

RESOLUTION 21-142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, SETTING A TIMELINE FOR COMPLIANCE ON THE PART OF SOUTH BAY CARSON, LLC & SYWEST DEVELOPMENT, LLC, WITH THE TERMS AND CONDITIONS OF CONDITIONAL USE PERMIT NO. 940-13, RELOCATION REVIEW NO. 3047-13 & RESOLUTION NO. 13-099 REGARDING VEHICLE STORAGE FACILITIES LOCATED ON THAT CERTAIN REAL PROPERTY WHOSE COMMON STREET ADDRESS IS 20151 SOUTH MAIN STREET, CITY OF CARSON

WHEREAS, in 2013, South Bay Carson, LLC as owner of that certain real property hereinafter described and SyWest Development, LLC (collectively “SyWest”), acting on behalf of Enterprise Rent-A-Car Company of Los Angeles, LLC (“Enterprise”), applied for and was granted Conditional Use Permit No. 940-13, Relocation Review No. 3047-13 and Resolution No. 13-099 (collectively the “Original CUP”) which permitted, for an initial term of four (4) calendar years, the use of an approximately 24.65 acre site previously used as an organic refuse landfill, drive-in theater and auto-auction, whose common street address is 20151 South Main Street, Carson, California (the “Property”), as and for the storage of rental cars, including as a regional rental car storage hub, and the relocation of certain modular office buildings on that portion of the Property zoned ML-ORL-D; and

WHEREAS, the Original CUP was duly approved and adopted by the Carson City Council on October 21, 2013; and

WHEREAS, the Original CUP required, among other conditions of approval, that SyWest would, within three (3) years of approval of the CUP, enter into an agreement with the appropriate environmental regulatory agency (“Environmental Regulatory Agency” or “ERA”) to commence steps necessary to support the cleanup and reuse of the Property for new development; and

WHEREAS, staff had contended that SyWest failed or refused to comply with this condition of the Original CUP and SyWest requested additional time to complete this task concurrently with City’s update to its General Plan (the “ERA Dispute”); and

WHEREAS, SyWest has contended and advised staff that in order to fulfill this remediation condition of the Original CUP a proposed plan for redevelopment and long term use of the Property is required to first be processed, considered and approved by the City, and SyWest and the City desired to confirm how this ERA Dispute would be addressed moving forward; and

WHEREAS, the Original CUP required, among other conditions of approval, that SyWest would develop, implement, and maintain a landscaping plan to assure an aesthetically appropriate appearance surrounding the Property; and

WHEREAS, staff contended that certain areas of the existing landscaping around the Property were in disrepair and needed to be replaced and SyWest requested additional time to complete this task (“Landscape Dispute”); and

WHEREAS, City and SyWest desired to fully and finally resolve the Landscape Dispute and the ERA Dispute in order to avoid litigation between them arising out of such disputes, and without acknowledging fault or responsibility in connection with the positions of any party in such disputes; and

WHEREAS, in connection with the parties’ attempt to fully and finally resolve the ERA Dispute, the Landscape Dispute, and the CUP Extension Request (collectively the “Disputes”), to avoid litigation between them arising out of such Disputes, and without acknowledging fault or responsibility in connection with the positions of any party in such Disputes, on September 5, 2017, and May 5, 2020, the City Council adopted Resolutions 17-120 and 20-081, respectively, (“Compliance Resolutions”) which served as an attempt to effectuate the foregoing, and which also extended the compliance period under the Original CUP until October 31, 2021 (“Compliance Period”); and

WHEREAS, Sywest has addressed the Landscape Dispute by continuing to maintain the landscaping by a professional landscape company and replacing the landscaping if they are deemed unhealthy by the landscape maintenance company; generally, the City has determined the maintenance and appearance of the landscaping is acceptable; and

WHEREAS, on or about July 20, 2020, Sywest submitted an application (“Application”) for development of the Property which Application includes a request for a General Plan Amendment, Specific Plan and related entitlements (e.g. Development Agreement, tentative parcel map, site plan and design review) (collectively “Proposed Entitlements”); and

