

CITY OF CULVER CITY
TEMPORARY USE AGREEMENT
WITH: LUX BUS AMERICA CO.
FOR: TEMPORARY USE OF TRANSPORTATION FACILITIES
BY APPLE'S COMMUTER SHUTTLE

THIS TEMPORARY USE AGREEMENT ("Agreement") is made and entered into by and between THE CITY OF CULVER CITY, a municipal corporation, hereinafter referred to as "City;" and LUX BUS AMERICA CO., a California Corporation, hereinafter referred to as "Shuttle Operator." The parties to this Agreement shall be referred to individually as "Party" and collectively as "Parties."

1. PURPOSE: The purpose of this Agreement is to authorize, pursuant to Culver City Municipal Code, Section 7.03.420, and California Vehicle Code Sections 21655.1 and 22500, Apple, Inc.'s ("Apple") Shuttle Operator's temporary use of the City bus stop located at the N/W Corner of Washington Blvd. & National Blvd., on Washington Blvd. in front of the Shay Hotel, and incidental use of City's bus-only mobility lane on Washington Blvd., adjacent to the City's bus stop (to allow for entrance and exit out of the bus stop) for pick-up and drop off of Apple's employees as part of Apple's commuter shuttle program.

2. DESCRIPTION AND USE OF TRANSPORTATION FACILITIES:

- A. The transportation facilities consist of the City's bus stop at the N/W Corner of Washington Blvd. & National Blvd., on Washington Blvd. in front of the Shay Hotel ("Shared Bus Stop"), and a segment of the City's bus-only mobility lane on Washington Blvd., adjacent to the City's bus stop (to allow for entrance and exit out of the bus stop) (collectively, "Transportation Facilities"), for pick-up and drop off of Apple's employees as part of Apple's commuter shuttle program. Shuttle Operator shall use the Transportation Facilities in an as-is condition.

With the exception of the purposes described in this Section 2, Shuttle Operator shall not be authorized to use the Transportation Facilities for any other purpose whatsoever. Shuttle Operator may use the Transportation Facilities only for the purpose of active unloading and loading passengers of privately operated and pre-arranged transportation services for the exclusive or primary use of Apple authorized passengers, as a part of Apple's commuter shuttle program. Active unloading and loading of passengers means there is to be no staging or idling: Shuttle Operators shall use the Transportation Facilities for active loading and unloading only and shall load and unload riders as quickly and safely as possible. Shuttle Operator shall not stage vehicles at the Transportation Facilities, and will only stage vehicles at other locations in accordance with parking laws and regulations.

- B. Shuttle Operator shall provide City with a list of the shuttle vehicles that are authorized to utilize the Shared Bus Stop. The list of shuttle vehicles shall include the shuttle license plate numbers. Shuttles not on the list may be cited through the City's Automated Bus Lane Enforcement (ABLE) program.
3. TERM: The term of this Agreement shall commence on March 6, 2024, and shall expire on June 30, 2027 ("Term"), unless earlier terminated pursuant to Section 11. This Agreement

may be extended in 6-month increments, as authorized by the City Manager and agreed to by the Shuttle Operator, for a maximum of two extensions. For each extended 6-month period, an amendment to this Agreement shall be required.

