

## AMENDMENT NO. 1

### TO REIMBURSEMENT AGREEMENT

**THIS AMENDMENT NO. 1 TO REIMBURSEMENT AGREEMENT** ("Amendment") is executed this \_\_\_\_ day of April, 2020 ("Effective Date"), by and between the **CITY OF CARSON**, a charter city and municipal corporation ("**City**"), and **SYWEST DEVELOPMENT, LLC**, a California limited liability company and **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 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 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 "**DTSC 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 DTSC 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 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**, 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 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, 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; and

**WHEREAS**, the Parties entered into that certain Reimbursement Agreement dated August 30, 2017 ("Agreement") for Sywest to reimburse City the full and reasonable costs incurred in resolving the Disputes and in documenting resolutions of the same, including, without limitation, City costs and fees associated with negotiating and preparing the Compliance Resolution; 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 the appropriate regulatory agency to resolve the DTSC 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 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. And Sywest is also in discussions with a major retailer ("New Retailer") who has inquired about sites in Carson for construction of a new retail facility; and

**WHEREAS**, as a result, Sywest has placed DTSC 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 a two-year extension of time to comply with the Original CUP; and

**WHEREAS**, the Agreement provided that Sywest would deposit \$20,000 with City from which City may draw against to pay for time spent negotiating and preparing the Compliance Resolution but that deposit was expended during the last round of Sywest's request for an extension in 2017; and

**WHEREAS**, the Parties now desire that Sywest deposit \$50,000 with City as Deposit (as defined below); and

**WHEREAS**, Sywest requested that the City Council approve an extension of the Compliance Resolution ("Extended Compliance Resolution"), which would extend the compliance date of the Original CUP by an additional two years to October 31, 2022, in order to provide Sywest 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; and

**WHEREAS**, Sywest understands and acknowledges that City has incurred and may continue to incur costs associated with negotiation and preparation of the Extended Compliance Resolution, including but not limited to, attorney's fees, and agrees to reimburse and pay for all such expenses; and

**WHEREAS**, now, the Parties seek to amend the Agreement to expand Sywest's reimbursement obligations to include City costs and fees associated with the Extended Compliance Resolution and any development of the Property.

**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. **Contract Changes.** The Agreement is amended as provided herein (new text is identified in ***bold italics***, deleted text in ~~strike through~~).

A. **Section 2 "Sywest Responsibility for City Costs," of the Agreement is hereby amended to read in its entirety as follows:**

"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, ***including, but not limited to, reasonable costs and fees associated with (i) negotiating and preparing the Extended Compliance***

*Resolution, it being understood that City has already incurred and may continue to incur costs associated therewith, (ii) preparing all amendments to the Agreement, (iii) consultant's fees and costs, and (iv) when an application is filed for development, for all direct and indirect costs, fees and expenses of City related to review and processing of the entitlements and permits, including CEQA review (collectively, "Permits"). City Costs include, but are not limited to: (i) attorneys' fees, at a rate not to exceed \$350 per hour, and staff time required for the drafting and review of any agreements required or entered into pursuant to or in connection with any of the Permits including CEQA documents; (ii) all costs related to the review and processing of the Permits including all fees, costs and expenses incurred in connection with CEQA review or compliance, including but not limited to City staff time, attorneys' fees at the rate set forth above, environmental consultant fees, costs of preparing, reviewing, certifying and/or circulating necessary CEQA reports and documents, including any environmental impact report, technical studies and analyses, and other supporting documents, reports, written declarations, studies, or analyses, as deemed necessary and appropriate by City in accordance with CEQA; (iii) all costs related to studies, reports and design services for the development of any project-related infrastructure; (iv) all costs related to investigations of the Property; and (v) any other fees and costs deemed necessary by the City in order to process, review, or act upon the Permits and all related entitlements. Developer's obligation to deposit and reimburse City Costs are in addition to Developer's duty to indemnify, defend, and hold harmless City, as otherwise set forth in the Agreement. . 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 ~~\$50,000~~\$20,000 against which City Costs will be drawn down ("Deposit"). In no event shall Sywest's reimbursement obligations under this Agreement be capped at \$50,000, as it is the express intent of the Parties that City shall be fully reimbursed for all City Costs.

(c) At no point shall the minimum balance of the Deposit fall below ~~\$5,000~~\$15,000 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."

**B. Section 3 "City Release; Termination," of the Agreement is hereby amended to read in its entirety as follows:**

**"3. City Release; Termination.** This Agreement shall remain in effect *until and through October 31, 2022*~~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 *of this Agreement*, 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."

**2. 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, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Sywest 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.

Sywest 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 Sywest that, as of the date of this Amendment, Sywest 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.

4. **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.

5. **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

\_\_\_\_\_  
Albert Robles, Mayor

ATTEST:

\_\_\_\_\_  
Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney

SYWEST:

SYWEST DEVELOPMENT, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

SOUTH BAY CARSON, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2020 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
<input type="checkbox"/>	<div>TITLE(S) PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div>	<div>TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	<div>NUMBER OF PAGES</div>
<input type="checkbox"/>	OTHER _____	
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		<div>DATE OF DOCUMENT</div>
		<div>SIGNER(S) OTHER THAN NAMED ABOVE</div>

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

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- CAPACITY CLAIMED BY SIGNER**
- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

**SIGNER IS REPRESENTING:**  
(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE