

DRAFT 09.25.2017

LEASE AND RELOCATION  
AGREEMENT BETWEEN  
THE CITY OF SALINAS AND  
DONGJUN CHO



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## LEASE AND RELOCATION AGREEMENT

**281 East Alisal Street, Salinas, California**

THIS LEASE AND RELOCATION AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between the **City of Salinas**, a California charter city and municipal corporation, hereinafter called the "City," and **Dongjun Cho**, an individual hereinafter called "Tenant," sole Proprietor and Owner of ES Car Wash #1. The City and the Tenant may sometimes collectively be referred to herein as "the parties."

### RECITALS

WHEREAS, the City is the owner of that real property (the "Property") located at 282 East Alisal Street in the City of Salinas, California, County of Monterey (APN 003-041-031-000), which is more particularly shown on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the City acquired the Property for future use as a public asset related to development of a Police Department headquarters on an adjacent property; and

WHEREAS, the Tenant currently occupies space on the Property pursuant to a leasehold interest from which he operates a car wash and a pet wash; and

WHEREAS, the City desires to allow the Tenant to continue to occupy a portion of the Property pursuant to this Agreement for a limited time and for the sole purpose of allowing the Tenant to continue operating his carwash and pet wash; and

WHEREAS, the Tenant desires to continue operating his carwash and pet wash on the Property subject to the terms and the conditions contained of this Agreement; and

WHEREAS, the parties intend this Agreement to supersede and to replace all prior agreements, whether written or oral. Specifically, this Agreement supersedes and replaces that Commercial Lease dated June 1, 2009, and entered into by and between the former owner Dong Cho, the Uncle of Tenant from whom the Tenant purchased the Carwash in 2015, and Rita A. Muller and Kathlyn M. Garcia, Executors of the Estate of John P. Muller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

### PART 1. PRIOR AGREEMENTS

**1. Novation of Prior Agreements.** The Tenant was a party to a Commercial Lease entered into on June 1, 2009, with Rita A. Muller and Kathlyn M. Garcia, Executors of the Estate of John P. Muller ("Original Landlords") pursuant to which the Tenant was granted the use and the

occupation of the Premises (defined below) for the operation of a car wash (the "Original Lease"). The Original Lease, which has an expiration date of May 31, 2019, was assigned to the City by the Original Landlords at the time the City purchased the Property from the Original Landlord. The assignment of the Original Lease is described in Section 10(e) of the Purchase and Sale Agreement entered into by and between the City and the Original Landlord (a copy of which is attached hereto as Exhibit A).

The parties to this Agreement agree that this Agreement supersedes and replaces the Original Lease and that the City and the Tenant are discharged from their obligations under the Original Lease. The parties to this Agreement further agree that all rights under the Original Lease are hereby extinguished.

## **PART 2. LEASE AGREEMENT**

**1. PREMISES.** The City hereby leases to the Tenant and the Tenant hereby leases from the City, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at **282 East Alisal Street, Salinas, CA 93905** and described more particularly in Exhibit B, which is attached and incorporated herein by reference. The Tenant shall accept the Premises "as-is, where-is" condition.

**2. TERM.** This Lease shall be for a term of two (2) years, commencing on October 1, 2017, ("Commencement Date"), and ending on September 30, 2019 (the "Initial Term"), unless terminated earlier pursuant to the provisions of this Agreement. The City may grant a renewal of the Agreement for an additional one (1) year period. The terms and conditions of a renewed agreement shall be subject to the negotiation of the parties to this Lease.

Upon the expiration or the earlier termination of this Agreement, Tenant shall peaceably vacate the Premises and any and all improvements located thereon and deliver the same to the City in at least as good a condition as it was delivered to Tenant on the Commencement Date, reasonable wear and tear and casualty excepted.

Any holding over after the expiration of the term, or any renewal thereof, with the consent, express or implied, of the City, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, as far as applicable. This Agreement may only be extended upon then mutual written agreement of the parties.

**3. RENT.** Commencing on the Commencement Date and continuing through the entire term of this Agreement, the Tenant shall pay to the City, as rent, the amount of three thousand eight hundred thirty-two dollars and forty cents (\$3,832.40) per month ("Rent") for the use and the possession of the Premises. If pursuant to Section 2 "Term" this Agreement is extended, a new rental rate will be negotiated with the intent to maintain the rent amount per month at the current market rate through-out the duration of the Agreement or subsequent renewals.

4. **USE.** Tenant shall use the Premises for the operation of a car wash and a pet wash and for no other purpose(s). Tenant may alter said use to any lawful purpose, upon the written consent of the City, which consent shall not be unreasonably withheld.

5. **COMPLIANCE WITH LAWS.** Tenant shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal relating to Tenant's use and occupancy of the Premises whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted.

6. **TAXES AND ASSESSMENTS.** This Agreement may create a taxable possessory interest, the timely payment of which, together with any other taxes or assessments imposed against Tenant or the activities of Tenant shall be paid by Tenant before they become delinquent. The City shall be responsible for the payment of all real property assessments imposed on the Premises by any improvement district or special taxing authority. During the lease term, all real estate taxes for the Premises shall be paid by the City.

7. **UTILITIES.** The Tenant shall pay, and hold the City free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, garbage pickup and disposal, and other public utilities to the Premises during the term of this Lease.

8. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall, at its sole cost and expense, make any and all alterations necessary to use the Premises for Tenant's business purposes. Tenant shall make no demand upon the City for any improvements, rehabilitation, repairs or alterations of the Premises.

Any alterations, remodeling or utility installations by Tenant during the term of the Lease shall be performed only upon the City's written approval and shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all applicable laws, regulations, and building codes. All improvements, alterations and fixtures (including, but not limited to, trade fixtures as that term is defined in Civil Code Section 1019) made or placed in or on the Premises by Tenant or otherwise existing on the Premises during the term of this Lease shall be owned and insured by Tenant, and such improvements, alterations, and fixtures may be depreciated for income tax purposes by Tenant, provided that Tenant removes, at its sole expense, such improvements, alterations, and fixtures at or prior to the expiration or sooner termination of this Lease and restores the Premises to their original condition as nearly as practicable. In the event that Tenant does not so remove such improvements, alterations, and fixtures, they shall become the property of the City for no further consideration of any kind, and Tenant shall execute any documents that may be required to convey its interest in such improvements, alterations and fixtures to the City.

9. **MAINTENANCE AND REPAIRS.** Tenant, at its sole cost, shall keep and maintain the Premises and every part thereof, both inside and outside, including all landscaping clean and in good repair, and including, but not limited to, the repair of all appurtenances to the same

condition or better as when received, damages by fire, act of God, or by the elements excepted, and to remove all of Tenant's signs from the Premises upon termination or expiration of this agreement. Further, Tenant shall provide its own custodial services for said Premises.

**10. INDEMNIFICATION.** Tenant shall defend, hold harmless, and indemnify City and its officers, officials, employees, and volunteers from and against any and all liability, loss, damage, expense, and costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with this Lease, Tenant's performance of work hereunder, or Tenant's failure to comply with any of its obligations contained in this Lease, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

**11. INSURANCE.** Tenant shall, at its own cost and expense, maintain the insurance specified and required at Exhibit C hereto.

**12. HAZARDOUS SUBSTANCES.** Except as may specifically be required in order to operate a car wash and a pet wash, Tenant shall not use any portion of the building or parking lot for the storage or use of flammable or hazardous substances. The City understands and acknowledges that vehicles parked at the parking spaces will use hazardous substances in order to operate, including gasoline and oil. Tenant shall be solely responsible for the clean-up and remediation of any spill or discharge or any hazardous substances including, but not limited to, gasoline and oil from such vehicles. As required by law, Tenant shall immediately notify the City in writing of any material release of hazardous substances and of any hazardous substances that have come to be located on or beneath the Premises.