WHEREAS, the City has received a completed application and has placed ERA discussions regarding development on hold with DTSC while the City processes the Application;

WHEREAS, Sywest has asked the City for the right to continue to utilize the Property consistent with the Original CUP while the Application is processed; and

WHEREAS, pursuant to the Compliance Resolutions, SyWest deposited with City in October 2017, to be held in a separate City interest bearing account, a bond or other irrevocable instruction having a penal value of Three Hundred Fifty Thousand Dollars (\$350,000) as a “Holdover Deposit” from which City may deduct any and all amount(s) as expressly provided for under the Compliance Resolution, with such deduction(s) timely and reasonably documented by City and made available for SyWest’s review; and

WHEREAS, pursuant to the Compliance Resolutions, SyWest further paid to City several installments of a “Heavy Vehicle Transit Fee”, of which portions of said payments included an increase of the Holdover Deposit, and cumulatively equate to an additional One Hundred Twenty Five Thousand Dollars, (\$125,000) added to the Holdover Deposit to bring the total Holdover Deposit to Four Hundred Seventy-five Thousand Dollars (\$475,000.00) as of April 30, 2021; and

WHEREAS, on April 30, 2021, Enterprise ceased operations at the Property and properly vacated the Property in compliance with the Resolution, and the Property has remained vacant since such time pending the processing of the Proposed Entitlements;

WHEREAS, on September 13, 2021, having determined that Enterprise met the obligations of the Compliance Resolutions, the City terminated the \$350,000 Holdover Deposit by issuing a letter of release to Bank of America, copied to Sywest and Enterprise, stating that the bond representing the Holdover Deposit for the benefit of the City may be cancelled. The remaining portion of the Holdover Deposit in the amount of One Hundred Twenty-five Thousand Dollars, (\$125,000), is still held by the City on behalf of SyWest pursuant to terms set forth in the Compliance Resolution;

WHEREAS, to accommodate Sywest's request and in furtherance of possible development of the Property, the City Council has been asked to approve this Resolution ("Extended Compliance Resolution" or "Resolution"), which, like the Compliance Resolutions, would be adopted to finally resolve any Disputes and document the resolution of the same as well as to extend the compliance date of the Original CUP by one (1) additional year to October 31, 2022 ("Extended Compliance Period"), to provide Sywest adequate time to secure the Proposed Entitlements from the City and obtain building permits by going through the plan check process and allow for beneficial use of the Property during that period;

WHEREAS, by this Extended Compliance Resolution, Sywest seeks to use the Property for the following uses: (i) no more than twelve (12) acres for the overnight parking of delivery cargo vans, known as sprinter vans and employee vehicles ("Sprinter Van Operations"), during the Extended Compliance Period, entering and exiting the Property between 9:00 a.m. and 5:00 p.m. five (5) days per week, including occasional weekends if demand for services warrant, with the Sprinter Vans remaining parked overnight at the Property; and (ii) the entire site can be used for parking of cars (collectively, "Car Operations"), which "Sprinter Van and Car Operations shall collectively be referred to herein as "Temporary Parking Use";

WHEREAS, SyWest shall provide a site plan to the Planning Division to designate the areas of the site that will be occupied. If the designated areas to be used are modified, a revised site plan shall be filed with the Planning Division.

WHEREAS, the Temporary Parking Use shall not include any of the following: (i) vehicle service or maintenance of any type on the Property or (ii) loading/unloading, transfer shipping or removal of any contents of the Sprinter Vans; (iii) overnight parking of employee vehicles; (iv) sleeping of any kind within the Property, whether inside or outside any vehicle parked thereon; (v) parking of recreational vehicles or trailers designed for human accommodation, such as motorhomes, campervans, coaches, caravans fifth-wheel trailers, and popup campers, (vi) boats, (vii) large trucks and containers or (viii) any other activity not specifically enumerated above within the description of the Temporary Parking Use (collectively, "Prohibited Activities");

