

## RESOLUTION 17-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, PROVIDING FOR COMPLIANCE ON THE PART OF SOUTH BAY CARSON, LLC & SYWEST DEVELOPMENT, LLC, WITH RESPECT TO THE TERMS AND CONDITIONS OF CONDITIONAL USE PERMIT NO. 940-13, RELOCATION REVIEW NO. 3047-13 & RESOLUTION NO. 13-099 REGARDING ENTERPRISE RENT-A-CAR FACILITIES LOCATED ON THAT CERTAIN REAL PROPERTY WHOSE COMMON STREET ADDRESS IS 20151 SOUTH MAIN STREET, CITY OF CARSON AND AFFORDING AN EXTENDED COMPLIANCE PERIOD WITHIN WHICH TO DO SO

**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**, Interim Urgency Ordinance Nos. 15-1575U and 16-1578U (collectively, the “Stadium Moratorium”) enacted a moratorium on the establishment, expansion, modification or new development within the six (6) planning study areas within the City of Carson; and

**WHEREAS**, in or about 2017, SyWest requested an extension of the Original CUP beyond October 21, 2017 and has further requested that such extension of the Original CUP be deemed subject to the “exemption” provision(s) of the Stadium Moratorium (the “CUP Extension Request”); 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 regulatory agency (e.g., Department of Toxic Substance Control) (the “DTSC”) to commence steps necessary to support the cleanup and reuse of the Property for new development; and

**WHEREAS**, staff contends that SyWest has failed or refused to comply with this condition of the Original CUP and SyWest has requested additional time to complete this task concurrently with City’s up-date to its General Plan (the “DTSC Dispute”); and

**WHEREAS**, SyWest contends and has 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 desire to confirm how this DTSC Dispute will 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 contends that certain areas of the existing landscaping around the Property are in disrepair and need to be replaced and SyWest has requested additional time to complete this task (“Landscape Dispute”); and

**WHEREAS**, City and SyWest desire to fully and finally resolve the Landscape Dispute and the DTSC 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**, SyWest denies each and all of the City contentions discussed hereinabove, and SyWest is interested in solidifying a long term land use for this site including incorporating a retail point-of-sale as a component of any such use. SyWest is willing to incorporate such a use but needs an extended compliance period to prepare and present the appropriate application(s)/entitlement(s) for the new use to City; and

**WHEREAS**, the Original CUP authorized the City Council, “in its sole and unfettered discretion,” to extend the Original CUP for one (1) additional year without the need to apply for a new conditional use permit; and

**WHEREAS**, the Original CUP provided that at the expiration of up to a maximum of five (5) calendar years, the uses permitted by the Original CUP would expire and any future land use(s) for the Property would require a new conditional use permit; and

**WHEREAS**, City has recently initiated a General Plan update process that has the potential to ultimately change and/or affect the land use(s) and land use designation(s) on properties with the City of Carson, including the Property and other properties in the surrounding trade area; and

**WHEREAS**, SyWest and City are interested in exploring opportunities to define and consider a viable, long term land use for the Property other than (or in addition to) the uses currently existing on-site. City staff have expressed an interest in incorporating a retail point-of-sale as a component of any such use. SyWest represents that Enterprise, the current tenant on the Property, has expressed a willingness to undertake a preliminary market study in advance of the General Plan update in an effort to determine feasibility of adding such a retail component. As explained more fully below, SyWest has expressed a willingness to facilitate exploration of said redevelopment opportunities in connection with any extension of the Original CUP and upon a favorable determination of market feasibility for a retail point-of-sale; and

**WHEREAS**, City and SyWest desire to fully and finally resolve the DTSC 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.

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

**Section 1.** 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 an extended compliance period under the Original CUP from the effective date of this Compliance Resolution until October 31, 2020 (“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 vehicle storage facilities or rental car hub storage facilities on or at the Property; such compliance shall occur on or before the close of normal business hours on October 31, 2020 (the “Compliance Deadline”). Failure to meet the Compliance Deadline 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 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. With respect to Original CUP Condition 3, the following sentence shall be added: “However, in the event that the property owner is advised by the Department of Toxic Substances Control or other regulatory agency having jurisdiction over the Property, that said agency will not enter into such contract or other agreement absent a final development plan for the Property that has been considered and approved by City, then City and SyWest shall, in good faith, meet, confer and consider any appropriate extension(s) to the Compliance Period set forth in Section 2 of Resolution No. 17-120.”

D. With respect to Original CUP Condition 22, the following sentence shall be added: “The on-site landscape improvements shall be restored to a condition consistent with the landscape plan approved in connection with the Original CUP. On no less than a bi-monthly basis SyWest shall have the perimeter landscape and fence inspected and a condition report written with a copy of each said condition report being available for review by City staff. Any work required to remedy any repairs noted in said reports shall be initiated within 72 hours.”

