-aeronautical activity. The three non-aeronautical activity sponsors must compensate the Airport for any required repair and maintenance costs of these areas.

Also, the City should notify the pilots, users and tenants of the airport about the motorized vehicular racing and training activities and explain how this activity will affect the airport and airport operations. The Airport should receive significant and tangible financial benefits from the three activities, at least fair market value compensation for the use of the tarmac.

Be advised that the City is ultimately responsible to ensure the safety and security of the airport, airport users, activity officials, aviation system users, and the event visitors, participants, and spectators during the motorized racing and training events. In closing, the City is responsible for complying with the sponsor grant assurances based on the City's current and past assurances. It is expected that the proposed non-aeronautical use of the tarmacs will have a positive net benefit to civil aviation and the local community while not compromising the safety and security of the National Airspace System (NAS). Therefore, the FAA does not object to the City's request for the three activities to operate on the North and South Tarmacs for 2017.

By not objecting to the event, FAA is not providing an endorsement of the City's non-aeronautical use of the airport's North and South Tarmac areas or an opinion regarding its merits. Please contact me at (650) 827-7601 or Robert Lee, Compliance Specialist, at (650) 827-7629, if you have any questions or additional information.

Sincerely,



James W. Lomen
Manager, San Francisco Airports District Office

Cc: San Jose FSDO
Layne Long, Marina City Manager
AWP 600, Aviation Safety and Standards Division

**MARINA MUNICIPAL AIRPORT
CONDITIONAL AIRPORT USE PERMIT
FOR THE NON-AERONAUTICAL USE OF THE SOUTH TARMAC BY
MARINA MOTORSPORTS, INC.**

THIS IS TO CERTIFY THAT, the City of Marina City Council at a regular meeting held on December 5, 2017, considered the following request. The City Council at that meeting then approved this Conditional Airport Use Permit (“Permit”) for the use 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 Mr. John Moulton on behalf of **MARINA MOTORSPORTS, INC., a California 501(c)(3) nonprofit corporation**, and any other entities under which the business shall do business as (“Permittee”) for permission to use the south tarmac at the Marina Municipal Airport for motorized vehicle racing and related events. Permittee has previously operated automotive-related events and activities and utilized the south tarmac, including autocross competitions; swap meets, and sales of equipment and food items. The Permit shall go into effect on January 1, 2018, and remain in effect for a twelve (12) month period ending on December 30, 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 automotive-related activities and Permittee’s use 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 automotive-related activities will not be detrimental or injurious to the efficiency and utility of the Airport or to Airport property and improvements.

3. Permittee's automotive-related 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 automotive-related activities and the use 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 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 automotive-related and related activities.
7. The charge established for the proposed use 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. Any previous editions of these forms shall be modified to indicate the business name of the Permittee: Marina Motorsports, Inc.
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 motorized vehicle racing is a hazardous recreational activity 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:

Twelve months, **January 1, 2018 through December 31, 2018.**

CHARGE:

The Permittee shall pay to the City a charge for the use of the south tarmac in the amount of \$600.00 per day in advance. The "days" include the days of activities and events, as well as any set

up and breakdown days. Payment shall be made to the “City of Marina”, 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 operations, including but not limited to autocross and automotive-related 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 automotive-related activities shall be confined to 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 another area of the Airport in connection with Permittee’s activities.
- B. The south tarmac is to be maintained by Permittee to Airport standards to the satisfaction of the Airport Services Manager. When required, maintenance and any repairs of the south tarmac 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 of the south tarmac.
- C. Prior to conducting any operations, Permittee must examine the condition of the south tarmac to determine if it is in a safe condition to use.
- D. Prior to conducting any activities on the south tarmac, Permittee shall provide and receive approval of a written schedule of its activity dates to 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. City will attempt to accommodate Permittee's requested usage dates for activities but reserves the right to cancel, in advance and with prior written notice, or to modify the location for any event if necessary. The "usage dates" include the activity and event dates, as well as any set up and breakdown dates. Prior to the effective date of this Permit, Permittee shall provide to the Airport Services Manager 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.