4. FEE: Shuttle Operator shall pay City Two Thousand Five Hundred Dollars (\$2,500) per year for use of the Shared Bus Stop. Immediately upon executing this Agreement Shuttle Operator shall pay City for the period of May 1, 2024 to the date of execution of this Agreement.
5. APPLICABLE LAWS, CODES, REGULATIONS AND POLICIES: Shuttle Operator shall comply with all federal, state and local laws, statutes and ordinances in connection with Shuttle Operator's use of the Transportation Facilities under this Agreement.
6. PERMITS AND LICENSES: Shuttle Operator, at its sole expense, shall obtain and maintain during the term of this Agreement, all applicable permits, licenses, and certificates that may be required in connection with Shuttle Operator's use of the Transportation Facilities under this Agreement, including, but not limited to, a Culver City business tax certificate._
7. INDEMNIFICATION: Independent of Shuttle Operator's obligations pursuant to Section 8 of this Agreement, Shuttle Operator shall defend (at Shuttle Operator's sole expense, with legal counsel selected by City), indemnify and hold harmless the City, members of its City Council, its boards and commissions, officers, directors, employees, agents, successors, assigns and subsidiaries (collectively "Indemnitees"), from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, expenses and reasonable attorneys' fees and judgments, including civil, criminal, administrative or investigative, arising out of, in connection with, or which are in any way or manner related to this Agreement, including, but not limited to loss or damage to persons or property, arising out of or in any way related to Shuttle Operator's, including its officers, managers, employees, contractors, agents, and volunteers (collectively, "Indemnitors") use of the Transportation Facilities, the Indemnitors' business conduct and operations, and any violation of any laws by the Indemnitors. This indemnification includes, but is not limited to, statutory or tort liability to a third person for bodily injury and property damage. Shuttle Operator agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnitees' active or passive negligence. Notwithstanding the foregoing, nothing herein shall be construed to require Shuttle Operator to indemnify an Indemnitee from any claim arising from the sole negligence or willful misconduct of that Indemnitee. The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to Shuttle Operator of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Shuttle Operator, City or any Indemnitee._
8. INSURANCE: Without limiting its obligations pursuant to Section 7 of this Agreement, and at all times during the term of this Agreement and any use of the Transportation Facilities by Shuttle Operator pursuant to this Agreement, Shuttle Operator shall procure and maintain the insurance coverage set forth below:
 - A. Commercial General Liability ("CGL") Insurance coverage, at least as broad as ISO Form CG 0001, in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence,

with not less than Six Million Dollars (\$6,000,000) in annual aggregate coverage. These insurance requirements may be met by umbrella or excess policy, provided that it shall not include any exclusions or clauses that limit or delete the underlying policy. The CGL policy shall have the following requirements:

- i. The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall be utilized to satisfy, to the extent of the coverage limits, the City's self-insured retention under any other policy of insurance. The coverage shall not be excess or contributing with respect to City's self-insurance, commercial liability insurance, or any pooled risk arrangements;
 - ii. The policy shall provide \$3,000,000 coverage per accident for owned, hired and non-owned automobile liability. Automobile liability coverage may be satisfied with a stand-alone policy or as a component of the CGL policy;
 - iii. The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law, Shuttle Operator's obligation to indemnify the Indemnitees as required under Section 7 of this Agreement; and
 - iv. The City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees shall be named as additional insureds in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.
 - v. The Policy shall not contain an "Independent Negligence" provision that would void or otherwise nullify the insurer's obligation to defend and indemnify the City of Culver City in the event that its independent negligence is alleged or proven.
 - vi. The CGL limits may be satisfied with a primary policy with \$5,000,000 occurrence/\$6,000,000 annual aggregate, OR, by a primary policy with lower limits of coverage plus an Excess or Umbrella policy which will satisfy the occurrence and aggregate limit requirement. If Shuttle Operator's insurance coverage provides coverage in excess of these required limits, but is eroded by payment or claim reserves, then Operator or its insurance carrier shall notify the City of Culver City within ten (10) days when the contractual coverage limits provided are below the required coverage limits.
 - vii. The City of Culver City reserves the right to review and waive or modify the CGL aggregate requirement in the event that an adequate project specific policy and limits are provided.
- B. If this Agreement will have Shuttle Operator employees working within the City limits, Shuttle Operator shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability insurance (with limits of at least one million dollars [\$1,000,000] per accident). Operator shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