E. In consideration of resolution of the Disputes, SyWest shall, on or before November 1, 2017, deposit with City, 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 and for a "Holdover Deposit." City may deduct from the Holdover Deposit any and all amount(s) as expressly provided for hereunder, with such deduction(s) timely and reasonably documented by City and made available for SyWest's review.

F. In further consideration of resolution of the Disputes, SyWest shall, on or before November 1, 2017, pay to City a one-time "2017 Heavy Vehicle Transit Fee" of One Hundred Twenty Thousand Dollars (\$120,000.00) reflecting compensation to the City for extended operations under the Extended Compliance Period between November 1, 2017 and October 31, 2018. In the event SyWest fails to make timely payment of the "2017 Heavy Vehicle Transit Fee," then SyWest shall pay a daily penalty of Five Hundred Dollars (\$500.00) for each calendar day such payment is delinquent.

G. In further consideration of resolution of the Disputes, SyWest shall, on or before November 1, 2018, pay to City a one-time "2018 Heavy Vehicle Transit Fee" of One Hundred Seventy Thousand Dollars (\$170,000.00), reflecting compensation to the City for operations under the Extended Compliance Period between November 1, 2018 and October 31, 2019. City agrees that Fifty Thousand Dollars (\$50,000.00) of the "2018 Heavy Vehicle Transit Fee" shall be added to the Holdover Deposit to bring the total Holdover Deposit to Four Hundred Thousand Dollars (\$400,000.00) as of November 1, 2018. In the event SyWest fails to make timely payment of the "2018 Heavy Vehicle Transit Fee," then SyWest shall pay a daily penalty of Five Hundred Dollars (\$500.00) for each calendar day such payment is delinquent.

H. In further consideration of resolution of the Disputes, SyWest shall, on or before November 1, 2019, pay to City a one-time "2019 Heavy Vehicle Transit Fee" of One Hundred Seventy Thousand Dollars (\$170,000.00), reflecting compensation to the City for operations under the Extended Compliance Period between November 1, 2019 and October 31, 2020. City agrees that Fifty Thousand Dollars (\$50,000.00) of the "2019 Heavy Vehicle Transit Fee" shall be added to the Holdover Deposit to bring the total Holdover Deposit to Four Hundred Fifty Thousand Dollars (\$450,000.00) as of November 1, 2019. In the event SyWest fails to make timely payment of the "2019 Heavy Vehicle Transit Fee," then SyWest shall pay a daily penalty of Five Hundred Dollars (\$500.00) for each calendar day such payment is delinquent.

I. In the event that SyWest or Enterprise were to cease vehicle storage facilities or rental car hub storage facilities on or at the Property prior to the Compliance Deadline, the payments required herein above would abate, but only if there was a complete cessation of any and all use of the Property for either vehicle storage facilities or rental car hub storage facilities. Otherwise, cessation of use of the Property by Enterprise shall not abate the SyWest payment obligations set forth hereinabove.

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#### **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 Compliance Deadline, should SyWest fail to meet the 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 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 either a Heavy Vehicle Transit Fee or the Holdover Deposit (as the case may be).

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 5. Return or Use of Holdover Deposit.**

A. Except as provided hereinabove:

(i) in the event City has approved such application(s)/proposal(s), including, but not limited to, discretionary approval(s)/entitlement(s) of any new use(s) by SyWest or Enterprise for the Property, and the processing and permitting processes of such future development of the Property, *or*

(ii) upon the compliance with and expiration of the Compliance Deadline, or upon termination of any litigation arising out of or related to this Resolution, or upon termination of any enforcement proceeding(s) by the City to compel the cessation of the SyWest operations on or at the Property, *then*

B. City shall either (i) within ten (10) business days return or refund to SyWest the balance of the Holdover Deposit, if any, not drawn upon by City as authorized hereinabove or

(ii) with SyWest's consent, credit any such balance of Holdover Deposit against reimbursement obligations relative to any application, entitlement, permit and other fees required by law in connection with new development of the Property.

**Section 6. Finding of Compliance With Interim Urgency Ordinance.**

A. Interim Urgency Ordinance Nos. Ordinance Nos. 15-1575U and 16-1578U (collectively, the "Stadium Moratorium") enacted a moratorium on the establishment, expansion, modification or new development within the six (6) planning study areas within the City of Carson.

B. The City Council finds and determines that this Resolution is consistent with the Stadium Moratorium at Section 6.A.1, 5, 7, 9, 10, 12, 13, and 14 thereof.

C. The City further finds and determines that this Resolution furthers the purpose of the Stadium Moratorium by providing for termination of existing facilities otherwise subject to the moratorium.

**Section 7. 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 8. 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.

PASSED, APPROVED AND ADOPTED this 28<sup>th</sup> day of August 2017,

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Mayor

ATTESTED:

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City Clerk

APPROVED AS TO FORM:

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City Attorney