

RESOLUTION NO. 2024-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AMENDMENT TO TEMPORARY LICENSE AGREEMENT
BETWEEN CITY OF MARINA AND JOBY AERO, INC. FOR A PORTION OF
PROPERTY LOCATED AT MARINA MUNICIPAL AIRPORT AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON
BEHALF OF THE CITY

WHEREAS, on or about September 1, 2023, while the City and Joby were in the process of obtaining the FAA approval of a permanent hydrogen fueling facility to be operated at the Airport by Joby, the City and Joby entered into a Temporary License Agreement (“License Agreement”) for a term of one year, which granted Joby the right to grant Joby the right to use at the Airport the facility consisting of outdoor, fenced area for the operation of hydrogen aircraft refueling, hydrogen aircraft maintenance, and aircraft part installation (the “Facility”); and

WHEREAS, the Facility is built on existing concrete and asphalt at the Airport and required no construction of improvements or modifications. The Facility consists of a 145x75ft area (total 10,150 square feet), three 40x8ft containers, and one 20x8ft container. The Facility is surrounded by a 6-foot-tall temporary fence with locks to prevent access and with knock box for exclusive access by fire officials. To provide power, Joby uses temporary power lines already onsite; and

WHEREAS, since the parties entered into the License Agreement, the FAA issued the non-rulemaking airspace actions (“NRA”) determinations for the temporary and permanent hydrogen sites; and

WHEREAS, due to the delay in the construction of the permanent site, the parties wish to amend the License Agreement to extend the term for an additional year; and

WHEREAS, currently, the License Agreement is set to expire on or about August 31, 2024; and

WHEREAS, all other terms of the License Agreement remain unchanged; and

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

1. Approve a license amendment extending the term of the License Agreement for an additional year between the City of Marina, and Joby Aero, Inc. for a portion of the property located at the Marina Municipal Airport, and;
2. Authorize the City Manager to execute the amendment on behalf of the City, subject to review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th day of August 2024, by the following vote:

AYES, COUNCIL MEMBERS: McAdams, Biala, Visscher, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT (Agreement), dated as of September 1, 2023, is made by and between Joby Aero, Inc., a Delaware corporation (Joby), and City of Marina, a political subdivision of the State of California (City).

RECITALS

- A. The City operates and maintains the Marina Municipal Airport (Airport).
- B. Joby is a Delaware corporation that operates an electric aerial ridesharing business.
- C. The City and Joby are in the process of obtaining the FAA approval of a permanent hydrogen fueling facility at the Airport, to be operated by Joby.
- D. For a term of one year, pursuant to the Airport Rules and Regulations, and on the conditions outlined herein, the City wishes to grant Joby the right to use at the Airport the facility consisting of outdoor, fenced area for the operation of hydrogen aircraft refueling, hydrogen aircraft maintenance, and aircraft part installation (Facility).

NOW, THEREFORE, for and in consideration of the premises, covenants, and agreements of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. Grant of License. The City hereby grants Joby a temporary right to use a specified area at the Airport (Temporary License) for operation of hydrogen aircraft refueling, hydrogen aircraft maintenance, and aircraft part installation (Facility).

2. Description and Operation of the Temporary Hydrogen Refueling Facility.

(a) The Facility is built on existing concrete and asphalt at the Airport and will require no construction improvements or modifications. The Facility will consist of the 145x75ft area (total 10,150 square feet), three 40x8ft containers, and one 20x8ft container. The Facility will be surrounded by a 6-foot-tall temporary fence with locks to prevent access and with knock box for exclusive access by fire officials. To provide power, Joby will use temporary power lines already onsite. The location and plan of the Facility are shown on Exhibit A attached hereto.

(b) The Facility shall have the option to operate between 7am and 7pm, every day of the week. The Facility shall adhere to OSHA and NFPA 2, 14, 55, 58, 72 standards and setbacks. All tanks and systems venting hydrogen shall be connected to vent stacks 60" above building highest point, or higher.

(c) The use of the Facility shall be subject to the Airport Rules and Regulations for the safe and efficient operation of the Airport. The operation of the Facility shall not impair safe and efficient use of the Airport.

(d) The Facility's environmental hazards consist only of low probability ethylene glycol spills in the amounts of less than 10 gallons. Joby shall install secondary containments for all areas at risk of spill.

(e) Joby shall be solely responsible for all Facility maintenance costs and expenses.

3. Term of Agreement.

(a) The term of the Agreement shall commence on the Effective Date and shall expire one year after the Effective Date, unless earlier terminated as provided herein (Term).

(b) This Agreement is not intended to affect or impair the ownership of the Airport and the title thereto.