- C. City may waive one or more of the coverages listed in this Section 8. This waiver shall be express and in writing, and will only be made upon a showing by the Operator that its operations in and with respect to City are not such as to impose liability within the scope of that particular coverage.
 - D. All insurance listed in this Section 8 shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A-VIII or better in the current Best's Insurance Reports.
 - E. Shuttle Operator shall provide City with at least thirty (30) days' prior written notice of any modification, reduction or cancellation of any of the Policies required in this Section 8 or a minimum of ten (10) days' notice for cancellation due to non-payment.
 - F. City may increase the scope or dollar amount of coverage required under any of the policies described in this Section 8, or may require different or additional coverages, upon prior written notice to Shuttle Operator.
 - G. If Shuttle Operator, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Shuttle Operator resulting from said breach.
9. DAMAGE TO PUBLIC PROPERTY: Shuttle Operator shall, at its sole cost and expense, repair or replace, to the reasonable satisfaction of the Chief Transportation Officer and Public Works Director/City Engineer, broken or damaged City-owned or operated real or personal property or public right-of-way caused, directly or indirectly, by Shuttle Operator's vehicles.
10. DATA SHARING:
- A. Permittee agrees to provide the following data each quarter to the Culver City Transportation Department:
 - i. Daily stop-events by permitted bus stop;
 - ii. Monthly vehicle miles traveled in commuter shuttle service in Culver City (including any deadheading);
 - iii. Average daily boardings in commuter shuttle service in Culver City;
 - iv. Average daily occupancy for each vehicle upon arrival at destination;
 - v. Average shuttle dwell time by permitted bus stop;
 - vi. Typical routes, and average number of runs per route; and
 - vii. Average number of daily shuttle vehicles in operation;

- B. Permittee shall provide information about fleet vehicle fuel type, ridership, routing, and other requested information within 15 business days of receiving such a request from the Culver City Transportation Department;
 - C. Permittee shall provide updated information to the Culver City Transportation Department within five business days in the case of changes to any of, including but not limited to, the following:
 - i. Change of primary contact, billing contact; and
 - ii. Increase in number of monthly stop events greater than 5% month-over-month.
 - D. City reserves the right to request additional data from Permittee, as needed.
11. NON-TRANSFERABILITY: No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by City.
12. TERMINATION: City may terminate this Agreement without cause, in whole or in part, at any time by written notice to the Shuttle Operator. For instance, in the case that Apple's shuttle operations are impacting public transit, as determined by the City, the City will cancel the agreement.
13. MODIFICATION OF THE AGREEMENT: The City may modify any of the terms and conditions contained in this Agreement at any time and in City's sole discretion. City shall consider any requests by Shuttle Operator to modify this Agreement and shall work in good faith with Shuttle Operator to accommodate such requests, subject to City Manager's approval, in his sole discretion.
14. NOTICES: All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery, email, facsimile, overnight delivery, or by U.S. Mail. All written notices or correspondence sent pursuant to this Section will be deemed given to a party on whichever date occurs first; the date of personal delivery; the date of transmission, if sent by email or facsimile (with proof of transmission); the next business day following deposit with an overnight mail carrier; the fifth day following deposit in the U.S. Mail, when sent by "first class mail."

Notice sent by U.S. Mail or email shall be addressed, as applicable, as follows:

To City: City of Culver City
Attention: Chief Transportation Officer (c/o: Mobility Planning Manager)
4343 Duquesne Avenue
Culver City, CA 90232
seth.contreras@culvercity.org

To Shuttle Operator: Lux Bus America Co.
Attention: Jared Flaum

851 E. Cerritos Avenue
Anaheim, CA 92805
jflaum@luxbusamerica.com

14. WAIVER: If at any time one Party shall waive any term, provision or condition of this Agreement, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.
15. FURTHER ASSURANCES: Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties._
16. GOVERNING LAW: The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of Los Angeles County.
17. LITIGATION FEES: If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including reasonable attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.
18. INTEGRATED AGREEMENT: This Agreement represents the entire agreement between City and Shuttle Operator regarding the subject matter hereof, and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to the subject matter. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any subsequent successors and assigns.
19. SEVERABILITY: If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
20. AUTHORITY TO ENTER INTO AGREEMENT: The individual(s) executing this Agreement on behalf of each Party is (are) authorized to execute this Agreement on behalf of said Party. Each Party has taken all actions required by law to approve the execution of this Agreement._
21. SIGNATURES AND COUNTERPARTS: The Parties acknowledge and agree that this Agreement may be executed in counterpart, and by faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

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22. EFFECTIVE DATE: The effective date of this Agreement shall be March 6, 2024. This Agreement shall remain in full force and effect until amended or terminated; provided, that the indemnification and hold harmless provisions shall survive the termination.

LUX BUS AMERICA CO.

Dated: _____

By: _____

Jared Flaum
Director of Sales and Operations

CITY OF CULVER CITY

Dated: _____

By: _____

Odis Jones
City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Yanni Demitri
Interim Chief Transportation Officer

Heather Baker
City Attorney