**13. ENTRY AND INSPECTION.** The City shall have the right to enter the Premises at all reasonable times for the purpose of inspection, posting notices, or other lawful purposes.

**14. REMOVAL OF PERSONAL PROPERTY; RESTORATION OF PROPERTY.** At the expiration or the earlier termination of this Agreement, Tenant shall at its sole cost and expense remove all items of personal property placed on the Premises by Tenant and shall clean the Premises such that the same is restored to at least as good as condition as it was at the time of commencement of this Agreement.

**15. ASSIGNMENT AND SUBLETTING.** Tenant shall not encumber, assign, or otherwise transfer this Agreement, any right or interest in this Agreement, or any right or interest in the Premises or any improvements that may now or hereafter be constructed or installed on the Premises to any other person or entity without first obtaining the express written consent of the City. The Tenant shall ensure that the terms and the conditions of this Agreement are incorporated into the terms and the conditions of any sublease or assignment, including the sublease from the Tenant.

**16. DEFAULT AND REENTRY.** In the event of any breach of any obligation to be performed by Tenant hereunder, including non-payment of rent, which is not cured within thirty

(30) days of the date upon which notice of such breach is given to Tenant, or upon the abandonment or vacation of the Premises by Tenant, the City, in addition to any other rights or remedies as may be provided by law, shall have the right to terminate this Lease, immediately reenter the Premises, without notice, and remove all persons and property from the Premises.

17. **FORCE MAJEURE.** If either party is unable to perform its duties under this Agreement due to acts of God, strikes, lockouts, labor disputes, inability to obtain labor, governmental restrictions, regulations or controls, civil commotion, fire or other casualty, emergency, or any other cause beyond the reasonable control of the party, such non-performing party shall be excused from performance by the other party, and shall not be in breach of this Agreement, for a period equal to any such prevention, delay or stoppage.

18. **WARRANTY OF TITLE.** The City warrants and represents that it has the sole and the exclusive title to the Premises such that it may enter into this Agreement. The City further warrants and represents that the execution, delivery, or performance of this Agreement will not conflict with or violation any other agreements by which the City is bound, or any law, rules, regulation, or ordinance by which the City is bound.

19. **NON-DISCRIMINATION IN USE AND AVAILABILITY.** Tenant shall not discriminate on the basis of a person's place of residence, their race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any participant in, recipient of, or applicant for any services or programs provided by at the Premises. Tenant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and non-discrimination in the provision of any services or programs offered at the Premises.

20. **ACCIDENT REPORTS.** Tenant shall immediately report to the City in writing any accident causing or reasonably estimated to have caused more than one thousand dollars (\$1,000) worth of property damage or any serious injury to person or to property that occurs on or in connection with the Premises. This written report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and the hour, the names and the addresses of any witnesses, and any other pertinent information.

21. **AMERICANS WITH DISABILITIES ACT AND TITLE 24 COMPLIANCE.** Consistent with the provisions of Section 8 of this agreement, (Alterations and Improvements), the Tenant shall be responsible for compliance with the Americans with Disabilities Act and Title 24 of the California Code of Regulations for those changes to the Premises occurring after occupancy by the Tenant.

22. **SIGNS AND ADVERTISING.** Tenant shall not place or erect any temporary or permanent signs or advertising upon the Premises which will cause damage or which will otherwise alter the physical structure of any structure or building located on the Premises. The placement or erection of any sign or advertising upon the Premises shall be in accordance with



the requirements of the Salinas City Code in effect at the time such sign is proposed to be placed or erected.

**23. LIENS AND ENCUMBRANCES.** Tenant shall keep the Premises free and clear of any liens or encumbrances of any kind whatsoever created by Tenant or any of its acts or omissions.

