

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is executed this 30th day of August, 2017 (“**Effective Date**”), by and between the **CITY OF CARSON**, a general law city & municipal corporation (“**City**”), and **SYWEST DEVELOPMENT, LLC**, a California limited liability company & **SOUTH BAY CARSON, LLC**, a California limited liability company (collectively “**SyWest**”). City and SyWest may be referred to, individually or collectively, as “**Party**” or “**Parties.**”

RECITALS

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.; and

WHEREAS, SyWest has agreed to reimburse City the full reasonable costs incurred in resolving the Disputes, and in documenting resolution(s) of the same.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Incorporation of Recitals.** The Parties hereby incorporate the Recitals as though fully set forth herein.

2. **SyWest Responsibility for City Costs.** The following reimbursement obligations shall be collectively referred to as "City Costs."

(a) SyWest shall reimburse City for all reasonable costs and fees, including but not limited to staff time, if any, and attorney time, in resolving the Disputes, and in documenting resolution(s) of the same with respect to the Property. The tasks subject to reimbursement shall be referred to as "Reimbursable Tasks."

(b) To that end, SyWest shall, within five (5) business days of the Effective Date, deposit with City an initial sum of \$20,000 against which City Costs will be drawn down ("Deposit").

(c) At no point shall the minimum balance of the Deposit fall below \$5,000 and SyWest shall make such additional deposit(s) required under Section 2.1, below, within 10 days of City's written request to do so.

2.1 **Additional Deposits by SyWest.** SyWest will not unreasonably withhold reimbursement necessary to reimburse City for the City Costs. City's notice requesting additional deposits necessary to reimburse City for the City Costs shall state what costs have been incurred to date, additional costs anticipated, and how City intends to apply any needed additional SyWest deposits. If deposited sums exceed the costs incurred by City, City shall promptly refund the difference upon determining the amount of such excess.

2.2 **Compliance with City Costs Reimbursement & Deposit Provisions.** In the event that SyWest does not promptly reimburse the City Costs as provided in this Section 2, or does not timely deposit or replenish the Deposits necessary to reimburse City for the City Costs incurred by City, City may immediately cease all work on Reimbursable Tasks, and may take such further action as City deems appropriate.

2.3 **Interest on Deposit.** Any amounts deposited by SyWest shall be maintained by City in an interest-bearing account of City's choice, and may be co-mingled with other City funds in such account. Interest accruing upon any such deposit shall inure to the benefit of City.

2.4 **Accounting.** City shall keep an accounting of the City Costs and all Deposits made by SyWest. City shall provide periodic statements of these accounts to SyWest, which shall include descriptions of the City Costs and Reimbursable Tasks, including, the date, amount, and type of activity for which the cost was incurred. Prior to applying any Deposit to reimburse City Costs, City shall provide to SyWest a description of the City Costs and Reimbursable Tasks, including the date, amount and the type of activity for which the cost was incurred. SyWest may question or challenge any use of funds set forth in the accounting and may appeal same to the City Council.

3. **City Release; Termination.** This Agreement shall remain in effect for a period of three (3) years from the Effective Date, at which time it shall automatically terminate, provided, however, that SyWest shall remain obligated to reimburse the City Costs incurred by the City pursuant to this Section 2, prior to the termination date. In the event that SyWest's reimbursement obligations extend beyond the Term, SyWest and City will enter into an amendment to this Agreement to extend the Term until SyWest meets all of its obligations.

4. **Remedies.** In the event of a breach by SyWest, City may, in addition to any other remedies, seek to recover the City Costs plus reasonable attorneys' fees in enforcing this Agreement. This provision will not be interpreted to curtail any of City's remedies at law or equity against SyWest for any violation of its codes, nor shall it be interpreted as a waiver of any defense or claim of SyWest.

5. **Conflicts of Interest.**

5.1. **No Financial Relationship.** SyWest acknowledges the requirements of Government Code §§ 1090 *et seq.* (the "1090 Laws") and warrants that it has not entered into any financial or transactional relationships or arrangements that would violate the 1090 Laws, nor shall SyWest solicit, participate in, or facilitate a violation of the 1090 Laws.

5.2 **SyWest's Representations & Warranties.** SyWest represents and warrants that for the 12-month period preceding the effective date of this Agreement it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code §§ 87100 *et seq.*).

6. **SyWest Acknowledgements.** Subject to the reimbursement obligations set forth in this Agreement, SyWest acknowledges and agrees that:

6.1 City has sole discretion to select which of its employees and contractors are assigned to work on Reimbursable Tasks.

6.2 City has sole discretion to direct the work and evaluate the performance of the employees and contractors assigned to work on Reimbursable Tasks, and City retains the right to terminate or replace at any time any such person.

6.3 City has sole discretion to determine the amount of compensation paid to employees or contractors assigned to work on Reimbursable Tasks.

6.4 City, not SyWest, shall pay employees and contractors assigned to work on Reimbursable Tasks.

7. Indemnification and Hold Harmless.

7.1 **Non-liability of City Concerning Matters Related to Agreement.** The Parties acknowledge that there may be challenges to the legality, validity and adequacy of any resolution agreed to and/or adopted by the City documenting resolution of the Disputes (“Resolution”) and/or this Agreement; and if successful, such challenges could delay or prevent the performance of the Resolution and/or future approval of entitlements relating to the Property. City shall have no liability under this Agreement for the inability of SyWest to obtain entitlements and/or implement any project as the result of a judicial determination that some or all of the Resolution and/or this Agreement is invalid or inadequate or not in compliance with law.