WHEREAS, City staff has evaluated the scope of the Temporary Parking Use and confirmed that such activities would be less intensive from the standpoint of traffic, circulation,

and air quality impacts than those previously analyzed and approved for the Enterprise activities under the Compliance Resolutions and, as such, no further review is required under the California Environmental Quality Act, Public Resources Code sections 21000 et seq. and its implementing guidelines (Cal. Code Regs. Title 14, §§ 15000 et seq. (collectively, “CEQA”) pertaining to the Temporary Parking Use;

WHEREAS, the City Council hereby adopts this Resolution to authorize the Temporary Parking Use for the Extended Compliance Period, as may be duly extended pursuant to Section 3.A below, and outline the requirements and limitations applicable to such Temporary Parking Use.

NOW THEREFORE, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, does hereby FIND, DETERMINE and ORDER AS FOLLOWS:

Section 1. Recitals.

The foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of Extended Compliance Period Directed to South Bay Carson, LLC & SyWest Development, LLC, Jointly and Severally.

Subject to SyWest’s agreement to comply with its obligations set forth in Section 3 below, City hereby approves one extended compliance period under the Original CUP from October 31, 2021 until and through October 31, 2022 (“Extended Compliance Period”); provided that the City Council may extend such time in its sole discretion by approval of an amendment to this Resolution if the Proposed Entitlements are not completed during the Extended Compliance Period.

Section 3. Conditions of Extended Compliance Period.

In resolution of the Disputes, the City Council issues the following compliance order:

A. SyWest shall terminate, and cease and desist in, the operation of any Temporary Parking Use on or at the Property; such compliance shall occur on or before the close of normal business hours on October 31, 2022 (the “Extended Compliance Deadline”); provided that City’s Community Development Director, in consultation with the City Attorney, may, in their sole discretion, grant one more extension to the Extended Compliance Deadline, not to exceed six (6) months, if the record reflects a good faith attempt by SyWest to work with the City in good faith to process the Proposed Entitlements. If SyWest requires such an extension, it shall notify staff in writing by 5:00 p.m. on September 1, 2022. Failure to meet the Extended Compliance Deadline, as may be extended per the terms herein, shall subject SyWest to enforcement actions as well as such other legal remedies as may be afforded City by law.

B. SyWest shall, during the term of this Extended Compliance Resolution, comply with all remaining conditions of approval in the Original CUP, including, but not limited to, the landscape and operations provisions of the same, to the reasonable satisfaction of City.

C. In consideration of the Extended Compliance Period and resolution of the Disputes, by no later than February 1, 2022, May 1, 2022, August 1, 2022 and November 1, 2022, (the “Remittance Date”), SyWest shall pay to City as follows for the Temporary Parking Use:

1. For the Sprinter Van Operations and Car Operations, SyWest will remit an annual Heavy Vehicle Transit Fee of Ten Thousand Four Hundred-sixteen Dollars (\$10,416.00) for every acre of the Property used for such purposes during the term of the Extended Compliance Period, reflecting compensation to the City for the Temporary Parking Use attributable to the Sprinter Van Operations and Car Operations. The amount of any payment remitted by SyWest is based upon the portion of Property shown on the site plan as being used for the Sprinter Van Operations and Car Operations such that the amount of any such installment and total payment of the 2021 and 2022 Heavy Vehicle Transit Fee shall be accessed and paid on a prorata basis. By way of example only, should only 9 of the total 24 acres of the Property be used on the Remittance Date for Sprinter Van Operations and Car Operations, the quarterly payment by SyWest on the Remittance Date shall be $(\$10,416 / 4) \times 9$ acres, (or \$23,437.50 for such period). SyWest shall provide a site plan to the Planning Division to designate the areas of the site that will be occupied. If the designated areas to be used are modified, a revised site plan shall be filed with the Planning Division. SyWest’s quarterly payment will include any increase or decrease in the Heavy Vehicle Fee due to the City for increase or decreased use of the Property since the last quarterly payment made to the City.

