

**AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF CARSON
AND
SHIPPERS TRANSPORT EXPRESS, INC.**

THIS AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and SHIPPERS TRANSPORT EXPRESS, INC., a California corporation (“Shippers”) is effective as of the 1st day of January, 2024, except as otherwise provided herein.

RECITALS

A. City and Shippers entered into that certain Settlement Agreement dated December 28, 2021 (“Agreement”) whereby Shippers was authorized to conduct or engage in the Use (as defined in the Agreement) until the Compliance Deadline, which pursuant to Section 3(a) of the Agreement is January 1, 2024, in exchange for the consideration set forth in the Agreement.

B. Section 4(a) of the Agreement provides that in the event Shippers is unable to meet the Compliance Deadline, the City Council may, in its sole and unfettered discretion, extend the Compliance Deadline by up to two calendar years, in exchange for the compensation and other additional reasonable conditions and requirement that City may impose pursuant to Section 4(c), provided Shippers makes a written request to extend the Compliance Deadline not later than 90 calendar days prior thereto in accordance with Section 4(b).

C. Shippers’ position is that due to industry conditions, it is unable to meet the Compliance Deadline. Shippers made a timely written request to extend the Compliance Deadline pursuant to Section 4(b).

D. The City Council is amenable to granting a two-year extension of the Compliance Deadline to January 1, 2026 in response to Shippers’ request, provided Shippers (i) agrees to file a complete application with the City for a conditional use permit and any other required permit(s) or entitlement(s) for Shippers’ Use pursuant to the City’s Zoning Ordinance, as determined by the City’s Community Development Director (collectively, the “Entitlements”), within one (1) year (i.e., by January 1, 2025), (ii) limits the Use to 40 acres of the Property, rather than the 60 acres originally authorized under the Agreement, and (iii) continues to pay the City at the rate of \$1,000,000 per annum for the two-year extension period, unless the Entitlements are approved prior to the conclusion of the two-year extension period (i.e., before January 1, 2026), in which event the Agreement (as amended by this Amendment) shall automatically terminate upon effectiveness of the Entitlements. In the Event the Entitlements are denied before January 1, 2026, Shippers shall terminate the Use by January 1, 2027, except as otherwise provided in the City’s decision denying the Entitlements.

E. Shippers is amenable to the City Council’s terms, and City and Shippers now desire to amend the Agreement to effectuate same on the terms set forth herein.

TERMS

1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein by reference.

2. **Contract Changes.** The Agreement is amended as provided herein (additions shown in ***bold italics***, deletions in ~~striketrough~~).

A. The definition of the term “Use,” for purposes of the Agreement, which is provided in the eleventh recital with reference to the second recital, is hereby amended such that it shall refer to and include just 40 acres of the Property rather than the entire 60 acres of the Property.

B. Section 2 of the Agreement is amended as follows:

“This Agreement shall take effect as of December 28th, 2021 (the “Effective Date”). The term of this Agreement shall commence on the Effective Date and continue until ***the sooner of: (i) the January 1, 2024, or until the expiration of any applicable Extended Compliance Deadline pursuant to Section 4, below; or (ii) the effective date of any final City decision on the Entitlement Application, at which point this Agreement shall automatically terminate (except with respect to the surviving provisions pursuant to Section 21) and the terms of the City’s decision on the Entitlement Application shall prevail.***

C. Subsection (a) of Section 3 of the Agreement is amended as follows:

“Shippers is hereby authorized to conduct or engage in the Use until ***January 1, 2026, and as may be extended pursuant to Section 4*** ~~January 1, 2024~~ (hereinafter, the “Compliance Deadline”), ***provided Shippers files a complete application with City for issuance of a conditional use permit and any other required permit(s), approvals or entitlement(s) for the Use pursuant to the City’s then-applicable Zoning Ordinance and the California Environmental Quality Act, as determined by the City’s Community Development Director (collectively, the “Entitlement Application”) by January 1, 2025. If Shippers fails to file the complete Entitlement Application by January 1, 2025, the Compliance Deadline shall be January 1, 2025 and no extensions shall be permitted.***

If the Entitlement Application is timely filed and subsequently denied by the City before January 1, 2026, Shippers shall terminate the Use by January 1, 2027, except as otherwise provided in the City’s denial decision (the “Termination Period”). During the Termination Period, Shippers shall continue to pay City the amounts set forth in Section 3(b) below.

Unless the Use is authorized to continue after the Compliance Deadline pursuant to a final decision of the City on the Entitlement Application by the Compliance Deadline, f~~Failure to terminate the Use by on or before the~~

Compliance Deadline shall subject Shippers to enforcement actions as well as such other legal remedies as may be afforded the City by law ***and this Agreement.***”

D. Subsection (b) of Section 3 of the Agreement is amended as follows:

“In consideration of Section 3(a), above, Shippers shall pay City the amount of \$1,000,000 per annum, ~~or \$2,000,000 for the two-year term of this Agreement~~ ***until the Compliance Deadline (except as otherwise provided in the second paragraph of Section 3(a) regarding continued payments during the Termination Period)***, payable in quarterly installments of \$250,000, with each installment payment due within thirty (30) days following conclusion of the applicable calendar quarter.”

E. Subsection (d) of Section 3 of the Agreement is amended as follows:

~~“Subject to the City’s election, in its sole and unfettered discretion, to extend the Compliance Deadline, as set forth in Section 4 below, Sshould Shippers (i) fail to meet the any Compliance Deadline or (ii) fail to terminate the Use by the date of conclusion of the Termination Period,~~ Shippers 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 a Compliance Deadline or date of conclusion of the Termination Period.~~”

F. Section 4 of the Agreement is amended to read in its entirety as follows:

“4. City’s Discretion to Extend Compliance Deadline.

a. In the event that Shippers ***fulfills its obligation to submit the Entitlement Application by January 1, 2025 pursuant to Section 3(a),*** is ~~unable to meet the Compliance Deadline,~~ the City may ***thereafter,*** in its sole and unfettered discretion, extend the Compliance Deadline by the period(s) of time ***deemed necessary by the City for the City to complete processing of the Entitlement Application, provided Shippers acts diligently at all times in facilitating City’s processing thereof*** ~~up to two (2) additional calendar years (an “Extended Compliance Deadline”).~~

b. Such discretion shall be exercised by the Carson City Council at a duly noticed public meeting ~~and provided that Shippers makes a written request to extend such deadline(s) not later than ninety (90) calendar days prior to the Compliance Deadline or any Extended Compliance Deadline.~~

c. In the event the City grants an ***extension of the*** ~~Extended Compliance Deadline,~~ then Shippers shall pay, prior to the first date of the period covered by ***the extension*** ~~any Extended Compliance Deadline,~~ to the City a minimum “Extended Compliance Impact Fee” of Two Hundred Fifty

Thousand Dollars (\$250,000.00) for each three (3) months extension *of beyond the Compliance Deadline or any Extended Compliance Deadline for on going operations by Shippers at the Property*, together with such other additional reasonable conditions and reasonable requirements as the City shall impose in return for any *extension of the Extended Compliance Deadline*.

d. ~~During the term of this Agreement, Until the or any Extended Compliance Deadline, and during the Termination Period~~, Shippers 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 hereafter imposed by City in connection with the use which are standard and uniformly-applied to similar entities in the City.”

G. Section 5 of the Agreement is amended, effective retroactively as of December 28, 2021, to replace the phrase “the adoption of this Resolution” with the phrase “the Compliance Resolution or this Agreement.”

H. A new Section 21 is added to the Agreement to read in its entirety as follows:

“Survival. The following provisions of this Agreement shall survive any expiration or termination of this Agreement: (i) Section 5 (Indemnification); (ii) any and all provisions related to Shippers’ obligation to terminate the Use by the Compliance Deadline or by the date of conclusion of any Termination Period; (iii) any and all provisions related to City’s rights and remedies for Shippers’ violation of any provision of the Agreement or to City’s enforcement of same; and (iv) any other provision where the context so indicates.”

3. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, except as otherwise provided herein, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

4. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Shippers each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Shippers represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Shippers that, as of the date of this Amendment, Shippers is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

5. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

6. **Authority.** The persons executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney

SHIPPERS:

SHIPPERS TRANSPORT EXPRESS, a California corporation

By:_____
Name: Kevin Baddeley
Title: President

APPROVED AS TO FORM

By:_____
Name: Joseph N. Mirkovich