- E. Permittee's automotive and related activities and operations shall be conducted only between the hours of 7:00 a.m. to 7:00 p.m., subject to wind and weather conditions as determined by the Airport Services Manager. Hours for other types of automotive-related events must be coordinated in advance with the Airport Manager. The City may require Permittee to temporarily cease its use of the south tarmac to accommodate other 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.
- F. An accurate plan of the location of all events and related activities must be prepared by Permittee and approved in advance by the Airport Services Manager. This plan should include, but is not limited to: safety setbacks, crowd lines, parking areas for visitors and participants, and the operation area for racing activities. All event activities shall be set back at least 60 feet from Taxiway A. A traffic management plan showing the Airport gate and route to be used for ingress and egress to the event site, and the location of directional signs, security fencing and barricades, if needed, shall be submitted to the Airport Services Manager at least thirty (30) days before a scheduled event.
- G. Traffic entering or leaving 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 B.**" Permittee shall provide personnel to control access to and from the south tarmac, as shown on "**Exhibit B.**" Said personnel shall 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.
- H. If required, Permittee shall coordinate with the City Airport staff to file a NOTAM with the FAA at least 72 hours prior to an event. The City Airport staff shall indicate when events are scheduled. The NOTAM will subsequently be published on the internet at the following address: www.faa.gov/air_traffic/publications/notices/.
- I. Set-up and break-down of equipment associated with any event may occur on the day of the event or on the day prior to and the day following an event. All equipment and materials must be removed from the tarmac areas used for an event by noon on the day following conclusion of an event and the site returned to its pre-event condition, unless other arrangements are approved in advance by the Airport Services Manager. Permittee is responsible to pay any maintenance or cleanup costs associated with the event.

- J. Permittee shall be responsible for installing and securing any security fencing (6 feet high), traffic cones, signs, striping or tape used to delineate areas, trash cans, portable toilets, tents, structures or other materials, equipment or supplies brought onto the site for any event. Permittee shall be also responsible for installing or implementing any additional security measures requested by the FAA.
- K. Permittee must, within 24 hours of a written notice, take down north-south security fencing paralleling Taxiway A for any aviation use.
- L. If water is required to clean the event site, it shall be accomplished using non-potable water whenever possible unless potable water is required for reasons of health or safety.
- M. In the event of any damages from the Permittee's activities, the responsible party(s) must pay for and repair all damages to Airport facilities in a timely manner. If Permittee's activities on the site damages, for example, the tarmac due to a fuel spill and the tarmac softens or otherwise becomes unusable, Permittee shall be responsible for the cost of repairs to the damaged tarmac.
- N. If, in the sole determination of the Airport Services Manager, the event site requires sweeping for residual debris or Foreign Object Debris (FOD) following any event 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 an event.
- O. Ample garbage and refuse containers with snug fitting lids must be provided for food facilities and for public use to the satisfaction of the Airport Services Manager. Garbage and refuse containers must be emptied as necessary during any event so as not to overflow during or after an event. All trash must be removed from the site and the Airport no later than 5:00 p.m. of the day following any event. If City personnel are required to remove garbage or refuse from the event 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.
- P. Adequate portable restrooms shall be provided for any event in such numbers and locations as may be required by the Monterey County Health Department and the Airport Services Manager and these portable restrooms must be serviced and pumped by a sanitation truck as required. There must be no dumping of any materials into existing sewers serving the Airport.
- Q. The City's Fire Department may perform a fire safety inspection prior to the commencement of any event. Any deficiencies identified by the fire safety inspection must be corrected prior to commencement of any event. Fire extinguishers fully charged and with tags affixed, shall be provided as required by the City's Fire Department. There shall be no open-air use of hazardous or flammable materials.

All fuel shall be stored and dispensed properly from adequately vented containers. Use of a barbecue during an event shall require prior approval of the Airport Services Manager.

- R. First aid kits and supplies as approved in advance by the Airport Services Manager and the City's Fire Department shall be available on-site for the duration of any automotive racing activity.
- S. Any accident requiring medical attention must be reported in writing to the Airport Services Manager within 24-hours from the time of the accident.
- T. 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.
- U. Permittee must, within 24-hours from the time of an accident or an incident or reportable event which violates Airport Rules and Regulations or this Permit, provide a written report of the incident to the Airport Services Manager using a form approved by the City as set forth in "**Exhibit C.**"
- V. If required by the Airport Services Manager or City's Police or Fire Departments, Permittee shall provide security personnel for an event.
- W. Permits must be obtained from the Monterey County Health Department for any temporary food or beverage service or preparation facilities at least ten (10) days prior to an event.
- X. There shall be no overnight or vehicle camping or long-term (more than 72-hours) vehicle storage on Airport property, unless same is approved in advance by the Airport Services Manager. Any circumstances which arise during an event which is expected to impact Permittee's ability to leave the site clean and vacant, such as the presence of an inoperable vehicle, shall be immediately communicated to the Airport Services Manager.
- Y. Permittee shall be responsible for, and must take all measures required to ensure that participants or spectators do not trespass onto leased premises at the Airport and do not access the Airport Operations area including Taxiway A.
- Z. No persons shall possess or consume any alcoholic beverage or illegal drug in or around any areas of the tarmacs when Permittee's 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 Permittee's activities are taking place.

