

RESOLUTION 20-081

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, PROVIDING FOR A SECOND AND LAST EXTENSION FOR COMPLIANCE ON THE PART OF SOUTH BAY CARSON, LLC AND SYWEST DEVELOPMENT, LLC, WITH RESPECT TO THE TERMS AND CONDITIONS OF CONDITIONAL USE PERMIT NO. 940-13, RELOCATION REVIEW NO. 3047-13 AND 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 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 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 has 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, City has 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 within the City of Carson, including the Property and other properties in the surrounding trade area; 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, the City Council adopted Resolution 17-120 (“Compliance Resolution”) which served as an attempt to effectuate the foregoing, and which also extended the compliance period under the Original CUP until October 31, 2020 (“Compliance Period”); and

WHEREAS, in connection with Enterprise’s proposed use of the Property, Sywest has been seeking to develop the Property with two large scale industrial buildings; and

WHEREAS, Sywest has hired consultants to assist in the design, environmental, and cost related issues typical of former landfill sites, and further has been prepared to enter into discussions with ERA to resolve the ERA Dispute; and

WHEREAS, Sywest has also 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 appearance of the landscaping is acceptable; and

WHEREAS, Sywest contends that it was in the process of finalizing plans for the two industrial buildings in order to submit a package to the City’s Planning Division for processing. However, prior to Sywest submittal and initiating formal discussions with the ERA, it came

across an opportunity for development of a major retailer (“New Retailer”) who inquired about sites in Carson; and

WHEREAS, as a result, Sywest has placed ERA discussions regarding development on hold with DTSC until Sywest decides what is the best development for this site and Sywest is asking the City for another two-year extension of time to comply with the Original CUP; and

WHEREAS, pursuant to the Compliance Resolution, 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 and for 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 Resolution, in October 2017, SyWest paid 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 Compliance Period between November 1, 2017 and October 31, 2018; and

WHEREAS, pursuant to the Compliance Resolution, in November 2018, SyWest paid 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 Compliance Period between November 1, 2018 and October 31, 2019. Fifty Thousand Dollars (\$50,000.00) of the “2018 Heavy Vehicle Transit Fee” was added to the Holdover Deposit to bring the total Holdover Deposit to Four Hundred Thousand Dollars (\$400,000.00) as of November 1, 2018; and

WHEREAS, pursuant to the Compliance Resolution, in October 2019, SyWest paid 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 Compliance Period between November 1, 2019 and October 31, 2020. Fifty Thousand Dollars (\$50,000.00) of the “2019 Heavy Vehicle Transit Fee” was 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; and

WHEREAS, to accommodate Sywest’s request and in furtherance of possible development of the Property by the New Retailer, the City Council has been asked to approve this Resolution (“Extended Compliance Resolution” or “Resolution”), which, like the Compliance Resolution, would be adopted to resolve the Disputes and to document resolution of the same, as well as to extend the compliance date of the Original CUP by an additional two years to October 31, 2022, in order to provide Sywest and the New Retailer adequate time to prepare an entitlement package, obtain entitlements from the City, design the project for construction, and obtain building permits by going through the plan check process.

WHEREAS, as of the date of adoption of this Extended Compliance Resolution, the amount of the balance of the Holdover Deposit should be \$450,000.00 and the City will conduct a true up and will notify Sywest if correction to this account must be made.

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 One Last 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 last extended compliance period under the Original CUP from October 31, 2020 until and through October 31, 2022 ("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, 2022 (the "Extended Compliance Deadline"). Failure to meet the Extended 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 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 resolution of the Disputes, by no later than November 1, 2020, SyWest shall pay to City a one-time "2020 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, 2020 and October 31, 2021. By no later than November 1, 2021, Sywest shall also pay to City a one-time "2021 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, 2021 and October 31, 2022. City agrees that Fifty Thousand Dollars (\$50,000.00) of the "2020 Heavy Vehicle Transit Fee" and Fifty Thousand Dollars (\$50,000.00) of the "2021 Heavy Vehicle Transit Fee" shall be added to the Holdover Deposit to bring the total Holdover Deposit to Five Hundred Thousand Dollars (\$500,000.00) as of November 1, 2020, and Five Hundred Fifty Thousand Dollars (\$550,000.00) as of November 1, 2021.

D. By no later than June 30, 2020, SyWest shall file a complete development application with the City. If a complete application is not filed on or before June 30, 2020, the

Extended Compliance Period extension will not take effect on October 31, 2020 and the vehicle storage facilities or rental car hub storage facilities uses on or at the Property must cease on October 31, 2020. In other words, this Resolution is not effective and the second and final extension for compliance does not take effect on November 1, 2020, if a complete development application is not filed with the City on or before June 30, 2020. If the second and final extension does not become effective, then City has full discretion to use the funds in the Holdover Deposit to commence legal proceedings and shall deduct and withdraw all applicable penalties under this Resolution and the Compliance Resolution from any and all deposits with the City.

E. The City Council retains sole discretion to grant one more extension to the June 30, 2020 deadline of filing a development application provided the record reflects a good faith attempt by SyWest to close a development deal and a need for more time to complete a development application. If SyWest requires an extension for the filing of the development application date, it shall notify staff in writing by 5:00 p.m. on June 8, 2020.

D. 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 Extended 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.

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 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, Enterprise, or the New Retailer 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 Extended 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 (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 and (ii) with written notice provided by City, 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, including but not limited to, development of the Property by the New Retailer and (iii) with written notice provided by City, apply the Holdover Deposit towards City costs and fees, including attorney’s and consultant’s fees, associated with City’s analysis of the feasibility of alternatives for development of the Property, including those incurred in connection with possible development by the New Retailer.

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.

Section 9. 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.

[signatures on the following page]

PASSED, APPROVED AND ADOPTED this 5th day of May, 2020.

Albert Robles, Mayor

ATTESTED:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

Sunny Soltani, City Attorney