

**CITY OF COMMERCE  
FACILITY USE AGREEMENT**

**FOR**

**TRANSPORTATION BUS WASH  
IN THE CITY OF COMMERCE**

This Facility Use Agreement (“Agreement”) concerns the above-stated City of Commerce transportation bus wash facility, located at 5555 Jillson Street, Commerce, CA 90040 (the “Facility”), and is entered into as of December 28, 2017, by and between the City of Commerce, as AGENCY, and City of Montebello, as USER, WITNESSETH that AGENCY and USER have mutually agreed as follows:

WHEREAS, the AGENCY owns the Facility as described in this Agreement, and

WHEREAS, USER desires to use the Facility for the purposes herein contained, and AGENCY desires to allow such use on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, AGENCY and USER agree as follows:

1.0 Grant: AGENCY hereby grants to USER a license to use the Facility for the sole purpose and use of washing USER’s transit buses on the following terms and conditions:

- a) USER shall only use the Facility to wash transit buses owned and operated by USER during the dates, days and times specified in this Agreement;
- b) On-site AGENCY equipment shall be only used for the purpose of washing USER-owned and operated transit buses; and

USER shall not use the Facility for any purposes not expressly set forth herein and shall not interfere with AGENCY’s use of the Facility.

2.0 Term: USER shall be permitted to use the Facility during the following time and dates:

- a) Monday to Friday from 5:00 am – 2:00 pm
- b) From December 28, 2017 until March 30, 2018

3.0 Fee: AGENCY agrees to waive any and all fees or payment, in consideration for USER’s previous provision of like-supportive services to AGENCY when AGENCY’s CNG station was under construction.

4.0 Condition of Premises: USER has inspected the Facility prior to the execution of this Agreement and agrees to accept the same in its “as is” condition, and except as specifically noted herein, AGENCY shall not be required to perform any work or alterations to prepare the Facility for USER’s use.

5.0 Maintenance of Facility: AGENCY shall at its own cost and expense maintain the grounds and structures the Facility.

6.0 Utilities: AGENCY shall at its own cost and expense supply USER with all existing utilities, including heat, water and electricity, as applicable.

7.0 Compliance with AGENCY Policies: USER shall be responsible for ensuring that its employees, agents and contractors abide by all AGENCY rules, regulations and policies, a copy of which has been provided to USER, as well as any written or verbal directions of AGENCY staff and security.

7.1.1 USER and its employees, agents and contractors shall not injure, damage, mar or deface the Facility, its appurtenances and any equipment contained therein. Neither shall USER cause or permit anything to be done whereby said premises, appurtenances and equipment shall in any way be injured, damaged, marred or defaced, and shall not drive or permit to be driven, nails, hooks, tacks or screws into any part thereof and will not make or allow to be made any alterations of any kind therein without AGENCY's prior written approval.

7.1.2. USER and its employees, agents and contractors shall not erect any special platforms, water tanks, scaffolding, rigging and other apparatus without AGENCY's prior written approval. AGENCY, in its sole discretion, reserves the right, through its Public Works Department to reject any of the above mentioned items. In the event of such constructions, USER will take all necessary action required to insure the safety of the participants and the public, and shall be solely liable for any damages that arise as a result of same.

7.1.3. USER agrees that it and its employees, agents and contractors will not use AGENCY's equipment, tools, or furnishings located in or about described Facility except for the sole purpose of washing USER transit buses , without first seeking and receiving the written approval of AGENCY. AGENCY does not guarantee the operation of any of its equipment and shall not be liable for any loss sustained by USER or its employees, agents, contractors, licensees, guests or invitees by reason of any breakdown of equipment during the permitted use.

7.1.4. USER and its employees, agents and contractors shall not use any flammable materials or similar items in or near the vicinity of the Facility, without AGENCY's prior written approval.

7.1.5. The Facility is designated as non-smoking at all times. USER shall be responsible for any fines levied against the AGENCY for violation of this regulation and reimbursement to the AGENCY for any damage caused by smoking.

7.1.6. At no time shall USER allow occupancy of the Facility to exceed maximum permitted occupancy. The maximum permitted occupancy for the Facility is set forth on herein.

7.1.7. Vacating Premises: At the end of Agreement, or upon the earlier termination of this Agreement, USER shall quietly and peaceably vacate the Facility and remove its employees, agents and contractors and their property from the Facility so that the Facility s are in the same condition (ordinary wear and tear excepted) as at the inception of this Agreement, and USER shall reimburse AGENCY for any expense incurred to repair any damage caused by such removal. Any property or items of USER or its employees, agents and contractors remaining in

the Facility after the expiration or sooner termination of this Agreement shall be deemed abandoned and may be disposed of by AGENCY as it sees fit in its sole discretion, at USER's expense. USER agrees that AGENCY shall have no liability for any disposal of property that is deemed abandoned.

7.2. Liaison. USER will provide, at its own expense, a liaison between USER and AGENCY's staff. Said liaison will facilitate communication between USER and AGENCY, as the need arises.