### **PART 3. RELOCATION AGREEMENT**

**1. RELOCATION EXPENSES.** \$700,000 payment for the value of the business. To be paid within thirty (30)-days of the execution of this Agreement.

**2. Waiver of Relocation Benefits.** In consideration for the City's payment of the Relocation Expenses identified in Section 1 of Part 3, above, Tenant waives any and all claims it can, could, or may raise against the City for damage or compensation of any type, and claims for any relocation benefits or relocation assistance against the City. This waiver includes, but is not limited to, all claims against the City for just compensation, leasehold value, any claims for compensation for loss of business goodwill, interest, litigation expenses, costs of all types, against the City relating to this Agreement, any claims for business interruptions or lost profits, claims for impairment of access, or relocation benefits or assistant. With respect to the waivers stated herein, Tenant acknowledges and agrees that such waivers are and shall be effective regardless of any later-discovered information, and in connection with such waivers, Tenant voluntarily and knowingly releases any and all protections it may have under California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

**3. Relocation Negotiation Expenses.** In consideration of the expenses incurred during the negotiation of this Agreement and within thirty (30)-days of the execution of the Agreement, City agrees to pay to tenant those costs incurred not to exceed \$16,000 as can be documented by Tenant to the City's satisfaction.

### **PART 4. GENERAL PROVISIONS**

**1. SUCCESSORS AND ASSIGNS.** Except as otherwise provided for herein, the parties expressly agree that, subject to the terms of this Lease, all terms and conditions of this Lease shall extend to and be binding upon or inure to the benefit of the heirs, executors, administrators, personal representative, assigns and successors in interest of both the respective parties hereto.

**2. ENTIRE AGREEMENT.** This Lease expresses the whole contract between the parties,

there being no representations, warranties, or other understandings not here expressly set forth or provided. This Lease may be executed in duplicate, each of which when so executed and delivered shall be deemed an original, but such duplicate together shall constitute but one and the same instrument.

3. **AMENDMENTS.** This Lease may be amended at any time and from time to time, provided that no amendment to this Lease shall be legally enforceable against the City or Tenant unless it is in writing, executed and acknowledged by both parties.

4. **NOTICES.** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been given fully, when made in writing and personally delivered as shown below, or deposited in the United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

**City:**

City of Salinas  
200 Lincoln Avenue  
Salinas, CA 93901  
Attn: City Manager

**Tenant:**

Dongjun Cho  
ES Car Wash #1  
186 4<sup>th</sup> Street  
Greenfield CA 93927

With a copy to:

City Attorney  
200 Lincoln Avenue  
Salinas, California 93901

Dave Cerutti  
Via Email

5. **JURISDICTION.** This Lease shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Lease shall be in the State of California, in the County of Monterey, or in the appropriate federal court with jurisdiction over the matter. In case suit shall be brought to interpret or to enforce this Lease, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorney fees in addition to such costs as may be allowed by the court. City's attorney fees, if awarded, shall be calculated at the market rate.

6. **COUNTERPARTS.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

7. **FURTHER ASSURANCES.** Both parties agree to take whatever action may be necessary to perform their respective and their mutual obligations under this Lease.

8. **RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.** By entering into this

Lease, the Parties do not intend to create any obligations express or implied other than those set out herein; further, this Lease shall not create any rights in any party not a signatory hereto.

9. **INVALIDITY.** The invalidity or unenforceability of any provisions of this Lease shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

10. **SURVIVAL.** In no way shall the insurance requirements herein limit Tenant's indemnification obligations hereunder, and Tenant's indemnification obligations shall survive termination of this Lease.

IN WITNESS WHEREOF, the undersigned, as authorized representatives of the parties, have entered into this Lease as of the date first written above.

CITY OF SALINAS

[INSERT LESSEE NAME]

\_\_\_\_\_  
Ray E. Corpuz, Jr., City Manager

\_\_\_\_\_  
By: Dingjun Cho  
Its: Owner of ES Car Wash #1

APPROVED AS FORM:

\_\_\_\_\_  
Christopher A. Callihan, City Attorney

ATTEST:

\_\_\_\_\_  
Patricia Barajas, City Clerk

EXHIBIT A

PARCEL 2: 282 EAST ALISAL STREET

PARCEL 1: (APN: 003-041-030-000 and a portion APN: 003-041-031-000)

ALL THAT CERTAIN REAL PROPERTY SITUATE, LYING AND BEING IN RANCHO EL SAUSAL, IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, BEING ALSO WITHIN THE CORPORATE LIMITS OF THE CITY OF SALINAS, AND BEING ALSO A PORTION OF THAT CERTAIN 4.14 ACRE PIECE OR PARCEL OF LAND DESCRIBED IN THAT CERTAIN DECREE OF FINAL DISTRIBUTION IN THE MATTER OF THE ESTATE OF VICTOR BARLOGIO, DECEASED, DATED MARCH 3, 1927, AND RECORDED IN VOLUME 105, OF OFFICIAL RECORDS AT PAGE 185, RECORDS OF MONTEREY COUNTY CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID 4.14 ACRE PARCEL OF LAND, SAID CORNER BEING IN THE EASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY AT THE MOST WESTERLY CORNER OF THAT CERTAIN 1.799 ACRE TRACT OF LAND CONVEYED BY N. A. HOLADAY, ET UX, TO THE COUNTY OF MONTEREY, A BODY POLITIC AND CORPORATE, DEED DATED APRIL 4, 1927, AND RECORDED IN VOLUME 114, OF OFFICIAL RECORDS AT PAGE 34, RECORDS OF MONTEREY COUNTY, CALIFORNIA, AND RUNNING THENCE FROM SAID POINT OF BEGINNING ALONG THE BOUNDARY COMMON TO SAID 4.14 ACRE PARCEL OF LAND AND SAID 1.799 ACRE TRACT OF LAND,

- (1) N. 1° 39' E., 485.58 FEET; THENCE, LEAVE LAST MENTIONED BOUNDARY AND RUNNING
  - (2) N. 82° 57' W., 100.00 FEET; THENCE
-

EXHIBIT B

ACCEPTANCE OF THE LEASED PREMISES

I \_\_\_\_\_(NAME), the \_\_\_\_\_ (POSITION OR TITLE),  
representing [INSERT LESSEE NAME] have inspected the offices and common grounds at  
\_\_\_\_\_, Salinas California, owned by the City of Salinas. I have determined that this  
building and property will be suitable for my business practices, and I hereby accept the Leased  
Premises in "as-is, where-is" condition.

Signature: \_\_\_\_\_ Date\_\_\_\_\_

## EXHIBIT C

### INSURANCE REQUIREMENTS

Tenant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Tenant, his agents, representatives, employees or subcontractors.

#### *MINIMUM SCOPE AND LIMIT OF INSURANCE*

*Coverage shall be at least as broad as:*

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (**ISO CG 25 03 or 25 04**) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if Tenant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation**: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Property insurance**: against all risks of loss to any tenant personal property, improvements, or betterments at full replacement cost with no coinsurance penalty provision.

If the Tenant maintains **broader coverage and/or** higher limits than the minimums shown above, the Entity requires and shall be entitled to **the broader coverage and/or** the higher limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### *Additional Insured Status*

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Tenant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Tenant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, **CG 20 26, CG 20 33, or CG 20 38; and** CG 20 37 if a later edition is used).

### ***Primary Coverage***

For any claims related to this contract, the Tenant's insurance coverage shall be primary coverage at least as broad as **ISO CG 20 01 04 13** as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Tenant's insurance and shall not contribute with it.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

### ***Waiver of Subrogation***

Tenant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Tenant may acquire against the Entity by virtue of the payment of any loss under such insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the Entity. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

### ***Verification of Coverage***

Tenant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Tenant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.