(c) This Agreement and the exercise of license right for the Facility shall not be construed to affect or impair any assurance the Airport is required to provide to the FAA pursuant to Section 47107 of Title 49 of the United States Code.

4. Indemnity and Insurance.

(a) Joby shall defend, indemnify, and hold the City and its officers, employees, agents, and authorized volunteers (Indemnitees) harmless from any and all claims, liability, losses, demands, damages, or injury of any kind, in law or equity, to property or persons, including wrongful death by or on behalf of any person, arising out of, resulting from, or relating to the use and operation of the Facility by Joby or its employees, customers, guests, contractors, suppliers of materials, tenants, furnishers of services, and invitees. It is the intent of the parties to provide the broadest possible coverage for the City.

(b) It is the express intent of the parties that the defense and indemnity obligations imposed in this Agreement are binding, valid, and enforceable even if it is claimed or proved that the City or its Indemnitees were actively or passively negligent, strictly liable in tort, or otherwise responsible for any such claims, damages, injury, loss, liability, and/or expense with one exception: Joby shall not be obligated to defend, indemnify or hold the City and its Indemnitees harmless under the terms of this provision for claims, damages, injury, loss, liability, and/or expense to the extent caused by the gross negligence or willful misconduct of the City or its Indemnitees.

(c) Joby shall secure and maintain general liability insurance sufficient to cover any liability for its actions on the Temporary License and Use Permit in an amount determined in the reasonable discretion of the City.

5. Terminating Events.

(a) This Agreement will terminate upon the expiration of the Term.

(b) If Joby subleases to or allows use of the Facility by any other individual, entity, or agency, other than or in addition to Joby, without the City's prior written approval, which the City

may withhold at its sole discretion, the City has the right to terminate the Agreement after providing Joby with a thirty-day notice of termination.

(c) In the event of a material default or breach of this Agreement, this Agreement shall not terminate automatically, but the non-defaulting party may provide the defaulting party with written notice specifically identifying the nature of such default or breach. Defaulting party shall have thirty days from receipt of the notice of default to cure the default or breach, provided that if the nature of the breach or default reasonably requires more than thirty days to cure such breach or default, the defaulting party shall not be deemed in default if the defaulting party commences to cure within such thirty day period and thereafter diligently and in good faith prosecutes the cure to completion pursuant to the mutually agreed-to plan. In the event the material default does not or cannot be cured within a reasonable time, the City has the right to terminate the Agreement after providing Joby with a thirty-day notice of termination.

6. Miscellaneous.

(a) This Agreement and the rights and obligations of the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any legal action or proceeding with respect to this Agreement may be brought in the courts of the State of California in Monterey County, or of the United States for the Northern District of California.

(b) If a court of competent jurisdiction determines that any provision of this Agreement is invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(c) This Agreement sets forth the entire Agreement and understanding of the parties with regard to the subject matter hereof, and supersedes all prior and contemporaneous representations, agreements and understandings, oral or otherwise, between the parties with respect to such subject matter. No representation, agreement, arrangement, or understanding, oral or written, exists among the parties relating to the subject matter hereof that is not fully expressed herein. Except as otherwise expressly provided herein, no amendment or modification of this Agreement shall be effective unless approved in writing by all parties to this Agreement. Any amendment to this Agreement shall also obtain written approval of the City Council, if required.

(d) The parties shall take and perform (or refrain from taking or performing) such further acts, provide all information, and execute, acknowledge, and deliver such other documents and instruments, as may be necessary, advisable or proper from time to time to further evidence, confirm or carry out the provisions, intent and/or purposes hereof or to comply with any applicable laws, rules or regulations.

(e) Any waivers of terms or conditions hereunder shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby.

(f) If any legal action or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the prevailing party shall

be entitled to recover reasonable attorney fees and court costs, in addition to any other relief to which such party may be entitled.

(g) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

JOBY AERO, INC., a Delaware corporation

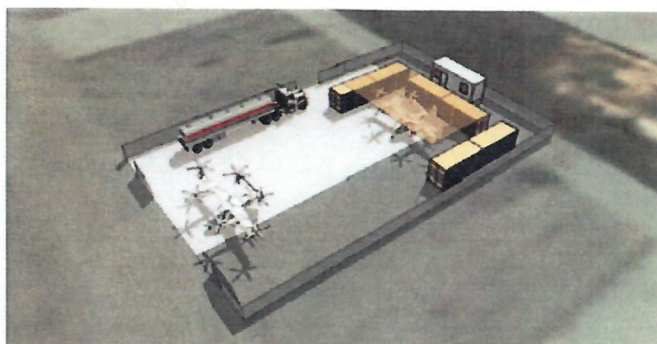
By: 
Name: JOEBEN BEVIRT
Title: FOUNDER AND CEO
Date: SEPT. 8, 2023