8.0 Additional USERS: USER understands and agrees that during the term of this Agreement other activities and events may be held in other parts of the Facility not included in this Agreement, and USER shall so conduct its activities so as not to interfere with such other activities and events.

9.0. Compliance with Laws, Rules and Regulations. USER and its employees, agents and contractors shall comply with all pertinent federal, state, local and municipal laws, codes, ordinances, rules and regulations, including but not limited to fire, building safety and health codes applicable to the Use of the Facility, including with respect to the dispensing and sale of alcoholic beverages. USER and its employees, agents and contractors shall obtain and maintain in full force and effect, all permits, licenses and authorizations required by governmental and quasi-governmental agencies. USER shall advise AGENCY of all permits and licenses required to be obtained for its activities in AGENCY's own name, and shall cooperate with AGENCY in obtaining same and shall pay any fees and expenses that may be required relative thereto.

9.1.1 Governing Law And Venue. Except as may be preempted by federal law, this Agreement shall be governed by the laws of the State of California, without regard to its choice of law principles. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of California, County of Los Angeles.

10.0 Indemnification. USER agrees to defend, indemnify, and hold harmless AGENCY, its successors and assigns, and their respective employees and agents to the fullest extent permitted by law from and against any and all claims or demands whatsoever, including associated costs, expenses, and reasonable attorneys' fees incurred on account thereof, that may be asserted by Consultant's employees, employees of USER's subcontractors or agents, or any other persons for loss, damage, death, or injury to persons or property arising in any manner out of or incident to USER's utilization of AGENCY the Facility and/or USER's performance or nonperformance of this Agreement.

11.0 Insurance: In addition to Workers Compensation and other statutorily required coverage, USER agrees to obtain and maintain at its own cost and expense broad form General Liability insurance with a limit of not less than Two Million (\$2,000,000) Dollars covering personal injury, death and property damage, covering all of activities of USER and its employees, agents, contractors, licensees, guests and invitees at AGENCY's premises. Such policies of insurance shall be maintained with insurance companies authorized to do business in the State of California and provide that they may not be canceled except upon 30 days prior written notice to AGENCY. USER shall, at the time of the execution of this Agreement, furnish AGENCY with a certificate of insurance evidencing such coverage, and naming AGENCY as an additional

insured with respect to its liability coverage. The insurance required hereby shall not be deemed to limit the USER's obligations to indemnify AGENCY under this Agreement.

12.0 Violation: If in AGENCY's reasonable opinion, at any time USER's employees, agents and contractors violates an applicable AGENCY rule or regulation (including, but not limited to restrictions against the use of drugs and alcohol), or the ordinance or law of the local city, town, village, or county, the State of California or the United States of America, USER shall direct the offender to cease and desist from continuing such illegal or improper use. Notwithstanding anything to the contrary contained in this Agreement, AGENCY expressly reserves its right at any time upon prior notice to USER (except in emergencies), to cause the removal of any of USER's employees, agents, contractors, licensees, guests or invitees, who in the reasonable discretion of AGENCY has engaged or is engaging in undesirable, disruptive or hazardous behavior.

13.0 Non-assignment: USER shall not assign or transfer this Agreement or allow any other entity to use any portion of the subject Facility hereunder without the prior written consent of AGENCY.

14.0 No Joint Venture: Nothing contained herein shall be deemed or construed by the parties or by any third party as creating any employment or agency relationship or partnership or joint venture between USER and AGENCY.

15.0 Entire Agreement: This Agreement, together with any exhibits or addenda annexed hereto, is the sole and complete expression of the parties' intent with respect to the subject matter hereof. This Agreement may be amended or modified only by a writing countersigned by authorized representatives of each party.

16.0 Inspection: USER agrees that AGENCY's authorized representatives may enter upon the licensed Facility at all reasonable times to make inspection and perform necessary work or to ensure conformity with this Agreement.

17.0 Notices: All notices by the parties to each other hereunder shall be in writing, addressed as follows:

To AGENCY:  
City Administrator  
City of Commerce  
5235 Commerce Way  
Commerce, CA 90040

To USER:  
City Manager  
City of Montebello  
1600 W. Beverly Boulevard  
Montebello, CA 90640

with simultaneous copies to:

Director of Transportation  
City of Commerce  
5555 Jillson Street  
Commerce, CA 90040

Director of Transportation  
City of Montebello  
400 S. Taylor Avenue  
Montebello, CA 90640

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of the date first set forth hereinabove.

**CITY OF COMMERCE**

By: \_\_\_\_\_

Name: Edgar Cisneros

Title: City Administrator

**CITY OF MONTEBELLO**

By: \_\_\_\_\_

Name: Andrew Pasmant

Title: Acting City Manager

**ATTESTED**

By \_\_\_\_\_

Name: Lena Shumway

Title: Admin Services Dir & City Clerk

By \_\_\_\_\_

Name: Irma Barajas

Title: City Clerk, City of Montebello

**APPROVED AS TO FORM**

By \_\_\_\_\_

Name: Noel Tapia

Title: City Attorney, City of Commerce

**APPROVED AS TO FORM**

By \_\_\_\_\_

Name: Arnold Alvarez-Glassman

Title: City Attorney, City of Montebello