7.2 **Indemnification.** SyWest agrees to defend, indemnify and hold harmless the City, its elected or appointed officials, agents, officers, employees, or attorneys from any claims, demands, causes or causes of action, damages, or proceeding against the City or its elected or appointed officials, agents, officers, employees, or attorneys arising out of or related to this Agreement and the Resolution (the “Claims or Demands”), whether such activities are undertaken by SyWest or by any of SyWest’s agents, contractors, or subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for SyWest or any of SyWest’s agents, contractors, or subcontractors. The City will promptly notify SyWest of any such claim, action, or proceeding against the City and SyWest will pay the City’s associated legal costs and will advance funds assessed by the City to pay for defense of the matter by the City Attorney. The City will cooperate fully in the defense. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without SyWest’s consent but should it do so, the City shall waive the indemnification herein, except, the City’s decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein. SyWest shall provide a deposit in the amount of 100% of the City’s estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorney’s fees, and shall make additional deposits as requested by the City to keep the deposit at such level. If SyWest fails to provide or maintain the deposit, the City may abandon the action and SyWest shall pay all costs resulting therefrom and the City shall have no liability to SyWest.

7.3 **City Right to Abandon.** If SyWest fails to timely pay the agreed upon deposit or to replenish the deposit, City may also abandon any litigation without liability to SyWest and may recover from SyWest any attorneys’ fees and other costs for which the City may be liable as a result of abandonment of any of the Claims or Demands.

7.4 **City Discretion.** It is expressly agreed that City shall have the right to utilize the City Attorney’s office or use other legal counsel of its choosing in responding to or defending the Claims or Demands. SyWest’s obligation to pay the defense costs of City shall extend until final judgment, including any appeals, unless this Agreement is otherwise terminated by SyWest as described above. The City agrees to fully cooperate with SyWest in the defense of any matter in which SyWest is defending and/or holding City harmless. The City may make all reasonable decisions with respect to its representation in any legal proceeding relating to any Claims

or Demands, including its inherent right to abandon or to settle any litigation brought against the City in its reasonable discretion.

7.6 **Exception.** The obligations of SyWest under this Section 7 shall not apply to any claims, actions, or proceedings arising out of the gross negligence or willful misconduct of the City, its elected or appointed officials, agents, officers, employees, or attorneys.

7.7 **Survival of Indemnity & Hold Harmless Obligations.** All indemnity and hold harmless provisions set forth in this Agreement shall survive termination of this Agreement.

8. **Assignment.** SyWest may not assign this Agreement to any other entity unless agreed to in writing by City and upon proof of the financial viability of the successor entity to fulfill the Agreement's obligations. City's consent to assignment shall not be unreasonably withheld.

9. **Relationship Between the Parties.** The Parties agree that this Agreement does not operate to create the relationship of partnership, joint venture, or agency between City and SyWest. Nothing herein shall be deemed to make SyWest an agent of City.

10. **Authority to Enter Agreement.** SyWest warrants that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

11. **Notices.** All notices, demands, invoices, and communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City: City of Carson
701 East Carson Street
Carson, California 90745
Attn: Saied Naaseh, Planning Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave. Suite 1700
Irvine, CA 92612
Fax: 949-223-1180
Attn: Sunny Soltani

To SyWest: SyWest Development, LLC.
150 Pelican Way
San Rafael, CA 94901
Attn: Bill Vierra, President

Copy to: Miller Starr Regalia
1331 N. California Boulevard, Suite 500
Walnut Creek, CA 94596
Fax: 925-933-4126
Attn: Basil S. Shiber

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail; and by email, upon the sender's receipt of an email from the recipient acknowledging receipt.

12. **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

13. **Construction; References; Captions.** It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Unless otherwise specified, any term referencing time, days, or period for performance shall be deemed calendar days and not business days, provided, however that any deadline that falls on a weekend or holiday shall be extended to the next City business day. All references to SyWest include all personnel, employees, agents, and contractors of SyWest, except as otherwise specified in this Agreement. All references to City include its elected officials, appointed boards and commissions, officers, employees, agents, and volunteers. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

14. **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15. **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

16. **Binding Effect.** Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

17. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

18. **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

19. **Consent to Jurisdiction and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Los Angeles, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental

entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, SyWest expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure section 394.

20. **Time is of the Essence.** Time is of the essence with respect to this Agreement.

21. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

22. **Entire Agreement.** This Agreement contains the entire agreement between City and SyWest and supersedes any prior oral or written statements or agreements between City and SyWest with respect to the subject matter of this Agreement.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

SYWEST:

SYWEST DEVELOPMENT, LLC

By: _____

Its: _____

By: _____

Its: _____

SOUTH BAY CARSON, LLC

By: _____

Its: _____

By: _____

Its: _____

CITY:

CITY OF CARSON

By: _____

Its: City Manager

APPROVED AS TO FORM:

By: _____

Sunny K. Soltani, City Attorney