- AA. Permittee shall cooperate with the City 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.
- BB. Permittee shall possess adequate insurance and assume full liability for its activities.

II. Release of Liability and Assumption of Risk Agreement, Insurance and Indemnification Required

- A. Release of Liability and Assumption of Risk Agreement. Each participant in motorized vehicle racing, autocross or other automotive-related activities as determined by the Airport Manager and any passenger shall, prior to such participation, sign a Release of Liability and Assumption of Risk Agreement ("Release"), a copy of which is attached hereto as "**Exhibit D**," and a copy of every such executed Release shall be provided to the Airport Manager upon request. All Releases shall be effective for a period of ONE CALENDAR YEAR ONLY. Each year a new Release must be obtained for all participants. Permittee must retain the original of all executed Releases in its files for a period of no less than three (3) years from their date of execution.
- B. Insurance. Permittee agrees to provide insurance in accordance with the requirements set forth herein. Specifically, such insurance shall: (1) protect the 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 nonpayment 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. 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 coverages shall be provided by Permittee and 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.
- C. 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.
- D. 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. 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.

- E. Business Auto. Primary coverage must be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or another form approved in advance by the City’s Risk Manager. Limits shall be no less than one million dollars per accident. Starting and ending dates shall be concurrent. If Permittee owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- F. Workers’ Compensation/Employers’ Liability. Workers’ Compensation and Employers’ Liability insurance 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. Employers’ liability coverage shall be scheduled under any umbrella policy described above. 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.
- G. Indemnity. 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 motorized vehicle racing, driver training, autocross or automotive-related 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

associated with 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 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 is 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 has 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 fail 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.

H. Other Agreements re Insurance.

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. Contractor 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.

III. 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.
- A. 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. Immediate verbal notice of suspension, following within not more than 24-hours by written notice of suspension shall be given to Permittee, or that person then in-charge of conducting Permittee's 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 the south tarmac.
- B. 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.

- C. This Permit may be suspended by action of the Airport Manager and terminated by action of the City Council.
- D. 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.
- E. The Permittee shall cease its use/operation of non-aeronautical activity in a timely manner of not more than 30 days when an aeronautical demand for the south tarmac exists as communicated in written notice from the Airport Services Manager.
- F. In the event of a request or action by the 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.

IV. Non-Transferability, No Exclusive Right, No Right to Lease, No Long-Term Use Contemplated by the Parties

- 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.

V. 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:

To the City of Marina:

Airport Services Manager
City Hall
211 Hillcrest Avenue
Marina, California 93933

Phone: 831-582-0102
Mobile: 831-241-8628
Facsimile: 831-582-0104
E-mail: jcrechriou@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 Marina Motorsports, Inc.:

Mr. John Moulton
Marina Motorsports, Inc.
P.O. Box 1200
Marina, California 93933

Phone: 831-484-1966
Facsimile: none
E-mail: jam@redshift.com

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.

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 or 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 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

If Permittee is a corporation, partnership or limited liability company, the individual executing this Permit on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of said entity and that this Permit is binding upon said entity in accordance with its terms.

THIS CERTIFICATE IS TO NOTIFY MARINA MOTORSPORTS, 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 Tuesday, December 19, 2017. 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: December 5, 2017 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:

John Moulton
Marina Motorsports, Inc.

Dated: _____, 201__

Attest: Pursuant to Resolution No. 2017-

Anita Sharp, Acting Deputy City Clerk

APPROVED AS TO FORM:

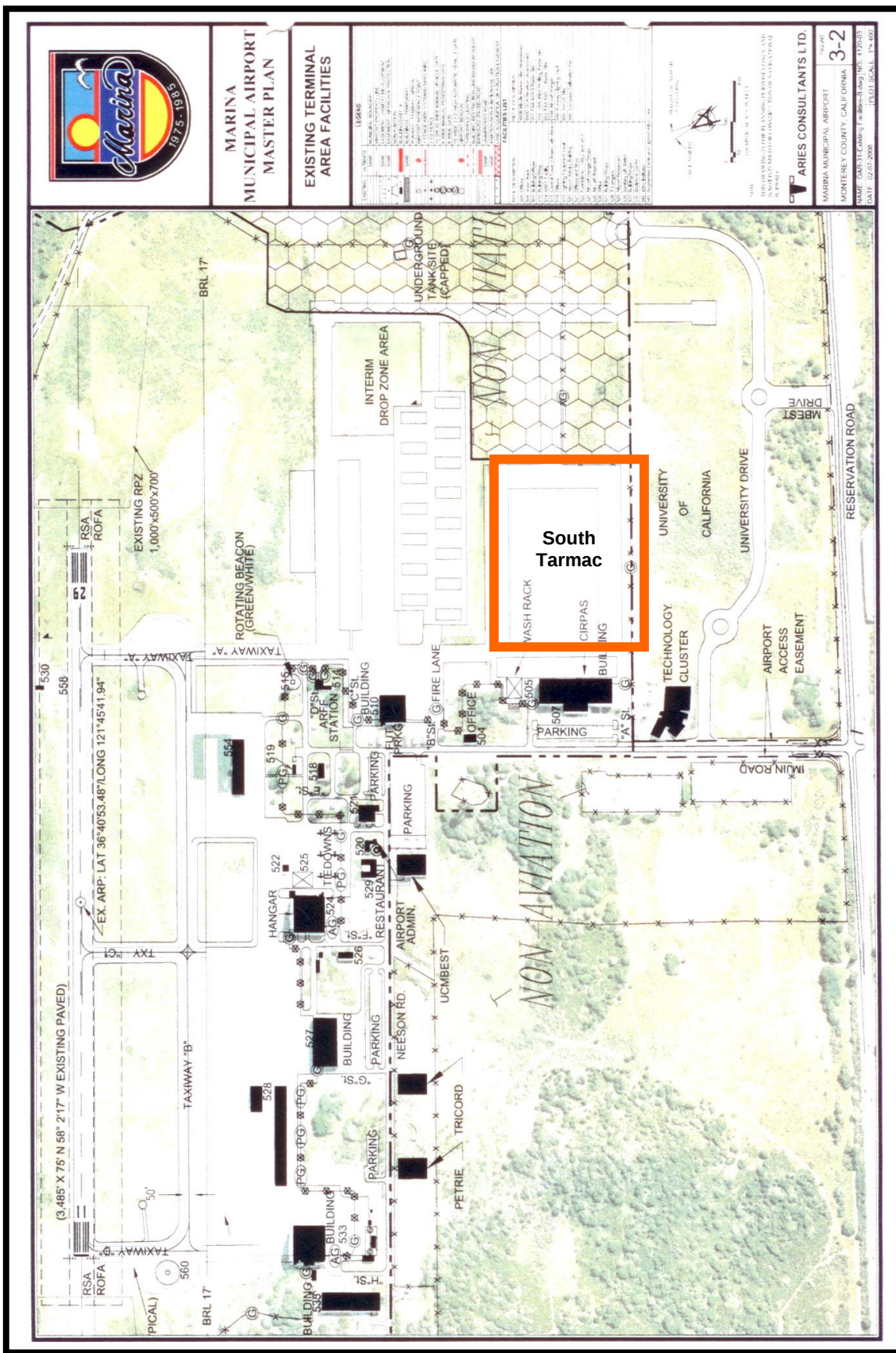
City Attorney

ATTACHMENTS:

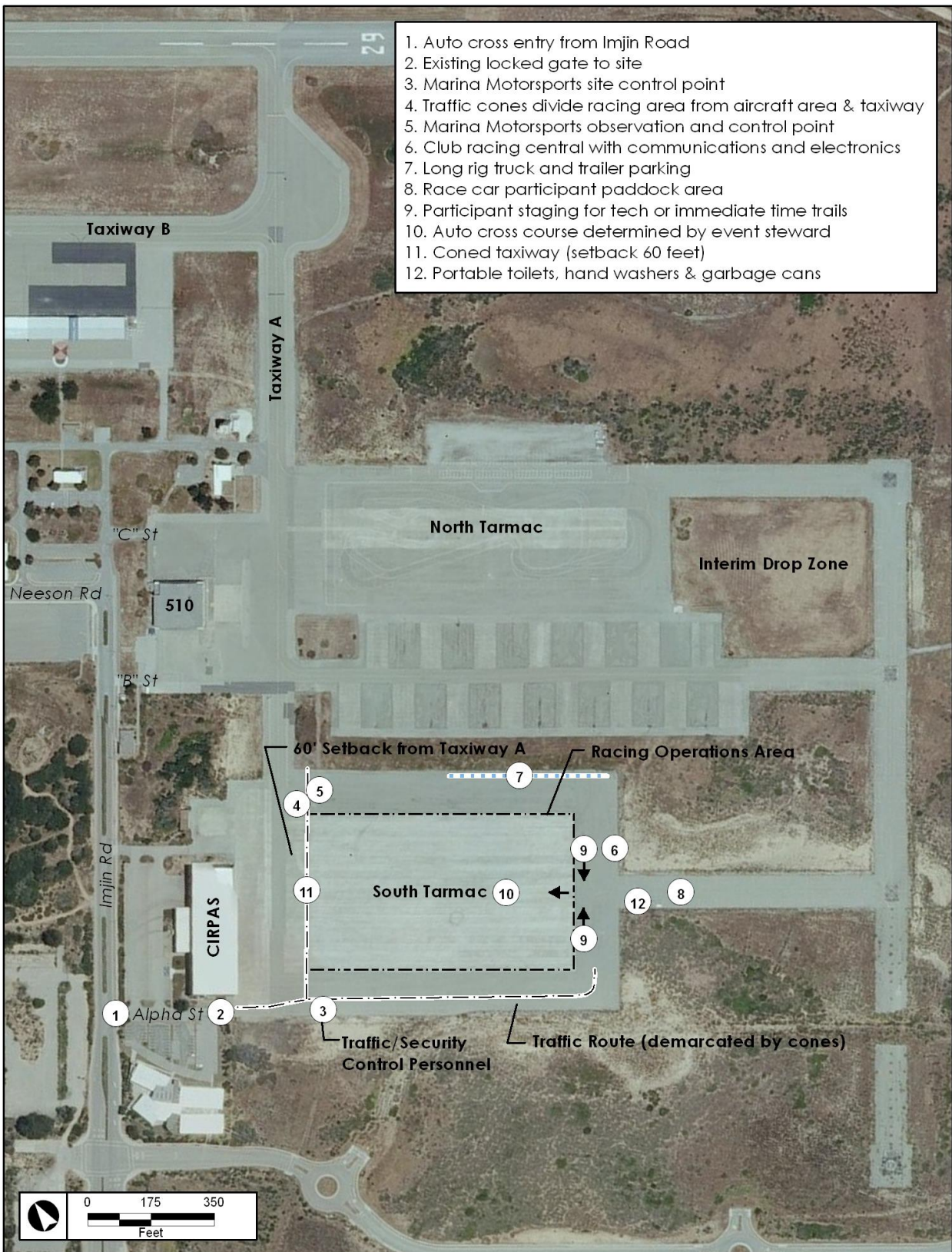
- EXHIBIT A Site Plan of South Tarmac
- EXHIBIT B Access Route to Tarmac
- EXHIBIT C Incident Report Form
- EXHIBIT D Release of Liability/Assumption of Risk

“EXHIBIT A”