CITY OF MARINA, a political subdivision of the State of California

By: 
Name: LAYNE LONG
Title: CITY MANAGER
Date: SEPT. 1, 2023

EXHIBIT A

Location and Plan of the Facility



FIRST AMENDMENT TO TEMPORARY LICENSE AGREEMENT

THIS FIRST AMENDMENT TO TEMPORARY LICENSE AGREEMENT (“First Amendment”), dated as of _____, 2024, is made by and between Joby Aero, Inc., a Delaware corporation (“Joby”), and City of Marina, a political subdivision of the State of California (“City”), collectively the “Parties”.

RECITALS

- A. The City operates and maintains the Marina Municipal Airport (“Airport”).
- B. Joby is a Delaware corporation that operates an electric aerial ridesharing business.
- C. On or about September 1, 2023, while the City and Joby were in the process of obtaining the FAA approval of a permanent hydrogen fueling facility to be operated at the Airport by Joby, the City and Joby entered into a Temporary License Agreement (“License Agreement”) for a term of one year, which granted Joby the right to use the Facility, as defined in the License Agreement.
- D. Since the parties entered into the License Agreement, the FAA issued the NRA determinations for the temporary and permanent hydrogen sites. However, due to the delay in the construction of the permanent site, the parties wish to extend the term of the License Agreement for an additional year.

NOW, THEREFORE, for and in consideration of the premises, covenants, and agreements of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

- 1. The Term as set forth in Section 3(a) of the License Agreement is hereby extended from August 31, 2024 to August 31, 2025.
- 2. All other terms set forth in the License Agreement, not amended by this First Amendment, shall remain in effect.
- 3. Capitalized terms in this First Amendment shall have the same meaning as set forth in the License.
- 4. This First Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

JOBY AERO, INC., a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

CITY OF MARINA, a municipal corporation of the State
of California

By: _____

Name: Layne Long

Title: City Manager

Date: _____

Approved as to form

By: _____

Name: René Alejandro Ortega

Title: City Attorney

Date: _____

July 31, 2024

Item No. **10g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 7, 2024

**CITY COUCIL TO CONSIDER ADOPTING RESOLUTION NO. 2024-,
APPROVING AMENDMENT TO TEMPORARY LICENSE AGREEMENT
BETWEEN CITY OF MARINA AND JOBY AERO, INC. FOR A
PORTION OF PROPERTY LOCATED AT MARINA MUNICIPAL
AIRPORT AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AMENDMENT ON BEHALF OF THE CITY**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2024-, approving an amendment to a temporary license agreement between the City of Marina and Joby Aero, Inc. for a portion of the property located at the Marina Municipal Airport (“License Agreement”) extending the term of the License Agreement for an additional year, and;
2. Authorize the City Manager to execute the amendment on behalf of the City, subject to review and approval as to form by the City Attorney.

BACKGROUND:

On or about September 1, 2023, while the City and Joby were in the process of obtaining the FAA approval of a permanent hydrogen fueling facility to be operated at the Airport by Joby, the City and Joby entered into a Temporary License Agreement (“License Agreement”) for a term of one year, which granted Joby the right to grant Joby the right to use at the Airport the facility consisting of outdoor, fenced area for the operation of hydrogen aircraft refueling, hydrogen aircraft maintenance, and aircraft part installation (the “Facility”). The License Agreement is attached as **EXHIBIT A**.

The Facility is built on existing concrete and asphalt at the Airport and required no construction of improvements or modifications. The Facility consists of a 145x75ft area (total 10,150 square feet), three 40x8ft containers, and one 20x8ft container. The Facility is surrounded by a 6-foot-tall temporary fence with locks to prevent access and with knock box for exclusive access by fire officials. To provide power, Joby uses temporary power lines already onsite.

ANALYSIS:

Since the parties entered into the License Agreement, the FAA issued the non-rulemaking airspace actions (“NRA”) determinations for the temporary and permanent hydrogen sites. However, due to the delay in the construction of the permanent site, the parties wish to amend the License Agreement to extend the term for an additional year. The First Amendment of the License Agreement is attached as **EXHIBIT B**. Currently, the License Agreement is set to expire on or about August 31, 2024. All other terms of the License Agreement remain unchanged.

FISCAL IMPACT:

No fiscal impact.

CONCLUSION:

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

Respectfully submitted,

Layne Long
City Manager
City of Marina

REVIEWED/CONCUR:

Rene A. Ortega
City Attorney
City of Marina