2. Should this Resolution be extended pursuant to Section 3.A above, SyWest shall pay a prorated amount of the 2021 and 2022 Heavy Vehicle Transit Fee based on the acres used for such extended time and months by which the extension is authorized. Such installment shall be paid on the first day of the month following each three (3) month period following the extension of the Extended Compliance Period (e.g. February 1, 2023, May 1, 2023, etc.).

D. In the event that SyWest or Enterprise were to cease the Temporary Parking Use at the Property prior to the Extended Compliance Deadline, the payments required herein above will abate effective as of the date of cessation of the Temporary Parking Use, but only if there is a complete cessation of any and all use of the Property for Temporary Parking Use. Otherwise, cessation of use of the Property for either the Sprinter Van and/or Car Operations shall not abate the SyWest payment obligations set forth hereinabove.

Section 4. City’s Right to Enforcement; Miscellaneous Provisions.

A. Subject to the City’s election, in its sole and unfettered discretion, to extend the Extended Compliance Deadline, should SyWest fail to meet the Extended Compliance Deadline, SyWest shall pay a delinquent departure penalty in the amount of Five Thousand Dollars (\$5,000.00) per day for each day of delayed departure beyond the Extended Compliance Deadline which departure penalty City may unilaterally withdraw from the Holdover Deposit.

B. In the event that any provision of this Resolution is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire Resolution shall be null

and void and shall subject SyWest to such enforcement action(s) as well as such other legal remedies as may be afforded the City by law.

C. In the event the City is required to take action to enforce this Resolution, or in the event this Resolution is declared invalid, illegal or otherwise unenforceable by the court of competent jurisdiction and the City is required to commence an enforcement proceeding(s) against SyWest, the City shall be reimbursed by SyWest for all costs and reasonable attorneys' fees incurred in such action or enforcement proceeding(s).

D. In the event that any claim or litigation is filed to challenge any provision of this Resolution ("Litigation Challenge"), the payment obligations of SyWest under this Resolution shall be tolled and delayed for a period of time equal to the time any such "Litigation Challenge" is pending. If a "Litigation Challenge" is pending on the date that any payment is due and payable under this Resolution, SyWest shall deposit the entire amount due and payable into a separate interest bearing account ("Escrow Account") with the City. Within thirty (30) days following the final resolution of any "Litigation Challenge," SyWest shall authorize, in writing, City to withdraw all funds in the Escrow Account and credit the same to the annual 2021 or 2022 Heavy Vehicle Transit Fee.

E. During the term of this Resolution and Extended Compliance Period, SyWest shall pay to the City all normal and customary fees and charges applicable to all permits necessary for the use, and any taxes, fees, and charges imposed by City in connection with the use which are standard and uniformly-applied to similar entities in the City.

Section 6. Resolution Exempt from CEQA.

A. The City Council finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 1 Categorical Exemption, Existing Facilities, pursuant to Section 15301 of the CEQA Guidelines.

B. The City Council further finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 21 Categorical Exemption, Enforcement Actions by Regulatory Agencies, pursuant to Section 15321 of the CEQA Guidelines.

Section 7. SyWest Indemnification.

SyWest shall indemnify, protect, defend, and hold harmless City, and its respective officials, officers, employees, agents, elected boards, commissions, departments, agencies, and instrumentalities thereof, from any and all actions, suits, claims, demands, writs of mandamus, liabilities, losses, damages, penalties, obligations, expenses, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) asserted by third parties against City that may arise from or relate to adoption of this Resolution (herein the "Claims and Liabilities"), whether such Claims and Liabilities arise out of or under planning and zoning laws, the Subdivision Map Act, Code of Civil Procedure §§ 1085 or 1094.5, or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction.

Section 8. Effectiveness; Certification.

This Resolution shall take effect immediately upon its adoption. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED this ___ day of _____, 2021.

Lula Davis-Holmes, Mayor

ATTESTED:

City Clerk

APPROVED AS TO FORM:

Sunny Soltani, City Attorney