Site Plan of South Tarmac



“EXHIBIT B” Access Route to South Tarmac



“EXHIBIT C”
Incident Report Form

INCIDENT REPORT FORM – FOR OFFICIAL USE ONLY

Date of Incident _____ Pilot in Command _____

Total Passengers _____ Name of Ground Observer _____

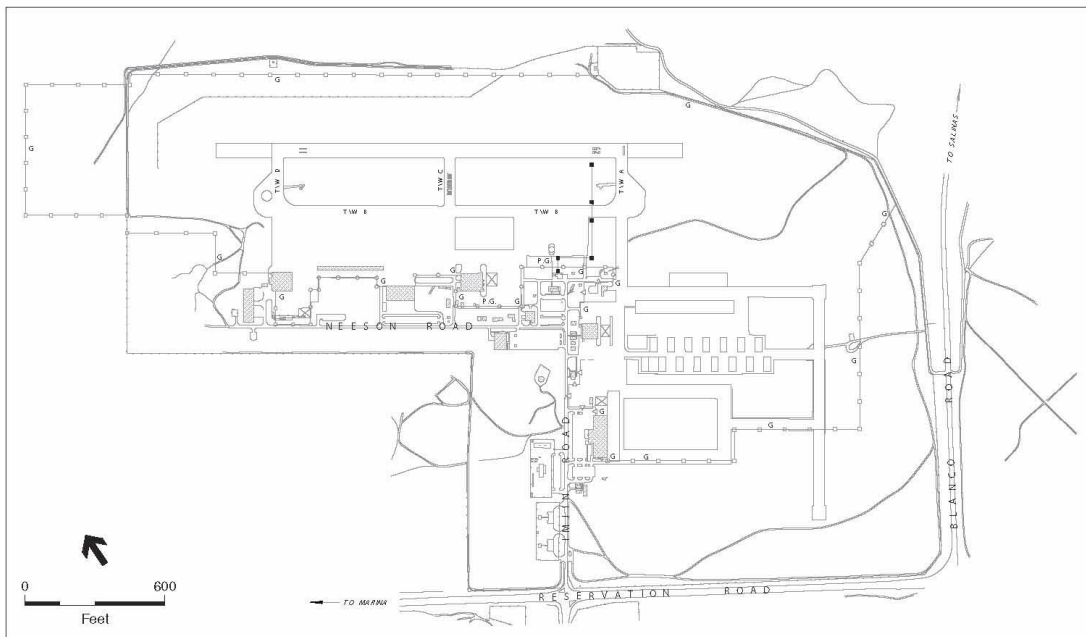
Name of Person(s) Involved: _____

Explanation: _____

Report Prepared by _____ Date _____

Received by _____ Date / Time _____

MARINA MUNICIPAL AIRPORT



“EXHIBIT D”

Release of Liability and Assumption of Risk Agreement

Description and Location of Scheduled Event	Date Release Signed
IN CONSIDERATION OF BEING PERMITTED TO compete, drive a motor vehicle, spectate, officiate, observe, work, or PARTICIPATE in any way IN THE ABOVE EVENT(S) OR BEING PERMITTED TO ENTER FOR ANY PURPOSE ANY RESTRICTED AREA (defined as requiring special authorization, credentials, or permission to enter, or any area to which admission by the general public is restricted or prohibited including but not limited to the competition area and any hot pit or paddock area), EACH OF THE UNDERSIGNED, FOR HIMSELF OR HERSELF, HIS OR HER PERSONAL REPRESENTATIVES, HEIRS, NEXT-OF-KIN: 1. ACKNOWLEDGES, AGREES AND REPRESENTS THAT HE OR SHE HAS OR WILL immediately upon entering any such Restricted Area, and will continuously thereafter, INSPECT THE RESTRICTED AREA which he or she enters, and he or she further agrees and warrants that, IF AT ANY TIME, he or she is in or about the Restricted Areas and HE OR SHE FEELS ANYTHING TO BE UNSAFE, HE OR SHE WILL IMMEDIATELY ADVISE THE OFFICIALS OF SUCH and if necessary will leave the Restricted Area AND REFUSE TO PARTICIPATE FURTHER IN THE EVENT(S). 2. HEREBY RELEASES, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE, the CITY OF MARINA and the Marina Municipal Airport, MARINA MOTORSPORTS, INC., the U.S. Navy, the U.S. Naval Postgraduate School and the Center for Interdisciplinary Remotely-Piloted Aircraft Studies, the promoters, participants racing associations, sanctioning organizations, or any subdivision thereof, track operators, track owners, officials, competition vehicle owners, drivers, pit crews, rescue personnel, any persons in any Restricted Area, sponsors, advertisers, owners and lessees of premises used to conduct the Event(s), premises and event inspectors, surveyors, underwriters, consultants and others who give recommendations, directions or instructions or engage in risk evaluation or loss control activities regarding the premises or Event(s) and each of them, their councils, directors, officers, agents, employees, and volunteers all for the purposes HEREIN REFERRED TO AS “RELEASEES,” FROM ALL LIABILITY TO THE UNDERSIGNED, HIS PERSONAL REPRESENTATIVES, ASSIGNS, HEIRS, AND NEXT-OF-KIN FOR ALL LOSS OR DAMAGE, AND ANY CLAIM OR DEMANDS THEREFOR ON ACCOUNT OF INJURY TO THE PERSON OR PROPERTY OR RESULTING IN DEATH OF THE UNDERSIGNED ARISING OUT OF OR RELATED TO THE EVENT(S) WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE. 3. HEREBY AGREES TO INDEMNIFY AND SAVE AND HOLD HARMLESS THE RELEASEES AND EACH OF THEM FROM ANY LOSS, LIABILITY, DAMAGE, OR COST they may incur arising out of or RELATED TO THE UNDERSIGNED’S INJURY OR DEATH WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE. 4. HEREBY ASSUMES FULL RESPONSIBILITY FOR ANY RISK, KNOWN AND UNKNOWN, OF BODILY INJURY, PERMANENT DISABILITY, arising out of or related to the Event(s), INCLUDING MEDICAL OR HOSPITAL BILLS, DEATH OR PROPERTY DAMAGE arising out of or related to the Event(s) whether CAUSED BY THE NEGLIGENCE OF RELEASEES or otherwise. 5. HEREBY ACKNOWLEDGES THAT THE ACTIVITIES OF THE EVENT(S) ARE VERY DANGEROUS and involve the risk of serious injury and/or death and/or property damage. Each of THE UNDERSIGNED, ALSO EXPRESSLY ACKNOWLEDGES THAT INJURIES RECEIVED MAY BE COMPOUNDED OR INCREASED BY NEGLIGENT RESCUE OPERATIONS OR PROCEDURES OF THE RELEASEES. 6. HEREBY AGREES THAT THIS RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT EXTENDS TO ALL ACTS OF NEGLIGENCE BY THE RELEASEES, INCLUDING NEGLIGENT RESCUE OPERATIONS and is intended to be as broad and inclusive as is permitted by the laws of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.	

I HAVE READ THIS RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT, UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE OR GUARANTEE BEING MADE TO ME AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

CAUTION THIS IS A RELEASE OF LEGAL RIGHTS -READ AND UNDERSTAND BEFORE SIGNING

ALL SECTIONS MUST BE COMPLETED

#	PRINT NAME HERE	SIGN NAME HERE	CAPACITY [driver, spectator]
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

Signature and Title of Witness	Address of Witness	Date Signature(s) witnessed
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Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 5, 2017

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2017- ,
APPROVING A CONDITIONAL AIRPORT USE PERMIT FOR MARINA
MOTORSPORTS, INC. TO CONDUCT NON-AERONAUTICAL ACTIVITIES
ON THE SOUTH TARMAC AT THE MARINA MUNICIPAL AIRPORT AND
AUTHORIZING CITY MANAGER TO EXECUTE THE CONDITIONAL
AIRPORT USE PERMIT ON BEHALF OF CITY, SUBJECT TO FINAL
REVIEW AND APPROVAL BY CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2017- , approving a Conditional Airport Use Permit for Marina Motorsports, Inc. to conduct non-aeronautical activities on the south tarmac at the Marina Municipal Airport; and
2. Authorizing City Manager to execute the Conditional Airport Use Permit on behalf of City, subject to final review and approval by City Attorney.

BACKGROUND:

Marina Motorsports, Inc., (MMS), a California 501(c)(3) nonprofit corporation, has utilized the south tarmac at the Marina Municipal Airport since 1995 for non-aviation motorsport events under terms and conditions of Conditional Airport Use Permits (CAUP) approved by the City Council.

The area used for the MMS events is planned for aviation development in the 2008 Airport Layout Plan Map and is zoned Airport District (A-1).

The Marina Municipal Airport property was transferred to the City of Marina to be used for public airport purposes (County of Monterey County, Office of Recorder, Salinas, California, Reel 3272, page 693, filed September 6, 1995, document no. 47266). According to section C of the deed, no property shall be used for other than airport purposes without the written consent of the Federal Aviation Administration (FAA) which consent shall be granted only if the FAA determines that the property can be used for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport.

The FAA is also vested with jurisdiction over monitoring and enforcing grant agreements, including grant agreements from the Airport Improvement Program (AIP). As a condition of receiving AIP funds, the City is obligated to comply with 39 grant assurances, which provide a means for the federal government to ensure that public use airports are developed, operated, and maintained in a safe, secure, efficient, compatible and compliant manner.

FAA Compliance Manual (Order 5190.6B) provides guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes.

The Airport realizes significant revenue generation through permitting non-aeronautical (non-aviation) activities on the tarmac areas via City Council approval of annual CAUPs. The City recognizes motorsports activities as positive recreational activity, supports their use within the City, values the contribution these activities and organizations provide to the community and region and the revenue generated to benefit and support the Airport.

In 2012 and 2013 letters, FAA made requests of the City to discontinue and relocate the non-aeronautical (motorsport) activities at the north and south tarmacs because the activities are considered contrary to the use of Airport infrastructure and do not advance the public's investment in civil aviation.

FAA approved the CAUPs for conducting non-aeronautical (motorsport) activities on the tarmacs for 2013 and 2014.

In a January 2015 letter, FAA, in approving the CAUPs for 2015 non-aeronautical activities, determined that the City provide a corrective action plan to discontinue the non-aeronautical (motorsport) activities by the year ending December 31, 2015.

In May 2015, staff submitted the FAA required Corrective Action Plan regarding non-aeronautical (motorsport) use of the south and north tarmac areas. The Corrective Action Plan: 1) acknowledged FAA's ongoing requests to discontinue and relocate the motorsport non-aeronautical activities; 2) affirmed the commitment to transition the south and north tarmac areas to aviation use with future demand by aeronautical users; 3) detailed the efforts and progress of the motorsport users to identify alternate off airport locations for their respective activities beyond December 31, 2015 and 4) provided reasoning for and requested FAA consideration of an up to three (3) year extension for non-aeronautical (motorsport) activities at the north and south tarmacs.

At the September 2015, Association of California Airports conference, the Airport Services Manager met with FAA San Francisco Airport District Office Management to discuss the Corrective Action Plan and request for extension of non-aeronautical use of the south and north tarmacs. Based on this meeting, FAA indicated that consideration of a three (3) year extension would be reasonable but there needed to be further follow up internally within FAA before an official determination would be provided.

In a January 2016 letter, FAA approved the continuance of permitting non-aeronautical (non-aviation) activities on the tarmacs areas subject to the CAUPs for one year expiring on December 31, 2016 and committed to providing the City/Airport a response to the Corrective Action Plan in December 2016.

At the October 2016 FAA Airport Capital Improvement Program meeting, there was further discussion of the Corrective Action Plan and request for an up to three (3) year extension for conducting non-aviation related activities on the tarmac areas for the purpose of revenue generation. In this discussion, FAA responded positively to further consideration of approving the request based on revenue generation, the ability of the Airport to be self-sustainable and that the tarmacs are not currently in demand for aviation use.

At the regular meeting of December 20, 2016, the City Council adopted Resolution No. 2016-161, approving a CAUP for Marina Motorsports, Inc. to conduct non-aviation related motorsport activity on the south tarmac at the Marina Municipal Airport. The term of the one (1) year permit ends December 31, 2017.

In a letter dated February 3, 2017, FAA reviewed the three CAUPs for use of the North and South Tarmacs for the South Bay Regional Public Safety Training Consortium, South Tarmac for Marina Motorsports, Inc. and the North Tarmac for the Monterey Bay Karters for 2017 (**"EXHIBIT A"**).

In this letter, FAA states: 1) FAA does not generally support the use of airport facilities for motorized vehicular racing and training purposes; 2) FAA realize that aeronautical demand for the use of the North and South Tarmacs has not existed since the United States Army conveyed the airport to the City in 1995 and 3) FAA understands the City's decision to generate revenue from utilizing these areas for other than aeronautical activities in order to benefit and support the Airport.

Further in this letter, FAA states: 1) FAA does not object to the City's request for the temporary use of the North and South tarmac areas for non-aeronautical purposes if the City enforces the permits and ensures that non-aeronautical activity ceases its operation in a timely manner, no more than 30 days, when an aeronautical demand for these areas exist; 2) when required, maintenance and any repairs of the tarmacs should be completed in a timely manner; 3) after event (use), the City must ensure that the tarmacs be swept clean of any residual debris or Foreign Object Debris (FOD) resulting from the non-aeronautical activity and 4) the three non-aeronautical activity sponsors must compensate the Airport for any required repair and maintenance of these areas.

ANALYSIS:

The CAUP for MMS to conduct non-aeronautical (motorsport) activities on the south tarmac is presented for City Council consideration ("**EXHIBIT B**").

The CAUP allows for MMS to utilize the south tarmac for the period of January 1, 2018 through December 31, 2018 subject to the condition precedent for FAA approval prior to conducting events for 2018. The fee per day for MMS's use of the south tarmac is proposed at \$600 per day which is consistent with the fee paid for 2017 activity.

The 2018 CAUP has been modified to include FAA provisions as stated in the letter dated February 3, 2017. For the events, MMS will be responsible for all permits, sanitary facilities, safety, medical personnel, and coordination of all safety issues with the Marina Municipal Airport, Police Department and Fire Department.

Staff has determined that the findings for approval of the CAUP can be made, in that the proposed project 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 the use of the North and South Tarmacs does not exist at this time and that the use of these areas for non-aeronautical purposes generates significant revenue to benefit and support the Airport.

FISCAL IMPACT:

Should the City Council approve this request, revenue for the one (1) year period of the Conditional Airport Use Permit will be recorded in the Airport Enterprise Fund, Lic & Permits, Account No. 555.000.000.5200.010. Based on MMS's anticipated activities, estimated 2018 revenue is \$60,000.

CONCLUSION:

This request is submitted for City Council consideration and direction to staff.

Respectfully submitted,

Jeff Crechriou
Airport Services Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina

